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# Constitutional *Talk*

OFFICIAL NEWSLETTER OF THE CONSTITUTIONAL ASSEMBLY

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Above: Sheila Camerer (National Party) exchanges views with Rev. Kenneth Meshoe (African Christian Democratic Party) during a break in the debate on the Bill of Rights in the Constitutional Sub-Committee. Right: African National Congress negotiators Willie Hofmeyr and Naledi Pandor share a lighter moment.



Constitutional Assembly Chairperson Cyril Ramaphosa and Deputy Chairperson Leon Wessels in discussion with members of the Panel of Experts, Adv Ishmail Semenya and Prof Johan van der Westhuizen.



## Constitutional Assembly committees hard at work



CA Executive Director Hassen Ebrahim with Judge Ismail Mahomed, Judge Arthur Chaskalson, Chief Justice Michael Corbett, Judge Gerald Friedman and Judge Laurie Ackermann. See page 3.

*There are still 65 issues in the draft Constitution that need to be attended to, according to a schedule presented to the Constitutional Assembly's Management Committee last week, but progress is being made in important areas.*

As the constitution-writing process gathers speed, political parties are considering matters relating to all the chapters of the draft Constitution with a view to achieving consensus. In the first few weeks, the emphasis has been mainly on the Bill of Rights and the shape of the National Assembly, the courts and administration of justice and the financial issues that run through the whole Constitution.

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Securing your *rights*. Securing your *freedom*. THE NEW CONSTITUTION

# The Working Draft reaches millions

Over four million copies of a Constitutional Talk issue containing the Working Draft of the new Constitution were printed and distributed during December and January and public submissions are being received in response to it.

Faced with the task of reaching as many people as possible with the Working Draft of the new Constitution, the Constitutional Assembly's media department undertook an unprecedented publishing exercise.

Over four million copies of a special 32-page *Constitutional Talk* edition were produced in all 11 official languages. Many of the copies were inserted in the country's major national newspapers and regional newspapers and nearly two million were distributed countrywide to householders. The massive cost of the exercise was carried by the Sappi and Mondi paper companies, which donated thousands of tons of free newsprint to the Constitutional Assembly, and a grant of over R3-million from the Swiss Government, which covered the costs of printing and distribution. The Apple Computers, used for the publication, were loaned by



President Nelson Mandela receives a copy of the Working Draft of the new Constitution hot off the press from Constitutional Assembly chairs, Cyril Ramaphosa and Leon Wessels at his home in Pretoria.

HNR Computers.

The publication contained the complete text of the draft Constitution, plus explanatory articles outlining the issues and a series of graphics aimed at making the often complex constitutional

issues accessible to ordinary South Africans.

Response to the publication was generally enthusiastic. Copies of the Working Draft are still being requested from the Constitutional Assembly's

public relations office. If you still have not received one, write to the The Public Relations Office, Constitutional Assembly, P O Box 1192, Cape Town 8000, and we will post a copy free of charge.

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## CA Committees hard at work

At the Management Committee meeting, CA chairperson Cyril Ramaphosa expressed his satisfaction with the progress made with the first three chapters of the Constitution, which includes the Bill of Rights. In meetings between the political parties, the various options were being thoroughly discussed and consensus achieved on a number of points.

But he pointed out that hard work lay ahead because ideally the Constitution should be completed by the end of March so that technical refinement and other processes could be fitted in before the May 9 deadline.

"Parties should take discussions very seriously with due regard for the deadlines we are setting," he said.

At the same time as this process of multi-party consensus-seeking is continuing, public submissions are being processed and made available to the members of the CA committees. The cut-off date for this public input is 20 February.

This is a summary of the issues that still need to be given attention, either by the political parties, the legal drafters or technical experts:

**The Preamble** - first drafts of this important opening statement are expected from the political parties in mid-February.

### Chapter 1 - Founding Provisions.

The issues listed include a description of the national territory, the national anthem and the application of official languages.

### Chapter 2 - Bill of Rights.

Outstanding issues include the clause dealing with the state's duty towards the Constitution and aspects of clauses relating to equality, life, freedom and security of the person, privacy, freedom of religion, freedom of expression, political rights, freedom of movement, economic activity, the right to strike, to lock out and to form trade unions, property, housing and land, children, education, academic freedom, language and culture, access to information, just administrative action, arrest and detention, limitations, states of emergency and the application of the Bill of Rights.

