

Introductory Note

These end-notes contain references to submissions from the public on the Working Draft published on 22 November 1995. They do not seek to replace the original submissions, many of which are fairly detailed. The submissions themselves were sorted, categorised and copied directly with summaries to political parties. 30 volumes of submissions have been provided to political parties from January 1996. In many instances the views contained in submissions have been too lengthy or too detailed to be adequately covered in these notes. It is strongly recommended therefore that political parties revert to the original submissions in such case. These End-notes are intended merely as a further aide to facilitate consideration of the views contained in public submissions.

1. PREAMBLE

- 1.1 The CA received 3 075 petitions, calling for the acknowledgement of God in the Preamble. This was supported in many submissions from individuals and religious organisations.
- 1.2 Some individuals and organisations also sent in suggested formulations for the Preamble. (Walker, Prozesky, SACC)
- 1.3 Another suggestion raised in a number of submissions was that the Preamble should refer to the fundamental rights in the Constitution; and clearly state that the Constitution imposed duties and responsibilities, not only rights.

CHAPTER 1 FOUNDING PROVISIONS

2. GENERAL

- 2.1 The Afrikaner Freedom Foundation (AVSTIG) called for the recognition of the right to self-determination and its inter-relatedness with democracy and human rights, to be included in the Founding Provisions:

"Principles and norms of international law shall be an inseparable part of the legal system. Recognition of the right of self-determination shall not be construed as precluding the right of any community sharing a common cultural and language heritage to freely exercise its right of self-determination. The state shall in accordance with international law and the conventions on human rights and the right of self-determination, protect and promote the cultural, social, economic and political development of communities, provided that principles of equal rights and equal status are not prejudiced in any way. Democracy in this Constitution is expressed in

universal adult suffrage, the recognition of fundamental human rights and of the right to equality and self-determination, and the division of powers between the legislative, executive and judicial organs of the state."

- 2.2 AVSTIG further proposed that machinery for dealing with issues and claims regarding the collective right of self-determination be included under the President's powers to appoint commissions.
- 2.3 The Afrikanervolkswag and S.A. Bureau of Race Relations both requested that provision be made for the self-determination of the "Afrikaner nation in their own homeland."
- 2.4 Individual submissions on the issue of self-determination were varied, indicating both support for, and opposition to the idea of a volkstaat. One individual's submission (Rahim,A.) said that any of the provinces with a democratic majority should have the right to ask for autonomy.

REPUBLIC OF SOUTH AFRICA s1

- 3. s1(1)
- 3.1 Suggestions for alternative names for the Republic from individuals were Azania, United State of South Africa and Hlanganani.
- 3.2 The Department of Defence said that the words " *...and to defend its territory*" should be added to the end of s1(1).
- 3.2 Prof. LM Du Plessis of the Department of Public Law at Stellenbosch University felt it was more appropriate to describe South Africa as a "*social democracy*" or "*social democratic state*" in s2(1) because of the increased emphasis on socio-economic rights in the Bill of Rights.
- 3.3 The Afrikanerbond proposed that the nature of the Republic should be determined to be a "*constitutional state founded in justice, order and the well-being of its citizens*".
- 4. s1(2)
The Department of Defence said that the definition of the territory in Schedule 1 should include the maritime zones as contained in the Maritime Zones Act 15 of 1994.

SUPREMACY OF THE CONSTITUTION s2

- 5. s2(1)
Prof. F. Venter of the Department of Public Law at Potchefstroom University proposed the rewording of s2(1): "*... law inconsistent with it is invalid and conduct contrary to its provisions is unlawful.*"

CITIZENSHIP s3

6. **s3(2) (a)**
The Africa Fund points out that whilst this principle is clear and must be enshrined, it may need to be reworded to maintain its objectives while referring to specific limitations as set out in other provisions of the Constitution. Chapter 3, s42(c) - (e) and 68(Option 2) and Chapter 8, s121(1)(c) - (e) all indicate that the insane, insolvents and certain convicted criminals are not equally entitled to all the rights of citizenship i.e. they are not entitled to become members of legislative bodies. If there is a minimum age for voting, the very young will be excluded from the franchise and therefore may be excused from some of the duties, responsibilities and obligations of citizenship.

7. **s3(3)**
The Africa Fund asks whether the provision for lost citizenship in this subsection is compatible with s19 in Chapter 2 which indicates that no citizen may be deprived of citizenship and suggests it may be better to refer to "renunciation" of citizenship rather than loss.

NATIONAL SYMBOLS s5

8. **s5**
A number of submissions from individuals and organisations were received on the national flag and anthem. These indicated support and opposition to the present flag. Submissions on the anthem included Nkosi Sikelele, Die Stem and the official condensed version.

LANGUAGE s6

9. **s6**
9.1 A number of submissions from individuals supported either English or English and Afrikaans as official languages. Others called for the retention of Section 3 of the Interim Constitution.

9.2 The English Academy of Southern Africa supported Option 1.

9.3 The S.A. Akademie vir Wetenskap en Kuns, National Council for Women, the National Professional Teachers Association of S.A. and Prof. F.F.J Van Resnburg of the Department of Afrikaans at Rand Afrikaans University supported Option 2 (retention of Interim Constitution provisions).

9.4 The Human Rights Commission supported Option 3 with the inclusion of s(2) and (3) of Option 1.

9.5 The Project for the Study of Alternative Education in South Africa said that the provisions on language should allow for some flexibility and the reduction or addition of the 11 official languages.

9.6 The S.A. Chamber of Business preferred Option 3 as it recognised, rather than entrenched national languages and leaves it to be regulated by

legislation.

- 9.7 The Rapportryerskorps - Vaal River said not more than 3 official languages should be used by government at national level, and 2 languages in each province, based on the percentage of inhabitants.
- 9.8 The SA Federal Council on Disability and the Deaf Federation of South Africa , called for the inclusion of sign language as an official language.
- 9.9 The Africa Fund believes that none of the options are wholly satisfactory and says that after listing the official languages, the section should indicate what being an official language requires/entails i.e. the right to use any official language and the right to interpretation, the right to obtain all/some government documents in any/all official languages, the right of voters to have ballots in their official languages and the right to schooling and texts in any official language (primary and secondary education only ?) and minimum rights to radio/television broadcasts in the various official languages.

CHAPTER 2 BILL OF RIGHTS

10. GENERAL

- 10.1 A number of submissions called for the inclusion of additional rights:
 - i The Department of Sport said that principles regarding the acknowledgement by government of the importance of sport and recreation should be included in the new Constitution.
 - ii The S.A. Students Congress proposed the inclusion of student rights which would include the right to elect representatives with effective powers, the right to organise freely across institutions without interference, the right to bargain collectively and the right to be represented on structures of governance at tertiary institutions.
 - iii The Evangelical Alliance of South Africa, South African Education Law and Policy Association and the Nederduitse Gereformeerde Kerk proposed the inclusion of a new clause dealing with Family Rights and Marriage.
 - iv Athe Mtubatuba and Distric Women's Institute said that whilst it was correct that children's rights are a priority, there is no mention of the aged at all. A number of individual submissions also said the Bill of Rights needed to make special provision for the protection of the aged.

- v One individual's submission called for the inclusion of a clause protecting citizens against prohibitive taxation
 - vi The National Professional Teachers Association said the Bill of Rights should contain a fundamental right to the maintenance of law and order.
 - vii Peter Weiss of the Africa Fund commends the inclusion of socio-economic rights but says it is puzzling that while these "positive" or "aspirational" rights have been included, other rights enunciated in the International Covenant on Economic, Social and Cultural Rights are missing, to wit, the right to fair wages and equal remuneration; a decent living for workers and their families; rest, leisure and holidays; paid leave for mothers and fathers before and after childbirth; non-coercive marriages; an adequate standard of living; participation in the cultural life of the nation and enjoyment of the benefits of scientific progress.
- 10.2 The S.A. Chamber of Business remarked that many provisions in the Bill of Rights go beyond basic human rights and extend to methods of implementation, which they feel should be left to legislation.
- 10.3 The Association of Law Societies said that with regard to transitional arrangements, the provisions on the Bill of Rights, should become operative as soon as practically possible after adoption.
- 10.4 The Africa Fund said there seems to be a tendency to state rights in absolute terms in this Chapter and then to provide for their regulation by legislation. They suggest this may vitiate the absolute quality of rights. They also suggest that this Chapter or s53 should explicitly preclude any amendment, abolishing or limiting rights set out in the Bill of Rights.

STATE'S DUTIES s7

11. s7
- 11.1 A number of individual submissions felt that the Bill of Rights needed to state that it did not only give rights, but also imposed duties. One submission proposed a corresponding Bill dealing with duties and responsibilities.
- 11.2 The Muslim Assembly in the Cape suggested the insertion of the words "*and duties*" in S7 to read "*The state must respect and protect the rights and duties in this Bill of Rights.*"
- 11.3 The Verbruikerstigting proposed the insertion of the word "*promote*" in S7, to read "*The state must promote, respect and protect ...*"

EQUALITY s8

12. s8(1)

12.1 The National Association of Democratic Lawyers Gender Desk strongly supported the inclusion of *"and benefit of the law"* in the understanding that it signifies a substantive notion of equality which contemplates the possibility of different treatment to achieve the goal of equality and acknowledges the defects of early US jurisprudence which assumed that "equal" meant "identical".

12.2 Dr G Lubbe of the Faculty of Theology and Religious Studies at University of South Africa said that s8(1) did not adequately protect religious communities against slander and denigration. He said the Constitution should explicitly mention that religious communities should exhibit tolerance, refrain from violating each other's rights and conduct the propagation of their teachings with respect for people of other religious communities.

13. s8(2)

13.1 The Equality Clause drew many submissions from the public. There was some opposition in principle to affirmative action and concern also that the provisions of S8(2) were too broad. There were suggestions for a time-limit of 10 years for this provision.

13.2 The Deaf Federation of South Africa proposed the inclusion of the words *"... including persons with disabilities"* to 8(2). This was supported by the S.A. Municipal Workers Union Medical Benefit Fund.

13.4 The National Association of Democratic Lawyers (NADEL) supported the wording of the original Option 1 of 8(2) with the wording *"legislative and other measures designed and likely to achieve"*. The National Womens Coalition proposed the deletion of the word *"unfair"* in s8(2).

13.5 The S.A. Chamber of Business also supported the wording of Option 1 of s8(2) but proposed the deletion of the words *"and other"* as it felt measures other than legislation should not be enshrined in the Bill of Rights. They also felt that the words *"provided that they do not unfairly discriminate against the rights of others"* should be added at the end of s8(2).

13.6 The Human Rights Committee focussed on problems with both options. They felt that the wording in Option 1- *"designed and likely to"* - would better promote the achievement of substantive equality but could remove the application of the general limitations clause. However, the placing of *"likely"* on its own in Option 2 would subject programmes to a

higher level of judicial scrutiny and was preferable in this respect. The Africa Fund said that "*intended to*" or "*designed to*" should be linked with "*likely to*" to express the full meaning.

