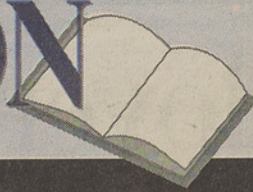


# THE PEOPLE'S CONSTITUTION

May 1996

HOW THE NEW NATION'S BIRTH CERTIFICATE AFFECTS YOU



## South Africans can't rest on their laurels

**THE** new Constitution aims to protect the rights of individuals and groups, write **ANTHONY JOHNSON, BARRY STREEK** and **PATRICK BULGER** — but it is up to ordinary citizens to ensure those rights are enforced.

**T**HE birth certificate of our new nation is designed to ensure the rights of all South Africans — but especially those of the weak and the powerless.

That's the message from Constitutional Assembly chairperson Cyril Ramaphosa, who has played a key role over the last two years guiding the complex and often contentious process of shaping the new Constitution.

But his deputy Leon Wessels, who has also played a pivotal role in forging consensus in the 490-member Constitutional Assembly, warns that while many provisions are designed to protect minorities and historically disadvantaged groups, it is up to ordinary South Africans to ensure that the Constitution becomes a living document that will protect their interests on an ongoing basis.

"If vigorous and dynamic efforts are not undertaken to popularise the Constitution and ensure that the public engages with and understands it, the document will fade into oblivion."

Before any aspect of the new Constitution can come into effect, the document has to be given a clean bill of health by the Constitutional Court, which will sit in June to decide whether it complies with the 34 principles agreed to by all negotiating parties at the Kempton Park talks.

Once the provisions of the Constitution come into effect — probably on a staggered basis between mid-1996 and 1999 — a number of institutions independent of the government will be established to protect the rights granted to all.

These include the public protector, the human rights commission, the commission for gender equality, the independent broadcasting authority, the electoral commission, the cultural commission and the auditor-general.

Ramaphosa believes the recognition of collective rights provided for in the terms of reference of the cultural commission will promote cultural, linguistic and religious diversity "that touches such deep emotions in this country".

More fundamentally, he emphasises that the new Constitution is geared towards transformation: "It is going to deal in real terms with the past and address the legacy of apartheid."

The socio-economic rights will ensure that the government does not simply pay lip service to the needs of ordinary people in areas such as health provision, social security and clean water.

The Constitution has also been framed in such way as to make local government the development agents for ordinary people, especially those denied proper services in the past, Ramaphosa submits.

Wessels, however, stresses that the Constitution should not be viewed as the instrument that will deliver services and jobs. Rather, it grants rights to ordinary citizens who can in turn put pressure on politicians and institutions to deliver.

"The Bill of Rights will make a democratic society within the reach of every citizen — but it is up to individuals and organisations to insist on their rights."

Wessels believes that the best way to popularise the Constitution is to publish a pocket version which could be used "to settle arguments about basic rights over the dinner table".

Ramaphosa, in turn, has called for the study of the new Constitution to be a subject in all schools.

Clearly, it is in the interests of all South Africans to understand the document because it will shape our society for generations to come.



**HOT SEATS:** Constitutional Assembly chairperson Cyril Ramaphosa and his deputy Leon Wessels led the way to consensus.

PICTURE: BENNY GOOL

## Constitution does away with the tyranny of Parliament



ANTHONY JOHNSON

SOUTH AFRICAN citizens will no longer have to live under the "tyranny of Parliament".

When the final Constitution is adopted, the 42 million people in this country will be residing in a constitutional state, with the Constitution serving as the supreme law

of the land.

This means that public representatives in Parliament will not be free, as was the case in the past, to take upon themselves the power and the right to make laws — good, bad or indifferent — as they please.

The Constitution will ensure that ordinary citizens are protected against any attempt by Parliament to pass legislation that violates their basic human rights. This means that MPs will in future not be able to enact laws

that are, for example, racist, sexist or discriminatory.

Citizens or organisations in civil society will be able to challenge questionable legislation in the Constitutional Court. In any contest between the Bill of Rights and Parliament, the Constitution and the rights enshrined in it will enjoy supremacy.

This places South Africa on a par with mature democracies like the United States and Germany.

