

THEME COMMITTEE 1

A.C.D.P. PRELIMINARY SUBMISSION REGARDING SEPARATION OF POWERS

We in the ACDP believe that the government is made up of elected representatives as a result of the voting rights exercised by the population. There exists a power relation between the governed and the elected authorities. As "all" of the population has taken part in voicing their demands (through voting), it is therefore, important that the preferences of all be given constitutional protection alongside the will of a majority decision.

According to Exodus 18:19-23, powers must be separated and shared in order to be completely representative:

"Listen now to me and I will give you some advice,
and may God be with you.

You must be the people's representative before God and bring
their disputes to him. Teach them the decrees and laws and show
them the

way to live and the duties they are to perform.

But select capable men from all the people - men who fear God,
trustworthy men who hate dishonest gain

and appoint them as officials over thousands, hundreds and fifties and tens.

Have them serve as judges for the people at all times, but have them bring every
difficult case to you,- the simple cases they can decide themselves.

That will make your load lighter, because they will share it with you.

If you do this and God so commands, you will be able to stand the
strain and all these people will go home satisfied. "

We therefore argue for a separation of powers where government does not only consist of the executive, but of the legislative and judiciary as well.

According to the French political writer, Montesquieu, (The Spirit of Laws, 1748):

'When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a

tyrannical manner. Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would be then the legislator. were it joined to the executive power, the judge might behave with violence and oppression.

Tyranny will result when legislative, executive and judicial powers are all accumulated in the same hands, of one, a few or many.

With the separation of powers, the legislative (lawmaking) will be the body deliberating on significant policy disagreements on matters social (eg. abortionon-demand), redistribution (eg. taxation), or national security legislation.

The executive cabinet (enforcers of the law), on the other hand, may have to haggle with legislature regarding policy formation and primarily be involved with those things that affect the country as a whole. For example, defense, foreign policy, foreign commerce, money regulations and citizenship.

The judiciary will see to the interpretation of all matters of the law and maintain independent status.

These powers should not be completely separate, but should band together through a system of checks and balances. An example of checks and balances is the executive having the right to veto laws passed by the legislature, and the legislature being able to override the veto with a larger percentage vote by their members.

The ACDP regards that the legislative will enjoy the privilege of real policy making alongside the executive. And policy formation will in turn allow for making effective and representative laws. Furthermore, the committees representing the various parties will serve to shape policy and participate in the legislative process.

For the ACDP, the separation of power will ensure legislative accountability and fluidity, as well as greater executive stability.

We further believe that separation of power will allow for more effective government, especially in a multi-party system.

'While a separation of powers will produce some conflict between the branches of government, this will assist in preserving the three branches of government and the system of checks and balances. "

STEVEN K.MAC DOWELL - LIBERATING THE NATIONS
(1993)

THEME COMMITTEE 4

A.C.D.P. PRELIMINARY SUBMISSION REGARDING CONSTITUTIONAL PRINCIPLE 11 (FUNDAMENTAL RIGHTS AND FREEDOMS)

The A. C. D. P. believes in a biblical approach to the granting of fundamental human rights.

We believe that God is the giver of all good gifts, including human rights. We question the legitimacy of human rights that have not been God-ordained.

Clause 8.2 in Chapter 3 on Fundamental Rights, which refers to unfair discrimination, should be revisited. The "sexual orientation" clause, in particular, is unbiblical, because it legitimises the practice of homosexuality. The Bible literally and clearly forbids homosexuality. It is not valid to use the argument that the state cannot legislate morality, whilst the introduction of clause 8.2 has led to the protection and will lead to the possible legislation of immorality.

The practice of homosexuality is a lifestyle, or sub-culture, like gangsterism. If we call on the protection of this one sub-culture, on what basis are other sub-cultures excluded.

The right to life clause should also be revisited, because unborn children should also be protected by this right.

In conclusion, the A. C. D. P. would support any first, second, third or fourth generation rights, on condition that these rights are not condemned by the Word of God.

THEME COMMITTEE 4, BLOCK ONE

THE NATURE AND APPLICATION OF A BILL OF RIGHTS

Biblical Scholars in the eleventh through thirteenth centuries AD used the concept rights in the Bible (translated with "justice" and "authority") to form the basis of the eighteenth century Enlightenment that rejected the Bible and Christianity.

For these scholars, rights were both "unalienable" and "universal". "Unalienable" in the sense of being God-given and incapable of transfer or surrender by man and "Universal" in that they belong to all persons from conception to natural death, irrespective of situation or origin.

Clearly then, the nature of a Bill of Rights should be a document enforcing the heritage of divine authority with the corresponding duties that inevitably come from being granted responsibilities in discharging the authority. What it had become, though, is a lofty set of ideals that man has set for himself to escape from the natural consequences of a sinful nature.

It is, therefore, hardly any surprise that notorious human rights violators had lengthily and impressive sounding lists of rights and, yet, disregarded these with contempt as in the old USSR and its satellites.

To try and safeguard against these abuses, we attempt to correct evil with evil. Humanity came to the conclusion that, because of the corrupting effect of power, even properly constituted, elected representative of society, to be found in legislatures across the world, are incapable of safeguarding the rights of individuals, as they are subject to the whims of an electorate and therefore, has to act acceptably to stay in power- On the face of it, the brilliant way of circumventing this shortcoming, was to place all that power in the hands of a select ministry of normally judicial background, who are elected to bodies such as constitutional courts.

The theory behind this widely followed practice seems to be that because these individuals are not accountable to an electorate and, therefore, secure in their positions, that they will discharge their position of authority with a sense of wisdom, fairness and justice. This surely must be a fallacy. A jurisprudential background does not ensure fairness, as the experience of having legally trained senior officers in despotic governments, clearly must have shown.

When God instituted His government on earth, He provided the same checks and balances are now a part of the federal systems of government in accepted democracies across the globe- It was not, however, part of His method to place any more authority in the hands of the judiciary than in the hands of the other two power bearers.

Two ways of ensuring a fair distribution of power come to mind,

Firstly, to provide a balance of power, even for the constitutional court and

Secondly, to ensure that the court does not make law by interpreting the constitution and Bill of Rights from a particular perspective.

As Christians, we feel that the following aspects should be clearly spelled out, It must not be left open for the constitutional court, or any other competent body, to adversely affect morality in this country. In this regard, to elevate atheism and occultism to the level of recognition that organised and accepted religion occupies is unacceptable. Equally so, the right to life should make provision for the death penalty, while ruling out abortion and euthanasia. The sanctity of the family must be protected and same-sex relationships should not be recognised. At most, private relationships between consenting adults could be tolerated.

In the same vein, pornography and it's partner, prostitution, must be specifically excluded from any protection afforded in the Bill, to ensure that the core family is allowed it's continued and unthreatened existence.

That the Bill of rights currently makes no provision for the protection of the sanctity of marriage between a man and a woman and the attending issues of a family. In the light that, most human rights documents afford the family as the core unit of society certain rights, the lack thereof, in the local version, needs to be urgently addressed.

In the American experience and in several other jurisdictions, the effects of providing those who temporarily or permanently, throw off the protection of society by committing heinous crimes in a warped sense of justice or fairness with the same, if not greater rights, than their victims have become shockingly apparent. in the case of murder, the criminal totally negates the most basic of rights and, yet, is afforded the same rights, coupled with the ineffectiveness of a fettered system of policing.

Every act that a person commits has certain consequences and, while it would be insensible to declare every murderer outlawed, a balance needs to be struck between the rights of the innocent, law-abiding victims and that of the criminally-intent perpetrator who shows contempt for the laws that must, of necessity, regulate society.

The Bill should further include redress and support systems for the victims- It would be a good idea to make the enforceability of the rights a direct consequence of fulfilling one's duties or responsibilities as a law-abiding citizen.

Should one view human rights as distinct from any biblical perspective, then it would be arguable that, just as breach of contract leads to certain penalties, breach of the contract between humans to use certain fundamental human rights as the boundaries within which to act, should lead to certain forfeitures.

It is only when we realise that humanity in its fallen nature is not capable of handling God's authority properly, that we will begin to see the Bill of rights, not as an absolute, and infallible ideology to ensure peace and prosperity for all. Rather, it is to be viewed as the written boundaries within which all persons are to do all those things which we, as humans collectively called society, hold in esteem. In order to make this possible, we should not place undue accent on the innate dignity and worthiness of the human individual.

We should constantly remind ourselves that the ideology of human rights and human rights instruments today, has at its core, the limitation of State authority" and the achievement of maximum freedom and liberties for the individual.

In this well-meaning, though thoroughly misguided process, due regard is not given to balancing these libertarian ideas with the prevention of adverse consequences that could easily flow from the process.

To counteract this effect, proper measures must be introduced to clearly stipulate the demarcated areas within which individuals who will want to use their rights to the detriment of themselves and society, will be barred from doing so. Neglecting to take up this task, will inevitably, lead to lawlessness and chaos, for which we will have ourselves to blame.

Application of the Bill of Rights

If we accept the above reasoning for proper limitations and boundaries, then it becomes apparent that what is true of individuals will be equally true of the associations into which they organise themselves.

Because of the by now proven ability of power to corrupt those entrusted with it, the first instance where safeguards will have to be employed is with the government and its organs and structures. It is the view of the PARTY that the Bill should be applicable, where a person or association in a position of power, has the ability to abuse that position and there is no remedies already to be found in the positive and common law.

It has always been a biblical principle that the weak should be assisted. Care should, however, be taken that, again, in the misguided sense of ensuring equity and -justice, we do not do away with a well-developed legal system that has the practical advantage of having been successfully applied for several centuries.

To provide private individuals unqualified recourse to a Bill of rights arising from their having entered in to the relationships upon which the free-market system and economy rests, could have serious negative consequences on development in this country.

A .C. D. P.

AFRICAN CHRISTIAN DEMOCRATIC PARTY
THEME COMMITTEE 6.1
PUBLIC SERVICE

There are currently 1.5 million civil servants on the payroll of the South African government according to the Central Statistical Service (Business Times - April 16. 1995).

As an authority with powers delegated from God, the public service are to be His servants for the good of all citizens.

The ACDP believes that a small, efficient and effective civil service is the one approach that will ensure the realisation of this ideal.

According to the Bible, there are three tiers of government: Individual, Church and Civil. The areas of responsibility for these three are clearly delineated in Scripture: Harold O. J. Brown said it very well in his monumental - *The Reconstruction of the Republic*, p.87: "Unless we control our appetites, we cannot control our government. We certainly cannot expect it to limit itself, because it senses our appetites far more strongly than it is persuaded by our claims that we are tired of bureaucracy, taxes and government interference. If the ultimate goal of government is to 'do everything and change everything', really an infinite challenge, then it will require an infinite effort - in fact, infinite taxes, infinite paperwork, and infinite interference: infinite in the sense that there will be no limit to them, no place at which people will say: 'This is clearly all that we want or need,' until the limits of exhaustion are reached. Infinite goals mean infinite controls. And infinite controls mean zero freedom."

It has been shown in the field of Public Administration that it is almost a principle of law that a civil service complement will grow to enable it to burden additional tasks, which other jurisdictions of authority fail to take up. To counter this, a number of noteworthy recommendations to limit growth in the public sector is always advanced.

Surely enough, implementing these, such as the principle of non-reducing numbers of civil employees in favour of not employing more, will provide short-term solutions. Care must be taken, however, to not let short-term gains become the vision and the goals of restructuring the civil service.

Statements, such as those made in Time Magazine of the 27th February 1995, (concerning misappropriation of funds by the tourism organisation, then headed by Mr Makaba, and a further \$40 million in foreign donations to an organisation set up to help former political prisoners), that any fraud within the ranks of the present government probably falls short of similar occurrences in the previous National Party dispensation, are inappropriate and dangerous.

Surely all forms of dishonesty in the realm of public service is a major cause for concern and needs to be addressed immediately. Even though it might sound politically good to say that levels of corruption is nowhere near where it was previously, and even though it shows promise, there still

needs to be firm measures leading to the complete eradication of corruption - this should be a long term commitment, starting immediately.