- 13.7 The Human Rights Commission supported the wording of Option 2 of s8(2) ("*measures likely to achieve*") and retaining the word "*unfair*". The National Council for Women, Women's Lobby and Transvaalse Onderwysersvereniging also supported the wording of Option 2.
- 13.8 The Association of Law Societies proposed the amendment of s8(2) to allow courts to review ill-conceived affirmative action programmes.
- 13.9 NADEL's Gender Desk supported Option 2, stating that whilst it is conceptually important to see affirmative action as a legitimate vehicle for the achievement of equality and not as a derogation from equality, affirmative action measures and policies should be subject to the criterion of reasonableness which is contained in the limitations clause. Option 2 expresses affirmative action as a limitation of equality and therefore would be subject to the limitations clause. If it is considered problematic to frame affirmative action in the negative, an internal modifier of reasonableness should be included.
14. s8(3)
- 14.1 The inclusion of sexual orientation as one of the grounds in s8(3) drew a lot of comment from the public. There was support for and opposition to the inclusion of sexual orientation - 546 petitions were received opposing its inclusion and 7 032 petitions supported its inclusion.
- 14.2 The National Children Rights Committee proposed adding "*economic status*" to the list. The National Womens Coalition in the Western Cape proposed adding "*pregnancy*" to the list.
- 14.3 The Human Rights Committee supported including the words "*unfairly*" in s8(3) as there are types of legitimate discrimination. They felt that the wording should be amended to read "*including but not limited to..*" to ensure that the list is not a closed one. The Human Rights Commission also felt that it would be unwise not to explicitly indicate that the list is not a closed one. The Association of Law Societies also proposed the amendment of s8(3) to clarify that the listed grounds are not exhaustive.
- 14.4 The National Professional Teachers Association said the principle of affirmative action was too wide and contains too few objective criteria for ensuring it is applied as a bona fide remedy, particularly in the sensitive field of education.
- LIFE s10
15. s10

- 15.1** The CA received 186 376 petitions in support of the constitutionalisation of the death penalty. This was supported in many of the submissions from individuals and organisations. Organisations in support of the death penalty included the Residents and Ratepayers of Greater Germiston, S.A. Agricultural Union, National Council for Women, Eastern Province Agricultural Council, Islamic Council, Women's Lobby, Verbruikerstigting , Rustenbergse Vroueforum, Nederduitse Gereformeerde Kerk O.V.S, Die Forum Van Christelike Kerke and Rapportryerskorps - Vaal River, Pretoria Technikon Students Movement, Belville Baptist Church, Nederduitsch Hervordme Kerk van Afrika, Durban Chamber of Commerce, Africa Christian Action, His People Christian Ministers, Hoxawe Tribal Authority, Molteno Community, Concerned Citizens Committee, Mabopane Community, Kowie Retired Residents Association and S.A. Chamber of Business.
- 15.2** Organisations against the death penalty included Africa Fund, Amnesty International, the Religious Society of Friends, the Church of the Province of South Africa , the SA Catholic Bishops Conference, Methodist Church, South African Council of Churches, S.A. National Council for Child and Family Welfare, National Association of Democratic Lawyers, Human Rights Committee, Human Rights Commission, Society for Abolition of the Death Penalty, Fish Hoek Baptist Church, Black Sash Pretoria, Synod of Bishops of the Church of the Province, N. Region of Transvaal Law Society and Centre for Criminal Justice.
- 15.3** The Nederduitse Gereformeerde Kerk felt that the death penalty is not a constitutional issue.
- 15.4** The issue of abortion did not receive the same amount of attention as the death penalty in relation to the right of life. However, the S.A. Catholics Bishops Conference called for the amendment of s10 to make it clear that everyone has the right to life from the moment of conception. This was supported by a further 9 604 petitions from Pro-Life insisting on the unconditional protection and entrenchment in the Constitution of the right to life of all innocent human beings from conception until natural death. Other organisations which spoke out against abortion included the S.A. Vrouefederasie, People for Life, Presbyterian Church of Southern Africa, Islamic Council, Evangelical Alliance of S.A, His People Christian Ministries , World Federation of Doctors who respect Human Life, Free Evangelical Lutheran Synod and PACSA.
- 15.5** Many individual submissions linked the right to life to the right to self-defence and the right to own fire-arms. The CA received 14 410 submissions stating that the Constitution should be amended to recognise the right to own fire-arms and to place a limitation on government's power to disarm the civilian population. These petitions also argued that the right to life should be qualified by allowing for justifiable homicide, inter alia, in

defence of any person from unlawful violence or, in order to effect a lawful arrest or to prevent the escape of a person lawfully detained.

- 15.6 Organisations which opposed any provision for the ownership of firearms included the Ceasefire Campaign, Conscientious Objector Support Group and Gun Free South Africa.

FREEDOM AND SECURITY OF THE PERSON s11

16. s11(1)
Prof. F. Venter of Potchefstroom University suggested that the rights contained in 11(1)(a) and (b) deserved to be included as separate rights.
17. s11(2)
S11(2) also drew a lot of comment from the public. Prof. F. Venter of Potchefstroom University felt that these were not rights and that their inclusion undermined the whole Bill of Rights. The Africa Fund supported the idea of including *"both bodily and psychological integrity"* after *"person"*.
18. s11(2)(a)
- 18.1 The National Children Rights Committee said that corporal punishment should be specifically prohibited in 11(2)(a).
- 18.2 The National Network on Violence against Women said the right needed to more actively phrased and suggested replacing the word *"free"* in 11(2)(a) with *"protected from"*.
19. s11(2)(b)
The wording in 11(2)(b) *"to be secure in and control their own body"* was supported by the Reproductive Rights Alliance , the Women's Health Project at Wits University, Planned Parenthood Association of S.A., National Association of Democratic Lawyers and South African National Civic Organisation.
20. s11(3)(c)
The South African Municipal Workers Union (SAMWU) Medical Benefit Fund and Africa Fund suggested adding the word *"informed"* to 11(3)(c) to read *"... without that person's informed consent."*

SLAVERY, SERVITUDE AND FORCED LABOUR s12

21. s12

21.1 The Medical Association of South Africa (MASA) said that s12 should be extended to include compulsory labour. The Chief of the South African National Defence Force, Gen. G. Meiring, proposed adding the words " ... *but the state may impose a system of military conscription upon citizens.*"

22.2 Africa Fund ask whether work in a prison is considered "*forced labour*".

PRIVACY s13

23. s13

Many submissions from individuals expressed concern about s13. The general feeling was that the protection of the right to privacy was too wide and should not preclude normal activities of the police e.g. the right to search. The S.A. Constitutional Consultants on behalf of the Association of Credit Bureaus, expressed concern about the implications for credit bureaus and said if the limitations clause included a necessity test, the result could be that the business activities of credit bureaus would be declared unconstitutional. The Community Law Centre is also of the view that this right should contain an internal qualifier. Africa Fund also suggest there may be a need for qualification in the text to make it subject to action taken under judicial warrant, subpoena etc

FREEDOM OF RELIGION, BELIEF AND OPINION s14

24. s14(1)

24.1 Submissions from individual members of the public raised concerns about satanism and felt this practice should not be excluded from Freedom of Religion.

24.2 Many submissions also expressed concern about the legalisation of dagga and felt the Constitution should preclude this. The Helenvale Dagga Forum linked the practice to freedom of religion. 1 040 petitions were received from the Burning Spear Movement calling for the recognition of the rights of the rastafarian people.

24.3 Dr Lubbe of UNISA said that s14(1) should explicitly state that freedom of religion also includes the right to change religious allegiance, and the right to profess, practice and propagate the religion of one's choice.

24.4 The Conscientious Objector Support Group proposed adding the words "*... including the right to conscientious objection to military service.*"

25. s14(2)

25.1 The National Professional Teachers Organisation of South Africa felt that the wording of 14(2) was vague and too restrictive and should be deleted.

25.2 The South African Education, Law and Policy Association suggests that s14(2) be rephrased "*Without derogating from the generality of sub-section 1, religious observances may be conducted ...*" They submit that s14(2) creates the impression that religion will only be tolerated in state or state-aided institutions when the three requirements of the sub-section are met and that this will be an inappropriate limitation of religious freedom which approaches the position in the USA.

26. s14(2)(a)
The S.A. Jewish Board of Deputies said that the free practice of religion was not guaranteed and that clarity was needed on who the "*appropriate authority*" was, referred to in s14(2)(a).

27. s14(3)(b)

27.1 Submissions from Muslim organisations objected to the qualification "*... to the extent that that the system is consistent with the Bill of Rights*" in 14(3). These organisations included the United Ulama Council of South Africa), Islamic Unity Convention, Muslim Assembly of the Cape, Muslim World League and Siraatul Haq Islamic School and Madrasah. The argument is that Muslims regard their personal law as divine, binding and absolute and this law cannot be altered or subjected to any law. This view was supported in individual submissions.

27.2 The S.A. Jewish Board of Deputies said the wording of this provision was loose and confusing.

FREEDOM OF EXPRESSION s15

28. s15(2)

28.1 The Association of Law Societies, Freedom of Expression Institute, the National Association of Democratic Lawyers and Human Rights Committee opposed the inclusion of 15(2). The Freedom of Expression Institute said that merely by relying on the underlying principles of the Constitution as a whole as well as on other rights listed in the Bill of Rights and by applying the limitations clause, one would achieve the exclusion from constitutional protection of the worst categories of speech which constitute infringements of the rights to equality and dignity and others.

28.2 The National Coalition for Gay and Lesbian Equality also felt that 15(2) was unnecessary. They went further to propose that, if it remained, other mechanisms should be included, for example the constitutional right to reply.

28.3 The Conference of Editors also oppose s15(2) on the grounds that it ignores the very essence of a constitutional guarantee by deciding in advance what kinds of speech are undeserving of constitutional protection, and does not allow the Constitution to grow and develop over time.

29. s15(2)(b)
- 29.1 The Human Rights Commission supported the inclusion of hate-speech but proposed deleting the word "*imminent*" in 15(2)(b). The National Network on Violence against Women and the National Hindu Youth Federation also supported the inclusion of provisions on hate- speech.
- 29.2 Many of the submissions from individual members of the public supported the idea of further qualifying the right by outlawing pornography. The Traffic and Licensing Services in Port Elizabeth proposed adding the words "*or crime*" to 15(2)(b).
30. s15(2)(c)
- 30.1 The S.A. Jewish Board of Deputies supported the inclusion of hate-speech but proposed the deletion of the words "that constitutes incitement to discrimination" in 15(2)(c).
- 30.2 Prof. L.M. Du Plessis of Stellenbosch University suggested alternate wording for s15(2)(c): "*advocacy of hatred which violates the dignity of others.*"
31. s15(3)
- The Human Rights Committee raised a number of concerns with 15(3). See Submission. The Human Rights Commission was of the opinion that 15(3) should be omitted as it would allow administrative interference and inhibit state funded media in its function as a national broadcaster. The Association of Law Societies (11.1) supported Option 1 of s15(3) but said it should be amended to exclude from state regulation media merely financed by the state. The Africa Fund also supported Option 1.

