VOLKSTAAT COUNCIL

SUBMISSIONS TO THEME COMMITTEE 1

CITIZENSHIP

(Hierdie dokument is ook in Afrikaans beskikbaar)

A. PRINCIPLES

1. Nationality relates to the relationship between a state and its citizens and determines the public international law bond between a state and its citizens. It is accepted that there is a single South African nationality which binds all citizens to the Republic in terms of public international law. As long as the volkstaat is a constituent state within the Republic, its citizens will also hold South African nationality.

2. South African citizenship is defined by legislation and determines the rights and duties of citizens within the Republic.

3. The fact that there is a single South African nationality and citizenship which accords all persons equal rights and duties within the Republic, does not preclude a specific volkstaat citizenship within an Afrikaner Volkstaat. Thus, for example, Aaland Island, which belongs to Finland and whose inhabitants are Finnish citizens, has a separate state citizenship which provides that only the Swedish speaking citizens of the island may own property on the island. (See Frowein, Hofmann & Oeter *Das Minderheitenrecht europäischer Staaten* Vol 1 (1993) Max Plank Institute for Foreign Public Law and Public International Law at 123.) German constitutional law, too, envisages the possibility of a constituent state citizenship alongside a federal citizenship. (See sections 73(2) and 74(8) of the German Constitution and Doehring *Staatsreg* 2ed 91-92.)

4. The fact that a state, whether dependant or independant, is irrevocably bound to its population and citizens, is a characteristic of statehood. This means that a constituent state must of necessity have a citizenship of its own.

5. As, in section 184B(1), the interim Constitution Act 200 of 1993 recognises the principle of a volkstaat as a form of self-determination, it of necessity also recognises the existence of the principle of an individual volkstaat citizenship.

6. Consequently, volkstaat citizenship determines who are, or may be, citizens of the volkstaat together with their rights and duties towards the volkstaat.

7. Volkstaat citizenship is related to the fact of the existence of the Afrikaner nation which is entitled to self-determination. Volkstaat citizenship, consequently, defines who the "self" are which enjoy the right to self-determination: who the "self" are that must "be determined".

8. The principle of an own volkstaat citizenship is recognised in Principle XXXIV which rests on the understanding that there is a South African nation which has a right to be determined and therefore constitutes a self-determination entity. However, within this entity there is a smaller entity which enjoys its own right to self-determination.

9. Principle XXXIV already provides some indication of the "self" which may determine themselves, namely "any community sharing a common cultural and language heritage".

10. Section 184B(1) is based on the principle that the volkstaat may be established for "proponents of the idea of a volkstaat". The principle is therefore that the volkstaat can be established for those having the subjective desire to be part of a volkstaat. The provision gives an indication of who may be citizens of a volkstaat, namely persons wishing to be part of it.

11. It is clear that volkstaat citizenship vests in all within the greater whole who are "proponents of the idea of a volkstaat" and who share a "common cultural and language heritage" irrespective of whether or not they reside within the boundaries of the volkstaat. Of course, this also implies that the proponents subject themselves to the duties flowing from volkstaat citizenship.

12. Volkstaat citizenship does not detract from South African citizenship or the rights and duties flowing from such citizenship for those resident within the volkstaat.

A. CONSTITUTIONAL PROPOSALS

1. That section 5 of the present Constitution be retained, namely:

    (1) There is a South African citizenship.

    (2) South African citizenship and the acquisition, loss, and restoration of such citizenship, should, subject to the provisions of section 20 read together with section 33(1) of the interim Constitution, Act 200 of 1993, be regulated by Act of parliament.

    (3) Subject to this Constitution, every South African citizen is entitled to to enjoy all rights, privileges and benefits attaching to South African citizenship, and is subject to all duties, obligations and responsibilities attaching to South African citizenship granted to or imposed upon him or her in terms of this Constitution or an Act of parliament.

2. The constituent states and the volkstaat have the power to institute citizenship for their respective states and to define such citizenship legislatively.

3. Without detracting from par 2, citizenship is instituted for an Afrikaner Volkstaat.

4. (1) The following persons are entitled to citizenship of the Afrikaner Volkstaat:

(a) All South African citizens who actively share, practice, exercise and maintain the Afrikaans language, culture and traditions, or who identify therewith.

(b) who by descent belong to the Afrikaner people or have been assimilated into the Afrikaner people;

(c) who feel bound to the protection, exercise and maintenance of the Afrikaans language, culture and traditions;

(d) who actively propagate an Afrikaner Volkstaat; and

(e) who are accepted as Afrikaners by their fellow Afrikaners.

(2) All South African citizens permanently resident within the volkstaat at the time of its establishment, or who thereafter have resided within the volkstaat for a period of ten years, are entitled to citizenship of the Afrikaner Volkstaat, notwithstanding the fact that they do not meet the requirements of par 4.1.

(3) No individual shall enjoy citizenship of the volkstaat unless he/she freely accepts such citizenship by registering as a volkstaat citizen.

(4) An individual registering as a volkstaat citizen, accepts the duties flowing from such citizenship. Such duties may be imposed only by the volkstaat authorities.

5. (1) Volkstaat citizens satisfying the requirements of par 4.1, are, in addition to their right to vote for national legislative and executive organs, also entitled to vote for the government structures of either the volkstaat, or of a specific autonomous unit. However, in the event of their exercising such a vote, they shall not be entitled to vote for constituent state authorities other than local authorities.

(2) Volkstaat citizens who acquire volkstaat citizenship by virtue of their residence within the volkstaat and do not meet the requirements of par 4.1. may vote only for volkstaat government institutions or the government institutions of some other constituent state, but not for the elected government institutions of an autonomous unit.

(3) Volkstaat citizens who are resident outside the volkstaat or a specific autonomous unit for longer than ten years after the establishment of the volkstaat, shall lose their right to vote in the volkstaat and the autonomous unit.