The difference between the old system and the new is like "chalk and cheese", according to Constitutional Assembly chairperson Cyril Ramaphosa.

"People arrogated unto themselves enormous powers and rights and could do literally as they wished with the lives of the citizens whom they were supposed to be protecting," he said.

In the new South Africa, citizens will not have to rely on a government

with sectional or constantly shifting interests to dispense favours or patronage when it comes to their rights.

These rights will be entrenched in the highest law of the land — the Constitution.

As the founding provisions contained in chapter one of the Constitution note: "This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and duties imposed must be performed."

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## Movers and shakers behind the scenes

**BARRY STREEK AND PATRICK BULGER**

FOR ALMOST two years now, South Africa's 490 parliamentarians have been locked in tortuous negotiations over the new Constitution. Some have played a prominent role in this process — others have played virtually no part.

Most members of the Cabinet, for instance, did not actively participate in the drawn-out negotiations, with the notable exceptions of Water Affairs and Forestry Minister Kader Asmal and former Provincial Affairs and Constitutional Development Minister Roelf Meyer. Most, however, participated when matters affecting their portfolios came up.

Among the deputy ministers, Valli Moosa (Provincial Affairs and Constitutional Development) and Sheila Camerer (Justice) were prominent.

Some of those involved in oiling the process have been unsung heroes — many of them Constitutional Assembly (CA) officials working behind the scenes to ensure that the negotiators reach the May 8 deadline.

So, who were the movers and shakers behind our new Constitution?

Central to the whole process were the chairperson, Cyril Ramaphosa of the ANC, and his deputy Leon Wessels of the National Party. Both have announced they will be withdrawing from active politics when the constitutional process is completed.

They have had to keep the whole complicated process on track, making sure that it was not derailed and that it was an open process.

Often with good humour, Ramaphosa and Wessels cajoled, and sometimes threatened, the parties into reaching agreement.

Much of this unrewarding work required leadership, and these two lawyers — one an ex-policeman and former president of the militantly anti-communist and pro-apartheid Afrikaner Studentebond; the other a former member of the South African Students Organisation when Steve Biko was its president and former general secretary of the National Union of Mineworkers — gave leadership.

They continually emphasised the need for consensus, but also decisions. Neither, however, prescribed to the negotiators, despite their own political bases, and this set the tone for eventual agreement.

But important as the roles of Ramaphosa and Wessels were, they



**TENSE MOMENT:** Roelf Meyer and Dawie de Villiers.



**CA DIRECTOR:** Hassen Ebrahim.



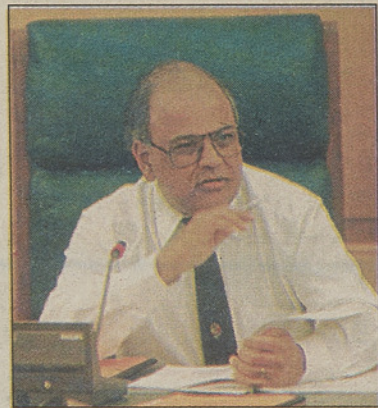
**DRAINED:** Willie Hofmeyr.



**DOUBTFUL:** Naledi Pandor.



**EXHAUSTED:** Dene Smuts.



**OUTSPOKEN:** Pravin Gordhan.



**LEGAL AID:** Legal expert Zak Yacoob and an assistant.

would not have been able to achieve this without the CA staff, particularly executive director Hassen Ebrahim, his deputy Louisa Zondo (who has been appointed the first director of

the human rights commission once her CA obligations end) and executive member Marion Sparg.

The political parties have all played their part in the negotiations,

but one of the key figures in the whole process, quietly recognised by all parties, was Democratic Party veteran Colin Eglin. It is rumoured he might retire from active politics — at

the age of 71 — once the new Constitution is adopted.

Eglin was first elected to Parliament in 1958 and, after the NP's Myburgh Streicher, is South Africa's longest-serving MP. He has time and time again intervened in the debates to encourage solutions.

Among ANC parliamentarians, one MP who has emerged as a incisive debater is Collins Chabane.

Other ANC members who have made significant contributions are M J Mahlangu, Dirk du Toit, Willie Hofmeyr, Baleka Kgositsile, Naledi Pandor, Johnny de Lange, Pravin Gordhan, Rob Davies on financial matters, and Bulelani Ngcuka on justice clauses.