ASSEMBLY, DEMONSTRATION AND PETITIONS s16

32. s16
- The Congress of South African Trade Unions proposed adding the right "*to picket*".

FREEDOM OF ASSOCIATION s17

33. s17
- A number of submissions from individual members of the public were concerned that Freedom of Association should specifically include the right "*not to associate*", and "*to disassociate*." The Africa Fund ask whether there is sufficient case law to establish the meaning of this right.

POLITICAL RIGHTS s18

34. s18
- A number of submissions from individuals and from the Rustenbergse Vroueforum, Traffic and Licensing Services and N. Region of the Transvaal Law Society in Port Elizabeth felt that the Constitution should specify 18

years as the voting age.

FREEDOM OF OCCUPATION s21

35. s21

35.1 Business South Africa supported the inclusion of a clause on Economic Activity: *"Everyone has the right to pursue the livelihood and engage in the business of their choice, including the right to choose freely their occupation, industry, trade and profession."*

35.2 The Medical Association of South Africa argued for the retention of s26 of the Interim Constitution and the inclusion of a separate right to occupational choice. The S.A. Chamber of Business also supported the retention of the provisions of the interim Constitution.

35.3 The National Association of Democratic Lawyers supported the idea that no provision be made for a right to economic activity.

35.4 The Council of South African Bankers, Human Rights Commission and Residents and Ratepayers of Greater Germiston supported the wording of Option 3: *"Everyone has the right to pursue the livelihood of their choice, including the right to choose freely their occupation, their place of work and their place of training."* The Chamber of Mines also supported this version, but proposed the following amendment: *"Everyone has the right to engage in economic activity and has the right to pursue ..."*

35.5 The Life Officers Association proposed adding the right to *"contract"* to s21.

35.6 The Association of Law Societies felt the Constitution should entrench the right to choose one's occupation, not diffuse economic activity.

35.7 The Workers Organisation for Socialist Action and the Evangelical Alliance of S.A said the constitution should entrench the right to work.

35.8 The Africa Fund said because the Constitution tended to spell out rights in detail rather than in general terms, it would be dangerous not include any provision on economic activity, if it is intended to be a right.

LABOUR RELATIONS s22

36. s22(1)

36.1 Business South Africa proposed a new formulation for Labour Relations, which entrenched neither the right to strike nor the right to lock-out but entrenched the right to fair labour practice, including the right of both employers and employees to join and form employer organisations and trade unions and to engage in collective bargaining. However, they said if the right to strike was included, this had to be balanced by including the right to lock-out.

- 36.2 Submissions from individuals on the labour relations clause emphasised the need to protect farm-workers in particular.
- 36.3. s22(2)
The Transvaalse Onderwysersvereniging suggested that the word "*workers*" in the labour relations clause be replaced with "*employees*", and the word "*trade unions*" be replaced by "*employee organisations*."
37. s22(2)(c)
The Public Servants Association of S.A said the right to strike should be restricted to collective bargaining purposes. The Congress of South African Trade Unions (COSATU) and S.A.Clothing and Textile Workers Union (SACTWU) opposed any circumscription of the right to strike.
38. s22(3)(c)
- 38.1 The South African Agricultural Union, Chamber of Mines, Council of South African Bankers, National Professional Teachers Association of S.A. and S.A. Chamber of Business supported the inclusion of the lock-out clause. COSATU, SACTWU and the Methodist Church were opposed to the lock-out clause.
- 38.2 Africa Fund said that the rights of employers in the USA have been extended to permit the hiring of permanent replacement workers in a strike or lock-out which has had the effect of largely undermining the labour movement and the effective right to mistake. They submit that South Africa should not repeat this mistake.
39. s22(4)
- 39.1 The S.A. Chamber of Business was opposed to s22(4) as it believed the regulation of labour relations was not the function of a constitutional function in the Bill of Rights. They also opposed the entrenchment of centralised collective bargaining.
- 39.2 Cosatu proposed an addition to the clause stating that Parliament may pass a Bill providing for a Workers Charter to be attached to the Constitution, which elaborates on the rights contained in s22 and the rights of workers generally.

ENVIRONMENT s23

- 40.. s23
- 40.1 The C.A. received 17 600 petitions from the Animal Groups Alliance and the Animal Anti-Cruelty League, calling for the inclusion of a section for the protection of animal rights in s23. This was supported by the S.A Association against Painful Experiments on Animals, Animal Voice and a number of submissions from individual members of the public.

- 40.2 The Natal Parks Boardsaid the Constitution should also include a reference in relation to a duty in regard to the environment.
- 40.3 It was felt the clause needed to be tightened up. Alternative suggestions were received from the Chamber of Mines,the South African Constitutional Property Rights Trust and the Environmental Planning Professions Interdisciplinary Committee.
- 40.4 Africa Fund suggest that either in this section or the following one a provision should ensure that limitations or requirements placed on property or its use in order to protect public rights to a healthy environment shall not constitute a deprivation of property for which compensation shall be required in accordance with s24.

PROPERTY s24

- 41. s24
- 41.1 The various options of the Property clause solicited a host of comments from the public. Submissions from individual members of the public varied. Many supported the inclusion of a property clause as essential to ensuring economic growth and stability. Others opposed the inclusion of a property clause and spoke of the need to address land reform. Some of these submissions also spoke of the need to address the situation of people being threatened with eviction from farms.
- 41.2 Organisations in support of a property clause included the Greenlands Boerevereniging, National Professional Teachers Association of S.A., South African Agricultural Union, S.A Foundation for Education and Training , Ladysmith Boerevereniging, Porterville Landbou Kooperasie Beperk, Klipfontein Boerevereniging, Langkloof Landbou Genootskap, the company Business Dynamics ,Durban Chamber of Commerce, the American Chamber of Commerce in S.A , S.A. Chamber of Business and the Molopo West Farming Union.
- 41.3 Most of these submissions were in favour of guaranteeing property rights and entrenching just and equitable compensation.
- 41.4 The S.A. Constitutional Property Rights Trust argued for a property rights clause which extinguished capital values in land and eliminated taxes on labour and savings. This change to rental tenure (as opposed to freehold tenure) would, it is argued, ensure that the right of access to land is enforceable.
- 41.5 The S.A. Property Owners Association felt that all 3 options in the 3rd Edition failed to protect property rights..
- 41.6 The Association of Law Societies supported the inclusion of property rights and said that the safegaurds governing restitution in s121 - 123 of

the Interim Constitution should be retained.

- 41.7 The Human Rights Committee supported a property clause but raised a number of concerns with all Options in the 3rd Edition, and said the relationship between the property clause and other clauses in the Bill of Rights needs to be more fully considered. They suggested that there could be a separate clause for land reform.
- 41.8 The Human Rights Commission supported Option 2 subject to certain amendments.
- 41.9 The Development Action Group, National Land Committee, Cosatu and the National Association of Democratic Lawyers were opposed to a property clause. The motivation in these submissions was that the inclusion of property rights, and particularly the onus on the state to pay market-related prices for land, would limit land reform.
- 41.10 Africa Fund said that, as with s21, a Constitution which spells out other rights in detail should also spell out property rights. They suggest such a section may even protect the loss advantaged by preventing a future, less progressive government from trying to end or reverse land reform and recommend an amalgamation of parts of options 2 and 3. See submission.
- 41.11 The Association of Marketers proposed the inclusion of an "intellectual property clause": *"Everyone has the right to the protection of the moral and material interest resulting from any artistic, scientific or literary production of which they are the creator or trademark brand or brand equity of which he is the proprietor."* This was supported by the Cape Film Office, Copyright Protection Agency, World Council of Professional Photographers, Utico Holdings Ltd, Unilever, S.A. Breweries, the Association of Advertising Agencies, Rembrandt Group Ltd, Sasol Oil, National Television and Video Association of Southern Africa and the Loerie Committee. 4 419 petitions were received in support of this right.
- 41.12 The National Monuments Council expressed its concern that the property clause will affect the powers and functions of the Council, and cautions with regard to the issue of compensation that the property clause should not "sound the death knell of the conservation of our cultural, historical and scientific heritage by claiming compensation when they are deprived of their properties for those purposes."
42. s24(3)
A number of submissions from Muslim groups, including the Dannhauser Islamic Society, Alipur Muslim Association, Delmas Muslim Jamaat, Homestead Park Mosque and Madressa Trust, Aanwarul Islam and Mayfair

Jumma Masjra and Madressa Institute said that Mosques and holy places should be exempt from expropriation.

43. s24(3)(b)
The S.A. Chamber of Business further proposed the replacement of the words *"equitable redress"* in Option 3 with the words *"equitable redress at the expense of the state"*.
44. s24(4)(g)
The Council of South African Bankers proposed the addition of the words: *"value of the investments in it by those affected"* to 24(4) of Option 3 in the 3rd Edition.

HOUSING AND LAND s25

45. s25
- 45.1 Many submissions from individual members of the public spoke of the need for housing, shelter and nutrition and welcomed their inclusion in the Constitution. Others felt that the right to housing was too broadly framed, and was unrealistic.
- 45.2 The Urban Sector Network support the inclusion of socio-economic rights as full, equal and justiciable rights and propose a reformulation of s25.
- 45.3 The Deaf Federation of South Africa proposed the inclusion of the words *"including the housing of communities with common values and/or disabilities"* to s25(1).