(4) South African citizens who do not hold volkstaat citizenship may not vote for the volkstaat government institutions.

(5) South African citizens resident within the volkstaat and who satisfy the requirements for volkstaat citizenship, but who elect not to register for such citizenship, may, in addition to voting for the national parliament, also vote for the government bodies of any other constituent state.

6. (1) In the Republic of South Africa, the franchise is restricted to any South African citizen over the age of 18 years who is not subject to any disqualification defined in legislation.

(2) The franchise accords a citizen the right, subject to the provisions set out above, to vote for the National Parliament, for the legislative body of a constituent state, for the volkstaat or an autonomous unit, for local government, and in referendums or plebiscites.

(3) An individual may vote only for the government institutions of a specific constituent state or of the volkstaat, but may not vote for the government institutions of more than one.

CAVOORL.14E

VOLKSTAATRAAD

SUBMISSIONS TO THEME COMMITTEE 1

LANGUAGE

(Hierdie dokument is ook in Afrikaans beskikbaar)

A. PRINCIPLES

1. It is proposed that section 3 of the interim Constitution be retained but that it be clearly stated that the status of the languages which are to be protected is that status which existed on 27 April 1994, namely the status as existing on the coming into operation of the interim Constitution.

2. Although the constituent states, and therefore also the volkstaat, have original power to enact legislation governing official languages, this power is subject to section 3 of the interim Constitution, and specifically to section 3(5).

3. From the above it appears that it is only the status of languages which qualified as official languages in a particular region, which may not be diminished. The Afrikaner Volkstaat will consequently maintain as official languages, those languages which enjoyed official status within its territory on the coming into operation of the interim Constitution.

4. The language provisions in section 3 must be read together with sections 31 and 32 and Constitutional Principle XI of the interim Constitution. Principle XI declares expressly that the circumstances for the promotion of the diversity of language shall be promoted. In terms of section 30 of the Indian Constitution, the state may not withhold any subsidies merely because a specific minority-controlled educational institution, bases its education on a language or religion specific to a particular people.

5. Should the principle in the Indian Constitution be accepted, it is clear that the Afrikaner would have a right to educational institutions of his own, in his own language and that state subsidies could not be withheld from such institutions if they fall under private rather than state management - even if they are exclusively Afrikaans and aimed solely at the maintenance of Christian Nation-specific Education (Christelike Volkseie Onderwys).

6. Language is an essential characteristic of a people. It is the means through which cultural realisation may be achieved and cultural norms passed on. It is inalienably linked to the right of a people to self-determination. The recognition of the right of peoples to self-determination, implies that this essential characteristic must also be protected and promoted, and that it constitutes more than a mere individual right.

B. PROPOSALS FOR CONSTITUTIONAL WORDING

1. (1) Afrikaans, English, isiNdebele, Sesotho sa Leboa, Sesotho, siSwati, Xitsonga, Setswana, Tshivenda, isiXhosa and isiZulu shall be the official South African languages at national level, and conditions shall be created for their development and for the promotion of their equal use and enjoyment.

   (2) Rights relating to language and the status of languages existing on 27 April 1994 shall not be diminished, and provision shall be made by Act of Parliament for rights relating to language and the status of languages existing only at regional level, to be extended nationally in accordance with the principles set out in sub-section 9.

   (3) In his or her dealings with any public administration at the national level of government, a person shall, wherever practicable, have the right to use and to be addressed in any official South African language of his or her choice.

   (4) Regional differentiation in relation to language policy and practice is permissible.

(5) A legislature of a constituent state may, by resolution of at least two-thirds of all its members, declare any language referred to in sub-section (1) to be an official language for the whole or any part of the constituent state and for any or all powers and functions within the competence of that legislature, save that neither the rights relating to language nor the status of an official language as existing in any area or in relation to any function on 27 April 1994, shall be diminished.

(6) In his or her dealings with any public administration at the constituent state level of government, a person shall, wherever practicable, have the right to use and to be addressed in any of the official South African language of his or her choice as contemplated in subsection (5).

(7) A member of Parliament may address Parliament in the official South African language of his or her choice.

(8) Parliament and any legislature of a constituent state may, subject to this section, provide by legislation for the use of official languages for the purposes of the functioning of government, taking into account questions of usage, practicality and expense.

(9) Legislation, as well as official policy and practice, in relation to the use of languages at any level of government shall be subject to and based on the provisions of this section and the following principles:

(a) The creation of conditions for the development and promotion of the equal use and enjoyment of all official South African languages;
(b) The extension of those rights relating to language and the status of languages which were on 27 April 1994 restricted to certain regions;
(c) The prevention of the use of any language for purposes of exploitation, domination or division;
(d) The promotion of multilingualism and the provision of translation facilities;
(e) The fostering of respect for languages spoken in the Republic other than the official languages, and the encouragement of their use in appropriate circumstances; and
(f) The non-diminution of rights relating to language and the status of languages existing on 27 April 1994.

(10) (a) Provision shall be made by Act of Parliament for the establishment by the Senate of an independent Pan South African Language Board to promote respect for the principles enshrined in sub-section (9) and to further the development of the official South African languages.

(b) The Pan South African Language Board shall be consulted, and accorded the opportunity to make recommendations, in relation to any proposed legislation contemplated in this section.

(c) The Pan South African Language Board shall be responsible for promoting respect for the development of German, Greek, Gujerati, Hindi, Portuguese, Tamil, Telegu, Urdu and other languages used by communities in South Africa, as well as Arabic, Hebrew and Sanskrit and other languages used for religious purposes.

2. No state subsidy or contribution to a private cultural, language or educational facility shall be withheld solely on the ground that such an institution is under the control of, or offers a service to, a single language or cultural group or promotes only a specific language or culture.