The ACDP proposes that civil servants be exactly what the appellation denotes: It is submitted that the so-called "security" of employment in the civil service needs careful scrutiny. Members of a small and efficient service must be openly accountable to the South African citizenry - as these are the very people whose lives are controlled by the faceless individuals implementing public policy.

While it is understandable that certain technical fields, such as atomic energy applications, warrant expert drafting of legislation and policy, every effort must be made to include grassroots members of society in the process of accountability. Suggestions in this regard would be the publication, in easily understandable language, of key aspects of proposed programmes or legislation, to be published in the national media with timeous invitations of public opinion and a schedule as detailed as possible, of what the proposed line of the action is going to cost the taxpayers.

To further the attainability of an efficient stream-lined civil service, it is submitted that this body submits detailed income and expenditure statements, showing, not it's profitability, but the balance between available sources and outcome. The public service must be ensured to run on sound managerial and business ethics and it is proposed that a committee of experienced persons, with proven managerial skills, be constituted to evaluate the current civil service, in terms of acceptable private sector standards and thus, resulting recommendations be introduced and monitored immediately.

The Civil Service must be a specialised, efficient and elite sector, where individuals, who have proven themselves in the private sector, are actively recruited, with their knowledge and skills creatively merged with the proven, but possibly staid methodology, which has pervaded the public service sector for the past several decades.

In short, the civil service must be made competitive with the private sector and, when it comes to the provision of services, the test should be whether it outperforms the other competitors in the market. Where it does not, it should not provide the service and the tax payer should receive the benefit.

It is argued that the oppressive tax system that currently eats up virtually seventy per cent of the hard working wage earner's income, should not serve to provide the enabling source for only those very few aspects of daily life that cannot be effectively encompassed by the competitive private sector market. This will mean a considerable reduction in taxes that should correspond with the flat rate of around sixteen per cent mentioned in the bible. Tax-paying South Africans will stand up - mobilised by the ACDP - to demand an explanation from public servants on how responsibly their tax monies are being spent and from the national government, and why it needs seven tenths of income generated by salary earners, when the Bible prescribes that, if the individual and the Church take up their rightful responsibilities, civil government will only need a fraction thereof to fulfil it's responsibility as a servant of the most High God, and to the benefit of all South Africans.

The ACDP demands that virtuous, moral people, who have a clear idea of their position in God's chain of authority, and for whom obedience to his inviolable principles, will be far more important than building kingdoms or defrauding the South African public, must be employed in the new public service and that it must be recognised that biblical morality and ethics will ensure that at least two billion Rand will not be stolen from South African tax payers annually, through corruption in only one aspect of the civil service, namely, the state pension system, (The Star, 2nd march 1995.)

It needs further be said, that the image of the public service, as an employer of last resort for especially public Administration and social science graduates, be drastically changed. Of key importance will be the role that the public service will play in affirmative action. The aim should not be egalitarianism, because this could easily end up as window dressing black-empowerment, that will benefit and enrich a minority to the detriment of the majority, but equity, where equal opportunity should not mean equal outcome and, where the individual takes final responsibility for outcome. Taking into account the scarcity of resources, the result of affirmative action in the public service should be to have individuals men and women - of proven ability and sound moral character - capably and efficiently serving the South African public with total irrelevance as to their skin colour or sex.

18th April

AFRICAN CHRISTIAN DEMOCRATIC PARTY
SUBMISSION TO THE CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE FOUR

FREEDOM OF RELIGION, BELIEF & OPINION

Content of the Right

The ACDP is in full agreement that this right must be included in the Bill of fundamental rights.

South Africa is a Christian country of up to 80% adherents, and this is besides the other religious faiths in our country.

We are of the opinion that a State represents the will of the people, and if the will of the people represents a large interest in religion, then South African is a State of religious people.

We, therefore, believe that South Africa cannot be defined as a secular State.

We believe that a secular State, by its very nature, will hold the following dangerous implications.

it is an attempt to erase the belief that God is present in the interplay between the human and State spheres.

it reduces the meaning of humans as a disposable entity.

it stands outside of the limitation of God's authority.

A secular State is a distortion of the meaning of human society. Society is made up of a collective unit of people, each with a spirit nature that invests into the State its spiritual character.

By virtue of this religious value, human society offers its allegiance to the State by ascribing to it the recognition to protect its citizens against any irreverent prescriptions. In view of this religious-normative responsibility, the secular State is an anathema that usurps and denies the rights of the God-created individual to function within a non-secular State.

We further believe that the strength of the sovereignty of the constitution will lay in its recognition of God as sovereign over the state, be reflected in the preamble of the Constitution that states we are a nation under that authority of God.

As South Africa is blessed with a multitude of faiths and religions, such a preamble will provide for a great deal of religious tolerance.

As freedom of religion holds great advantages for the regular function of the State, with regards to responsibility, lawfulness, productivity, tolerance, etc., it is of equal right the religious observances should be tolerated in State and state aided institutions, eg. schools, government institutions and others.

The Bible teaches us that Man does not live by bread alone, "but by every word that proceeds out of the mouth of God," (Matthew 4:4). It is certainly true that once our bodily needs for food, water, shelter and clothing have been satisfied, human beings also seek to have their physical, emotional, mental and spiritual needs met. This would involve acquiring of information, enquiring about destiny of life and the world, reflecting on religious questions, etc. However, these activities seem to create avenues of hostility among people, instead of harmony. Not only are we inclined to oppress, persecute, exploit and deprive each other from material gains, we are also inclined to persecute others who have a belief different to ours.

The ACDP is, however, against such types of authoritarianisms and despotism, but we will oppose any belief system that includes in its practise, activities such as murder rituals, cultic practises, witchcraft, or any form of repressive acts. Here we include practises of Satanism, anarchic belief, etc.

Government is instituted to uphold justice and moral integrity, and in instances where these principles are perverted, these should be prosecuted against.

Government authorities have been ordained by Almighty God for the preservation of law and order, for the punishment of criminals, for the rewarding of those who are good, and for the promotion of all godliness, morality and honesty (c.f. Genesis 6-5-6, Exodus 18:15-23; Romans 13.3-4; Timothy 2.-1-2, Titus 2:1-2.)

Authority is to be feared by evil-doers and in as much as political government is a servant of God, which does not bear the sword as a mere ornament, but which, as God's servant, wields the sword and thereby wreaks vengeance and punishes evil-doers.

The ACDP believes that, any belief-system that stray from Godly morality and perform murderous rituals should be seen as evil-doers and such systems prohibited.

We further oppose any State interference in the normal function of religious practises or reject the idea of a State religious Ministry that regulates religious affairs.

Furthermore, no rule should be made to prohibit members of the clergy from holding public office, insofar as the role of the State and Church is not confused.

With regards to academic freedom and educational preferences, section 32(c) of the interim constitution proceeds to give "every person the right to establish, where practicable, educational institutions, based on a common culture, language or religion, provided that there shall be no discrimination on the grounds of race." The ACDP believes that this right is compatible with the freedom of religion and should be included as stated.

The ACDP accepts Section 14 of the Constitution on religion, belief and opinion as a whole, with S14 (1 & 2), to read as follows:

- 1 "Every person shall have the right to freedom of conscience, religion, thought, belief and opinion, which are consonant with public order and Godly morality, which shall include freedom in institutions of higher learning."
2. "Without derogating from the generality of subsection (1), religious observances may be conducted at State or State-aided institutions, basis and attendance at them is free and voluntary."

Application of the Right

2.1 Nature of the Duty to be imposed on the State.

Section 14 (1), as revised by the ACDP imposes the duty upon the State to ensure that religious practises uphold public order and Godly morals.

The State's obligation in respect of section 14 (2) where it mentions that religious observances, which are conducted at State or State-aided institutions, should be regulated "under rules established by an appropriate authority for that purpose," is unacceptable and the ACDP rejects any State body that aims to regulate religious affairs.

2.2 Application to common law and customary law

The right should apply to common laws and customary law.

2.3 Should the right under discussion impose a constitutional duty on actors other than the State?

The rights are applicable to all levels of Society in both a horizontal and vertical manner. Because of it's general definition, no-one is excluded in respect of this right. A moral responsibility is clearly attached to this right.

2.4 Who should be the bearers of this right?

All natural persons are bearers of this right, yet juristic persons, like churches, religion and academic institutions may also lay claim to the right.

2.5 Should the right under discussion be capable of limitation by the legislative?

Religious beliefs that manifest themselves through ritual murders, enforced polygamy, cultic expressions, or violence explicitly promoting public immorality, should have limitations imposed.

19 April 1995

AFRICAN CHRISTIAN DEMOCRATIC PARTY

THEME COMMITTEE FOUR

FREEDOM OF DEMONSTRATION & PETITION

Content of the Right

The ACDP proposes that section 16 of the Constitution remain as stated.

"Every person shall have the right to assembly and demonstrate with others peacefully, and to present petitions."

This right is intrinsically linked to the political and social values of a democratic society, and invests in the individual, the power to resist measures which may be deemed undemocratic.

The right, as worded, promotes healthy and peaceful protest, with the least amount of injury to the demonstrator, and requires of the authorities, a dignified response in handling the right in question.

It is imperative that as much assistance is given to protesters, by the State, in order that the right of peaceful demonstration and petitioning be made possible.

The ACDP is of the opinion that the dignity of the person is protected through the needs of this right.

If a demonstration intends to be provocative or induce violence or hatred, and where the security of the State and lives of the community are threatened, the right should be withdrawn.

The right to assembly or to have public meetings is also subject to such stringent measures, with regards to the prohibition of arms or any type of weapon.

Any form of strike action or demonstration, that leads to violence should be penalised and the cost of damages incurred by such action should be paid for by those responsible for the creation thereof.

Any strike action or picketing that has as its aim, the breakdown of political stability, or to bring the economy to its knees, should be deemed as undermining State security and be classified as illegal. However, State security cannot be used as an argument against strikes where flagrant corruption, or dictatorial relationships are the order of the day.

The ACDP proposes that the resources of an independent public protector system, or similar persons, be made available to mediate on issues relating to demonstrations and petitioning. This will provide recourse to petitioners and protesters, and ensure uninterrupted functioning of the broader social machinery.

Application of the Right

2.1 Nature of the duty to be imposed on the State

A democratic society demands democratic responses from the State. It is the duty of the State to regulate that the right, as worded, is complied with, and to ensure that the right is not negatively infringed upon those of others. The content of the right implies morality and peace and this should be adhered to.

2.2 Application of the right to common law and customary law

In principle, the right should apply to both common and customary law.

2.3 Should the right under discussion impose a constitutional duty on actors other than the State?

No. The right to freedom of choice is an individual responsibility, e.g. closed-shop, and the right under discussion is dependent upon such criteria as they present themselves.

That the right is constitutional, strengthens the democratic principles upon which our society is based.

2.4 Who should be the bearers of the right?

This right should apply to both individuals and juristic persons.

2.5 Should the right under discussion be capable of limitation by the legislative?

No right is absolute, nor can it be arbitrarily exercised. The right, as is worded, provides its own specific limitation of being 'peaceful and unarmed', and should be imposed as such.

19th April 1995

AFRICAN CHRISTIAN DEMOCRATIC PARTY
SUBMISSION TO THE CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE FOUR

FREEDOM OF ASSOCIATION

Content of the Right

Section 17 of the Constitution reads that "every person shall have the right to freedom of association."

The inclusion of this right is both constitutionally correct, yet politically controversial. It is dependent upon the character of our nation to allow this right as long as the rights of others are not infringed, or the stability of society attested.

Freedom of association or dissociation is a democratic right that caters for respect of individual privacy and for institutional cohesiveness and freedom.