HEALTH, FOOD, WATER AND SOCIAL SECURITY s26

46. s26
- 46.1 Submissions from the public on the socio-economic rights were varied. Many spoke of the need for basic rights such as housing, food and social welfare and welcomed their inclusion in the Constitution. However others were concerned that these rights were unrealistic, idealistic and unenforcable .
- 46.2 The Human Rights Committee raised a number of concerns with Section 25 - 28, particularly with the use of the term *"right to access"* and the relationship of the limitations clause to socio-economic rights.
- 46.3 The National Womens Coalition in the Western Cape proposed that both section 25 and 26 be rewritten to afford more than the right to *"access"*.
- 46.4 Business South Africa proposed alternative wording for s25,26,28 and 28: *"Everyone has the right to legislation obliging the state to take reasonable measures which promote and advance access to ..."*

- 46.5 The S.A. Chamber of Business said that Constitutional Principle 11 in their view precluded non-justiciable rights from inclusion in the final Constitution, and that the socio-economic rights contained in s25 - 28 fell into this category. These were better addressed outside the constitutional model. They commended the submission of the Association of Law Societies (see below) on this matter.
- 46.6 The Association of Law Societies said the sections should be rewritten to include what might be called standards of seriousness review so that courts would scrutinise government programmes for seriousness of purpose and not second-guess government policy choices. They also proposed the strengthening of the role of the Human Rights Commission in this regard.
- 46.7 The Chamber of Mines and South African Agricultural Union proposed the deletion of s26.
- 46.8 The SAMWU Medical Benefit propose a detailed and lengthy reformulation of s26 with the emphasis on health care.
47. s26(1)(a)
- 47.1 The Planned Parenthood Association of S.A., the Reproductive Rights Alliance, Womens Health Project at Wits University welcomed the inclusion of *"reproductive health care"* in s26.
- 47.2 However, the Reproductive Rights Alliance (18.15) said s26(1)(a) should be amended to include *"the highest attainable state of health"* to ensure consistency with international norms.
- 47.3 The Gauteng Breastfeeding Forum and La Leche League of S.A. said breastfeeding should be included in the constitution as a fundamental right.
- 47.4 One submission from an individual on the issue of health, said the state also had a responsibility to ensure that everyone belonged to a medical aid scheme.
48. s26(1)(c)
- 48.1 The Deaf Federation of S.A. (21.5) proposed adding the words *"which will include community development measures"* to s26(1)(c).
- 48.2 The S.A. Jewish Board of Deputies said that the right to access to social welfare deserved to be included in a separate clause.
49. s26(3)

The Church of Christ, Scientist (Christian Science) said that constitutional provision should be made for the practice of Christian Science. This is related to the choice of therapy and the legal right to practice spiritual healing through prayer alone. They also submit that the Bill of Rights be specific in reference to the right to choose health care and the right to refuse medical treatment. This issue is also raised by the Africa Fund who say the Constitution may need to anticipate problems such as the fact that certain religious beliefs may conflict with public health or safety regulations eg. religious opposition to vaccination or medical/surgical treatment of a minor.

CHILDREN s27

50. s27(1)(b)

50.1 The National Children Rights Committee proposed the amendment of s27(1)(b) to read: "*to family care, (parental care) or appropriate alternative care when lacking a family environment.*"

50.2 The South African Federation for State Aided Schools felt that parental care should be endorsed in the Constitution. The Transvaalse Onderwysersvereniging also supported the inclusion of parental care.

50.3 The South African National Council for Child and Family Welfare said that s27(1)(b) and (c) should also provide for special care for homeless children, and the right of all children to a violence free family environment, community and country.

51. s27(1)(f)

51.1 The National Children Rights Committee (NCRC) proposed the addition of the following to s27(1)(f): free and compulsory education, special care for disabled children, automatic legal representation by the state in civil and criminal cases and the child's right to express their views in all matters affecting the child, with such views being given due weight in accordance with the age and maturity of the child. The National Institute for Public Interest Law and Research - Advice Centres suggested similar additions.

51.2 The NCRC also propose the addition of a new sub-section, giving the child when charged the right to be dealt with by an appropriate judicial system. They also propose the addition of a section on armed conflict, and that s27 should not be suspended during a State of Emergency.

51.3 The Northern Region of the Transvaal Law Societysaid s27(f) should provide only that "*a child, in addition to his rights in terms of s11 and 34, also has the right to be detained separately from persons over the age of 18 years and under circumstances which take his age into account.*"

Traffic and Licensing Services in Port Elizabeth felt that the criminal child was overprotected in this section.

EDUCATION s28

52. s28(1)

52.1 The NCRC, St Paul's Pre-primary and Primary Schools and Network against Child Labour support the inclusion of free compulsory primary and secondary education in the Constitution. A number of submissions from individuals also supported the idea of free, compulsory education. The NCRC further propose, supported by the Early Learning Resource Unit that early childhood education be added to 28(1)(b).

52.2 The Deaf Federation of South Africa propose the addition of "*special schools for the deaf*" to s28(1) (b).

52.3 Women for Women in Government felt that education should be given a gender reflection to redress the problem of historical discrimination.

52.4 The S. A Federation for State Aided Schools said that the Constitution should clarify the appointment of teachers.

53. s28(2)

53.1 The S.A Jewish Board of Education propose the deletion of the words "*at their own expense*" in s28(2). The Independent Schools Council also raise problems with this provision and its implications for the position of private schools.

53.2 A number of submissions from individuals on the issue of education emphasised the importance of language, culture and religion in education.

53.3 Option 2 of s28 was supported by the S.A. Federation for State-Aided Schools, Residents and Ratepayers of Greater Germiston, Nederduitse Gereformeerde Kerk, Transvaalse Onderwysersvereniging, Association for State-aided Schools, Potchestroom University and Federation of Afrikaans Cultural Associations. The SACC strongly rejected this option.

53.4 The S.A. Jewish Board of Deputies said the provision should be strengthened to ensure the granting of government aid to these schools.

53.5 The National Professional Teachers Organisation of S.A.also supported Option 2 with the proviso that if not fully utilised, provision should be made for a second stream for another language or cultural group.

54. s28(3)

The Deaf Federation of South Africa propose the inclusion of disability in 28(3).

55. Africa Fund ask whether it is possible to distinguish between "race" and "common language,culture or religion" given South Africa's history.
56. s29...
The Committee of University Principals supported the inclusion of a clause on academic freedom. Potchefstroom University also supported the notion of a separate clause dealing with academic freedom.

LANGUAGE AND CULTURE s30

57. s30
- 57.1 Prof. J. Titlestad of the University of Pretoria, on behalf of the English Academy of Southern Africa, said these provisions were so wide as not to adequately confer rights or protect rights. He proposed the retention of s31 and 32 of the Interim Constitution, whose detail and specificity he said is highly desirable and which do contaol the necessary qualification forbidding their racist application. The National Professional Teachers Association of S.A. is also dissatisfied with the provisions of s30.
- 57.2 The Judicial Branch of the Navajo Nation (U.S.A) said there should be a broader definition of language and culture.

ACCESS TO INFORMATION s31

58. s31
- 58.1 Submissions from the public raised a number of concerns with s31.The S.A. Agricultural Union and the Council of S.A Bankers said this particular right should be restricted to the right of a person to information on that person held by the state only.
- 58.2 The Chamber of Mines, Office for Serious Economic Offences and a number of submissions from individuals felt that access to information by the state should be further qualified, to allow for access only if required for the protection of any rights.
- 58.3 Business South Africa said access should be allowed if consistent with open and accountable administration. The S.A. Chamber of Business said access should be allowed, subject to the proviso that disclosure of such information should not be substantially prejudicial to the state, or natural or juristic person.
- 58.4 Cosatu argued for full horizontal application.
- 58.5 The S.A. National Council for Child and Family Welfare was concerned how this provision would relate to adoption services.
- 58.6 The Chief of the South African National Defence Force said that provision needed to be made for the protection of state secrets.

- 58.7 The Association of Law Societies felt that this clause should guarantee a right to a Freedom of Information Act, rather than a direct right of access to information.
- 58.8 Africa Fund suggest that the right stated in subsec(1) should be qualified by redrafting it to state that, subject to(specific qualifications or categories of qualifications) everyone has the right of access to information ...(as set out in (a) and (b). This subsection would then be followed by subsection 2 and might prevent the government from nibbling away at the right by repeated restrictive laws.

JUST ADMINISTRATIVE ACTION s32

59. s32
- 59.1 The Northern Region of the Transvaal Law Society said that s24 of the Interim Constitution should be retained.
- 59.2 The Chamber of Mines propose reformulations of both Options provided in thr 3rd Edition. See submission.
- 59.3 The Public Servants Association of S.A. proposes using the broader concept of "*reasonableness*" in s32(1). They queried the restriction in Option 2 to those whose rights are "*adversely affected*".
- 59.4 The Methodist Church supported Option 1 and using all three words - *lawful, reasonable and justifiable*. The S.A.Council of Churches also supported Option 1 but said there was no reason to use all three words. The S.A. Chamber of Business supported Option 1 with the deletion of the word "*lawful*".
- 59.5 Option 2 was supported by the Residents and Ratepayers of Greater Germiston and the Nederduitse Gereformeerde Kerk OVS.
- 59.6 Africa Fund prefers a mix of options 1 and 2 - option 1(1) and option 2 (3).

ACCESS TO COURTS s33

60. s33
- A number of submissions from individuals spoke of the need for access to legal aid. This was supported by the South African National Civic Organisation. The Association of Law Societies said that these provisions should be recast to make the Bill of Rights challenges less cumbersome.

ARRESTED, DETAINED AND ACCUSED PERSONS s34

61. s34
- 61.1 The Evangelical Alliance of South Africa and a number of submissions from individuals, spoke of the need to provide for the rights of victims of crime.

- 61.2 Africa Fund says this section appears to ignore the need for making and keeping records of all actions taken in connection with the arrest, detention, treatment and release of all persons to whom this section applies. They say such records are necessary to protect the rights of all arrested, detained or accused persons.
58. s34(1)(b)
The S.A. Chamber of Business said s34(1)(b) should be clarified to indicate that whatever may be said could be used in evidence against the arrested person.
59. s34(1)(d)
59.1 The Human Rights Committee supported the bail provisions in the Interim Constitution.
- 59.2 Option 1 of the 3rd Edition was supported by the Northern region of the Transvaal Law Society.
- 59.3 Submissions from individual on the issue of crime expressed concern about current bail procedures.
- 59.4 The S.A. Chamber of Business said s34(1)(d) should be extended to reflect current practice, that where a detained person is not charged within 48 hours, a court of law may order further detention. They also supported the call for more stringent bail provisions.
- 59.5 The Community Law Centre said Option 2 was a more accurate description of the bail process. The Residents and Ratepayers of Greater Germiston also supported Option 2.
60. s34(2)(c)
The Office for Serious Economic Offences said the right to a legal practitioner at state expense in s34 (2)(c), should be reviewed in the light of the cost to the state. The S.A. Chamber of Business said this right should be subject to a means or affordability test in preference to the criteria "*if substantial injustice would otherwise result.*"
61. s34(2)(e)
The Human Rights Commission said that the right to basic physical exercise, needed to be added to s34(2) (e).
62. s34(3)(c)
The Community Law Centre proposes that the word "*trial*" in s34(3)(c) be given a broad meaning to include the appellate or review proceedings.