CAVOORL.15E

VOLKSTAAT COUNCIL

SUBMISSION TO THEME COMMITTEE 2

STRUCTURES OF GOVERNMENT

(This document is also available in Afrikaans)

A. HEAD OF GOVERNMENT

Election

1. There shall be a distinction between the head of state and the head of government.

2. The head of state shall operate on a basis of rotation to accord recognition to the federated nature and cooperative ideal of the Republic of South Africa.

3. On a rotational basis each constituent state shall elect a head of state who will serve for a period of six months.

4. The out-going head of state serves as acting head of state for the six month period following the six month period during which he served as head of state.

5. To qualify for election as head of state, an individual must qualify for election as a members of the national parliament.

6. The head of state shall vacate his office should he no longer meet the stated requirements.

Functions

7. The head of state shall be competent to exercise and perform the following functions:

(a) to assent to, sign and promulgate Bills duly passed by parliament;
(b) in the event of a procedural shortcoming in the legislative process, to refer a Bill passed by parliament back for further consideration by parliament;
(c) to refer disputes of a constitutional nature between parties represented in parliament, or between organs of state at any level of government, to the Constitutional Court or other appropriate institution, commission or body for resolution;
(d) to confer honours;
(e) to appoint, accredit, receive and recognise ambassadors, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;
(f) to appoint commissions of enquiry;
(g) to make such appointments as may be necessary under powers conferred upon him or her by this Constitution or any other Law;
(h) to negotiate and sign international agreements;
(i) to proclaim referenda or plebiscites in terms of this Constitution or an Act of parliament;
(j) to pardon or reprieve offenders, either unconditionally or subject to such conditions as he or she may deem fit, and to remit any fines, penalties or forfeitures.

8. The head of state is obliged to sign all laws duly adopted, but may, where the validity of a law is in question, refer such law to the Constitutional Court for a decision on its validity before signature.

9. The head of state opens and prorogues parliament and adjourns and dissolves parliament.

10. The head of state may also call an election if a motion of no confidence in the government is introduced in and accepted by parliament, or if he is of the opinion that the government has lost the support of the majority in parliament, or if he is requested to do so by the head of government.

11. The head of state exercises his executive functions on the advice of the government provided that such advice is constitutional and subject to the proviso that he may have the legitimacy of such advice in the light of the Constitution, determined by the Constitutional Court.

Head of Government

12. The head of government is elected by majority vote of parliament.

13. The head of government is removed from office by majority vote of parliament or if the head of state dissolves parliament and calls an election.

14. The head of government appoints the cabinet.

15. The head of government and the cabinet are responsible to parliament for the performance of their duties.

16. The head of government and the cabinet advise the head of state on the performance of his duties.

17. Under normal circumstances, the cabinet advises the head of state on the convening, prorogation and dissolution of parliament.

B. THE LEGISLATIVE AUTHORITY

Composition

1. Parliament shall consist of two chambers and shall be the highest national legislative authority.

2. Parliament shall consist of two chambers, namely the Legislative Assembly and the Senate.

3. The Legislative Assembly shall consist of 400 members and the Senate of 100 members.

4. The Legislative Assembly is elected as currently provided in the Interim Constitution but with due regard to the fact that the representation of the volkstaat as a participating member state shall be calculated in terms of the appropriate formula based on the volkstaat electorate entitled to vote.

5. The Senate shall comprise 10 representatives from each of the constituent states and from the volkstaat.

Functions

6. Parliament shall have legislative powers in respect of all matters entrusted to it in terms of this Constitution.

7. All laws adopted by parliament, must be approved by majority vote in both the Legislative Assembly and the Senate, except where expressly otherwise provided.

8. The Senate, or a Senate sub-committee on which the constituent states are represented in a ratio proportionate to their representation in the Senate, shall confirm the appointment of all judges to the National Supreme Court, National Appeal Court or the Constitutional Court; of all ambassadors of the Republic of South Africa to posts outside of the Republic; of the Public Protector; of the Human Rights Commission; of the Commission for the Restitution of Land Rights; and of the Commission on Gender Equality.

9. Bills affecting the boundaries or the powers of a constituent state, may only be adopted if the majority of the Senators representing that constituent state, consent to the Bill.

10. (1) Parliament is accorded exclusive legislative competence over the following matters:

- (i) Foreign affairs and the conclusion of treaties which fall within the legislative powers of parliament.
- (ii) The external protection and safety of the Republic, the declaration of war and ancillary measures including provisions governing an air force and a navy.
- (iii) National citizenship.
- (iv) Visas and passports.
- (v) Immigration and emigration.
- (vi) Extradition.
- (vii) Monetary matters including the legal tender (monetary unit) and the determination of weights and measures.
- (viii) Issues relating to customs and excise, toll unions and commercial treaties with foreign states, in so far as the Republic is affected directly by such issues.
- (ix) National railways, national air, sea and road traffic and national harbours and airports.
- (x) National elections.
- (xi) National post and telecommunication services.
- (xii) The national Public Service and national courts, including the Constitutional Court, and persons competent to appear in such courts.
- (xiii) The national police force.
- (xiv) Joint national electricity and water networks.
- (xv) The national recognition of patents, trade marks, copyright and similar rights to immaterial property.
- (xvi) National statistical services.
- (xvii) The levying of uniform national taxes.
- (xviii) Borrowing powers.
- (xix) The Republic's claims to the sea and related maritime matters.
- (xx) Arrangements governing national legislative and executive seats.
- (xxi) National research, national tertiary education and national health matters, but without detracting from the rights enjoyed by constituent states over health, research and tertiary education services.
- (xxii) The establishment of a national television and radio service.
- (xxiii) Criminal and civil procedural powers necessary for the exercise of all powers conferred.
- (xxiv) The creation and unification of constituent states.