Within the NP, Camerer (particularly on the Bill of Rights), Piet Marais, and political veterans Alec van Breda, Sam de Beer, Boy Geldenhuis and Ray Radue were key players, with Meyer playing an increasingly important role towards the end of the negotiations.

The major figures among the DP negotiators were, apart from Eglin, Ken Andrew, Dene Smuts and James Selfe. In the PAC Patricia de Lille, Richard Sizani and Malcolm Dyani were particularly visible.

In the Freedom Front Constand Viljoen, Pieter and Corné Mulder, Pieter Groenewald and Joseph Chiole were significant, and outside the CA, the IFP's Walter Felgate and Ruth Rabinowitz continued to have some influence on the proceedings.

Party advisers such as Kate Savage of the ANC and Abre Hanekom of the NP, CA legal expert Gerrit Olivier — a former department of justice bureaucrat — and the Bill of Rights legal advisers Halton Cheadle, Sandi Liebenberg and Ignatius Reitenbach all played low-key but influential roles.

Many of those involved in the negotiations consider the panel of legal experts as "a complete pain", to quote one insider, but they were highly regarded as being an essential part of the process.

In particular, the blind Durban advocate Zak Yacoob has earned wide respect for his "brilliant" contribution.

For the media, first Enoch Sithole and then the highly competent Katharine McKenzie were a great help.

The constitution-making process has involved a large number of people, but whether they were the secretaries, service officers in the CA or the chairperson, they all played their part in drafting South Africa's final constitution. They should not be forgotten.

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## Implementation date undecided

**PATRICK BULGER**

ALTHOUGH the interim Constitution can theoretically remain in force until the next election in 1999, the parties are involved in discussions on when to implement the new Constitution. No decision has yet been taken.

Schedule five deals with transitional arrangements and provides some guidelines. It provides

for all existing legislation in force before the new Constitution comes into effect to remain in force and also provides continuity in respect of the legislature and executive.

People who hold positions in terms of the interim Constitution will retain those positions when the new Constitution comes into effect. This applies equally to the courts and to the public service.

Certain aspects of the Bill of Rights will also be held in abeyance.

The horizontal application of the equality clause must be given effect within three years of the new Constitution taking effect. However, the courts have been given the duty of developing common law consistent with the horizontal application of equality.

There are also limitations on the access to state information clause and administrative actions.

In respect of information, the Constitution provides that all people have the "right of access to all information held by the state or any of its organs in any sphere of government in so far as that information is required for the exercise or protection of any of their rights".



**HARD AT WORK:** The ANC benches during a sitting of the Constitutional Assembly. **PICTURE: BENNY GOOL**

## Time to bring laws in line

**PATRICK BULGER**

SOUTH AFRICAN legislation is likely to be subject to an exhaustive overhaul once the new Constitution comes into force.

This overhaul will have the effect of bringing the entire body of South African law into line with the Constitution.

Already Parliament is considering a bill that attempts to bring a host of laws into line with the interim Constitution.

The Abolition of Restrictions on the Jurisdiction of Courts Bill deals with those aspects of the law that prescribed an administrative remedy, and the Bill of Rights is emphatic that citizens have the right to take virtually any matter to the courts if they feel a right has been infringed.

If, for example, a law holds that an official or a minister can take a decision in terms of the Liquor Act and that that decision is final and that there is no right to appeal, the provision in the Liquor Act has to be amended to strike out the finality of the minister or official's decision.

Similarly with the final Constitution.

As the Constitutional Court develops its interpretations of the Constitution, aspects of the statute law will have to be brought into line with the Constitution.

Already the bill before Parliament deals with a wide range of laws in crucial areas like citizenship, illegal squatting, the appeal board on publications and the water court.

To the extent that any law is inconsistent with the basic freedoms contained in the Constitution, that law will have to be amended.

Parliament will therefore be busy, not handing down laws as it did in the past, but getting the country's legislation to comply with the more powerful constitution and the Constitutional Court.