As regards all rights, responsibility and the collective value to uphold the goodwill of all people are the cornerstones for effective exercise and manifestation of fundamental rights. The founding of voluntary or statutory associations rest on the assumption that individual and community (association) rights are protected, and that the fundamental rules that hold these diverse sectors together are the basic human values of love, respect, honesty, truthfulness, accountability and a divine spiritual bond.

Society demands that laws which encourage justice, transparency, peace, morality and social upliftment, should be maintained. These are requirements for social stability and neighbourliness. The right to freedom of association is limited to these.

The ACDP warns that unbridled rights that destroy family values infringe upon reasonable and acceptable social divergences or undermine moral defensible democratic tolerances, such as pornographic syndicates, drug cartels, Satanic and cultic worshipping, subversive groups, etc., are associations that work against the requirements of societal norms.

Insofar as clubs have the legitimate right to operate uninterrupted of state intervention, the right to freedom of association provides no shield behind which activities of an inhuman racist or discriminatory nature can be justified,

However, we are of the belief that freedom of association does not involve an absolute right. All forms of association are regulated according to checks and balances, which afford clubs and organisations, the protection to determine rules and mandates specific to them or their operations. We believe that ail associations should be voluntary and not enforceable, unless the State invokes such measures that are prerequisites for State security and national defence.

The ACDP views closed-shop arrangements as an infringement on an employee's right to dissociation. The worker should be entitled to decide whether or not to join up with a trade union. Any rights taken away from a worker because of dissociation is discriminatory and should constitute an unfair labour practice. Whereas a non-member stands to benefit through the collective bargaining position of the trade union, arrangements can be made between these parties where benefits can be equally shared.

The ACDP, therefore, agrees with the right as stated, that "every person shall have the right to freedom of association," which also means the right to freedom of dissociation. We also wish to include that:

"No restriction may be placed on the exercise of this right, other than those which are prescribed be law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right." (The Fundamental Covenant on Civil and Political Rights. Article 22.2)

Application of the Right

2.1 Nature of the duty to be imposed on the State

The right suggests that there shall be individual and social protection against State interference.

The right further guarantees that the citizens shall enjoy access to privacy.

The State's interference to infringe upon this right should be cautious, yet objectively applied, where such infringement is deemed appropriate. It is appropriate when the moral and ethical codes of good citizenship and public order is threatened. It is also appropriate in instances, where the government seeks to usurp absolute power.

2.2 Application of the right to common law and customary law

The ACDP position is clear that where the constitutional contents or application of any right is interpreted or stated to contradict moral biblical principles or the violation of biblical rule and so contained in any common or customary law, this will be opposed.

However, the right to freedom of association should be a cornerstone of society, and should be included to both common and customary law.

2.3 Should the right under discussion impose a constitutional duty on actors other than the State?

Yes, insofar as the constitution has a fixed moral content, and conforms to moral, biblical principles, it is submitted that, as equal subjects before God and His authority, all citizens are benefited with responsibilities to assume this right.

2.4 Who should be the bearers of the right?

This right is applicable to both natural and juristic persons. With regards to the benefit of privacy and exclusivism, in the case of juristic persons, clarification may be processed through the activity of court procedures.

2.5 Should the right under discussion be capable of limitation in the legislative?

Section 33 (4), which appeals to take steps to prohibit 'private discrimination' as well as a person's basic right to equality, provides satisfactory grounds for limitation. The moral appropriation of the right will determine as well the limitation imposed.

19 April 1995

AFRICAN CHRISTIAN DEMOCRATIC PARTY

SUBMISSION TO THEME COMMITTEE ONE BLOCK TWO

2. EQUALITY

The ACDP agrees that equality is central to a Bill of Rights. We further believe that all shall have equal access and protection of the law.

Equality before the law is beneficial to all and is principally aimed at enhancing the esteem of the value of all human beings, essentially in the understanding that we are created in the image of God. (Genesis 1:26 27).

Equality before the law means that as Christ is no respecter of persons, so the law should be no respecter of persons (James 2:8-9). The ACDP maintains that because all are born sinners, no one is to be considered to be superior to any other by birth or by nature.

Although we are all equal in value before God, we are at the same time different. We are different in our colour, belief, size, talent, attitude, gender, strengths, interests and so on. We have separate bathrooms for men and women to endorse this fact. This differentiation is not discrimination. The ACDP would like the Bill of Rights to recognise this differentiation in some cases and that, in such cases, it be justified.

The ACDP endorses Chapter 3:8.2 of our interim constitution that says "no person shall be unfairly 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, sex, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture or language. The clause "sexual orientation" is dropped because it is misplaced.

As God-loving Christians, we in the ACDP cannot endorse or condone what God calls abomination. Attempts to legalise what we view to be perversion is an attempt to impose on Christians, religious people and those who still maintain their cultural beliefs and traditional values, that which is unacceptable, unhealthy, immoral, sinful and unnatural.

The ACDP opposes giving unacceptable and sinful lifestyles like homosexuality, lesbianism, sodomy, bestiality and paedophiles any constitutional protection. It is wrong to legalise immorality. People involved in these lifestyles have chosen to do so and they are protected already by Chapter 3:13, that guarantees the right to privacy. We do not want our country to be another Sodom and Gomorrah. (Gen. 19: 1-25, Rom. 1.-25-32). Our right to freedom of conscience, religion, thought, belief

AFRICAN CHRISTIAN DEMOCRATIC PARTY

Affirmative Action

The ACDP believes that affirmative action should be defined as a temporary measure to make right the wrongs of the past in order to ensure individual family and nation building and human resource development. It should aim at making people self-sufficient and to contribute to the running of the country in all its sectors. We do not wish to see this concept written into the constitution as a permanent right because in a few years time, it may no longer be necessary.

The ACDP applauds the approach taken by Dr M. Ramphela of Idasa. We wish to express our appreciation for the pragmatic and thorough presentation she made to Theme Committee One. She cautioned us against applying the imported concept of affirmative action from the USA because their social conditions are different to ours.

Dr Ramphela continued to say that affirmative action must be "situated within an equity framework to ensure that it is an appropriate strategy in a given case, and that it achieves the oasis of making equal opportunities accessible.

A free standing affirmative action programme runs the risk of bedevilling social relations. "An equal opportunity environment must be created to bring out the best in all citizens."

3. SINGLE "SOVEREIGN" STATE

We as the ACDP agrees with the concept of a "sovereign" state, only in the context of an independent country within a prescribed jurisdiction. We do not believe a state should be absolute, all powerful, unlimited or supreme, but rather, it should be the constitution that is supreme.

The ACDP recognises the state as a God-ordained institution. Along with the institutions of the family (marriage and home), the church, religious organisations, the state occupies an important place in God's order of things. The ACDP believes that government is established with limited powers to do only certain things in society. We call for limited government, failing somewhere between no government (anarchy) and total government (totalitarianism). Caesar has his role, but other institutions like the family and the church have their roles too.

A good government is one that administers justice, protecting the weak from the bully, the poor from the rich and powerful, the innocent from the criminals. It will promote equality before the law, working diligently to restrain evil - raising revenues; avoiding deficit spending and so on.

Within the single "sovereign" state, the ACDP would like to see a small, but effective, central government and strong provincial and local governments. We believe strong provincial and local governments bring the government closer to the

people and help create effective governing and improved administration and communication. In this case, decision making is allocated to the lowest level where it could best be exercised and it allows for improved identification of needs and for the development of local and provincial leadership.

Secular State

The ACDP vehemently rejects any plan to turn South Africa into a secular state. It is totally unacceptable and undemocratic. According to statistics, about 80% of South Africans believe in the teachings of the Christian faith. Their voice must be heard. We do not want to have a constitution that does not acknowledge God the Almighty in its preamble because of a few politicians who do not believe in a sovereign God. Most South Africans believe in God and that must be reflected in the constitution.

It is inconceivable that an attempt can be made by members of this parliament to deny Christians, who are the majority of tax payers, from using State institutions that are built and maintained with their tax money for religious observances. Millions of Christians who voted for the ANC are using school classrooms and community halls for their church services. Is the ANC now turning their back on them, attempting to deny them that right by calling for a secular state?

A secular state would bar Christian leaders and religious office bearers from holding offices of State. This would be highly unconstitutional, undemocratic and the worst form of discrimination. The ACDP totally rejects such plans. Those who claim to support the concept of participatory and representative democracy must live up to their claims. South Africans must be allowed to exercise their democratic right of choosing who should represent them in any office of State, without any State interference.

The ACDP is calling for a Constitutional State, based on Christian principles like honesty, truth, love, respect for life, law and properly, justice, reconciliation and

many more that are universally accepted as indispensable for building a healthy, prosperous and normal society.

Golden rules like "love your neighbour as yourself" (Matt. 22:39) and "do to others what you would have them do to you" (Matt. 7:12) would save the world from poverty, misery, rape, murder and all other evils that are destroying precious lives, if they can be taught and applied. All nations of the world would agree that these rules can make our world a peaceful and better place to live.

These are some of the biblical principles that we, the ACDP would like to see undergirding our constitution.

Rev. K. R. Meshoe
15 March 1995

AFRICAN CHRISTIAN DEMOCRATIC PARTY

THEME COMMITTEE 6, SUB-THEME COMMITTEE 6.3

HUMAN RIGHTS COMMISSION

Philosophical Perspective

While the ACDP fully understands the need for a human rights culture in this country, it will not simply accept terminology without looking to the driving philosophy behind the wording. In this regard, "human rights" is the concept used by people of differing viewpoints, but the understanding and even application of the practical aspects of the terminology will conform to their particular philosophical points of departure.

Either the foundation for human rights is internal, as with secular humanism, having the atheistic view that these rights evolve with mankind towards the perfect society, or they are, in a biblical sense, inalienable and immutable granted by the triune God to Man, in order to provide the characteristics necessary to subdue and manage creation as His stewards. Two very important aspects appear that make a compromise between the two views impossible.

Firstly, man is either seen as ultimately good, because nature - the evolutionary well-spring for Man's existence - is predominantly good. Thus, society and the environment of Man are seen as the causes, humanistically speaking, for the aberrant and non-conformist tendencies that mankind sometimes have.

Biblical truth, in contrast, reveals that Mankind is born in sin, ever since Man, created in a perfect state, chose to disobey God's commands. Interpreting the principles from a Bible-believing, creationist perspective, brings about that only those attributes that God gave to man, can be considered 'universal' and worthy of protection. The choices that men and women make, that are in direct opposition to the Word of God, are called sin, and not rights, freedoms or civil liberties.

From this, the second point of divergence becomes clear: either mankind - every man and woman - takes responsibility for their actions and choices in life or they don't. Biblical principle states that Mankind receives the attending response abilities with every right that God gives- if a man transgresses the law of God and intentionally kills someone else, he did not take up the responsibility, the duty attendant to his own right to life and he, in turn, may by his life. The responsibility of Man is, therefore, in compliance with God's law.

Seen in a human rights context, the above aspects dictate that either these rights are evolving with society and are capable of being granted or denied by the State according to the perceived needs of a particular society, or they are recognised as being granted through creation, and incapable of being alienated or changed, even though circumstances might change.

Composition of the Human Rights Commission

The ACDP and several million Bible-believing Christians, believe in human rights in the sense of a competency received from God with the attending responsibility to obey God's laws.

As the philosophies of the individuals comprising the singular body, controlling the transitional process, will dictate their understanding and application of the concept of human rights, it is submitted that the nomination be done by a joint committee of the houses of Parliament, composed of one member of each party represented in Parliament and willing to participate in the committee and to be approved by resolution in both homes with a majority of seventy-five percent. This will ensure an inclusionary approach and allow government to make decisions that can truly be said to have been decided by all the political parties that represent constituencies who have a voice in the national government.

To not have this system in all appointments made by the president or cabinet of this country will mean that the same procedure employed by the Apartheid government - namely to let only a part of the community have it's say in Parliament - will be policy for the new South African Governmental structure: surely a tendency that cannot be allowed to remain.

Furthermore, the ACDP submits that the only true way to ensure human rights not being capable of being violated, is to recognize it as originating outside of mankind - of a higher hierarchy and not capable of being explained away with the situational ethics that form the basis of the unwanted and unwarranted system of legal positivism.