(2) The legislative, executive and judicial powers over all other matters vest in the various constituent states.

(3) Where a constituent state so requests by special decision of its legislature, parliament may grant such constituent state the capacity to exercise legislative,

executive and judicial powers in respect of any of the matters listed in par 10(1) above.

11. (1) The constituent states have full and original legislative, executive and judicial powers except in respect of those matters over which they have transferred powers to the national parliament as listed in par 10(1).

(2) Without derogating from the general provision in par 11(1), legislative, executive and judicial powers in particular in respect of the following matters are expressly and exclusively reserved for the volkstaat:

(i) Own education and training on pre-primary, primary, secondary and tertiary levels and own research institutions.
(ii) Health services, hospitals, clinics, old-age homes and special care institutions, together with social services and housing.
(iii) Agriculture and land issues, animal control and agricultural marketing.
(iv) Local governments.
(v) Own police force, citizens' defence units and domestic defence units.
(vi) Own public media, including television, radio and films.
(vii) Public transport within the constituent state but with the exclusion of national road, sea, rail and air transportation.
(viii) Own road and transportation infrastructure.
(ix) Tourism.
(x) The capacity, after consultation with the national government, to conclude treaties with other constituent states and with foreign states dealing with matters falling within the legislative capacity of the constituent state.
(xi) The levying and collection of taxes to enable it to perform its legislative, executive and judicial functions.
(xii) Courts for the constituent state concerned and the qualifications of persons who may appear before such courts.
(xiii) The definition and institution of volkstaat citizenship.

(3) A constituent state may by legislation authorise parliament to perform on its behalf, any legislative, executive or judicial function relating to any matter over which the constituent state enjoys such capacity.

(4) Constituent states exercise their legislative functions in respect of local government, subject to and in accordance with the proposals submitted in respect of local government.

(5) In the event of the suppression or negation of the Afrikaner's right to self-determination, which shall include his right to culture and his own language, the volkstaat shall, after a majority of its citizens have made their will known through a

referendum, have the power to declare itself independent from the Republic of South Africa.

12. (1) Parliament and the legislatures of the constituent states shall enjoy concurrent jurisdiction in respect of the following matters:

(i) The adoption of emergency financial measures in the event of extraordinary inflation or monetary instability.
(ii) The legal system governing civil and criminal matters and the execution of sentences.
(iii) Registration of births, marriages, deaths and domicile.
(iv) Bill of fundamental rights.
(v) Residence rights and the settlement of non-citizens.
(vi) Pensions.
(vii) Economic matters and trade including industries, mining, factories, stock exchanges, professions, occupations, banking, insurance and nuclear energy.
(viii) Labour law including social security.
(ix) Bursaries and awards for study.
(x) Expropriation in so far as it may prove necessary for the performance of specific legislative powers.
(xi) Fisheries matters and the exploitation of the sea.
(xii) Waste management.
(xiii) Autonomous units.

(2) In the event of the exercise of concurrent legislative powers, the legislation of a constituent state and that of parliament shall be reconciled. Only where the two cannot be reconciled, and then to the extent of such irreconcilability only, shall the parliamentary legislation enjoy precedence, and then only if the law in question is essential for the uniform application of the specific legislative power over the entire Republic.

CAVOORL.22E

VOLKSTAAT COUNCIL

SUBMISSION TO THEME COMMITTEE 2

THE PRINCIPLES UNDERLYING A VOLKSTAAT

(Hierdie dokument is ook in Afrikaans beskikbaar)

1. The current Interim Constitution entrenches the principle of a volkstaat for the Afrikaner constitutionally.

2. (1) In terms of section 184B (1) the Volkstaat Council serves as a constitutional mechanism to enable proponents of the concept of a volkstaat to pursue its establishment by constitutional means. To understand what is being sought, clarity must be obtained on the meaning of the term "volkstaat". A volkstaat can only mean a state for a certain people. The normal juridical requirements for the existence of a state are territory, a government, a population and the capacity to establish relations with other governments. The requirement of monetary sovereignty may be added to these requirements.

(2) The characteristics of a state are a national population, state territory and state authority. For present purposes, the distinction between a "state" and other government bodies and entities is particularly important. A municipality also has an area of jurisdiction, government authority and a population - as does a province. Yet it is clear that neither a municipality nor a province qualifies as a state. The Constitution establishes the Volkstaat Council with the express aim of its striving for the establishment of a volkstaat. In terms of the normal rules of statutory interpretation, this does not mean pursuance of the establishment of a municipality or a province. Had the Constitution sought to empower the Volkstaat Council to strive for the establishment of a municipality or a province for the Afrikaner, the obvious course would have been to use these terms. This was not done and one can only conclude that a "volkstaat" is something other than a municipality or a province.

(3) A state may be distinguished from a province or a municipality first, in that it is the bearer of international legal personality. In other words, as a subject of public international law, a state may participate in international intercourse. This capacity generally goes hand-in-hand with independence; it is the capacity to conduct relations with other states referred to in 2.1 above. This is the "normal" meaning of the term "state". It is also the most generally accepted meaning. It is only logical that the term "volkstaat" as appearing in the Constitution, should bear this meaning.