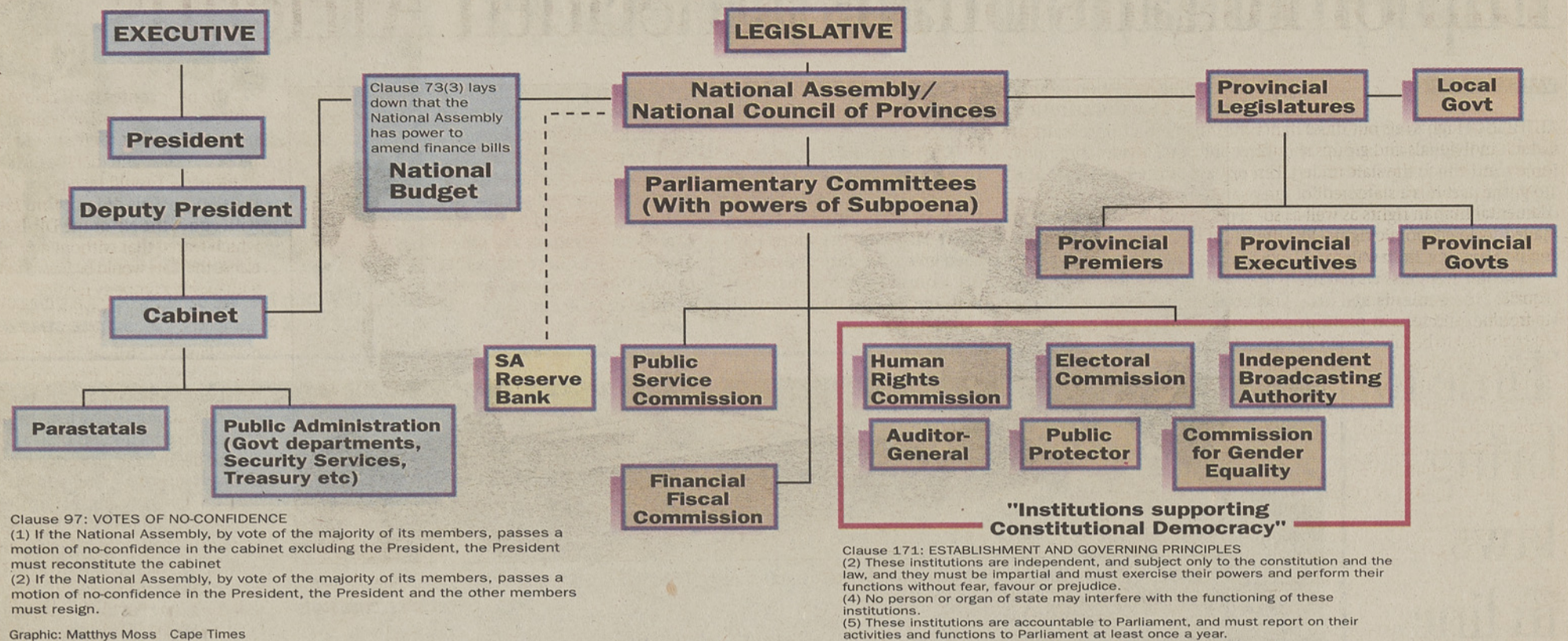
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## The separation of powers in co-operative government



## Co-operation balances separation of powers

**BARRY STREEK**  
POLITICAL WRITER

SOUTH AFRICA's new Constitution is based on the concept of the separation of powers between the legislature, the executive and the judiciary — but, almost paradoxically, it is also based on "the principle of co-operative government".

The Constitution is supreme, but Parliament is to have extensive powers, including the right to change the national budget, which is a new provision.

Parliamentary committees will also have the explicit legal authority to subpoena witnesses and documents.

But the six "institutions supporting democracy" — the human rights commission, the electoral commission, the auditor-general, the public protector, the commission for gender equality and the independent broadcasting authority — will have a key function in ensuring that the government, and Parliament, comply with the Constitution.

These six bodies, as well as the public service commission and the financial and fiscal commission, will all be accountable to Parliament, not

the executive.

Parliament will be able to pass motions of no confidence in the cabinet (in which case it will have to resign) and in the President, in which case the President and his or her cabinet will have to resign.

On paper at least, the Constitution will result in Parliament having significant powers to exercise controls over the executive.