63. s34(3)(d)
The Magistrate's Office in Johannesburg propose an amendment to s34(3)(d) qualifying the right to be present during trial by adding the words: *".. unless an Act of Parliament determines otherwise."*
64. s34(3)(g)
64.1 The Magistrate's Office in Johannesburg propose an amendment to s34(3)(g) qualifying the right to remain silent and not to testify.
- 64.2 The Prayers for Rehabilitation, Atonement and Goodwill (PRAG) group in Johannesburg Prison proposed the ff. amendments and re-organisation:
- "... (f) to be presumed innocent and to have the state prove all elements of tis case beyond reasonable doubt
(g) to remain silent and not to testify during the proceedings
(h) to adduce and challenge evidence ..."*
65. s34(4)
The CLC also propose that the word *"must"* in s34(4) be replaced with *"may"*. See submission. They appear to be supported by the submission from the Northern Region of the Transvaal Law Society (16.10) who argue that such evidence should not be excluded per se, only if the court finds it will result in a miscarriage of justice.
- LIMITATION OF RIGHTS s35**
66. s35(1)
Business South Africa supported the provision in the Interim Constitution. The Chamber of Mines, Methodist Church, National Council for Women and Transvaalse Onderwysers Vereeniging supported the wording *"reasonable and necessary"* in s35(1).
67. s35(1)(c)
The Human Rights Commission supported the inclusion of s35(1)(c).
68. s35(2)
68.1 The Human Rights Committee said that if the Bill did not clearly state that it operated horizontally, there was a need for a clause along the lines of s35(2). The Life Officers Association proposed the retention of the clause in the Interim Constitution.
- 68.2 The Association of Law Societies said this clause should be as narrow as possible and that the standard of necessity should be adopted. The S.A. Chamber of Business supported this position.

- 68.3 The Public Servants Association of S.A. proposed including a clause on essential content.
69. s35(4)
- 69.1 The Congress of South African Trade Unions proposed the following addition to s35: "*Nothing in this chapter shall preclude legislative and other measures permitting trade unions and employees concluding trade union security agreements.*"
- 69.2 The Institute of Defence Policy proposes that provision be made for the limitation of specific rights of members of the security services.

STATES OF EMERGENCY s36

70. s36(1)
- 70.1 The Centre for Comparative Public Law at the University of Hong Kong says clarity is needed on who will declare the State of Emergency referred to in s36(1).
- 70.2 The Institute of Defence Policy suggests that provision also be made for the declaration of a State of National Defence and proposes various amendments in this regard.
- 70.3 Africa Fund question the inclusion of "*disorder*" in the list in s36(1)(a) as they submit that it seems almost to encourage the declaration of a state of emergency, instead of pushing the government towards trying to deal with a difficult situation by negotiation, information and correction of the causes of disorder.
71. s36(2)(b)
- 71.1 The Human Rights Commission proposes removing the brackets in s36(2)(b) ; and suggests the following be added: "*may not be interrogated except in the presence of a lawyer or other person of the detainee's choice acting in an observing capacity, and not in advisory capacity.*"
- 71.2 The Conscientious Objector Support Group proposes the deletion of the words in brackets.
- 71.3 Africa Fund ask if a state of emergency must be declared by an Act of Parliament, why it can be extended by the National Assembly alone rather than by Parliament.
72. s36(4)(c)
- 72.1 The S.A. Chamber of Business said this list in s36(4)(c) should include s31 and exclude s22(2)(c) and s22(3)(c).
- 72.2 Africa Fund say that s7 should be included and ask why forced labour is excluded under s12 and how it is defined. They also submit that s13 should

be included and ask why s19 is omitted - and why ss22(2) and(3) is preserved(right to join unions and employers organisations) while the right to join political parties in s18 is not ? They also say that if s34(1)(b) is protected, why is s34(2)(a) not, since both deal with the right to be informed in a language that the accused/detainee understands.

73. s36(7)

The National Association of Democratic Lawyers proposes that the period of detention should be shortened. Africa Fund say this subsection should include more specific provisions concerning records to be kept by all officials approving or implementing actions required/taken under a state of emergency, which should be publicly available at least after the emergency is ended.

APPLICATION s38

74. s38(2)

74.1 The Reproductive Rights Alliance is in favour of horizontal application as they hold that this will go some way to addressing the oppression of women in the private sphere. This view is supported the Planned Parenthood Association of S.A.

74.2 Genbel states its support for the view of the Association of Law Societies against horizontal application. The Life Officers Association and AfrikanerBond also argued against horizontal application.

74.3 The S.A. Agricultural Union supported the position in the Interim Constitution.

74.4 Prof. F. Venter of Potchefstroom University also argued against "unbridled" horizontal application on the basis that there was no good cause to impose constitutional rights, with unpredictable consequences, on private relationships already being regulated justly by ordinary law.

74.5 The Transvaalse Onderwysersvereniging also opposed horizontal application and cited the use of the term "*... and where applicable binds all natural and juristic persons*" as a "typical example of the horizontal seepage that should be avoided."

74.6 Business South Africa proposed a reformulation, arguing that the Bill of Rights governs all law that applies between the state and persons, but that s22 also governs the law that applies between persons and persons.

74.7 The Human Rights Committee suggested a number of various approaches to the issue of horizontality.

74.8 The Association of Law Societies said the specifics of juristic persons' entitlement to the rights in the Bill of Rights should be left to the court. The

S.A. Chamber of Business said it shared the views of the ALS, that horizontality should be limited and specific, and that there was no reason for specifically prescribing the rights which juristic persons may enjoy.

74.9 Business South Africa said that juristic persons were entitled to the following rights: 8(1), 13(b)(c) and(d), 14(2), 15, 17, 21, 22, 23, 24, 28(2) and(3), 29, 30, 31, 32, 33, 34(3) and (4).

74.10 The Department of Defence said s38 should provide that the rights of uniformed members of the Defence Force may be limited in national legislation.

74.11 The Public Servants Association of S.A. and the Medical Association of S.A favoured the wording of Option 1 in the 3rd Edition: *Juristic persons are entitled to the rights in the Bill of Rights to the extent that the nature of the rights and of the juristic persons permit.*

75. s38(3)

75.1 The Human Rights Commission said that s38(3) should be more positively phrased and the right to development should be addressed.

75.2 Africa Fund suggest that international law should be added to the sources of rights since rights recognised by customary law may not necessarily include all rights arising under international law.

INTERPRETATION OF BILL OF RIGHTS s39

76. s39(1)

76.1 The Human Rights Committee raised a number of concerns on the interpretation clause, and particularly on the relationship between s39(1)(b) and (c).

76.2 The Judicial Branch of the Navajo Nation (U.S.A) said s39 needed to be reviewed to ensure that customary rights are given liberal construction and not denied for inconsistency, except in limited circumstances.

77. s39(3)

The Public Servants Association of S.A. asked why only courts were included, and said ambit of this provision should be extended.

CHAPTER 3 PARLIAMENT

COMPOSITION AND ELECTION OF NATIONAL ASSEMBLY s41

78. s41

- 78.1 A number of submissions from individual members of the public supported the reduction in size of the National Assembly. Suggestions ranged from 100 - 150 to 300.
- 78.2 The Deaf Federation of S.A.said two seats in the National Assembly should be reserved for special representatives of the disabled, whilst the National Womens Coalition in the Western Cape wanted some guarantee of the election of women.
- 78.3 One of the submissions from individuals said that the functions and duties of Members of Parliament needed to be included in the Constitution.
- 78.4 Submissions from individuals on the electoral system indicated support for both the proportional representation system, and constituency elections and a combination. One submission said the electoral system should not be included in the constitution.
- 78.5 The Centre for Policy Studies proposed the inclusion of a new clause guaranteeing all citizens the right to automatic voter registration.
- 78.6 A few submissions from individuals called for the inclusion of a provision relating to referendums.

DECISIONS s48

79. s48
Africa Fund ask if it is advisable to allow the Assembly to decide matters by a majority of members voting, rather than members present ? It appears that s47(4) and 48(2) read together, permit the removal of the Speaker or Deputy Speaker by one quarter of the members of the Assembly or even fewer if not all members present cast votes ?

SITTINGS AND RECESS PERIODS s45

80. s45(3)
Business Dynamics called for Cape Town as the seat of parliament.The Northern Areas Parliamentary Option Project proposed moving Parliament to Gauteng. The South African Council of Churches said the seat should not be stipulated in the Constitution. But, if it were to be included, the Constitution should provide that it remain in Cape Town until decided by a two-thirds majority of both houses sitting separately. IDASA forwarded the results of a survey submitting that 66% of the public favour Cape Town as the seat of Parliament, 14% chose Pretoria, 5% Bloemfontein, % Midrand and another 4% named an assortment of other locations.

CONSTITUTIONAL AMENDMENTS s53

81. s53

- 81.1. The S.A. Catholic Bishops Conference, the Christian Union of Graduates and the Black Sash supported a 75% majority for constitutional amendments. The Methodist Church also supported this, and went further to state that amendments would also need a two-thirds majority of provincial legislatures.
- 81.2 The Association of Law Societies proposed the entrenchment of the Constitutional Principles, amendments to Bill of Rights to require special majorities and be certified by the Constitutional Court, and entrenchment rules themselves should be entrenched. Genbel S.A. Ltd. supported this view.
- 81.3 The S.A. Chamber of Business said it would be desirable to consider the amending provisions contained in certain constitutions which involve the electorates in referenda and/or prior approval of or consultation with state, provincial or regional legislatures to a greater extent than what is provided for in the interim Constitution.
- 81.4 One individual (Buitenweg,W.H) said that amendments should be done by referendum.

APPLICATION BY MEMBERS TO CONSTITUTIONAL COURT s54A

- 82. s54A
The Residents and Ratepayers of Greater Germiston supported the inclusion of such a provision.
- 83. S55 - 56
Africa Fund ask whether the President must sight each bill in all official languages or in only one ? If only in one, which one ? If in all, what provision is there for reconciling differences between the texts ?

CHAPTER 4 COUNCIL OF PROVINCES/SENATE

- 84. CHAPTER 4
- 84.1 Submissions from the public indicated support for both of the Options in the 3rd Edition. Genbel S.A. Ltd. supported Option 2 (Senate), and added that this chapter should not be subject to normal amendment provisions.
- 84.2 Prof. F. Venter of Potchefstroom University said neither of the two options succeeded in achieving the two important goals of the effective representation of the separate interests of the provinces, and the limitation or elimination of the influence of party caucuses in the second house.
- 84.3 The "Red Tape" Commission supports the Option of a Council of Provinces but calls for its expansion to include executive co-operation.
- 84.4 The Public Administration of the Western Cape proposed Cape Town as

the seat of the Senate.

- 84.5 Africa Fund appear to support provision for a Council of Provinces, but ask, with regard to Chapter 5 whether the Council would have a role in the removal of the President (s84) and in voting no confidence (s93) ?

CHAPTER 5 THE NATIONAL EXECUTIVE

EXECUTIVE AUTHORITY OF THE REPUBLIC s76

85. s76
Prof. F. Venter of Potchefstroom University proposed that executive authority be vested in Cabinet, not the President.

POWERS AND FUNCTIONS OF THE PRESIDENT s78

86. s78(1)
The Chief of the S.A.N.D.F. proposed adding the following: *He may employ the defence force on service in defence of the Republic and on any other service provided for in national legislation.* It was felt that a major omission in the Working Draft was the power of the President to employ the Defence Force for any of the services provided for in law. The Institute of Defence Policy seemed to support this view but suggested different wording.