(4) However, not all states are independent. One also encounters dependent states; that is states which do not have the capacity to conduct their own external or internal affairs. There are also constituent states which form part of a federation - as in the case of the United States of America and the former Federal Republic of Germany. Although these constituent states have been subsumed within a greater state, they are still regarded as states. This may be ascribed to the fact that an entity retains its statehood even once it has been included within another state provided that it retains certain characteristics. The entity should still enjoy its own, original - albeit limited - government authority. Furthermore, some measure of equality must exist with the federation. In other words, the constitution must provide for a division of powers without a relationship of subordination, and rules of public international law must, by analogy, be capable of application to the relationship

between the state and the federation. Further, the entity must retain a measure of its "high state powers" such as the capacity to conclude treaties, the power to levy taxes, a police force of its own, an education system of its own and its own judicial processes. Such an entity should also have the capacity - albeit limited - to determine its own legal system, for example, the capacity to adopt and amend its own constitution. These characteristics should not, however, be regarded as absolute. It may be accepted that the "volkstaat" to which the Constitution refers, could include such a constituent or dependent state. This is clear not only from Constitutional Principle XXXIV discussed above, but also from the provisions of section 184B (1)(a). This section indicates clearly that the volkstaat is something other than a province. It is also clear that what the provision envisages, is a territorial entity.

(5) From what has been said above, it is clear that the "volkstaat" which the Volkstaat Council is seeking to establish, is not some abstraction akin to corporative self-determination. There is no way in which corporative self-determination may be equated with a volkstaat. The term "volkstaat" does not, either in legal or in political idiom, bear the limited meaning ascribed to a concept such as corporative self-determination. To equate the search for corporative self-determination with the institution of a volkstaat is simply to interpret the Constitution in a purely political idiom. It amounts to a negation of the precise meaning of the words used to define the functions of the Volkstaat Council, and furthermore, violates the history of the provision instituting the Volkstaat Council. Before the insertion of the provisions governing the Volkstaat Council, the Constitution already provided for corporative self-determination, provinces and subordinate territorial authority structures. If we now accept that the provisions governing the Volkstaat Council added nothing, the institution of the Council and the provisions governing the volkstaat are rendered meaningless. The juridical presumption that the legislature does not intend to enact futile or nugatory provisions comes into play.

(6) Paragraph 1 of Schedule 4 embodies the constitutional principle that the South African Constitution shall provide for the establishment of a single sovereign state:

First, it must be accepted that were this principle to clash with Constitutional Principle XXXIV, the latter would take precedence as a principle added by a subsequent (more recent) amendment to the Constitution.

Second, this provision does not necessarily conflict with the view that the Interim Constitution allows for the institution of an independent volkstaat. The principle relates to that for which the Constitution of South Africa must provide. Were an independent volkstaat to be established, it would no longer form part of South Africa and would, in any event, not fall under the South African Constitution. The Constitution, therefore, would still be able to provide for a single sovereign state. In practical terms, all that would happen is that there would be a change to the

definition of the territorial boundaries of South Africa. South Africa would continue to exist but in a smaller form and differently defined. Constitutional Principle XVIII of Schedule 4, establishes special procedures for the alteration of the boundaries of national government and the provinces and is therefore based on the assumption that boundaries may be altered - even the boundaries of the national government. How can the boundaries of the national government be altered but by the exclusion of a territory from South Africa? This principle relates to procedures to be prescribed in a future Constitution. There is no principle entrenching the definition of the current South Africa, that is South Africa as defined in the Interim Constitution.

(7) Section 5 and Part 1 of Schedule 1 define the Republic as a single sovereign state. This section may be replaced but such an amendment will in all likelihood be subject to the majority-requirements as provided in section 73(2) or (11) of the Interim Constitution as such an alteration to the boundaries of the Republic would necessarily also alter the boundaries of a province.

3. The Volkstaat Council's pursuance of an independent volkstaat is compatible with the Interim Constitution.

4. (1) As a constituent state within a federated South Africa, the volkstaat is likewise reconcilable with the Interim Constitution provided that the constituent state satisfies the requirements for statehood.

(2) The Constitution may not infringe upon such statehood. The Constitution should indeed provide that such a state may exercise its full right to independence in accordance with the principle of the right of peoples to self-determination.

5. (1) A precondition for statehood is the identification of a territory. The Volkstaat Council proposes the territory as defined in Annexure A hereto as the territory of the volkstaat. This territory represents an area over which the Afrikaner has historical claims to the right to self-determination and in which the Afrikaner constitutes a majority of the population. Because the Afrikaner is in the majority in this territory, it is axiomatic that he enjoys the right to realise his right to self-determination within such territory.

(2) The distribution of the Afrikaner makes it impossible for all Afrikaners to be accommodated within the proposed volkstaat. Provision is consequently made for autonomous units within other parts of the Republic of South Africa within which the Afrikaner may live as "concentrated minorities". In this latter case, the internationally accepted principle of minority autonomy is engaged. Of course, any minority within the proposed volkstaat will also be subject to this principle. Where minorities are, or will be, too small to exercise their autonomy territorially, provision is made for minority self-realisation on local government level through citizens' councils which exercise their capacities in the cultural sphere.

6. (1) Statehood also demands as a precondition that the state have a population. It flows logically from the Interim Constitution that if a volkstaat is to be established for the Afrikaner, such a state must also have a citizenship defining the inhabitants of the volkstaat and providing who shall enjoy rights and duties within the state. If the volkstaat takes the form of a constituent state within a federated South Africa, it stands to reason the volkstaat citizenship will have to be established alongside South African citizenship.

7. A state must also have a government to exercise state authority. To establish such a government for the volkstaat, the volkstaat is granted powers as a constituent state within the Republic of South Africa, but retains the right to realise its full self-determination should this be the wish of the inhabitants of the volkstaat. Provision is also allowed for the volkstaat, as well as any other constituent state or current province, to draft their own constitutions in accordance with their right to self-determination, and to organise their system of government is accordance with their natures. The process by which a volkstaat may be established in an orderly and constitutional manner is through federating the Republic of South Africa in constituent states.

8. It is accepted that the peaceful creation of a volkstaat must take place through constitutional means in accordance with both the Interim and the New Constitutions of South Africa.