On top of that, the Bill of Rights "affirms human dignity, equality and freedom", gives individual citizens extensive rights and binds "the legislature, the executive, the judiciary and all other organs of state".

One of the founding provisions of the constitution is the "separation of powers of the legislature, the executive and the judiciary with checks and balances to ensure accountability, responsiveness and openness".

However, the different levels of government — national, provincial and local — are expected to co-operate with each other within each of these spheres as well as across spheres.

Indeed, South Africa's new Constitution may, on paper, be one of the most democratic constitutions in the world.

## Putting 'civil' back into service



**THE** new Constitution will change the civil service dramatically, reviving a concept of service which has often been absent. **BARRY STREEK** reports.

PROVISION for the transformation of the civil service is to be written into the Constitution — making it possible for ordinary people to go to the public protector, the human rights commission or the courts if they are short-changed by public servants.

Constitutional Assembly chairperson Cyril Ramaphosa says he is satisfied that the Constitution is "not only a piece of paper. It is not only something in writing.

"It is there. The government is going to be monitored by the Constitution, by structures and institutions in terms of its performance in living up to the Constitution, particularly in the human rights area."

Public administration "must be governed by the democratic values and principles enshrined in the Constitution" and this must include:

- The promotion and maintenance of "a high standard of professional ethics";

- The promotion of the "efficient, economic and effective use of resources";

- Public administration must be "development orientated";

- Services must be provided "impartially, fairly, equitably and without bias";

- "People's needs must be responded to, and the public must be encouraged to participate in policy-making";

- "Public administration must be accountable";

- "Transparency must be fostered by providing the public with timely, accessible and accurate information";

- "Good human resource management and career development practices, to maximise human potential, must be cultivated"; and

- "Public administration must be broadly representative of the South African people, with employment and personnel management practices

based on ability, objectivity, fairness and the need to redress the imbalances of the past."

The draft Constitution also states that national legislation must ensure the promotion of these values and principles.

This means Parliament is constitutionally bound to pass legislation to enforce these high-sounding policies — and ordinary people will be entitled to demand that they are enforced.

This applies to all levels of government, including local government. The draft Constitution stipulates that "public administration includes administration in every sphere of government" and "the administration of institutions that are dependent on government financial support or are authorised in terms of any law to impose any tax, levy or duty."

If or when these policies are implemented, it could provoke the biggest-ever shake-up of the civil service — in which the concept of "public service" is often remote. The public service commission is mandated to promote these values and principles.

The final clause of the chapter on public administration is also significant: "No employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause."

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# Bill of Rights binds all South Africans

PATRICK BULGER

THE Bill of Rights sets out those rights which individuals and groups should enjoy and which the state undertakes to guarantee. It is a statement of fundamental human rights as well as so-called socio-economic rights, like the right to housing, fresh water and land.

The Bill of Rights sets out rights to equality, to human dignity, to life and to freedom and security of the person; the right not to be subjected to slavery, servitude or forced labour; the rights to privacy, to freedom of religion, belief and opinion, to freedom of expression and assembly, demonstration, picket and petition.

Everyone shall have the right to free political choices, to citizenship, to freedom of movement and residence, to choose their own trade, occupation or profession, to fair labour practice, to a healthy environment, to property and to health care, food, water and social security.

Children have rights, including the right to a basic education. Languages and cultures receive protection, citizens have a right to information held by the state and to enjoy "just administrative action". There is a right of access to the courts and a lengthy provision sets out the rights to be enjoyed by people who have been detained, arrested and accused.

Finally, the Bill of Rights deals with states of emergency. A "limitations clause" sets out the range of the guaranteed rights as well as circumstances under which they may be curtailed.

The Bill of Rights, chapter two of the Constitution, opens with an explanation of its place and function.



**INTENSE:** ANC MPs Jenny Schreiner and Ian Phillips (centre) thrash out controversial issues in a bilateral meeting with the DP's Senator James Selfe. **PICTURE: CLIVE SMITH**

It says: "This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. The state must respect, protect, promote and fulfil the rights in this Bill of Rights".