The individuals that form part of this body is proposed to have to be morally strong and principled men and women, holding the ethics of God's biblical law in high regard. Thus, it will be ensured that justice and equity triumph over of building power concentrates, unbalanced authority pursuits and other personal agenda.

The ACDP supports the goal of having one body to control the process of change from an ethical and equity perspective, rather than separate commissions to look at

separate areas of discrimination. this will ensure that national resources be distributed for the national good. The ACDP agrees with Dr Mamphela Ramphele in her lucid presentation to theme committee one, that the core value should be equity (for the whole period of transition), rather than egalitarian equality. Equity denotes the just and fair treatment of all, based upon a fair share in the national resources in accordance with their needs and responsibilities in society. This approach will address the hurts of Apartheid in a way as to minimize conflict and the perpetuation of injustice. No doubt, the concept of Affirmative Action will be instrumental in the work of the proposed body to oversee the transitional aspects of human rights issues.

No doubt, a single organisation with a united vision will be much more effective than several smaller bodies, whose frames of reference could easily overlap leading to expensive duplicity and superfluous work being done.

This body, having an equity focus, will ensure the following clear advantages as shown by Dr. Ramphele in her very helpful contribution:

- a. The ACDP agrees that an equity focus would benefit the most disadvantaged communities as well as giving equal opportunities to individuals with a

disadvantaged history, thus redressing the past and benefiting the new South Africa in an esteem-building process towards a prosperous future for all.

Conflict will inevitably arise if a simple black empowerment drive is introduced that will benefit individuals without flowing down in the form of a benefit to the disadvantaged community as a whole. Individuals must not be required to perform tasks impossible to them, because of educational handicaps in the name of empowerment or distributive justice. The emphasis should be on an approach where the skilled can teach the unskilled to become skilful.

- b) South Africa will go a long way towards ensuring it's own failure should a balance not be drawn between responsibilities.

On one hand, society has the responsibility to create the equitable framework that will provide individuals with equal opportunities to realise their potential in the form of talent received from the Creator.

Individuals will, however, have to take the responsibility to ensure the outcome of the process of equal opportunity. To give a right to equal outcome will be to the detriment of South Africa and all South Africans.

- c) Care will have to be taken to not focus on short term goals with a program of redress, but to ensure long-term benefits of the process. Affirmative Action should not be seen as a Band-Aid to heal the apartheid-legacy.

Finally, the ACDP stresses that the notion must not be to force justice on the people, but to give God a chance to complete the healing that He has started in this nation with the election process. After all, He always finishes any project in His mind before He starts creating the circumstances to give birth to His intent.

18th April 1995

AFRICAN CHRISTIAN DEMOCRATIC PARTY

SUBMISSION TO THE CONSTITUTIONAL ASSEMBLY THEME COMMITTEE 6.4

REPORT ON POLICE

Biblical Background

In Romans 13, the Biblical mandate for government is clearly related: "For [the authorities] are God's servants to do you good."

The role of the Police in the wider context of government, therefore, translates as upholding the absolute moral system of law that God gave to man. Of utmost importance, is the unacceptability to the ACDP of a legally positivistic morality backed up by ethical relativism.

The only way to ensure that history does not repeat itself in having a police force serving as a lackey or servant to a particular party-political ideology, is to set clear boundaries for its operational sphere - unchanging and uncompromisable. In recent years, the pseudo-system of legal positivism has attained acceptability in several so-called modern constitutions. This system postulates that law evolves with societies and, as such, no absolutes - moral, ethical or otherwise, exist. This leaves the door wide open for those who decide what society needs, at a particular reference in time, to manipulate the law and, subsequently, the enforcers thereof.

Contrast this to a Biblical sense of the law, grounded in the firmest foundations, known to all and constant - placing the same expectations on every man in every age.

The Police and Fundamental Rights

According to the new constitutional dispensation, a set of Fundamental Rights will provide the framework within which the police will and must operate. It is then, the yardstick against which even police action, will be measured.

Only when man is given an ultimate source for his rights and a responsibility for ensuring the existence of those rights on earth, will the rights have built-in safe guards against arbitrary infringements. According to the Christian world-view, the triune God created man in His image and gave him the necessary laws to regulate societal relationships. These laws are based on an unflinching and fix moral and ethical content.

It is submitted that adherence to these Biblical principles, will indeed provide the country and it's police force with a bridge to a prosperous and peaceful future. The converse, hereof, is the legal theory that the State is the ultimate authority creating law. This is that man has to rely on his reasoning capacities to discern what is legal. Because this negates the importance of the individual, the State and it's organs become the source of human rights and these are then called constitutional rights. However, it must be remembered that ethical relativism does not hold the limiting absolutes - the environment of man must not be limited as this will impede man in developing the moral sensibilities to ensure the evolutionary processes toward perfection of a particular society. As such, the rights will only be employed or granted as long as they are needed by society.

New situations may well demand throwing out the old and replacing it with new rights.

In following these tenets, the police force will simply become a marionette in the hands of an elect few to dispense "authority" on an ever-changing basis- without ever having to answer for or the ability to question their actions against a transcending moral and ethical code.

The Community and the Police

The prime task of a police force should be to maintain internal law and order and to prevent crime. It implies a two-fold relationship between the members of the police-force and the community that it is to serve and protect. Modern, inherently atheist philosophy holds that man is entirely blameless, despite any aberrant behaviour patterns exhibited. This is so, because humanist and New Age world-views postulates that man is inherently good, and ever-evolving for the better.

A reason for man's failing is, therefore, externalised and located in environmental factors - social and economic conditions. These aspects are criticised and the view held that, once they have been normalised, man will be launched on the way to perfection.

No doubt, poverty and lack of opportunity play an important role in the way an individual realises himself or herself. Mankind must, however, accept the responsibilities that attend the rights granted by God.

Once the individual oversteps the clear Boundaries or refuses to discharge responsibilities properly, it must be an accepted fact that certain sanctions follow. For the success of policing in the new dispensation, this realisation be ensured.. Law-abiding citizens must appreciate and acknowledge the forces for their maintaining of peace and harmony and criminal elements must realise and be made to understand that severe measures will be levelled against them.

It must be strived for to have a nation where citizens take responsibility for their own neighbourhoods in identifying criminal and unwanted elements to the police who will then act to rid the community of those influences.

Restructuring and the Role of Integrity

Because the Police serve at grass-roots level, the approach, even in structuring police force, must be from the bottom to the top, with progressively fewer individuals in the upper hierarchy - those in positions of authority over police activities should be men and women of integrity, having a high regard for upholding God's Biblical law, to ether with it's attending morality.

This is the only way to eradicate corruption in public office, in this instance, the police and the only option to prevent individuals or groups manipulating circumstances and, societal needs in order to build kingdoms within government.

It must be reckoned with that two great corruptible influences are power and money. While it is submitted that bible-based integrity will deny these influence their power bases, careful re-structuring of remuneration scales will complete the process. A member of a police force, earning a salary comparable to the private sector, will be much less prone to corruptive influences when faced with it at street level.

Care has to be taken not to have a police force where those on the ground a divorced from those in authority over them, with no concern for the situations those on the lower echelons find themselves in daily. It is also submitted that provincial systems of policing be implemented in order to adhere to a bottom-up inclusionary process of restructuring.

A revitalised police force, free from the negative identity-imprints of the past, regulated and interested in the communities they serve, is an undeniable necessity to creating the new South African dwelling for all future South Africans and the unflinching ethics of the Bible should be the only sure foundation for this house in years to come.

6 April 1995

AFRICAN CHRISTIAN DEMOCRATIC PARTY

1. Constitutional Principles

Regarding the Constitutional Principles - the ACDP wishes, at the outset, to make clear that it does not simply accept the Principles face value. The concept of basic rights and having them protected is acceptable, but only as part of a very specific philosophy.

Quite naturally, the viewpoint one holds, dictates very definitely, the effect of applying the ideals spelt out in the constitutional principle

1.2 The Christian Viewpoint

Interpreting the principles from a Bible-believing, creationist, Christian perspective, brings about that only those attributes that God gave to Man, can be considered 'universal' and worthy of protection. The choices that men and women make, that are in direct opposition to the Word of God, are called sin, and not rights, freedoms or civil liberties.

This is where Christianity draws the line - it will accept behaviour that is consistent with the character and nature of God, but not against it. In His divine providence, God gave men and women first set of laws by which to live.

1.3 Impact on the right to Human Dignity

The ultimate indignity that a human can suffer is to be seen as a mere species - no better or more advanced than an amoeba. This means that an amoeba should receive equal protection with a living thinking human being. To top this, humanists believe that the human brain, despite having originated space ships and Macbeth, is potentially less capable than a computer programmed to process information faster and the same more efficiently .

If this is what a human being is, having no absolute rights, no responsibility for his or her own actions, who is no better than amoeba and potentially worse than a computer, then it is inconceivable to Christians what could be done to or ascribed humans in order to detract more from their Dignity.

The Christian sense of Dignity is clear: Man was entrusted by the Creator - God with the responsibility to care for the earth and all inhabitants. He gave laws to Man to regulate society after the reference point in history, known as, The Fall, which is when mankind chose to believe a lie, rather than the truth. Man, as a fallen being, needs these regulations because of his tendency to miss the purpose predestined for every individual, by making choices contrary to God's nature and, therefore, in defiance of Him.

2.1 Nature of the duty to be imposed on the state

The nature of the duty to be imposed on the state in order to preserve the dignity of man, as seen from a Christian perspective is that of being a guardian of Godly Principles, as evidenced in the Bible. Nothing more and nothing less than a custodian of the true universal principles and morality that God has bestowed on them.

2.2 Application of the right to common law and customary law

Ultimately, the constitution must reflect the law of the triune God and from that perspective, differences between customary, and constitutional law must be addressed. The ACDP, however, notes with disfavour the move worldwide to abolish the common law, as it existed for several centuries.

2.3 Should the right under discussion impose a constitutional duty on actors other than the state?

The ACDP imposes those duties on state subjects, that is attendant to their position, as created beings and as custodians of God's laws and principles. Insofar as the constitution has a fixed moral content not capable of arbitrarily being changed and adapted, according to the whims of an elite, by a pseudo legal system of positivism, that conforms to the Biblical Principles mentioned, it is submitted that, as equal subjects of God's law, all citizens should be burdened with the responsibilities and, at the same time, enjoy the benefit of this right.

2.4 Who should be the bearers of the right?

The ACDP holds that human beings have a responsibility - a response first - to choose, in whatever circumstances, between right and wrong. What is right and wrong has already been revealed millennia ago by God in His Word.

Should the right under discussion be capable of limitation by the legislature?

The ACDP holds that the state must have the duty to govern according to God's laws and according to God's principles and this must be the basis for the protection of the dignity of man as set out above. No right should take prevalence over God's law.

Should the notion, however, be to make all laws and rights subject to the tenets of legal positivism, then the ACDP holds that Christians will not accept being dominated in the exercise of their principles by allowing constitution to be enacted that will, in effect, willy-nilly and arbitrarily grant and take away rights as though they were privileges granted to a rat or a blade of grass in the Amazon Jungle.

3 BIBLICAL REFERENCE

Human dignity is a value that cannot be measured and evaluated with secularist, scientific terms, nor understood as an evolutionary process

Human dignity is not an utilitarian concept which expands the idea that human value is dispensable and temporal., and dependent. On the contrary, human dignity finds expression in that spiritual relationship that exists between God and mankind. "The Spirit testifies with our spirit that we are God's children" mans 5:1 .