87. s78(3)
The Chief of the S.A. National Defence Force and the Institute for Defence Policy proposed the addition of conferring and cancelling permanent commissions in the SANDF.

ELECTION OF THE PRESIDENT s79

88. s79
A few submissions from individuals supported the idea of a directly elected President.

CABINET s85

89. s85
89.1 The Residents and Ratepayers of Greater Germiston supported the Option providing for a President, Prime Minister and Ministers.
89.2 Submissions from individual members of the public indicated both support for, and opposition to the continuation of the Government of National Unity. Submissions from individuals also called, more generally, for minority groups to have a say in decision -making.

CHAPTER 6 COURTS AND ADMINISTRATION OF JUSTICE

JUDICIAL SYSTEM s95

90. s95

90.1 The Judge President on behalf of the judges of the Transvaal Provincial Division of the Supreme Court proposed a return to the old Supreme Court System.

90.2 The Judicial Branch of the Navajo Nation (U.S.A) said the rights of indigenous peoples to their own systems of justice should be firmly entrenched.

90.3 The Association of Regional Magistrates proposed changing Regional Court to a Court of "similar status" to the High Court. A submission from the Regional Court in Pretoria also said proper provision needed to be made for Regional Courts.

91. s96(3)

The Association of Law Societies opposed the exclusive jurisdiction of the Constitutional Court and proposed that other courts also be given constitutional jurisdiction. The following reformulation of s96(3) was proposed : *"Only the Constitutional Court may decide on the constitutionality of any parliamentary Bill, but may do so only when the Bill is referred to in terms of the Constitution."*

92. s96(4)(a)

Africa Fund ask what happens in case of a conflict between national legislation and rules made by the Constitutional Court ?

HIGH COURTS s98

93. s98

The Human Rights Commission said that High Courts of Provinces should be given jurisdiction over the constitutionality of provincial legislation.

APPOINTMENT OF JUDICIAL OFFICERS s100

94. s100

94.1 The Association of Law Societies proposed that all permanent judges be appointed in the same way and forwarded a detailed proposal.

94.2 Women for Women in Government proposed a 50/50 quota to ensure a non-sexist judiciary.

94.3 Submissions from Magistrate's Offices in Durban, Johannesburg, Pretoria and the Association of Regional Magistrates said magistrates should be afforded the same status as judges.

94.4 The Residents and Ratepayers of Greater Germiston supported Option 2.

94.5 Africa Fund say that in specifying the qualifications of judges the section could well combine option 2 subsecs (2) and (3) with option 1 subsec(4). Subsecs(1) of option 1 and 2 can determine the qualifications of other judicial officers. Subsecs(2)(3) and (5) of option 1 as well as substantially identical subsecs (4) and (8) of option 2 can determine the manner of appointing judges.

ACTING JUDGES s101

95. Africa Fund ask whether there is any limit to the length of time a judge may absent themselves from the Constitutional Court or other court before the seat is considered vacant.

TERMS OF OFFICE AND REMUNERATION s102

96. s102(3)

Africa Fund ask whether this means that salaries, allowances and benefits may never be reduced, or only that those of a sitting judge may not be reduced.

JUDICIAL SERVICE COMMISSION s104

97. s104

The National Association of Democratic Lawyers said that the JSC needed to be more representative and proposed the establishment of a Prosecutorial Services Commission and a Magisterial Services Commission. Judge Hiemstra also said provision ought to be made for the appointment of magistrates.

98. s104(1)(g)

The Society of University Teachers of Law proposed that their society should replace the provision for deans of law faculties.

99. s104(1)(h)

Judge Hiemstra proposed the deletion of S104(1)(h).

100. s104(4)

Africa Fund asks whether a majority of its members refers to a majority of its entire membership or of a quorum.

OTHER MATTERS CONCERNING COURTS s105

101. s105

101.1 The Magistrates Office in Johannesburg said if not all courts are to be empowered to consider constitutional issues, the provisions of s103 or a similar provision should be retained to promote a procedure of uniformity.

- 101.2 The Community Law Centre at the University of the Western Cape said it is important for the final Constitution to determine the position of the prosecutorial authority. They proposed a formulation providing for a National Director of Public Prosecutions, appointed by the President, leaving the matter of provincial directors of public prosecutions to be regulated by legislation.

CHAPTER 7 STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY

102. CHAPTER 7

The Black Sash said the whole of chapter 7 should be removed and that a provision be inserted either in chapter 1 or 15 obliging the state to establish such structures by way of legislation. This is linked to their concern about subjecting the Constitution to frequent amendments.

ESTABLISHMENT AND GOVERNING PRINCIPLES s106

103. s106

- 103.1 One of the individual submissions called for the inclusion of the South African Prisoners Organisation for Human Rights as a statutory body.
- 103.2 The Department of Education, Sport and Recreation in the North West Province propose that the national youth commission be included as one of the institutions.
- 103.3 Africa Fund state that presumably a court will decide if there is a conflict between any of these institutions as to a particular set of circumstances?

PUBLIC PROTECTOR s107

104. s107

- 104.1 A submission from the Public Protector said that if it was envisaged that the Public Protector will be supported by regional offices, the Constitution must contain a provision to this effect. Alternatively, the matter should be dealt with in transitional arrangements.
- 104.2 The S.A. Chamber of Business said the tenure was too long and should be reduced from 7 years to 5.

HUMAN RIGHTS COMMISSION s109

105. s109

- 105.1 The Human Rights Commission prefers the name "*South African Human*

Rights Commission" and says the tenure of members must be included in the Constitution.

- 105.2 The S.A. Chamber of Business supported the view of the ALS that the Commission should have special responsibilities with regard to socio-economic rights and should be obliged to require of the relevant state organs information on the measures taken to secure the rights to, inter alia, housing, food, water, social security and education.

COMMISSION FOR GENDER EQUALITY s110

106. s110

- 106.1 The Women's National Coalition in the Western Cape said the Constitution should spell out the link between the Human Rights Commission and the Commission for Gender Equality i.e. that the Commission for Gender Equality will be able to refer violation of women's rights to the Human Rights Commission.

- 106.2 Peter Weiss of the Africa Fund asks why the Public Protector has the right to take remedial action and the Human Rights Commission the power to "take steps to secure appropriate redress where human rights have been violated" while the Commission for Gender Equality has only the power to investigate, research, lobby, advise and report, but not the power to take remedial action or secure redress ?

AUDITOR GENERAL s111

107. s111

The S.A. Chamber of Business said the Auditor General should be included in Chapter 14, as its functions related more to financial and economic control than constitutional democracy per se. They also strongly urged that more detailed provisions be included on the functions of the Auditor General, along the lines of the interim Constitution.

GENERAL PROVISIONS s115

108. s115

- 108.1 The Gender Research Project at the Centre for Applied Legal Studies proposed the addition of the words "who are representative in respect of race and gender" after "...South African citizens...".
- 108.2 Business Dynamics proposed the addition of the words "...after a public hearing".
- 108.3 The Human Rights Commission proposed that in respect of the Human Rights Commission, the Chair of the HRC or a representative sit on the committee.
- 108.4 The HRC further proposed that the parliamentary majority be increased to

75% in the case of the Human Rights Commission.

- 108.5 Africa Trust asks whether s115(3) effectively empowers Parliament to dictate the appointment of the institutions established by this Chapter ? They also ask whether the resolution in s115(4) is adopted by a joint sitting of Parliament ?**

REMOVAL FROM OFFICE s116

- 109. s116(1)(c)
Africa Fund ask whether this requires a joint sitting of Parliament?**

CHAPTER 8 PROVINCES

PROVINCES s117

- 110. s117(1)
One submission from an individual member of the public (Mohanlall, A.M.) called for the creation of a new province in KwaZulu Natal.**

STATUS AND DUTIES OF PROVINCES s117A

- 111. s117A
Africa Fund submit that the statement of principles set out in this section would give valuable guidance to the Constitutional Court and to foreign friends of South Africa.**

COMPOSITION AND ELECTION OF PROVINCIAL LEGISLATURES s120

- 112. s120(2)
Judge Hiemstra proposed that the number be no more than 80.**

ELECTIONS AND DURATION OF PROVINCIAL LEGISLATURES s125

- 113. s125(3)
The Provincial Administration of the Western Cape was opposed to the President calling for provincial elections. Judge Hiemstra supported the view that the Premier should call provincial elections.**

ASSENT TO BILLS s130

- 114. s130(2)(c)
The Provincial Administration of the Western Cape said that the Constitution should impose a specific time limit i.e. must be referred to the Court within 60 days.**

PROMULGATION s131

- 115. s131(2)
The Provincial Administration of the Western Cape proposed the deletion of s131(2) as they felt it adequate to publish provincial acts in the Provincial Gazette.**

POWERS AND FUNCTIONS OF PREMIERS s134

116. s134

The Provincial Administration of the Western Cape said that the power to appoint commissions of inquiry and the power to proclaim referenda and plebiscites, which are contained in s147 of the interim Constitution, have been omitted and imply a reduction of the powers of the Premiers.

ASSUMPTION OF OFFICE BY PREMIER s136

117. s136

Africa Fund ask whether the Premier remains a member of the provincial legislature, unlike the President and the National Assembly?

PROVINCIAL TAXES s150 ... moved to Chapter 14

118. s150

118.1 The Provincial Administration of the Western Cape said that it was unacceptable for provinces to lose their exclusive competence to impose taxes, levies and duties on casino's, gambling, wagering, lotteries and betting, and to impose user charges as provided for in s156(1)(b) and 156(3) of the Interim Constitution and would be in conflict with Constitutional Principle XVIII.2

118.2 The S.A. Chamber of Business also felt that s150 as it appeared in the 3rd Edition was too restrictive and supported the recommendations of the Finance and Fiscal Commission. Note: this section has since been reformulated, taking account of the FFC's views.

118.3 Rembrandt Group Ltd supported the position that value-added tax and excise duties should remain taxes which are imposed and collected nationally and a source of revenue to which provinces should only be entitled to through mechanisms created by s148(a) and (b).

119. s152 ... moved to Chapter 14

The S.A. Chamber of Business also supported the redrafting of this clause in line with the views of the FFC that revenue collected by national government should be equitably allocated to the national, provincial and local governments. They also suggested that provision be expressly made in this chapter for provincial tender boards along the lines of s189 in Chapter 14.

PROVINCIAL REVENUE FUNDS s153

120. s153 ... moved to Chapter 14

120.1 The Provincial Administration of the Western Cape said that s153 should be amended to read as s190(a) and (b) in a case where the province is to guarantee a loan. They also proposed that s153(1) should read: *"There is a Provincial Revenue Fund ... by national and provincial legislation, allocated ..."*

120.2 The Residents and Ratepayers of Greater Germiston said provision should be made in this section, stating that provinces were to finance their own monarchs, should provision be made for these in provincial constitutions.