The bill binds the legislature, the executive, the judiciary and all organs of state. It also binds all natural and juristic persons — which means that no branch of government may infringe an individual's rights; neither may other individuals, companies, clubs or associations.

However, the section on equality which states that: "No other person

may unfairly discriminate ... against anyone on one or more grounds" is only given effect within three years of the Constitution coming into force. This condition applies in the access to state information clause and the just administrative action clause.

While every clause in the Bill of Rights guarantees an important right, some of the rights have attracted more attention than others. These are the right to property, the right to life, the language clause and the education clause, which tackles the sensitive issue of mother tongue education.

These rights triggered fierce debate within the Constitutional Assembly's structures, with parties having clearly-

defined and often opposing positions.

In reaching compromises, the negotiators tried to strike a balance between the individual's exercise of a right and how it would affect others.

In the case of the right to life, the negotiators ended up with a brief clause saying: "Everyone has the right to life". This does not go as far as the PAC position that the death penalty should be outlawed; nor does it cater to the NP position that the clause should allow for the death penalty under certain circumstances.

The Constitutional Court will now have the discretion to decide whether the clause permits the death penalty under any circumstances.

The next contentious clause dealt with property rights. The original ANC position was that there should be no property clause and that the regulation of property should take place within legislation. This did not find favour with either the NP or the DP, both of which feared that without a property clause the state would be free to tamper with existing property relations.

On the other hand the ANC did not want a property clause that would make land redistribution and restitution impossible and freeze the unfair racial distribution of land in perpetuity. The compromise is a lengthy property clause which states that "no-one may be deprived of property except in terms of law of general application and no law may permit arbitrary deprivation of property". Compensation has to be determined by a court.

The language and culture clause was the third difficult area. It states that "everyone has the right to use the language and to participate in the cultural life of their choice, but no-one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights".

Negotiators feared that groups would want to exercise their right to language and culture in such a way that they would prevent other citizens from exercising these rights.

The education clause has to tackle the question of how mother tongue education can be provided without barring speakers of other languages. The compromise is that everyone has the right "to choose instruction in any language, where this can be reasonably provided at state or state-aided schools".

## Providing for the problems of eleven official languages

ANTHONY JOHNSON

THE Constitution affirms the status of nine African languages as "official" — a far cry from the days when only Afrikaans and English were recognised.

The new official languages are: isiNdebele, Sesotho sa Leboa, Sesotho, siSwati, Xitsonga, Setswana, Tshivenda, isiXhosa and isiZulu.

The upgrading of these languages was not a subject of dispute among constitution writers — everyone felt it was a good idea in principle. The problem comes when trying to give practical effect to the policy, in particular the extra expense it might involve.

The Constitution tacitly acknowl-

edges the practical problems by stating that national and provincial governments may use particular official languages for purposes of government, "taking into account usage, practicality and expense".

In the Western Cape, for example, the official languages are Afrikaans, English and isiXhosa; in KwaZulu-Natal isiZulu and English; in Gauteng English, Afrikaans, Setswana and Sesotho sa Leboa.

The Pan South African Language Board has been established to promote conditions for the development and use of these official languages, as well as promote respect for and the development of other languages.

## Gay, women's rights enshrined

ANTHONY JOHNSON

SOUTH AFRICAN women can count themselves fortunate that the Constitution was written during a period of history in which women's rights have, internationally, enjoyed sustained attention.

The Constitution not only guarantees women — and other traditionally disadvantaged groups — legal equality, but also provides for mechanisms to remedy past discrimination.

Gay rights also enjoy unusually strong protection in our Constitution — a factor which can be traced not simply to the values of those drafting the document, but to the topicality of the issue of non-discrimination on the grounds of sexual orientation.

Section 9(3) of the equality clause of the Bill of Rights stipulates that the state may not unfairly discriminate, directly or indirectly, against anyone on the grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth.

So gone are the days when, for example, women teachers could be denied housing subsidies when they married or women workers could be sidelined or discriminated against because they happened to fall pregnant.

Significantly, section 9(2) paves the way for possible affirmative action through legislative and other mea-

asures designed to "protect or advance persons, or categories of persons, who are disadvantaged by unfair discrimination ..."

In addition, Chapter 9 of the Constitution, which deals with state institutions supporting constitutional democracy, makes provision for a commission for gender equality.