It is within this unity context that respect and protection of dignity is to be understood. Human dignity is protected on the grounds that it is

critical:it questions all things 1 John 4.-1 -"Dear friends, do not believe every spirit, but test spirits to see whether they are from God, because many false prophets have gone out into the world. "

rational: it discerns all things

Hebrews 5.-14 - "But solid food is for the mature, who by constant use have trained themselves to distinguish good from evil. "

spiritual: humans reflect the image of God

Genesis 1:26 - "Then God said, Let us make man in our image,our likeness, and let them rule over the fish of the sea and the birds of the air, over the livestock, over all the earth and over all the seas

disciplined: it values truthfulness

Hebrews 12:11 - "No discipline seems pleasant at the time, but painful Later on, however, it produces a harvest of righteousness and peace for those who have been trained by it.

righteous it respects the law of God

Matthew 22:37-40 - 'Jesus replied, 'Love the Lord your God with your heart and with all your soul and with all your mind. This is the first and greatest commandment. And the second is like it: Love your neighbour as yourself.

Any deviation from qualities like these brings into question the value of dignity and disturbs the balance that controls the levels between tolerance and dignity.

In other words, intolerance is justified when deviation from an accepted norm is too large and threatens the balance between tolerance and dignity and destroys a value normally understood to constitute human dignity. Here we can include acts of criminality, authoritarianism, all forms of reversions and those acts that are deemed unlawful.

We in the ACDP, therefore, believe that although human dignity is a universal value, the right to uphold that dignity is determined by the degree of tolerance allowed in order for a society to function responsibly and effectively, but should the security of this function be threatened by action that do not constitute a dignity, intolerance against such an action will be justified and will invariably affect the nature of human dignity.

The law will ensure that the dignity of the human being is maintained, while limitations are placed upon the tolerance that will be allowed in order to determine how far the right of dignity is to be protected.

Thus, a limit is Placed upon the right to uphold one's dignity where upon is understood that an unlawful act is punishable and is to be disciplined, yet, where the value of human dignity is kept in check.

**AFRICAN CHRISTIAN DEMOCRATIC PARTY
SUBMISSION TO THE CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 6.1**

ELECTORAL COMMISSION

The true character and legitimacy of a system of government is found in the principles enshrined in the democratic ideal where the population is guaranteed the right to a regular, free and fair election process.

The will and maturity of the people is established when it is recognised that authority is democratically administered by the people. However, to exercise their authority responsibly and legitimately, the population need mechanisms to facilitate the process.

Democracy is enigmatic and contradictory by nature. It invariably occurs that good citizens give their support to presumably frustrating leadership, only to realise that once in position of power, the stature and public confidence of these leaders diminish, and that the people are, in turn, having to call for their removal.

Unfortunately in the majority of instances, those who possess outstanding moral leadership qualities are often found to be among the governed than being the governors.

As this seems to be the precarious position of the democratic process, and a principle rather to tolerate than to discard for something less flexible, we express our faith in the morality of suffrage, and believe that the electoral procedure is best managed by a trusted election body, such as an election commission.

ELECTION COMMISSION

The ACDP supports the idea that an election commission should be independent and representative.

We regard the status of independence as significant in that all political parties and institutions are insured of equal standing, as well as it protects against philandering and favouritism.

It is also necessary that the election commission be representative, reflecting a character of population participation.

We further believe it to be advisable to view the election commission as a permanent structure of society with limited functions during non-election periods, dealing with issues on an advisory and analytical level.

The election commission should adopt a strict code of principles, which will outline their position on transparency, legitimacy, impartiality/non-partisanship, efficiency etc.

It should also adopt a strict ethical finance policy. It should further operate on administratively correct guidelines and demand respect from the general public.

The election commission should be in close working relationship with the various local government authorities in order to ascertain demographic changes and to assist where necessary with the upkeep of voter registration and voters roll administration.

The election commission can be incorporated into a statutory body, to provide judiciary weight to their function.

As it was the tradition of the past that the election process was handled by the department of Home Affairs to ensure efficiency and availability of resources, this may continue to be so, but that a greater involvement be supplied to the election commission within these structures.

We further are of the opinion that an independent election commission should have recourse to an independent media commission.

POSTSCRIPT

We must at all times strive to govern with integrity, yet should we not have been able to accomplish much, may we at least be able to say we've passed the test that has been put before us as expressed by the following extract:

"What do you expect from society and its government? We must be clear about that.
Do you wish to raise mankind to an elevated and generous view of the things of this world?
Do you want to inspire men with a certain scorn of material goods? Do you hope to engender deep convictions and prepare the way for acts of profound devotion?
Are you concerned with refining mores, elevating manners, and causing the arts to blossom?
Do you desire poetry, renown and glory?
Do you set out to organise a nation so that it will have a powerful influence over all others?
Do you expect it to attempt great enterprises and, whatever by the result of its efforts, to leave a great mark on history?
If in your view that should be the main object of men in society, do not support democratic government, it surely will not lead you to that goal
But if you think it profitable to turn man's intellectual and moral activity toward the necessities of physical life and use them to produce well-being, if you think that reason is more use to men than genius, if your object is not to create heroic virtues but rather tranquil habits, if you would rather contemplate vices than crimes and prefer fewer transgressions at

the cost of fewer splendid deeds, if in place of a brilliant society you are content to live in one that is prosperous, and finally, if in your view the main object of government is not to achieve the greatest strength or glory for the nation as a whole but to provide for every individual therein the utmost well-being, protecting his as far as possible from all afflictions, then it is good to make conditions equal and to establish a democratic government.

But if there is not time left to make a choice, and if a force beyond human control is already carrying you along regardless of your desires toward one these types of government, then at least seek to derive from it all the good that it can do; understanding its good instincts as well as its evil inclinations, try to restrain the latter and promote the former."

(see De Tocqueville, *Democracy in America*; p226)

**AFRICAN CHRISTIAN DEMOCRATIC PARTY
SUPPLEMENTARY SUBMISSION TO THE
CONSTITUTIONAL COMMITTEE**

THE EQUALITY CLAUSE

The ACDP wishes to supplement its submission on the "equality clause" especially as far as the so called "sexual orientation" provision is concerned.

Freedom of Association implies the right not to associate and, as such, private individuals and organisations should have the right to not associate with certain other individuals and organisations. Should the current clause remain, it would mean that a church and a religious school respectively, may be taken to court if it refuses to violate its religious and/or moral principles by employing respectively pastors or church staff and teachers who engage in sexual behaviour that would be contrary to the belief systems of such churches or schools. Surely it cannot be said that any "rights" are violated when such an individual is not employed. Rights will however be very severely violated and negated if the individual could force his or her behaviour based "rights" onto an organisation who find such behaviour irreconcilable with their religious norms and principles. This is akin to allowing an alcoholic to enforce his right to be employed by a religious organisation that has teetotaling as a basic tenet and principle. It is submitted that good enough reasons have simply not been advanced to promote behaviour-based rights to the same level as true status-based rights such as race or birth.

The further truth of the matter is that the homosexual community is using the atmosphere of liberation - especially black liberation - to promote their cause. In the process they are effectively negating the essential content of just about every established notion of status that requires protection. The homosexual community has got every constitutional protection afforded to heterosexuals, left-handed persons, the physically disabled and the mentally disabled. None of these groups have "special" clauses in the constitution to protect them and so should homosexuals be treated equal with all of these groups and minorities.

Of further concern in the "sexual orientation" debate is the aspect of the negation of freedom of speech. Under the "sexual orientation" provision, homosexuals will be able to effectively silence churches and like organisations who denounce their behaviour on religious-ethical grounds. Again this would mean a negation of the essential content of the right to freedom of speech as well as the right to freedom of religion.

It simply is unconscionable to enable any individual and/or group, to abuse the constitution and the provisions of a Bill of Human Rights that are meant for protection through special privileges to actually violate the established foundations of morality and ethics of other individuals or organisations - in this instance religious organisations or individuals.

Taking away special privileges or special enhanced protections, such as with the "sexual orientation" clause - in this instance not including the "sexual orientation" provision constitutionally - still leaves the homosexuals completely protected with all the other provisions of the equality clause. Effectively taking away, however, the rights of religious freedom and freedom of speech or association through the inroads that the "sexual orientation" clause will no doubt have, creates a position of inequality akin to what the black population had (i.e. race) under the apartheid dispensation. A chapter in our history worthy of not being repeated.

Similarly, Freedom of Conscience, belief or opinion will be reduced to meaninglessness every time a homosexual couple demand that their "right" of "sexual orientation" entitles them to be joined together by religious ministers in "marriage". Suddenly, this right will be reduced to nothingness despite provisions being made for principles of law seemingly aimed at protecting religion or belief. A right to freedom of religion is worthless if that right is exclusive of the corollary enabling those adhering to a particular religious belief system of spreading such beliefs and sharing it with others of different faiths who are interested. The right is worthless without giving the right to engage in the practicalities of such a right or conversely to refrain from engaging in activities that are precluded by the particular belief system.

The minister who may be forced to engage in an act of "marrying" a homosexual couple, is effectively being forced to renege on his or her faith - this can not be what the global community had in mind when it formed the convention known as a Bill of Rights as a contract aimed at protecting those worthy of protection and not at falling away the protection afforded to all - that is inequality and not equality neither can it be the goal of the Houses when they sit as a Constitution - writing machinery.

For this exact same reason, the ACDP is against the inclusion of the "gender" provision in the equality clause. We feel that discrimination on the basis of maleness or femaleness is efficiently prohibited by the term "sex" which is also included.

During the Beijing Conference it was noted on the gender issue that women (and, it follows logically) men should not be bound by or restricted to their biological beginnings, meaning the physical parts that makes men different from women.

For the ACDP this term should therefore either be clearly defined to mean the existence of woman and man as the two sexes of human beings or dropped.

This was not done at the Beijing Conference where documentation was handed out that suggested that male and female are the two sexes in their opposite extremes and that in-between were the mixtures of bisexual, transsexual and homosexual.

If this is the definition given to the term gender, the ACDP will oppose its inclusion as strenuously as the "sexual orientation" provision and for exactly the same reasons.

23 OCTOBER 1995

AFRICAN CHRISTIAN DEMOCRATIC PARTY

SUBMISSION TO THE CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE THREE

RELATIONSHIP BETWEEN

LEVELS OF GOVERNMENT

Biblical Foundations of Government

In accordance with the Biblical principles on which the party is based, the ACDP states that government is an institution of the triune God, Creator of all and the mandate God had given to His institution is related in **Romans 13:4:**

Government is to be the servant of God for the good of all citizens.

From this aspect, it follows that government exists for two very basic purposes: Firstly to regulate society as a ruler of men in the attitude of a servant to God, and secondly, to do this to the benefit of all who submit under it's authority.

Decentralisation of Government

Since power residing in the people is a basic premise of democratic government, the government should be kept as close the people as possible. This can be accomplished by establishing a small national government and strong local and regional governments.

History has shown that centralisation of governmental power destroys the liberty and the rights of man. The way to have good and safe government is to divide the power among the people and the localities, instead of entrusting it to one body.

Delimitation of Powers and Capacities

Civil government in a country should be subdivided into many levels (local, regional, national.) The power of each level should be clearly defined and sovereign in those defined areas. No level of government should be able to usurp the jurisdiction of another. A great majority of the power should rest on the local level.

The limited powers of the national government should be clearly defined in a constitution and involve those things which affect the country as a whole, such as defence, foreign policy, regulation of interregional and foreign commerce, citizenship laws, coining money, and copyrights. All other powers should remain with the people, or with the local and regional governments. The powers of local and regional government can be written in a regional constitution and include such things as traffic regulations, business regulations, public works, voting procedures, and law and order.

The test should be whether these aspects of civil government can most effectively and efficiently be handled by an encompassing authority that has restricted resources with which to work - whether they be natural or otherwise.

Powers and competencies of the regions should not be a 'numerus clausus' or contained in the Constitution: this document, by nature should be tampered with as little as possible and it would be an extremely undesirable situation to have to amend this instrument every time a particular provincial government identifies a required competency in order to function smoothly.

In keeping with the inclusionary nature of the democratic process, currently underway in this country, a bottom to top approach is proposed for governmental relationships. This would mean

that the citizens be given the first opportunity to make their needs and requirements known on a regional geographic basis.