CHAPTER 9 PROVINCIAL AND NATIONAL LEGISLATIVE AND EXECUTIVE COMPETENCIES

121. CHAPTER 9

121.1 The Council of South African Bankers was concerned about the implications for banks and other businesses engaging nationally if different laws were to apply in different provinces regulating some of the functions concerned. They urged a re-examination of the Chapter on Competencies in the light of these concerns. They were supported in this view by the Life Officers Association of S.A.

121.2 The Provincial Administration of the Western Cape indicated its support for Option 2 in the Chapter, as it appeared in the 3rd Edition.

121.3 The Congress of S.A. Trade Unions said it wanted national government to be able to implement national policy at the level of economic, labour and other strategic areas and the provisions should avoid fragmentation and unnecessary bureaucracy.

121.4 The Ministry of General Affairs said that Schedule 6 should be amended to exclude lotteries and sports pools.

121.5 The Ministry of Transport suggests that the Constitution should aim to facilitate co-ordination between the national and provincial tiers of government instead of focussing on mediating conflict between the two tiers. It also proposed that the transport powers of provinces should be land transport, roads other than roads declared as national roads and road traffic regulation (where uniformity is not essential as agreed upon between national and provincial governments. Airports should be excluded from the list.

121.6 The Northern Cape Province Nature Conservation Service selected not to express a view on whether environment should be a national or provincial competence. However it prefers being part of a strong national nature and environmental conservation institution instead of its present existence. It prefers Option 2 Section 155 as it appeared in the 3rd Edition, if environment is made a national competence. if it is made a provincial competence, it prefers Option 2 Section 155 and Option 4 Section 159 and proposes the amendment of Schedule 5 as follows: " Environment, including nature conservation and soil conservation but excluding national parks, off shore marine resources and national botanical gardens" and the strengthening of section 161 through provision for the delegation of executive powers

to the relevant lower level of government.

121.7 The National Parks Board said the future management and control of national parks should remain the exclusive jurisdiction of national government.

121.8 The Natal Parks Board however said the final Constitution should confirm nature conservation as a provincial competency.

121.9 The Ministry of Provincial Affairs and Constitutional Development submitted on behalf of the Inter-governmental Forum that provision for intergovernmental relations should be made in the new Constitution. The Forum said this should include principles which should refer to both the nature of the relationship between governments and the obligations on the part of governments in the conduct of their affairs. Provision should also be made in the Constitution for legislation with regard to the establishment of intergovernmental structures and institutions to facilitate intergovernmental relations.

121.10 The Provincial Administration of the Western Cape supported the inclusion of a provision on necessary, ancillary powers as it appeared in s158 of the 3rd Edition.

121.11 The Provincial Administration of the Western Cape supported Option 4 in the provision on conflict of legislation, as it appeared in s159 of the 3rd Edition. The S.A. Chamber of Business also supported this option, and made a detailed submission in this regard.

121.12. The Provincial Administration of the Western Cape supported the inclusion of a provision on the integrity of provinces, as it appeared in s160 of the 3rd Edition.

CHAPTER 10 LOCAL GOVERNMENT

122. CHAPTER 10

122.1 The Major Urban Areas Association Constitutional Affairs Working Group submitted a detailed proposal and formulation for the Chapter on Local Government.

122.2 The National Interim Consultative Body for Organised Local Government also submitted a detailed proposal in this regard and provided alternative formulations which it recommended replace the proposed Chapter 10 in toto.

122.3 The Institute of Town Clerks did not suggest formulations but made detailed suggestions for the Chapter on Local Government.

- 122.4 The Town Clerk of the Kuruman Municipality said that the chapter omitted to mention that *"local government is autonomous within legal limits."*
- 122.5 The S.A. Chamber of Business (29.13) said the provisions in 3rd Edition appeared to be flexible enough to provide for effective operational efficiency.
- 122.6 The Hoxawe Tribal Authority said the Constitution should differentiate between the functions of metropolitan local councils, urban local councils and rural local councils. The Town Clerk of the Kuruman Municipality also supported this idea.
- 122.7 The Provincial Administration of the Western Cape proposed the deletion of the words *"to allow it to function effectively."* from s165 as it appeared in the 3rd Edition.
- 122.8 The Provincial Administration of the Western Cape proposed the rewording of s165 as it appeared in the 3rd Edition to read: *"A local government shall have the competence to form ..."*
- 122.9 The S.A. Chamber of Business and Business Dynamics said s166 on Administration and Finance as it appeared in the 3rd Edition made no provision to local government loans as a means of funding capital expenditure, and that the borrowing powers of local government should be subject to the same caveats as for provinces in s151.
- 122.10 The Provincial Administration of the Western Cape proposed that s166(5) as it appeared in the 3rd Edition be amended to read: *"Any transfer of responsibilities to local government by another level of government, must be subject to satisfactory arrangements for financial and other resources required for their fulfillment."*
- 122.11 Business Dynamics said provision should be made in s167 on Elections as it appeared in the 3rd Edition, for the representation of business in local government.
- 122.12 Business Dynamics also proposed the addition of a new sub-clause: *Persons that are liable for the payment of property rates, rent, service charges or levies to a local government but are not entitled to vote in terms of sub-section 5 are entitled to appoint members to represent their interests on such local government, where they represent a substantial interest group.*
- 122.13 The S. A. Chamber of Business and The Town Clerk of Kuruman also

supported the idea that suffrage for businesses should be re-introduced.

122.14 Africa Fund said that s167(5) and(6) as they appeared in the 3rd Edition, as read with (6) does not allow any person to vote more than once, but invites wealthy persons with property in several areas to vote once in each of those areas even if they don't live in them. They submit that there is no social justification for adding to the influences of the rich, particularly in a country where economic differences are so great and so concentrated along racial lines.

122.15 Africa Fund ask with regard to s167(3) and (4) how wards will be delimited and whether they will be required to of equal population or equal numbers of eligible voters. They submit that failure to require such equality is an invitation to fraud and possible to the reestablishment of old racial patterns.

122.16 The Western Local Government Association suggested amendments of s167 and s168 as they appeared in the 3rd Edition.

122.17 On LEGISLATIVE COMPETENCIES AND FUNCTIONS s168, as it appeared in the 3rd Edition : The Institute for Defence Policy proposed the addition of municipal and metropolitan policing. This was also proposed by Traffic and Licensing Services of Port Elizabeth. However, they expressed concern that the inclusion of Traffice in s168 might prompt provincial government to disassociate themselves from tendering this service.

122.18 The S.A. Chamber of Business and Business Dynamics proposed the addition of Tourism, Fire Brigade Services, Ambulance Services, Airports and Museums.

122.19 The Department of Defence proposed the addition of civil defence and disaster control.

122.20 The Town Clerk of the Kuruman Municipality felt that s168 was too limiting and should be extended. No specific proposals were made.

122.21 The National Professional Teachers Organisation of S.A. said education should be devolved to the lowest possible level of government.

CHAPTER 11 TRADITIONAL AUTHORITIES

123. CHAPTER 11

123.1 Submissions from individual members of the public on traditional authorities varied. Some expressed support for the recognition of traditional authorities and customs. Others expressed concern for

implications for women whilst yet others appeared to reject the institution in favour of local government.

123.2 Women for Women in Government said that the only custom which should prevail is equality.

123.3 The Kings Council of KwaZulu Natal said that the Constitution should avoid too much detail on this matter and proposed that provincial legislation provide for the establishment and guidance of traditional affairs at provincial level.

123.4 Kgosi NJ Maloka of the Bakgatla Ba Maloka Traditional Authority called for the recognition of traditional leaders, maintenance of the status of tribal courts and that tribal police be empowered to maintain discipline.

123.5 The Herschel Legal Advice Office also called for the recognition of traditional leaders and indigenous law.

123.6 The S.A. Traditional Healers Association and Inyanga Smoya Traditional Healers Organisation called for the recognition of traditional healers.

CHAPTER 12 PUBLIC ADMINISTRATION

124. CHAPTER 12

124.1. The S.A. Institute of Public Administration said it supported the provisions in the Interim Constitution on the public service. This view was supported by the Provincial Administration of the Western Cape.

124.2 The Transvaalse Onderwysersvereniging felt that the provisions of this chapter deal with policy matters and should not be included in the Constitution.

BASIC VALUES AND PRINCIPLES GOVERNING PUBLIC ADMINISTRATION

s171

125. S171

125.1 The Committee of University Principals and Potchefstroom University proposed that universities should be excluded from the broad definition of public administration in s171. Prof. LM Du Plessis of the Department of Public Law at Stellenbosch University supported this view, as did the Committee of Technikon Principals who said technikons should be excluded. The University of Venda supported the provisions of s171 subject to the proviso that universities did not form part of the public service.

25.2 The National Professional Teachers Organisation of S.A. said these principles were alright, if they were not detrimental to education. However it felt that s171(1)(i) was too broadly phrased as a principle of affirmative action.

126. S171(2)

126.1 The Public Servants Association of S.A. was opposed to s171(2). The Department of Defence said that this was a transitional matter and should be left to legislation.

126.2 The Public Service Commission said s171(2) needed clarification and reformulation as the phrase "*policy considerations*" is open to multiple interpretations. The Public Servants Association says that the proposed appointments lack "democratic control and constitutional supervision", and go on to argue for the need for some central institution. The S.A. Institute of Public Administration is also opposed to this provision.

PUBLIC ADMINISTRATION COMMISSION s172

127. S172

127.1 The Public Servants Association says that clarity is needed on who will exercise the law-making and advisory functions exercised by the present Commission. It says that one cannot do without a body exercising central authority with regard to matters relevant to the whole of the public service and suggests that this body could be, for example, the Department of the Minister for the Service and Administration.

127.2 The Public Service Commission propose changing the name of the Commission to "*Commission for Effective Governance and Efficiency*". The Commission also says the size and structure of the proposed new commission needs to be reconsidered and says experience with the Forum of Service Commissions would argue strongly for retention of provincial commissions. It also suggests that failure to retain the provincial commissions, may conflict with Constitutional Principle XVIII.

127.3 The Gauteng Provincial Service Commission however argues in favour of the retention of Chapter 12 in its present form and says the creation of a single Public Administration Commission and the simultaneous announcement by government of the redesigning of the Public Service Commission is line with contemporary public administrative theory and heralds the way for "massive and appropriate public

service restructuring".

127.4 The Department of Defence asked whether s172 allowed the Ministry to establish a separate Military Service Commission under legislation. The Institute for Defence Policy proposed the establishment of a separate service commission for defence, police, correctional services and intelligence services.

127.5 The S.A. Institute of Public Administration said it was opposed to the Commission being based on representation. It also felt its functions were wide and vague.

PUBLIC SERVICE s173

128. S173

The S.A. Institute of Public Administration said s173 should be extended to also protect persons seeking employment as public servants.