### Chapter 3 - National Assembly.

Issues still to be finalised include the composition and election of the assembly, its duration, internal autonomy, the procedure for bills, amendment of the Constitution and possible areas that cannot be amended, and assent to bills.

### Chapter 4 - The Senate or Council of Provinces.

The future of this house still has to be thrashed out.

### Chapter 5 - The National Executive.

Issues still to be considered include the future of the Government of National Unity, snap elections and votes of no confidence.

### Chapter 6 - Courts and the Administration of Justice.

Finality is required on the role of traditional leaders in the court system, inherent jurisdiction, the appointment of judges and matters relating to the Judicial Service Commission and the national Attorney General.

### Chapter 7 - State Institutions Supporting Constitutional Democracy.

Only a few details, including appointment procedures for members of these institutions, are outstanding in this section on the Public Protector, Human Rights Commission, Gender Commission and the Auditor General. There is also a proposal to be considered on a Cultural Commission.

### Chapter 8 - Provinces.

The provincial system is still to be debated, including boundaries, constitutions, government and finance.

### Chapter 9 - Provincial Competencies.

The powers of the provincial governments are still to be finally decided.

### Chapter 10 - Local Government.

The text in the Working Draft on this level of government is still to be extensively debated.

### Chapter 11 - Traditional Authorities.

Still to be debated.

### Chapter 12 - Public Administration.

This section is largely complete with only a few outstanding issues.

### Chapter 13 - Security Services.

There is general consensus on this chapter, with only the details of control of the police service still to be finalised.

### Chapter 14 - Finances.

Topics still under discussion include aspects of clauses relating to contracts for goods and services, accountability of Enterprises, appointment of members of the Finance and Fiscal Commission and the Reserve Bank.

### Chapter 15 - International Agreements.

Technical points to be considered.

Other issues to be looked at include self-determination, schedules and transitional arrangements.

# The National Assembly takes shape

*The debate over whether to put the seat of Parliament in the Constitution or not continues, but there have been some agreements on outstanding issues regarding the National Assembly.*

Parliament is one of the most visible signs of democracy, a forum where the great debates of our times are publicly conducted by elected representatives and laws passed. The Working Draft of the new Constitution has given the people of South Africa a clear picture of how the National Assembly will be structured and what its functions will be.

However, when the Constitutional Assembly reconvened in mid-January, there were still a few outstanding matters which required further attention from the political parties.

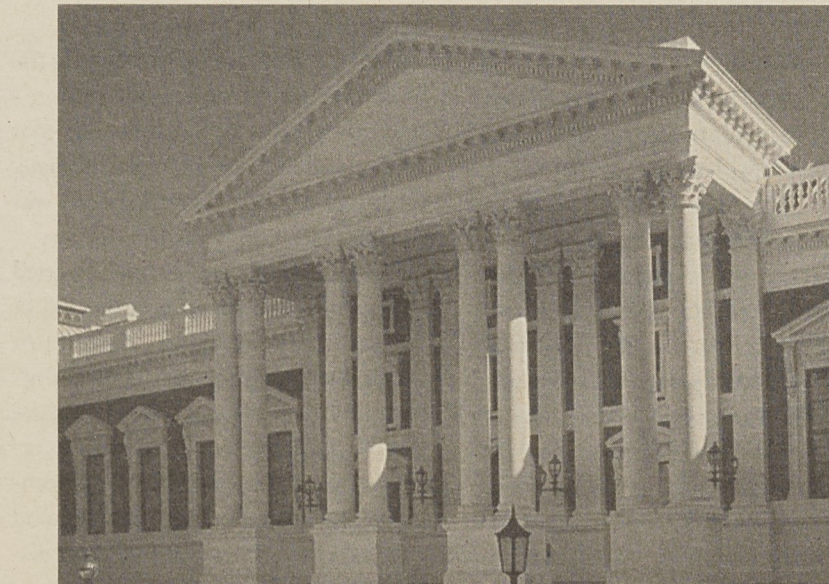
## How many MPs?

The first of these was the size of the National Assembly. The negotiators in the Constitutional Committee's Sub-Committee felt that only once an electoral system had been finalised and the exact role and composition of the second house (either a Senate or Council of Provinces) had been established, could the number of MPs be fixed. Also, because the electoral system must embrace, in general, proportional representation, the numbers may have to vary to accommodate proportionalism.

Consequently it was decided that the Constitution would say that the National Assembly should consist of not less than 300 and not more than 400 members.