It has already become undeniably apparent that no two provinces have the same strong or weak points, needs or requirements. The only effective way to ensure that these be addressed in a satisfactory manner, with the most efficient and effective application of limited natural and human resources would be to leave the allocation of resources to the national government. It is further submitted that assisting services be provided by the national government in the forms of research to find.. eg. viable alternatives in an area where natural fuels are becoming scarce, or where the skills of the provinces are not sufficient, or the manpower not available to undertake a province-wide polio vaccination, or the supply of sufficient water, etc.

Overriding Powers and Competencies

Referring to the Biblical mandate for civil government, the following aspect becomes relevant:

No government, at whichever level, should enact any law or have any competencies that transgress the law of God or the morality thereof. Should a province rule that only the religion of secular humanism be allowed in secondary and tertiary institutions, thereby discriminating against other religions, national government should eg. have competence to override this legislation. The same power should, however, exist for the provincial governments to override national decisions that are not in line with the scriptural principles referred to.

It is submitted that this would provide a system of checks and balances that have a fixed and defined content, no matter what the context and, as such, a definitive standard against which uses of competencies and powers shall be tested. Current thinking, following legally positivist tendencies, hold that societal changing needs will be the yardstick to measure when use becomes abuse and when corruption surfaces. A very real problem is

that no absolutes; no standards are set, that will not be capable of being overruled by anyone with hidden agendae.

Coupled herewith, comes the corollary that government must benefit the citizens thereof. Government has authority which it received from God, as shown above. The word authority, stems from the Hebrew word meaning "increase". The test for government should always be - are the citizens better off than before? This is always subject to the morality of God's law. Homosexuals and lesbians will not eg. be able to claim political rights as members of their particular sexual orientation because this would be directly opposed to God's Word.

Biblical Principles include the right to self-defence and mobilisation against attack - even on national level.

Keeping in mind that a powerful elite group can easily turn into an even more powerful totalitarian elite, the powers of the respective governments in terms of war and imminent attack from outside the borders, should preferably not allow any group to consolidate themselves into a mini-dictatorship and checks and balances must always be found. Again, having Godly men and women in Government, who are there because of a calling on their lives by the Most High God and, as such, not drawn to the power attendant to leadership, but rather to the opportunity to be leaders from a position of servanthood, is proposed by the ACDP, to be the most vital requirement for anyone wanting to enter for public office or to accept the mandate of the Creator of heaven and earth.

7 April 1995

AFRICAN CHRISTIAN DEMOCRATIC PARTY (ACDP)

FOLLOW-UP SUBMISSION ON SEPARATION BETWEEN STATE AND RELIGIOUS INSTITUTIONS

The ACDP strongly objects to the misrepresentation of our position on the separation between state and religion, contained in the leaflets that were distributed on the 30th May, 1995 and, also appeared in different newspapers throughout the country the previous day.

The ACDP has always called for a separation between Church and State as we have it at the moment. The State should not authorise, promote or support any church or religious group. This does not mean that individuals who are members or working for the State should not have religious opinions and beliefs. The State, as an institution, has functions that are totally separate from the church or any other religious body. Therefore, the State should not be permitted to interfere with what churches and religious groups are doing, except if such religious groups are breaking the law,

The Church, as a separate institution has functions and a clear mandate that is different from that of the State. The Church as an institution, should not try to run a government, although individuals in the church should be part of the team that runs a government. Any citizen of this country, including Christian leaders, must always be in a position to be part of a government if they want to.

If the Constitutional Assembly wants to replace the word "church" in order to include all types of institutions of faith, then the ACDP would support the separation of State and Religious Institutions/Organisations. But if the CA wants to continue making statements like. "All the parties in the CA fully support the idea that there should be a separation between state and religion," then the ACDP insists on an insertion that will reflect our disagreement with that statement. With the insertion, the statement should read. "All the parties in the CA, with the exception of the ACDP, fully support the idea that there should be a separation between state and religion."

**WE STAND FOR: CHRISTIAN PRINCIPLES, FREEDOM OF RELIGION, AN OPEN
MARKET ECONOMY. FAMILY VALUES. COMMUNITY EMPOWERMENT
AND HUMAN RIGHTS IN A FEDERAL SYSTEM.**

Please refer to transcription of debate on Secular State, dated 09/02/95, on page 23 of documentation A26, dated 5th June 1995.

On behalf of our constituency, we call upon the Constitutional Assembly to publicise our viewpoint correctly in keeping with its stated aim that "all opinions, views, and decisions are made available to the public for comment, criticism and change."

REV. K. R. MESHOE (MP)
12 June 1995

AFRICAN CHRISTIAN DEMOCRATIC PARTY
SUBMISSION TO THE CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 6.4

INTELLIGENCE

The role of the intelligence service in the post-apartheid South Africa has a definite task to ensure that the least possible infringement against civil and democratic principle is committed.

Transparency and accountability are values not contradictory to the function of intelligence, should the community be drawn into the protection of society. The idea of exclusivity and elitism create schisms and hierarchical distances among the various spheres of society, and in the instance of security, the extent of mistrust and hostility towards those in military and intelligence services are exacerbated.

Section 23 of the Constitution reads that:

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

It is always in the interest of a country that its citizens are well-informed.

Information disseminated to the public about how intelligence services influence and determine patterns in security, will establish among the general population a sense of responsible citizenship.

The population need to believe that the intelligence mechanism in society is contributing to their empowerment, by entrusting them with knowledge to strategically and intelligently provide auxiliary input into the safety and security of their society.

The ACDP believe that although certain secret codes must be maintained, it does not mean that covert abusive strategies are legitimate.

Justice and lawfulness should be the hallmarks of the intelligence operation, and its integrity should be supported on the basis that it subscribes to the rule and honour of law.

It is also imperative that the parameters and scope of intelligence services be spelled out as well as that it adopt a code of accountability as subject to an independent monitoring authority.

The powers afforded to intelligence can in no way exceed the Constitutional rights as elucidated in a bill of rights, and in cases of legitimate evidence against a person or body, prosecution should follow the due process of the law.

It should also be seen as an instrument to facilitate in the process of nation-building, by recognising areas of possible threat that may affect the growth-stability in a developing democracy such as South Africa's. For instance, they may warn against pandemic ills, demographic trends, crime, food shortages etc.

The White Paper on Intelligence (p6, 1994) states that:

"The intermingling and trans-national character of modern-day security issues furthermore indicate that solutions to the problem of insecurity are beyond the direct control of any single country and cannot be rectified by purely military means..."

Although it is the trend to define security in less military terms and more towards an holistic approach involving the political, sound, economic and environmental issues, the sovereignty of a country should at all times be respected.

We should beware of the general morality phenomena whereby national disputes are settled though international military intervention. Whereas such options are necessary in certain cases, there have been instances where invasions have been justified on the grounds to protect the freedom and security of a nation, but has ended up to protecting the interests of the invaders.

If intelligence services have changed, it should work against such selfish interest, and pursue vigorous methods to accelerate better living standards for the citizens of all societies.

The ACDP believe that our military intelligence should at all times maintain an independent character internally as well as at an international level.

AFRICAN CHRISTIAN DEMOCRATIC PARTY

13th June 1995

AFRICAN CHRISTIAN DEMOCRATIC PARTY
6th June 1995

REPRESENTATIVE GOVERNMENT, CITIZENSHIP AND SUFFRAGE

The ACDP supports the idea of making provision in the constitution for structures of civil government to be representative. Citizens should be able to vote for people who will represent their interests and the values they esteem highly.

From this basis flows the following corollaries. Firstly, in order to reflect balanced and differing opinions, there is need for more than one political party. This may be limited to two diametrically opposed parties representing all the major interests as with the Republicans and Democrats in the U S. with provision being made for those citizens who do not feel that their aspirations are being properly addressed, to mobilise and associate themselves into another representative political grouping.

Secondly, the need arises to allow citizens to mobilise support for their particular legitimate interests, both in and outside government. The ACDP therefore, strongly objects to a member of any one political party using the national broadcaster unchallenged, to inform the largest interest group in this country that they do not have to exercise their rights in terms of sec 16, of Act 200 of 1993 because their interests are being taken care of. This flies in the face of the right to assembly, demonstration and petition and does not bode well for the future.

Thirdly, individuals and parties in government should be accountable to ordinary people - both politically and morally. We refer to the submission made on accountable government and incorporates those terms herein. This necessitates the need for elections with secret ballots to be held on a regular basis every 5 years.

We equally call, however, for the constitution to enable voters to remove office bearers from national regional and local government following a petition supported by two-third of a particular constituency based on non-compliance with a code of conduct drawn up by all political parties collectively.

SUFFRAGE

Voting is at the heart of democracy - the right to make one's voice heard through the ballot paper vindicates the existence of a democratic system. The ACDP therefore, supports the right and further proposes that the constitution should lay down a minimum of 18 years as a qualification to vote. With every right comes responsibility and equally so with suffrage. This is why we state that all citizens should have the to vote if they are legal majors and conform to specific requirements

that will show they did take up their responsibility as citizens. This includes *inter alia* not having a criminal record for serious offences.

The ACDP feels that citizenship and suffrage go hand in hand. Ideally, only citizens should be able to vote. We, however, acknowledge a shrinking of the world due to progress in modes of transportation and the like. There is also a need to stimulate the economy of this country by including the expertise of the holder's of work and residence permits. Because of their interest and investment into the economic growth of South Africa, the ACDP feels that they should be given the opportunity to vote.

The emphasis in suffrage always is on citizens, with non-nationals being exceptions to the rule who may become entitled to vote after meeting certain requirements - e.g. duration of stay in this country.

INTERGOVERNMENTAL RELATIONS

The ACDP has consistently called attention to the true function of civil government as addressed in Romans 13: namely that government should be the servant of God and that it should bring about a better life for all citizens.

In this regard, we have expressed that the civil service should consist of a skilled and motivated small group of very efficient and experienced men and women. The civil service complement should be kept to a minimum, alleviating duplication where departmental functions overlap. A stream-lined public service where each section has a clearly defined role and function, will bring about greater efficiency and efficacy while becoming a sector of employment drawing a top calibre of personnel who take pride in themselves and their actions.

A sprawling empire of public officials with an already unwieldy appearance that is growing larger and more ungainly by the day, is a symptom of the illness of bureaucracy. Civil government from its institution was not meant to define for itself new areas of activity on an ongoing basis. The fact that the South African governmental institution has grown consistently over the past decades to include such rare entities as the central bank, public enterprises and parastatals is an indictment against the tendency to form new bodies to deal with new problems and functions, rather than re-think and replan the original systems.

Indeed, if there is to be any substance to the interrelated workings of the whole system of government, then a careful restructuring and blueprinting is indicated with a sense of urgency.

Moving next to the montesquian idea of a separation of powers, again some clear thinking in this regard becomes imperative: The legislature, the executive and the judiciary can only function at their optimum when the executive can not legislate or adjudicate, the legislator can not adjudicate or execute, and the executive is not empowered with legislative and judicial functions except in very specific circumstances, (the boundaries of which must be clearly defined) when the executive can continue to function, despite a state of emergency or war even though the other branches or government may be prevented from continuing its operations.

As such the use of intergovernmental commissions comprising members from more than one department or branch of government, must be avoided as far as possible as the need for something like this body, already indicates that the drawing board needs to be consulted as there is a possibility of overlapping. As far as possible having adjudicative bodies within the executive, such as administrative tribunals should be given a wide berth. The argument normally advanced pro the existence of this type of pseudo-court, is that it deals with matters so technical that only someone in the system will be able to pronounce on related issues: this reasoning, however, fails flat when it is realised that from these very bodies normally exist a route of appeal to some level of the very judicial system previously adjudged too uninitiated to have handled the matter from the beginning.