The commission has been given the task of promoting respect for gender equality, as well as the development, protection and attainment of this goal.

Among the powers granted to the commission via national legislation are those to monitor, to investigate, to educate, to lobby, to advise and to report on issues concerning equality between the sexes.

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On the 8th of May, the new Constitution will be adopted, and then submitted to the Constitutional Court for certification. All South Africans will enjoy the protection of one law for one nation.

We'll all have the foundation for a true democracy.

**O**ne law for one nation.

THE NEW CONSTITUTION 

# Buthelezi — the ANC's biggest mistake

**THE ABSENT** guest at the razzmatazz celebration marking the adoption of the final Constitution is the man now labelled the "eternal dissident" — IFP leader Mangosuthu Buthelezi. But he is not to blame, writes **JOHN MACLENNAN**.

**T**HE biggest mistake made by the African National Congress in writing this Constitution is that they broke a pledge of mediation which was made to the Inkatha Freedom Party.

This reflects on the integrity of the ANC and sets the scene for never-ending conflict in which KwaZulu-Natal will be the loser.

The ANC, together with the NP, made the promise on the eve of the national elections in an atmosphere of impending crisis, in the hopes of bringing the suspicious IFP into the country's first contest for a democratic government.

At that stage, various negotiations had failed to resolve differences, mainly over powers for the provinces. The IFP had walked out of the talks which produced the interim constitution.

The breakthrough came with a pact that brought the IFP in at the last moment in return for an undertaking

by the NP and the ANC that all "outstanding issues" would be subject to international mediation.

Whatever the ANC may say, there is absolutely no doubt the IFP had a cast-iron agreement. The NP, to its credit, kept calling for mediation. But in the end the ANC did not make good on its promise and the consequences of this breach of faith will be far reaching.

The first prize would have been a Constitution supported by the largest number of parties. This aim has been achieved to an extent, because even the right wing — as represented by the Freedom Front — is happy with the provisions which allow for collective rights and a commission which will also promote Afrikaner culture.

But the effect now is that a Constitution has been forced on a dissident province which flames continually with political violence. This means the killings will continue, the government



**ETERNAL DISSIDENT:** IFP leader and Home Affairs Minister Mangosuthu Buthelezi.

PICTURE: R BOTHA

will find itself dealing with — at best — a recalcitrant regional legislature and the province will continue to suffer a lack of proper government.

The government will also find it very difficult to deal with KwaZulu-Natal if the region's majority IFP

decides to place obstructions in the path of national goals. If co-operation between national and regional government breaks down completely, then the new rulers in Pretoria can only attempt to get their way by cutting off funds or through direct

security force intervention.

The first option spells economic disaster for the region. Any student of history will also tell the ANC that the security force scenario could ignite a civil war which would destroy the country's most populous province and which cannot be won by either the ANC or the IFP.

Another spin-off from the IFP's absence from the constitutional negotiations is that the NP and the smaller parties — all of which share many values with Buthelezi — have found it that much tougher to get their ideas enshrined in the final document.

At this stage, Buthelezi still regards it as a "nightmare Constitution", through which the ANC is attempting to establish a "totalitarian autocracy". In his view it does not address or solve any of the fundamental constitutional issues which have emerged.

The most recent draft, he says, is not even as good as the interim Constitution. The DP is of the same view, and has warned that the final Constitution might not pass the test of certification by the Constitutional Court because it clashes with certain immutable principles already agreed by the parties.

## Power to the (nine) provinces



**THE BATTLE** between the 'federalists' and the 'co-operationalists' over provincial and national powers was keenly fought in the Constitutional Assembly, writes **PATRICK BULGER**.

ONE of the longest-running and most intense constitutional debates has centred on powers for the provinces.

The interim Constitution solved the dilemma by arming the provinces with the same powers as the national government in some spheres — but it equipped national government to "override" provincial government if certain national norms and standards were not adhered to.

So while a province could make legislation on housing, for example, it could not decide to abandon house-building programmes in favour of more schools, because this would contravene the national norms and standards on housing.

The Constitutional Assembly negotiators were guided by the 34 "constitutional principles", which state that provincial powers could not be "substantially diminished".