## The seat of Parliament

Disagreement persists on the ques-



*The clause on where Parliament should be located has been removed from the draft Constitution*

tion of the seat of Parliament, with most parties, including the ANC, NP and Freedom Front, arguing that it would be unwise to decide this issue when there was a local election in the Cape metropole imminent. The ANC is not in favour of having it in the Constitution at all, while the NP has not finalised their position on this yet.

Only the DP and the ACDP have stuck their necks out and opted for Cape Town. However, the ACDP said that the seat should not be mentioned in the Constitution, while the DP argued that there should at least be a two-thirds majority vote in Parliament to move Parliament if this was not included in the Constitution itself.

The committee's decided to remove the clause dealing with the seat of Par-

liament from the draft Constitution and to simply note the DP proposal.

## The electoral system

No consensus could be reached on how to describe the principles of the electoral system which must, according to the Constitutional Principles, result generally in proportional representation. Various verbs discussed included "embracing", "embodying", "designed to achieve" and "resulting in", in general, proportional representation.

After several private meetings between the party negotiators it was agreed to get around the question of the particular wording by specifying the electoral system in more detail so that the description of it would not be so crucial.

## Committee system

There was also agreement on the inclusion of a clause in the section on Internal Autonomy (clause 50) dealing with the Parliamentary committees. This was that provision would be made for minority parties to participate in the legislative process "in a manner consistent with democracy".

This formulation was accepted by the NP, which had pushed for a guarantee of minority participation in the committee system, as well as to the ANC. The other parties also supported it.

## Referring bills

There is agreement that the President may refer bills to the Constitutional Court if he/she believes that they are unconstitutional. This is called "abstract review". But there is no finality on whether other mechanisms for referral of bills will be included in the Constitution. At the moment, any person or organisation can challenge the constitutionality of a law, but some political parties are arguing that a certain number of MPs should be able to refer a bill, before it is the law, to the Constitutional Court. The ANC is not in favour of this because it believes that this would interfere with the smooth working of the National Assembly and unduly burden the Constitutional Court and draw it into party politics. The matter is still being discussed in private meetings between the parties.

## Negotiators meet the lawyers



*Adv Wim Trengrove, front right, of the Legal Resources Centre, shares his views with constitutional negotiators at a consultation on the Chapter on Courts and the Administration of Justice.*

*Parties participating in the constitution-making process met with members of the judiciary and representatives of several legal organisations in Parliament last week to hold discussions on sections in the new Constitution dealing with courts and the administration of justice.*

This meeting followed similar consultations held last year. Members of the judiciary present included Justice A Chaskalson, President of the Constitutional Court, Justice I Mahomed, Deputy President of the Constitutional Court, Justice M M Corbett, President of the Court of Appeal and Justice G Friedman of the Cape Provincial Division of the Supreme Court.

Also in attendance were representatives from the Legal Resources Cen-

tre, General Council of the Bar, Association of Law Societies, Lawyers for Human Rights, the National Association of Democratic Lawyers, the Black Lawyers Association and the Hoexter Commission.

Discussions focused on access to justice, the jurisdiction of the Constitutional Court, abstract review (the referral of Bills of Parliament to the Constitutional Court when their constitutionality is in question), criteria and mechanisms for the appointment of judges, the tenure of Constitutional Court judges and the composition of the Judicial Services Commission.

Views were exchanged and several submissions were tabled.

Deliberations on the courts and administration of justice will continue on 12 February 1996 at a meeting of the Constitutional Committee Subcommittee.

# 1996 The Year of the Constitution

*A message from the  
Chairpersons*



*Cyril Ramaphosa and  
Leon Wessels*

1996 is set to be the year of the Constitution. The next few months promise to be an intense period of work for the Constitutional Assembly (CA) as we approach the last lap of the constitution-making process.

While lots of hard work is in store for the constitution-makers, we are confident of our ability to reach consensus on a final Constitution which we will all be proud to uphold.

That the CA has been able to make the progress which it has thus far is in large part due to your participation.

The many submissions which we have received from individuals and organisations on all the major aspects of the Constitution have helped the political parties to formulate their views. Every submission is considered by the CA and this has assisted in making the process of constitution-writing dynamic and exciting as we draw on the thoughts and ideas of a multitude of people.

We look forward to your continuing participation in this process as we complete this historic phase in our constitution-making process.

**Constitutional Talk is the official newsletter of the Constitutional Assembly**

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## No agreement yet on limits to freedom of speech

*The debate continues in the Constitutional Assembly about whether or not to include a specific limitation on "hate speech" in the clause guaranteeing Freedom of Expression.*

In a country where racial hate speech has been a feature of public and private life, it may be understandable that this type of behaviour should be specifically excluded when the right to Freedom of Expression in the Bill of Rights. But some parties argue that it is not a good idea to deal with hate speech in this way.