A further strong line to be observed, is that of relations between the so-called different tiers of government. In keeping with the demands of a strong federal system, government needs to be most concentrated where it can best serve the population - at the local level. The regional governments have to have autonomy in their respective areas, because the particulars of each region distinguishes it from the next taking into account the particular and unique composition of each region. The ACDP is in favour, therefore, of a system of intergovernmental relations where the national level concentrates on particular and constitutionally defined aspects and where it has only the powers that these functions necessitate. At all times should the emphasis be on the autonomy of the other tiers of government in their respective areas of jurisdiction.

Because centralised systems of government have been proven to fail, while decentralised and federal systems continue to prosper and develop, South Africa should learn from the rich heritage of political history and not give national government a veto power over the regional and local levels of government and by concentrating power where its use can best be monitored by the democratic process: as close as possible to the very families that make up this country.

10 July 1995

AFRICAN CHRISTIAN DEMOCRATIC PARTY (ACDP)
PRELIMINARY SUBMISSION
THEME COMMITTEE 3

LOCAL GOVERNMENT

The definition of democracy as government by the people, from the people for the people is never more true as in a constitutional republic with a strong local government component.

The level closest to the people is, logically, where government can have most effect. South Africa traditionally has not been a country where so-called bread and butter issues have been of paramount importance. This will definitely change as government moves closer to the families it ought to serve.

The ACDP is strongly in favour of decentralisation of government power and a devolution of powers with the balance of power residing in the local and regional tiers of civil governance. This translates into having a very limited national government with specific and constitutionally defined spheres of authority, with the balance of power resting closer to the people.

Being weary of multiplication of actions and functions, even at regional level, the ACDP proposes having Metropolitan Development Authority Committees that will have jurisdiction over all the major Town Councils, the smaller councils having the option of resorting under the Metropolitan Development Authority should K choose to do so. The Rural Development Authority will have jurisdiction over all areas falling outside of the municipal boundaries of all towns resorting under the MDA.

In this way, the differing needs of Rural Development Authorities and Metropolitan Development Authorities can best be met.

The separation of the above allows representation by persons familiar with the specific problems relevant to the identified Regional or Metropolitan area..

Distribution of funds can be more specific and in terms of the budget needs of that RDA or MDA, they could be pinpointed with absolute clarity as to their essential need. Social statistics on which budget decisions are to be based will be much more relevant and determined by the people concerned. A larger population base can only address problems on a global basis and will not deal with the needs of individual communities. RDA and MDA's - being in closer touch with the community - will respond quicker to grievances. Control of funds will be a lot more efficient as the funds will be task specific and not subject to the wiles of politicians. RDA and MDA's will support smaller bureaucracies and control of the bureaucracy will be more efficient as they will be smaller and area bound. The cost of administration is in proportion to the distance from the source of control; by bringing the issue closer to home the cost of resolution can be reduced. When social needs are established, it will be less costly to address those needs from a central government point of view than a blanket budget allocation with non-specific directions. Measurements of poverty and affluence will enable social scientists to assess the social needs of a relatively homogenous population

and meaningful comparisons can be made throughout the country for prioritisation of resource allocation. This will allow God's will of equitable treatment of all God's people to be equitably applied.

The ACDP further proposes using community-based organisations functioning on a non-profit basis, remunerated by the town councils having the dual advantage of being closer to the people, thus more accountable than big bureaucracies and rendering a cheaper service - while having a redistributive function, to take over local service provision.

The ACDP further proposes that local and regional government should be autonomous, with each district having its own governmental structures, suiting the particular requirements of that region. The ACDP proposes that the idea behind 'the Eritrean experience' is one that might rightly be considered as being extremely well-suited to the South African circumstance. After a three decade old brutal war with Ethiopia the Eritreans had to start rebuilding their war-ravaged country.

Schmidt, writing in *Democracy in Action*, 15 April 1995, notes that the government, in an urgent and serious attempt to halt uncontrolled urbanisation, adopted a policy of radically restricting growth in urban areas.

No cities or major towns may be the building site of new factories and the rural areas are to be the future development centres.

Mentioning the fact that signs of development are everywhere, to be seen in the reconstruction of damaged buildings, the tarring of roads, the reparation of factories and the restoring of agricultural land, Schmidt makes the key observation that Eritrea has been very cautious of accepting foreign aid and that it has apparently very little if any foreign debt.

The ACDP echoes the wisdom of this thinking - building South African esteem from the bottom up, should be a result of the resolve and self-reliance of all South Africans and should not bring about our plunging into even deeper national debt. Dealing then with the aspect of financing at local government level, we support a fiscal system based on the equitable distribution of resources. While we have pointed out in some detail, the ridiculous nature of a taxation system that actually enslave citizens who end up having to work just to keep paying taxes and break even, as against the v" small tax percentages ~ are actually needed if every South African takes up his or her familial responsibilities, thereby to a great extent erasing the need for welfare facilities and care centres for the aged as a starting point. The ACDP fully supports having an authority close to the people, constituentially accountable to raise taxes to be used for easily monitored specific tasks in the particular community, as against an umbrella-body central government who is remote and removed from the specific needs of the serviced community and less easily held accountable.

The Party favours having the local governments and regional governments be represented on the national body of representatives.

This representation should not be a mere "second house of sober thought" as with the British House of Lords, but must be a powerful fully functional and effective watchdog where the representatives can actually represent the interests of their particular constituencies in a system similar to the twin Houses in the USA

Being a country with a traditional leadership, that leadership functioning at a local level, the ACDP proposes having a system of traditional leaders at the local level, integrated with the regional and local leadership structures and remunerated and thus accountable to their people. Having a system with autonomous local and regional governments is conducive to a South Africa where the different cultures, languages and religions can come together as being one people while still recognising the heterogeneous nature and the rich cultural diversity of the families making up the South African subcontinent.

11 July 1995

FINANCIAL AND FISCAL RELATIONS

The ACDP believe that effective government is determined by the extent decentration is realised, which in turn affects political accountability and measures a population's response or involvement to socio-economic demands.

The foundation for effective financial and fiscal discipline is proportional to the way people have in where and how their taxes are being utilised. It is reported that on average, the tax levels on gross personal income lingers around 30%, yet the people get very little value for their tax money. In fact, we have a situation where the so called wealth of the people is only apparent wealth. Simply stated our people are becoming poorer, while the state takes more and more.

If there is a large difference between taxes paid and services or benefits rendered, dissatisfaction creeps into the population, and in many instances efficacy decreases and country-hopping is being encouraged.

In so far as the disparities of the past have affected a large sector of our population; pressures on government spending and increased taxation to redress these imbalances are seen as ways to solve such problems. However, we ask for caution on such 'drastic' methods, as our economy is still too weak to sustain major changes.

For example, the growth rate of South Africa is at present 3% and with regards to unemployment, the economy needs to expand at a rate of 5,5% per annum to absorb new entrants into the labour market.

Already we have an unemployment rate of 32,4% with the largest rate of unemployment in the Northern Transvaal at 47% followed by the Eastern Cape at 45.3%. Coupled with this is that 87% of the unemployed are unskilled.

The demands for wage increases and improved workers rights are important economic factors which need to be taken into consideration.

We are also seeing an increase in the crime rate, and this is already having a negative influence on investment opportunities.

What further distresses the economic climate is that we are a new democracy in the making, which still has to prove itself and which is strained by the above emerging factors characteristic of an open democratic society.

It is required of us to balance these diverse influences and demands, by ensuring a steady growth rate and friendly investment climate, as well as securing ready or disposable cash to the average person in the street.

In view of all these factors, the ACDP believe in the principle that smaller is better; the adage which states that the bigger you are the harder you fall is readily more true in the case of the latter than the former.

By allowing districts, regions or local communities to control their own finances, better controls can be exercised and larger returns can be expected.

Each community or region will commit itself to building up its infrastructure through a finance system supported by the community, and as a result services will trickle down quicker and be more cost effective.

A special tax system should be devised which is compatible to the status of a given region, and which corresponds co-efficiently to a tax structure on a national scale.

What is required is that finance and fiscal policy be based on simplicity, stability, equity and efficiency, through a process of community or regional consultation.

With regards to socioeconomic upliftment and equity, a National "Watchdog" can be instituted to measure the regions economic growth patterns on one hand and how disparities of the past are being redressed, on the other.

People at local level need to experience economic growth in the shortest possible time, and this can be achieved through creative methods of enterprise and community contributions.

Masakhane is a good example in how finances are generated to pay for services rendered.

As the RDP is a process of delivery, decentration is a plan to fund these projects. For example a variety of tax incentives or subsidy schemes at local level are useful economic growth initiatives, where the biggest beneficiary will be the local regions, and for which the people will readily finance such projects.

11 July 1995

ADDENDUM TO ANC SUBMISSION ON SENATE (COUNCIL OF PROVINCES)

The prior ANC submission to the Constitutional Assembly on National and Provincial Legislative Competencies, contained within the documentation of Theme Committee 3 (and more fully set out at pages 31 and 32 of the ANC's Constitutional Proposals published as "Building a United Nation"), should be read together with the ANC's submission of 5 September 1995 on the Senate (Council of Provinces).

National and Provincial Legislative Competencies

1. Provincial legislatures shall be competent to make laws for the province with regard to all matters which fall within the functional areas specified in Schedule 6 of the Interim Constitution (save for policing which we believe is subject to Chapter 14 and should not have been included in the Schedule). Legislative competence shall include the competence to make laws which are necessarily ancillary to the effective exercise of their legislative competence. Parliament shall have the same powers to make laws in regards to the above matters.

11. In the event of an inconsistency between national and provincial legislation, the Act of Parliament shall prevail over provincial legislation only to the extent of any inconsistency between them if:
 1. The national law deals with a function in respect of which uniformity across the nation is desirable.
 2. The national law deals with a matter in respect of which it is necessary for South Africa to speak with one voice or to act as a single entity - in particular, in relation to other states.
 3. The national legislation is necessary for the maintenance of essential national standards, for the establishment of minimum standards required for the rendering of services, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one province which is prejudicial to the interests of another province or the country as a whole.
 4. The national legislation deals with national economic policies, the power to promote inter-provincial commerce and to protect the common market in respect of the mobility of goods, services, capital and labour.
 5. The national legislation provides for equality and opportunity or access to a government service.

6. The national law establishes a national framework for the provision of public services or the management of institutions relating thereto.
- III. Where a provincial law deals specifically with matters other than those referred to above (such as the socioeconomic and cultural needs of a particular province), such matters shall prevail over national legislation. Provinces are not precluded from passing laws in regard to matters set out at 1 - 6 above, provided such legislation is not inconsistent therewith.
 - IV. In the event of a dispute concerning the legislative powers allocated by the constitution concurrently to the national and provincial governments:
 - a. Such legislation shall be deemed to be "necessary' or 'desirable" in terms of the requirements set out at 1 - 6 above, if such legislation has been approved by the Senate (or Council of Provinces);
 - b. If such dispute cannot be resolved by a court by a construction of the constitution, precedence shall be given to national legislation (Constitutional Principle XXIII).
 - V. Without derogating from the powers of national government under the constitution, national government shall not otherwise exercise its powers so as to encroach upon the geographical, functional or institutional integrity of the provinces.
 - VI. Residual powers shall be within the exclusive competence of national government.
 - VII. Provinces shall, in addition to the power to legislate in concurrent areas of legislative competence, be responsible for developing the details of the framework legislation of the national government, more specifically in relation to its implementation and in ensuring that regional and sub-regional variations are taken into account.

AFRICAN CHRISTIAN DEMOCRATIC PARTY PROPOSED AMENDMENTS TO THE CONSTITUTION

1. Pre-amble:

We demand that the Pre-amble be re-discussed by all political parties after due notice and that our detailed submission be used as a basis for such discussion. The minimum we request at the beginning of the preamble is "in humble submission to Almighty God."

2. Section 2:

Refers to the Constitution as 'the supreme law of the Republic; law or conduct inconsistent with it is invalid.'