CAVOORL.23E

VOLKSTAAT COUNCIL

SUBMISSION TO THEME COMMITTEE 3

<u>THE NATURE OF THE FEDERATED PROVINCIAL SYSTEM OF GOVERNMENT</u>

(Hierdie dokument is ook in Afrikaans beskikbaar)

A. <u>PRINCIPLES</u>

The Constitutional Principles in Annexure 4 of the Interim Constitution refer, under Principles XVIII-XXVI, to aspects relating to the nature of the provincial system of government and of local government. In evaluating the principles below, regard must also be had to the provisions of section 184B(3) of the Interim Constitution.

1. The Provinces form constituent states within the Republic of South Africa.

2. As constituent states, the Provinces constitute the cornerstones on which the Republic of South Africa rests.

3. The boundaries of constituent states must be drawn so as to reflect the historical development of specific communities and to unite peoples sharing nature and culture within a constitutional context.

4. As the cornerstone of the South African state, constituent states enjoy original powers which are derived from the society they represent and which confer state authority on the government.

5. The constituent states enjoy all powers save for those powers which have been transferred to the national government.

6. Constituent states have the right to draft constitutions of their own to give expression to their individual characters.

7. The boundaries of constituent states should be adaptable to allow persons sharing culture and language the opportunity of forming a society of their own and realising their right of self-determination.

8. The boundaries of a constituent state may be altered should the citizens of such a state so request by means of a referendum.

B. PROPOSALS FOR CONSTITUTIONAL WORDING

(This proposal relates to the nature of constituent states and does not deal with the powers and duties of constituent states. This is addressed later. The establishment of boundaries is dealt with in a subsequent submission dealing specifically with section 184A(3) of the Interim Constitution.)

1. (1) The Republic of South Africa comprises the following constituent states:

(a) Those constituent states which existed as Provinces as defined in the Interim Constitution Act 200 of 1993 immediately before the coming into operation of this Constitution, with their boundaries as adapted by this Constitution;
(b) An Afrikaner Volkstaat with boundaries as defined in this Constitution;
(c) Any other state which may join.

(2) An Afrikaner Volkstaat is a constituent state established for the Afrikaner people in terms of the Afrikaner's historic right to self-determination and his right to a state of his own as embodied, among others, in the Zuid-Afrikaansche Republiek (Transvaal) and Orange Free State, and in those areas where the Afrikaner constitutes a majority of the population.

(3) In addition to the specific powers provided in this Constitution, the Volkstaat shall enjoy all other powers vested in the other constituent states.

2. (1) All constituent states enjoy full and original legislative, executive and judicial powers and capacities save for those instances in which such powers and capacities have been transferred to the national legislative, executive and judicial authorities.

(2) Any legislative, executive or judicial power or capacity which has not been transferred to the national legislative, executive or judicial authority, shall vest in the constituent state.

(3) The national parliament may by legislation transfer specific powers vesting in the national legislative or executive authority to specific constituent states which have requested such a transfer by special resolution of the legislature of the constituent state.

(4) In the exercise of their full and original legislative powers, the constituent states are empowered to draft constitutions of their own in so far as such constitutions do not conflict with the provisions of this Constitution.

(5) The constitutions of the constituent states may not conflict with the universal, fundamental rights embodied in this Constitution.

(6) The constitutions of the constituent states must provide for the election of their legislative and executive authorities and the establishment of a judicial authority. They shall further provide for the responsibility of such organs vis a vis the

electorate of the constituent state and the form of representation enjoyed by the electorate in such state organs.

3. (1) The constitutions of constituent states must be accepted by a majority of at least two-thirds of all the members of the existing legislative body in the constituent state concerned.

(2) In the case of a newly established constituent state, a constituent state which does not yet have a legislature of its own, or of the Afrikaner Volkstaat, the constitution for such a state shall be drafted by a specially elected constitutional assembly elected by the citizens of that constituent state entitled to vote.

(3) Before the constitution of a constituent state shall come into operation, the Constitutional Court shall certify that such constitution does not conflict with this Constitution.

(4) Once the Constitutional Court has certified a constituent state's constitution as being in accordance with this Constitution, such certification shall be final and binding and neither a national court nor the Constitutional Court shall have the power again to test such compatibility.

4. Should a constituent state not wish to draft its own constitution, or not wish to exercise its legislative powers, it may request the national government to draft such a constitution or to exercise the legislative powers vesting in the constituent state.

5. (1) Autonomous regions with boundaries as defined in this Constitution, are established within the territory of those constituent states within which they fall.

(2) Autonomous regions are self-governing regions established for a minority group within a constituent state with the aim of developing into territories within which such a minority may exercise its right of self-determination.

(3) Autonomous regions may also be established by a constituent state's legislative authority after consideration of a petition from individuals of a specific group and after the constituent state has satisfied itself that the majority of the inhabitants of the autonomous region support the institution of such a region.

(4) Autonomous regions enjoy the executive and legislative powers and capacities provided in this Constitution.

(5) The legislative and executive powers enjoyed by autonomous regions may be extended by the legislature of the constituent state or by the national parliament but may not be restricted.

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(6) The national parliament may authorise the incorporation of an autonomous region into the territory of some other constituent state. Such authorisation is granted after the legislative organs of the constituent state within which the autonomous region is situated and the constituent states whose territory will be affected have, by special majority, taken a decision to that effect.

(7) Such authorisation of incorporation is granted only after it has been established that the majority of the inhabitants of the autonomous region are in favour of the incorporation.

6. The national legislature may by legislation create new constituent states or authorise the unification of existing constituent states provided that the legislature or legislatures of existing affected constituent states consent thereto by means of a decision adopted by special majority.