There is not one political party in the Constitutional Assembly that is in favour of people using racial, ethnic, religious or gender-based insults to stir up hatred and discrimination. The question is whether this can be controlled effectively through a specific limitation, the general limitations clause which limits all rights when it is reasonable to do so, or through ordinary laws passed by Parliament.

The African National Congress is in favour of including the ban on hate speech in the Freedom of Expression clause. In Sub-Committee debates on

the subject, ANC negotiator Willie Hofmeyr said it would send a "powerful message" that this type of behaviour would not be tolerated in a democratic society where equality and human dignity were fundamental.

There would be two tests before the limitation would spring into action - that hatred was advocated and that there was an incitement to discriminate. Both had to apply before speech was limited.

The Democratic Party is worried that a specific limitation in the Bill of Rights is not desirable. Negotiator Dene Smuts said it was "unhealthy" because future governments could possibly use this type of limitation to restrict speech the way previous governments had used anti-communism and anti-terrorism provisions to stifle dissent. "It is healthier for this type of speech to be heard and the consequences dealt with. But in an open democracy everyone has the right to express their views."

The National Party has also expressed concern about building specific limitations into clauses in the Bill of Rights. "The whole question of special limitations ought to be addressed,"

said the NP's Sheila Camerer.

Both the Freedom Front and the African Christian Democratic Party are in favour of having the prohibition on hate speech in the Freedom of Expression clause. However, the ACDP has reservations about what exactly constitutes hate speech. They would prefer to delete the second part of the sentence dealing with incitement to discrimination. "The way it stands it is pointing to a situation where religions believe different things and each one thinks it is right."

Two other issues were dealt with in the most recent debate on Freedom of Expression clause.

One was that academic freedom would cease to be a separate right but would be included in this clause. The proposal, which has multi-party support, says that everyone has the right to academic freedom, artistic creativity and scientific research. It has also been suggested that the section dealing with regulation of the media should be dealt with in the Chapter of State Institutions that Protect Constitutional Democracy and that the Independent Broadcasting Authority should be included.

## New options for equality

*After extensive talks between the political parties in the Constitutional Assembly, there is a growing consensus on the equality clause.*

When the Working Draft of the new Constitution was published last year, there were two options for the section in the equality clause where provision is made for affirmative action. Since then, the parties have moved closer together in an effort to finalise the wording of this important clause.

After much discussion, both in private talks between the parties and in open debate in the Sub-Committee, it has been decided to replace the previous two options with one supported by both the ANC and the NP. It reads as follows:

*"Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures that have as their objective the protection and advancement of persons or categories of persons disadvantaged by unfair discrimination may be used."*



*Cyril Rampahosa and technical expert Ms Sandy Liebenberg listen to constitutional expert Prof Johan van der Westhuizen.*

There is still a question mark over whether the word unfair should be included. The NP is in favour of it, while the ANC is not.

The DP submitted their own proposal with slightly different wording. "Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures protecting and advancing persons or categories of persons disadvantaged by unfair discrimination may be used."

The NP has also raised problems with the section that says that neither the state "nor any person" may unfairly discriminate against people. The party

wants the whole question of whether the Constitution should apply only between the state and individuals, or between private people, and to what extent this "horizontal" should apply, to be looked at holistically.

The DP has suggested that the phrase be removed and that a new subsection be included allowing for "reasonable legislative means to combat private discrimination".

Discussions between the political parties will continue. The CA Chairperson, Cyril Ramaphosa, commented that he was pleased with the progress being made on some aspects of the equality clause.

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## Opinion

# Hate Speech – Should it be limited by the freedom of expression clause?

## The case for allowing hate speech

By Jeanette Minnie, Executive Director,  
Freedom of Expression Institute

The Freedom of Expression Institute was born out of an alliance against political censorship in the 80s, but today it faces a brand new set of questions. And, whereas the mass democratic movement opposed censorship with one united voice, today some of our former allies are calling for severe limitations to freedom of expression.

The draft Bill of Rights proposes limiting Freedom of Expression by outlawing various forms of hate speech and propaganda for war. There is already a general limitations clause in the draft Bill of Rights which limits rights, including Freedom of Expression, so this means that even more stringent limitations are proposed.