This is unacceptable to the ACDP, because we believe that law or conduct that is inconsistent with the Bible, which is the Word of God, should be invalid. We believe that God's law must be over all forms of civil government. The Word of God is the only standard to be used in order to determine what conduct should be regarded as invalid. Christians may obey the constitution of a country, but only to the extent that such a constitution is not in conflict with the Bible. Any provision in the constitution that undermines the Bible, should actively be resisted by Christians. Absolute authority and power belong to God alone; no earthly institution can claim them.

A possible amendment of Section 2 that would be supported by the ACDP should read as follows: 'The Constitution, to the extent that it is not inconsistent with the Bible, is the supreme law of the Republic, law or conduct inconsistent with it is invalid.'

3. Section 8 Subsection 2:

The ACDP supports the horizontal application of the Bill of Rights, only to the extent that such application does not conflict with the Bible. A case in point is the equality clause in Section 9, subsection 2, which prohibits discrimination on the grounds of 'sexual orientation'. This is in direct conflict with the Word of God, which prohibits homosexual activity and relationships. If section 9(3) is applied as it stands, it will prevent Christians from speaking out against the sin of homosexuality. The ACDP, therefore, cannot support section 9(2), unless section 9(3) is altered.

4. Sub-section 9(3):

The Bill is to be a shield against the power of the State. The ACDP specifically opposes the inclusion of "sexual orientation" as a grounds for discrimination. The 'sexual orientation' clause, in particular, is unbiblical, because it legitimises the practice of homosexuality. The Bible literally and clearly forbids homosexuality. It is not valid to use the argument that the state cannot legislate morality, whilst the introduction of clause 9(3) has led to the protection and will lead to the possible legislation of immorality.

The practice of homosexuality is a lifestyle, or sub-culture. If we call on the protection of this one sub-culture, on what basis are other sub-cultures excluded. Delete 'sexual orientation' We prefer the word 'gender' to be removed, because it is contained in the word 'sex'.

5. Sub-section 9(4):

The complete disregard of the basic presumption of innocence is strenuously opposed. This sub-section needs to be deleted.

6. Section 11:

We propose the amendment should read "everyone has the right to life from the moment of conception to natural death except by execution of a court sentence following conviction for a crime for which the death penalty is prescribed by an Act of Parliament.

7. Section 12:

We propose that subsections 12(a) and (b) be deleted as they can be used to legalise abortion on demand. If they must be retained, then it must be clearly stated that these subsections do not imply legalising abortion on demand.

8. Subsection 15(2)(a):

We propose the deletion of the word "public" so that (a) should read "...those observations follow rules made by the appropriate authorities." School boards and committees should make the rules regarding the use of their facilities and not the state.

9. Subsection 16(1)(c):

We propose the deletion of the entire (c). "Freedom of artistic creativity" gives pornography a constitutional protection it does not deserve. The issue of pornography and the attendant evils of impurity was fully addressed in our submission of freedom of expression.

10. Sub-section 22:

We propose the deletion of the word "occupation" as it is largely used in this context to constitutionalise prostitution which many societies regard as evil. Prostitution destroys families, marriages, the moral fibre of society and, therefore, should not receive a constitutional protection.

11. Sub-section 23(3)(c):

We propose the removal of the brackets in (c). The right to strike must be balanced with the right to lock-out. Both must either be in the constitution or out.

12. Section 25:

We believe the right to property is a God-given right that must be entrenched in the constitution.

13. Sub-section 27(1)(a):

We propose the deletion of the words "Reproductive health care" as this entrenches the right to abortion clinics. The ACDP totally opposes legalising abortion on demand.

14. Sub-section 28:

We see subsection 28(1)(b) as an attempt to have the State decide for the child, usurping the role of the Supreme Court which has always been the main custodian of minor children. The State should not interfere with parental rights.

Sub-section 28(2):

International legal precedent in the U.S. and Canada has established that parents are the best judges of children's best interest and not the State.

Sub-section 28(3):

The definition of child has to be extended to all persons from the moment of conception.

15. Sub-section 29(2):

Delete the phrase "at their own expense".

The ACDP endorses a proposal that a voucher formula be introduced into our educational system, which would meet a wide range of educational needs; as well as lead to greater efficiency and higher standards. The ACDP supports the following threefold distribution of funds for schools:

a. An equal sum in the form of a voucher for parents for every child within a particular phase of schooling. Thus every child in pre-primary would be credited equally, every pupil in senior primary, every student in senior secondary, etc. This sum of money would be credited to the school attended by the pupil - irrespective of area, quality of teachers, etc.

b. A sum made available to schools assessed to be historically disadvantaged in resource allocation. Thus assessment of absence of libraries, laboratories, school fields, etc., would gain an additional annual sum for the school in order to make good these missing educational needs. This sum could only be spent on making good such backlogs.

c. A sum credited to a school serving a socio-economically disadvantaged area. This is aimed at balancing out the ability of certain parents to "pay" for better education for their children. This sum would allow such schools to hire additional staff, or to ensure the staff they employ have the best qualifications.

16. Sub-section 30:

Delete the qualifier "*but no one exercising these rights may violate a constitutional right of anyone else*". The limitations clause deals with this adequately.

17. Sub-section 32:

Delete: "*whose rights have been adversely affected by administrative action*".

18. Sub-section 35(1):

The formulation denoted **18** in the margin is to be preferred. (has been deleted).

Sub-Sections 35(2) and 38:

What has been said about the nature of Divine Law previously applies *mutatis mutandis*.

AFRICAN CHRISTIAN DEMOCRATIC PARTY (ACDP)

Preamble

As a starting point it needs to be pointed out that "[p]reambles are included in Constitutions for symbolic and biblical purposes. One of the functions of Constitutions is to legitimise the state and government, and preambles, with national symbols such as the flag, motto and anthem, are prominent in this objective. Reference is invariably made to the Almighty guidance bestowed on the state in the past, and to the benevolent principles by which it will be governed in future."

Thus, writes Boule *et.al.* (**Constitutional and Administrative Law**) Cape Town: Juta 1989 on p58). He continues ". . .[W]hile Constitutions are a form of statutory law, they do more than just define rights and prescribe procedures, but also, in their preambles, espouse values and principles..."

It is thus clear that aspects such as the distribution, exercise and control of authority and accession to and succession of the power bearers, with which Constitutions are concerned, form as it were, the skeleton of the Constitutional body. The *lifeblood* that animates this body, namely values and principles, is partly to be found in the Preamble.

While this section of a Constitution may thus be of lesser legal importance where the interpretation of Constitutions is concerned, it is undoubtedly important to the inhabitants of a nation as it reflects the hopes, aspirations and value beliefs and it acknowledges the diverse nature of a national culture.

The *South African Law Commission* (**Report on Constitutional models**, Pretoria: 1991, from page 366) sums up this aspect as follows:

"...the preamble, though of little value in juridical terms, nevertheless plays an important role as a practical reflection of the aspirations of a country's population."

The reflection mentioned undoubtedly includes a reference to a belief system for the vast majority of all South Africans and, as such a reference to the guidance of the Almighty God is definitely not inappropriate while it will simultaneously reflect the diverse aspects of religion that are so inherent in inseparable from the national character.

The ACDP, therefore, declares that wording similar to the following be introduced into the Preamble of the new Constitution to form a focus point for the role that a belief system such as is adhered to by the vast majority of all South Africans to play in the process of nation-building that takes due cognisance of the vital role that these aspects play in aspects of cultural and national life:

Option 1:

WHEREAS the People of South Africa

affirm that the Nation of South Africa shall be founded upon principles which acknowledge the supremacy of God, faith in human rights and fundamental freedoms, the position of the family in a society of free men and women, the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed by their Creator, including the right to enjoy and defend life and liberty, to acquire, possess and protect property, and to pursue and obtain happiness and safety;

recognise that men and women remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law.

While the above mentioned wording constitutes the most favoured wording for inclusion into the Preamble from the ACDP's perspective we are prepared to discuss the following additional options in order of preference:

Option 2:

WHEREAS South Africa under the authority of God, is a sovereign and democratic constitutional state;

WHEREAS recognition of the inherent dignity of the individual, respect for fundamental human rights and freedoms, and the central position of the family as the bastion essential for a stable society, are enshrined within the constitution; and

WHEREAS such rights as constituted involve the individual responsibilities, and include the rights to life, freedom to pursue personal development and contentment, justice, faith and worship, equality of economic opportunity and unrestrained movement, regardless of colour, creed or race; and

WHEREAS the government is governed by the democratic principle of being a government for the people by the people by virtue of its service to the people and are elected representatives of the people, operating under a sovereign Constitution and a free and independent judiciary; and

We. therefore, adopt this constitution as the fundamental law of our sovereign, independent South Africa.

Option 3:

That the current phraseology of "***In humble submission to Almighty God***", as contained in the Interim Constitution be retained.

AFRICAN CHRISTIAN DEMOCRATIC PARTY (ACDP)

Submission on the Central Bank

19 February 1996

Introduction

Karl Marx knew that the family (the core building block of society), property and liberty were bound together. In *The Communist Manifesto*, Marx advocated compulsory education in tax supported schools. He called for centralised banking, a graduated income tax and inheritance taxes.

Marx knew that putting enough economic squeeze on the family would ultimately destroy it. Destroying the family is again vital for the breaking down of social barriers that would stifle the classless society from developing.

His purpose in advocating a central banking system was to attain a method for the manipulation of money by the state. The effect of this manipulative exercise is called inflation.

Inflation is caused by the increase in the purchasing medium - what we would call money today.

At issue is thus private property. The Christian approach to economics is based on private property. Money is used as a medium of exchange so individuals can exchange one property for another or for labour or something else of value.

Money thus serves as a store of value.

A government that tampers with the money supply tampers with our wealth, our property. With a Biblical approach anything of value would be used as money although certain things will be more efficient as a medium of exchange than others - gold, for example, has a historic value as a medium of exchange and store of value.

The prophet Isaiah long ago warned about inflation. "Thy silver has become dross", he cried out to God's people. Baser metals were being used with the silver so that it lost most of its value. By using a cheap metal that looks like silver, the supply could be increased. This is inflation.

Modern inflating is done mostly through the central banking system. The money supply is steadily increased. This money is called "fiat" money with "fiat" being the Latin word which means "let there be". Just as God said "Let there be light," so the money creators say "let there be money."

The individual cannot create wealth by fiat. Increasing the money supply results in a corresponding decrease in the value of all money. This is why the Rand has been steadily losing its value.

Inflation is a silent burglar. Stealing from those, especially who are earning fixed incomes. Its victims, often as not, are the poor and needy.

Section 199(2)

While there is scope for the independence of the Central Bank, there is an equal need for transparency in its functions. All the structures of government and finance that have survived from the previous dispensations have been substantially adapted to ensure openness and transparency.

It is thus lamentable that the only institution that would seem to be as opaque and intransparent in its dealings as previously is the Central Bank - especially since its functions touch the pockets of all South Africans to an even greater extent than any other.

Oversight of this powerful body must thus lie with national and provincial Parliaments and not one member of cabinet. It must not merely consult, but its dealings must be audited from time to time and if errors in judgement end the like becomes apparent, those responsible must answer for it.

Section 199(1)

The primary object of the Central Bank should be adapted to make reference to the land. If the currency has to be changed, for whatever reason, this has to go through Parliament as the elected representatives of the people.

Re-drafted Text

Primary Object

199.

(1) The primary object of the South African Reserve Bank is to protect the value of the Rand of the Republic in the interests of balanced and sustainable economic growth in the Republic.

(2) The South African Reserve Bank, in the pursuit of its primary object, shall perform its functions, subject to acts of the respecting Parliaments and in such a way that transparency, accountability and effective financial management of the economy, debt and all aspects with which the primary object of the Bank is concerned, is promoted. Regular consultation will take place between these Parliaments and the Bank to assist in the attainment of having a transparent, accountable and effective central bank.

Powers and functions

200. The powers and functions of the South African Reserve Bank are those customarily exercised and performed by central banks, subject to the need for transparency and accountability. Such powers and functions are to be determined by national and regional legislation.