CAVOORL.31E

VOLKSTAAT COUNCIL

SUBMISSION TO THEME COMMITTEE 3

AUTONOMOUS AREAS

(Hierdie dokument is ook in Afrikaans beskikbaar)

Reference is here made to the submission of the Volkstaat Council on the nature of the federated provincial system and in particular to par B 5 dealing with the proposals with regard to autonomous areas. The proposals below serve as a further elaboration of the concept of autonomous areas.

1. The following areas are demarcated as autonomous units:

1.1 A Bushveld area.
1.2 A Drakensberg North area.
1.3 A Drakensberg South area.
1.4 A Southern Free State area.
1.5 A South East Cape area.

2. (1) Legislative powers in respect of autonomous units vest in a "Heemraad" comprising 20 persons elected for a period of five years by the citizens of the autonomous unit who are entitled to vote.

(2) Executive powers in respect of those matters over which the Heemraad enjoys legislative power, vest in a Presidium of five members elected by majority vote of the Heemraad from within its own ranks.

(3) From the five members of the Presidium, the Heemraad elects a chairman, termed the Primarius, who acts as the chief executive officer of the unit.

(4) The Presidium acts as the executive organ of the Heemraad for as long as it enjoys the confidence of the Heemraad.

(5) A new Presidium is constituted should the existing Presidium cease to enjoy the confidence of the Heemraad.

(6) The Primarius convenes the Heemraad as often as may be necessary but at least once every year and determines the sittings, adjournments and agenda of the Heemraad.

(7) The premier or chief executive officer of the constituent state is responsible for the dissolution of the Heemraad and shall call an election every five years to constitute a new Heemraad.

3. (1) A Heemraad exercises its legislative powers by means of resolutions which are embodied in edicts.

(2) Such edicts acquire legislative force once they have been signed by the Primarius and by the premier of the constituent state concerned.

(3) An edict is valid only in so far as it does not conflict with the National Constitution and the constitution of the constituent state concerned.

(4) The Heemraad may issue edicts dealing with the following matters:

(a) Agriculture and fisheries;
(b) Language and culture;
(c) Education;
(d) Health services including hospitals and clinics;
(e) Housing;
(f) Public transport;
(g) Regional planning and development;
(h) Roads;
(i) Social services including the care of the aged and of children;
(j) Regional industries and local trade matters;
(k) Radio and television for such units.

(5) In the event of irreconcilable conflict with the legislation of superior legislative bodies, edits will enjoy precedence within the above limited power sphere and territorial limits.

(6) A Heemraad of an autonomous area and the legislature of a constituent state have the power to expand the territory of the autonomous area by means of agreement which has been accepted as law by both legislative bodies.

4. (1) The premier of chief executive officer of the constituent state must sign a duly adopted edict save where he is of the opinion that the edict conflicts with the National Constitution or the constitution of the constituent state concerned.

(2) Where the edict is not signed in terms of par 4(1) above, the premier of the constituent state shall refer it to the Constitutional Court for determination of its validity.

(3) An edict adjudged valid by the Constitutional Court, shall be deemed to have been signed by the premier concerned.

5. (1) An autonomous unit may levy taxes on its inhabitants to meet expenses in respect of its legislative and executive powers.

(2) A constituent state and the national government respectively provides by means of agreements with the autonomous unit, the percentage of tax relief which the inhabitants of the autonomous unit shall receive in respect of their tax obligations towards the constituent state or national government.

(3) Tax relief in terms of par (ii) above is calculated in terms of a formula based on the saving which the autonomous unit generates for the constituent state or national government respectively, through the autonomous unit itself managing matters which would otherwise have fallen to be financed by the constituent state or the national government.

(4) The Fiscal Commission may make recommendations to the parties concerned on how the formula in par (iii) above, should be applied.

CAVOORL.32E

VOLKSTAAT COUNCIL

SUBMISSION TO THEME COMMITTEE 3

THE NATURE OF LOCAL GOVERNMENT

(Hierdie dokument is ook in Afrikaans beskikbaar)

A. PRINCIPLES

The institution of local government is referred to in Constitutional Principles XVI, XVII, XX, XXIV-XXVII and, read in context, also Principle XXXIV of the Interim Constitution. In this light the following formulations are submitted:

1. On the principle that democracy arises at grass-roots level and that organs of state are merely representative of such people, local government may be regarded as the *fons et origo* of all state power.

2. Local governments consequently constitute the foundations of self-determination from which powers and capacities are passed to the constituent states and eventually to the national government. Local government is the structure of state which most closely affects the individual.

3. Communities develop on the basis of voluntary association between the members within a certain territory.

4. Communities sharing a language, culture and interests with the need to nurture, protect and develop their culture, language and education must be accepted as the basis for local government.

5. Communities are formed to satisfy their inhabitants' basic need to live together in peace and security and to ensure the provision of the basic needs of a modern society in the form of services.

6. To achieve the above goals, individuals in certain areas have invested in property in respect of which they are prepared to pay taxes for the right to live in free association with one another and to finance services in such areas.

7. Local governments must therefore enjoy the right to levy taxes and be permitted, if they so desire, to control matters of a cultural or social nature as well as health and education.

8. On the local government level, cultural matters will fall under the control of cultural or citizens' councils established for individual communities. In accordance with the individual needs of each community, such councils may be granted appropriate powers and capacities to serve the community concerned.

9. Local government need not be dealt with uniformly throughout the entire country, but, in accordance with the principles of democracy and the self-determination of freely associated communities, must allow such communities to realise their individual characters through citizens' councils.

10. All legislative powers in respect of the institution, delimitation and empowerment of local governments vest in the governments of the constituent states.

B. PROPOSALS FOR CONSTITUTIONAL WORDING

1. (1) Legislative powers relating to the institution, delimitation and empowerment of local governments are conferred on the constituent state governments.

   (2) Constituent state legislatures may confer various powers and capacities on local governments and prescribe certain structures depending on demographic, economic, physical and environmental conditions, cultural cohesion and other factors which justify or necessitate such a distinction.