CHAPTER 13 SECURITY SERVICES

GOVERNING PRINCIPLES s174

129. s174

129.1 The Institute for Defence Policy argued for three separate chapters dealing with defence, police and intelligence services and said s174 could not apply to all these services without defining "*national security*" very specifically as it affects each service or force.

129.2 The Centre for Conflict Resolution proposed reformulating s174. See submission. The Chief of the South African National Defence Force also proposed a reformulation by adding the words: "*by providing for their defence, security and safety.*"

ESTABLISHMENT, STRUCTURING AND CONDUCT OF SECURITY SERVICES s175

130. s175(6)

The Chief of the South African National Defence Force said s175(6) needed to provide for the explicit curtailment of the rights of members of security services.

DEFENCE

DEFENCE FORCE s176

131. s176.

131.1 The Centre for Conflict Resolution said S82(4)(b)(ii) and 228(5) of the Interim Constitution, which deal with the President's authority to deploy the SANDF and Parliament's right to review such deployment, have been deleted. These are proper constitutional matter and

should not be left to legislation.

- 131.2 They also said that constitution should entrench the defensive orientation of the SANDF. While this was implied by references to international law, the Centre said there is insufficient understanding within government and the SANDF of the relevant law and it is therefore important to make explicit the defensive issue. The following wording was suggested: *"The defence force shall have a defensive orientation and posture."*

POLITICAL RESPONSIBILITY s177

132. s177

- 132.1 The Department of Defence proposed the addition: *"... and their functions must be structured by national legislation."*

- 132.2 The Centre for Conflict Resolution said civilian control of the defence force had been undermined by the deletion of s228(2) of the Interim Constitution which deals with parliamentary approval of the annual defence budget.

COMMAND OF DEFENCE FORCE s178

133. s178

- 133.1 The Chief of the S.A.N.D.F. proposed the reformulation of s178(1): *"... who exercises military executive command in respect of the defence force."*

- 133.2 The Defence Secretariat said that s178 should be removed for two reasons: firstly, it is in contradiction with s175(3) which stipulates that *"the security services must be structured and regulated by national legislation"*. There may also be a need to change the term "Chief of the Defence Force" and if fixed, it would be unnecessarily difficult to change it. Secondly, it intrudes on the prerogative of the Minister of Defence to structure or restructure and to determine in which officer or officers executive military command of the SANDF may be vested. The submission cites examples of such restructuring in the UK and USA, and says the government should be in a position to change structural and command arrangements without amending the constitution. See submission.

DEFENCE CIVILIAN SECRETARIAT s179

134. s179

- 134.1 The Department of Defence said the inclusion of s179 was not necessary as it is implied in s175. The Chief of the S.A.N.D.F. proposed a reformulation in the event of sufficient competent non-civilians not being available.

- 134.2 The Defence Secretariat says that it is not necessary to entrench a

structure such as the secretariat, before it has even been created. However, it is imperative to make provision for civilian control, either via s174 or in s176.

POLICE

135. s180

135.1 The Ministry of Police in the Western Cape said that the provisions on police services were contrary to Constitutional Principle XVIII.2 as they reduce the powers and functions of provinces to a level substantially lower than the current position. .

135.2 The S.A. Chamber of Business said the police service should be decentralised into separate, autonomous provincial police services headed by a Commissioner responsible for operational control and accountable to an independent and apolitical police board or committee. They also state that a relatively small national police service with some line functions be established, headed by a National Commissioner with no direct responsibility for day-to-day policing but responsible for the specialised and support services to other provincial police services.

135.3 The Reserwe Dienste van die Weskaap said the SAPS should be restructured and the plight of reservists addressed.

135.4. The Department of Defence said that the wording in this section overlapped with those for the SANDF and were likely to cause a confusion in roles. The Chief of the S.A.N.D.F raised the same concern and proposed the following amendment: *"The objects of the police service are to prevent and investigate crime, to maintain public order and to preserve the internal security of the Republic."*

135.5 The S.A. Chamber of Business propose the ff. amendment to s180(3): *"... are to prevent, detect and investigate crime .."*

135.6 Africa Fund suggest that s180(1) should refer to police functioning at national, provincial and local levels.

CONTROL OF POLICE SERVICES s182

136. s182

136.1 The National Commissioner of the S.A Police Services proposed the followed reformulation: *"The National Commissioner shall appoint a woman or a man as provincial commissoner for all provinces, who shall, in accordance with national legislation, be responsible for policing in the province."*

136.2 Africa Fund ask whether provision should be made for the removal of the National Commissioner of the Police, and the Chief of the SANDF ?

137. s182(5)
Africa Fund ask how this subsection is enforced and in case of failure, what happens ?

INTELLIGENCE SERVICES

ESTABLISHMENT AND CONTROL OF INTELLIGENCE SERVICES s184

138. s184

138.1 The Chief of the S.A.N.D.F said the establishment of intelligence services should not be left to the discretion of the President and proposed the following : *"An intelligence service or services may be established in terms of national legislation."*

138.2 The Department of Defence proposed the following reformulation of s184(1): *"An intelligence service or services, including those of the defence force or the police services, may be established under national legislation"* to distinguish between the independent and departmental intelligence services.

138.3 Africa Fund ask whether s184 should contain a provision relating to the removal of the heads of the intelligence services ?

POWERS AND FUNCTIONS AND MONITORING s185

139. s185

The Chief of the S.A.N.D.F. proposed that the intelligence division of the SANDF should fall under the scrutiny of this commission, to avoid overlap with the parliamentary committee on defence.

140. s185(c)

The Department of Defence proposed the following reformulation of s185(c): *"co-ordination of all intelligence efforts as well as those of any intelligence divisions of the defence force and police services."*

CHAPTER 14 FINANCES

141. CHAPTER 14

The Shareholders Association of S.A. proposed a new structure "National Taxpayers Authority" to administer and appropriate tax-payers funds.

NATIONAL AND PROVINCIAL BUDGETS s187

142. s187 ... changed to s3 Chapter 14 in 4th Edition

The S.A. Chamber of Business and Business Dynamics proposed that separate budgets be drawn up for capital and current expenditure.

CONTRACTS FOR GOODS AND SERVICES s189

143. s189 .. changed to s5 Chapter 14 in 4th Edition
The Office of the Provincial Tender Board in the Western Cape is concerned that the provisions that require that the records of a tender board must be open to public inspection are too wide and could prejudice the rights of a tenderer. They prefer to retain s187(4) of the Interim Constitution and say that rules for disclosure of information should be dealt with in legislation.
144. s191 deleted in 4th Edition
- 144.1 The Congress of South African Trade Unions proposed the inclusion of the following: *"National legislation shall provide that where public monies are involved in an enterprise, its sources of revenue are regulated by legislation, or it is able to raise revenue in terms of any legislation, such an enterprise will be required to report and to give evidence before parliament on an annual basis."*
- 144.2 The S.A. Chamber of Business and Business Dynamics added that such enterprises be required to prepare their accounts in accordance with generally accepted accounting practice, publish their accounts on a half-yearly basis and make their accounts freely available or accessible to the public.

REMUNERATION OF PERSONS HOLDING PUBLIC OFFICE s192

145. s192 ... changed to s7, Chapter 14 in 4th Edition
COSATU proposed that the remuneration commission must operate openly and transparently.

FINANCE AND FISCAL COMMISSION

146. s195(1) ... changed to s9, Chapter 14 in 4th Edition.
The S.A Chamber Of Business (SACOB) said that the use of the word *"may"* in s195(1) is inappropriate as it implies the function is discretionary, rather than peremptory as this is the prime function of the FFC.
147. s196 ... changed to s10, Chapter 14 in 4th Edition
SACOB also said that the criteria for appointment should be flexible, but should include representation of the business community, fair geographical distribution and that the Chairperson be qualified and experienced with the necessary specialist expertise.
148. s197 ... changed to s11, Chapter 14 in 4th Edition
SACOB said the requirement should be more specific i.e. half-yearly reports.

CENTRAL BANK

ESTABLISHMENT s198

149. s198 ... changed to s12, Chapter 14 in 4th Edition
- 149.1 Business Dynamics suggests that the Governor General of the Central Bank be appointed after a public hearing and subject to parliamentary approval. The S.A. Chamber of Business say that a mechanism s should be included for the appointment of the Governor General and other senior state appointments by the President, following public hearings and subject to parliamentary approval. Further that the principle of non-reduction of remuneration should apply to this post and other senior state appointments.
- 149.2 SACOB was concerned with the independence of the Bank and said it should be expressly stated that the legislation referred to in s198 should promote the primary objective of the bank of exercising its powers and functions independently.
150. S200 ... changed to s14, Chapter 14 in 4th Edition
The Chamber of Mines suggests that the Constitution should spell out the actual powers and functions of the Central Bank as has been done with the Finance and Fiscal Commission.

CHAPTER 15 GENERAL PROVISIONS

INTERNATIONAL AGREEMENTS s201

151. s201.
The Chief of the S.A.N.D.F says that s201 should have a second proviso reflecting instances where international agreements would have to be protected.

APPLICATION OF INTERNATIONAL LAW s203

152. s203
- 152.1 The Association of Law Societies said s201 should be amended to allow for international agreements to form part of our domestic law as soon as they are ratified by Parliament.
- 152.2 Africa Fund say that the movement in international law is towards easier and wider acceptance of international agreements as part of domestic law. In addition to customary international law, decisions of international tribunals (not merely the International Court at The Hague but also regional tribunals) are increasingly being accepted as precedents for courts in domestic situations. They suggest that this section be reworded to bring South Africa into the vanguard of international law by (a) making it easier to incorporate international

agreements into national law and (b) by omitting "*customary*" in line of s203.

153. GENERAL COMMENTS ABOUT PROCESS:

153.1 The C.A. also received general comments about the process of constitution-making from the public. These revolved around the style of the new constitution, public participation, the non-participation of the IFP and the deadline for completion.

153.2 PLAIN LANGUAGE - DETAIL OF CONSTITUTION

The principles of plain language were welcomed, but one member of the public said these had not been adequately applied in the Working Draft. Another individual said the Constitution contained too much detail, which should be left to legislation.

153.3 PARTICIPATION OF INKATHA FREEDOM PARTY (IFP)

A number of writers were concerned about the non-participation of the IFP in the process. One individual said consensus must be reached with IFP before completing the process.

153.4 PUBLIC PARTICIPATION

One writer expressed scepticism about public participation, and said that whilst it was important for the legitimacy of the Constitution to make the population feel that they have participated in its drafting, experience has shown that popular participation has little tangible effect on the product - except perhaps in so far as politicians, claiming to represent popular sentiment, invoke the vox populi to promote their own points of view..

A writer from the rural areas, said the deadline should be extended to allow for more participation. Whilst another said politicians should work faster to complete the new Constitution !

ENOTES.WPD