As the interim Constitution came into play, it became apparent that this area of government was subject to challenge in the Constitutional Court, because of the grey area between national and provincial competencies.

Torn by conflicting interpretations of the nature of the new state, the Assembly had to steer a course between competitive federalism on the one hand and "co-operative governance" on the other.

Another issue that became salient was the role of the Senate, which was originally meant to represent the provinces' interests. Since the Senate has not been a particularly appropriate method of protecting provincial interests, it is to be replaced by a Council of Provinces.

How did the negotiators bridge their differences on the issue of provincial competencies?

As mentioned, the notion of co-operative governance is addressed in two separate chapters of the Constitution. Chapter three sets out "principles of co-operative governance" as a general guide. The principles bind all spheres of government to preserving "national unity and the indivisibility of the republic", and call on different levels of government to "co-operate with each other in mutual trust and good faith", to "assist and support each other", and so forth.

Chapter six confers legislative authority on the provinces and provides for the adoption of provincial constitutions. The important section is the one dealing with "conflicting laws". It stipulates that national legislation prevails over provincial legislation in instances where a matter cannot be regulated effectively by the provinces, where national norms and standards are at play, where national legislation is necessary for national security, economic unity, protection of the common market and so on.

Where legislation conflicts, provision is made for the intervention of the Constitutional Court. There is also provision for a mediation committee to mediate in disputes.

## Security forces will come under Parliament's control

**BARRY STREEK**

SOUTH Africa's security forces — in which, in the words of MP Ian Phillips, "the most powerful forms of physical violence" are concentrated — will, for the first time, be explicitly subject to the control of Parliament.

National security, the draft Constitution says, must be pursued in compliance with the law, including international law, and "is subject to the authority of Parliament and the national executive".

The Constitution also lays down that "national security must reflect the resolve of South Africans ... to live as equals, to live in peace and harmony, to be free from fear and want, and to seek a better life."

The chapter on the security services is South African, "a homegrown one" says Phillips, although it drew on international experience. The chapter provides:

● Greater security by the illegalisation of private armies, militias, and rogue security services. It recognises one lawful military force and a single police service.

● The people of South Africa are assured an effective oversight over the security services through a combination of Parliament, the cabinet and the exercise of presidential prerogative in certain instances. "Illegitimate interference by the security services in the everyday life of our citizens and their institutions is expressly condemned".

● The people who serve in the security services are provided with safeguards against personal abuse and discrimination under the Bill of Rights.

● In times of war, any prisoners of war, medical personnel, and other categories of people covered by instruments such as the Geneva Conventions and Protocols are assured proper and humane treatment.

Phillips argues that these provide a firm foundation for the development of "highly professional, well-motivated, efficient and effective security services" that "will act with the necessary respect for human rights and, under the instruction and supervision of the political authority, the protection of our new democracy."

# Shell. Working to make a difference.



One in a series of artworks commissioned by Shell South Africa



**Freedom through Education**  
An oil painting by Lizo Pemba

This vibrant and compelling oil painting by Lizo Pemba reflects humanity's quest for freedom - through education.

It is also the artist's interpretation of the Shell Education Service, a unique programme dedicated to enhancing the skills of thousands of our country's teachers. Through the production and distribution of teaching resources like pictures, puzzles and posters, teachers are empowered to satisfy their students' thirst for knowledge.

Through training workshops and continuous consultation with grassroots education organisations, Shell Education Service hears from teachers themselves what resources would benefit them most in the classroom - even if the classroom is under a tree or in a shack in a squatter camp.

And, finally, Shell Education Service enables those teachers denied the

best education themselves to give their pupils what they never had.

It is because we at Shell South Africa know that properly qualified teachers are the real key to stability and growth that we believe in the Shell Education Service, and the role it plays in the lives of South Africans.



Lizo Pemba, grandson of artist George Pemba, was born and schooled in Port Elizabeth. He left his home town for Zimbabwe as a result of his involvement in the struggle against apartheid. His period in exile provided him with the opportunity to do portraits of prominent ANC leaders, and of the Namibian president, Sam Nujoma. Lizo has taken part in a number of group exhibitions. His first solo exhibition in 1992 was a great success.