   (3) Constituent state legislatures may not deny or limit the powers and capacities of a local government which is economically or otherwise in a position to exercise such powers and capacities.

2. (1) Constituent states are obliged to recognise a community which requests to be recognised as a community entitled to a local government of its own for the provision of services and/or to a citizens' council for the management of its cultural affairs.

   (2) In accordance with the principles of democracy, self-determination of peoples and the right to free association, any group sharing language, culture and interests enjoys the right to form a community of its own with its own local government and/or its own citizens' council.

   (3) The area of jurisdiction of such a local government is determined where seventy-five per cent of all land owners liable to pay taxes in a specific area support such a request.

   (4) This support may be established either through a referendum or by means of a written, signed petition.

3. (1) Local governments are autonomous and are entitled to manage their own affairs save where their actions conflict with an Act of Parliament or with this Constitution.

   (2) Neither the parliament nor the government of a constituent state may interfere with the powers, activities and structure of a local government to such an extent that the underlying status, aim and character of local government is affected.

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4. (1) Constituent states may by legislation and subject to the provisions of par 1 above, institute local governments for the inhabitants of demarcated areas.

(2) In establishing local governments, constituent states must bear in mind that communities sharing language and culture should serve as the basis for the delimitation of the area of a local government or a citizens' council.

(3) The legislation of constituent states which affects the status, powers, activities or boundaries of local governments is adopted only in accordance with the wishes of the community which shall be determined by means of a referendum among all land owners liable to pay taxes by means of written petitions from such persons, or by means of petitions from interested persons or institutions of existing local governments.

(4) No legislation as intended in par 3(iii) above, will be regarded as having been adopted where written objection has been received from a majority of land owners liable to pay taxes and other parties liable to taxation, whose voting power is determined by the amount of tax for which they are liable in relation to the total liability for tax in the area of a local authority affected by such legislation.

5. (1) Where communities are too small or where it would be uneconomical for a local government to set up and manage the services required, communities may by concluding valid agreements, create umbrella bodies for the provision of services.

(2) Constituent states may accord agreements referred to in par 5(i) above, legislative legal effect if so requested by the communities concerned.

(Powers, composition and election are dealt with later.)

CAVOORL.33E

VOLKSTAATRAAD

SUBMISSION TO THEME COMMITTEE 4

EQUALITY

(Hierdie dokument is ook in Afrikaans beskikbaar)

A. PRINCIPLES

1. The principle of equality before the law as embodied in section 8(1) of the interim Constitution is accepted.

2. The prohibition of discrimination principle underlying section 8(2) of the interim Constitution is likewise accepted but subject to the principle of the self-determination of peoples, the right to freedom of association, and the individual's right to his or her own language, culture and education.

3. Note is taken that group interests or rights already underlie the provisions of section 8(3)(a) of the interim Constitution. If group rights have been accorded protection, it is logical that peoples' rights should likewise enjoy protection.

4. So-called affirmative actions aimed at replacing one group within the public service or holding public posts with another racial group without regard being had to individual circumstances and qualifications is regarded as a violation of the prohibition on discrimination embodied in the interim Constitution.

5. Affirmative action is regarded as permissible only if a specific individual can show that another individual has been advantaged at his/her expense on the ground that he/she is of a different racial group. Affirmative action may only take place to correct the situation of a specific individual who is able to show that he/she was personally discriminated against. The test relates to the circumstances of an individual, namely, the individual who suffered discrimination or the individual who benefitted from discrimination, and not to whether discrimination has in the past been practised against a specific racial group as a whole. The replacement of one racial group with a different racial group on a purely quota-basis, is nothing less than blatant racial preferment and discrimination and conflicts with the essence of the principle of non-discrimination as a fundamental right.

6. A programme of affirmative action threatens the individual rights of those not qualifying as beneficiaries under the programme and cannot be reconciled with fundamental rights. Such a programme can be only a temporary measure and should be completed within one year. The concept of affirmative action should not be incorporated in the new Constitution.

7. Individual cases of affirmative action must be dealt with by legal process and should not take place on the basis of discretionary government action.

8. Section 8(3)(b) should not be included in the new Constitution as the process it envisages should already have been completed before the new Constitution comes into operation.

B. PROPOSAL FOR CONSTITUTIONAL WORDING

1. Every person shall have the right to equality before the law and to equal protection of the law.

2. No person shall be discriminated against, directly or indirectly, and, without derogating from the generality of this provision, on one or more of the following grounds in particular: race, gender, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language, *political or tribal affiliation*.

3. The principle of non-discrimination in par 2 is subject to the principle of the self-determination of peoples, the right to free association and the right of the individual to exercise his or her own language, culture, traditions and education within group context.

4. In the event of unfair discrimination, a court of law may, in addition to any other remedy, issue an order for affirmative action against the state.

5. Until the contrary is shown, *prima facie* proof of discrimination on any of the grounds mentioned in par 2, is regarded as sufficient proof of unfair discrimination as envisaged in that paragraph.

CAVOORL.42E

VOLKSTAATRAAD

SUBMISSION TO THEME COMMITTEE 4

THE RIGHT TO LIFE

(Hierdie dokument is ook in Afrikaans beskikbaar)

A. PRINCIPLES

1. As currently formulated, the right is too wide. It is vague and creates uncertainties. An example is whether or not the death penalty is permitted.

2. It is even possible that self-defence resulting in the death of an individual may be questioned.

3. In our view, these problems may be resolved by wording the provision in such a way that the emphasis falls on the protection of life. This will also emphasise the duty resting on the state to protect the lives of the innocent in preference to those of criminals.

B. PROPOSAL FOR CONSTITUTIONAL WORDING

1. Every person shall have the right to the protection of his or her life.

CAVOORL.43E