Do political parties really think that a constitutional ban on hate speech will stop people hurling racial insults? This is South Africa, after all, one of the most racially polarised societies in the world. More profoundly, shouldn't we allow people to express their racial hatred openly? Racial hatred can only be overcome by addressing the premises that underlie racist beliefs. And to challenge those beliefs we need to debate and argue openly with each other. If we can-

not, those beliefs will not go away; they will simply fester and grow unchallenged underground. This is not the road to reconciliation.

Victims of racial insults can resort to existing common law. It is already illegal to defame someone and a racial insult is defamatory. There is protection in the general limitations clause in the Bill of Rights and in the equality clause which forbids racial discrimination. So why the overkill?

The same argument applies to limitations on the basis of ethnicity, gender and religion. Our aim should be to get these debates out in the open. Freedom of religion will be constitutionally protected, so religious groups should be much more tolerant of criticism and challenges.

A serious concern is that news reports about hate speech could be illegal. In Sweden, television journalists reporting on the activities of a racist minority party were prosecuted under a law banning racial hate speech. The documentary presented their racist views to bring it to public attention that such groups were operating. But, instead of seeing this as a public service, a Swedish court found the journalists

guilty of portraying racist hate speech. The decision was later overturned by the European Court of Human Rights. In a Canadian case, gay and lesbian activists who campaigned for a law restricting gender hate speech were the first to be successfully prosecuted under that law. So laws often have a way of targeting people they were not designed to.

The suggested ban on propaganda for war raises interesting questions. Suppose a neighbouring country invades us. Would I go to prison for expressing the view that South Africa should declare war? Surely it is the right of citizens to discuss who our country should make war against and for what reasons and for the news media to reflect these debates? For a country that was recently engaged in a liberation war, this proposal sounds extraordinary.

In the final analysis, the acid test of Freedom of Expression is to allow speech and expression which offends us in the most fundamental sense. In doing so, we are not condoning the content of that expression, but allowing it to be aired so that it can be publicly challenged.

## The case against

By Vivienne Anstey, SA  
Jewish Board of Deputies

It is the belief of the SAJBD that all South Africans who are committed to a society free from discrimination and racism should embrace the Freedom of Expression clause in the draft Constitution as well as the limitations it contains in clause 15 (2).

The tragic experiences of this country teach that racist opinions can lead to an atmosphere of race hate and insensitivity, fostering palpable acts of violence and discrimination. The lessons of apartheid South Africa and Nazi Germany suggest that spreading racial and religious hatred can triumph over free speech, rather than more free speech leading to the truth.

In a heterogenous society such as our own, and particularly in the light of the deep-rooted racial prejudices that have plagued this country for generations, and which were institutionalised and reinforced by legislation, the possibility of friction between one group and another based on racial or religious hatred is ever present.

While the new Constitution may declare acts of racism unconstitutional, racist sentiments will not simply disappear with changes in the law; in fact, legislation prohibiting hate speech or racial abuse and incitement is not the strongest or safest protector. The Bill of Rights, in its aims to promote national reconciliation and a true democracy, sets the core principles and values for a society in which the perpetrators of racist/hate speech are not tolerated and in which the victims of racism and discrimination are protected and valued. South Africans can therefore look to the Constitution as the guiding principles of a society based on the rights of individuals and groups.

Precedents around the world have been set for recently drafted constitutions to include limitations to Freedom of Expression clauses. These include the constitutions of Estonia, Lithuania, Slovakia, Kazakhstan and others.

We therefore support the limitations to the Freedom of Expression clause, with the suggested wording for the relevant phrase being "advocacy of hatred based on race, ethnicity, gender or religion" with its application to individuals, groups, and communities.

Hate speech and its propagation is a dangerous social ill against which our society should be protected. Our vision and hope is for a hate-free society based on respect for diversity, tolerance, acceptance and mutual understanding.



Colin Eglin (Democratic Party) stresses a point on the Freedom of Expression clause.

## Freedom of Expression

### As published in the Working Draft

15.

(1) Everyone has the right to freedom of expression, including-

- (a) freedom of the press and other media; and
- (b) freedom to receive and impart information and ideas.

(2) The protection in subsection (1) does not extend to -

- (a) propaganda for war;
- (b) the incitement of imminent violence; or
- [(c) advocacy of hatred based on race, ethnicity, gender or religion that constitutes incitement to discrimination.]

(3) Option 1

The state must regulate any media that it finances or controls to ensure that it is impartial and presents a diversity of opinion.

Option 2

The state must regulate any newspapers and electronic media that it finances or controls to ensure that they are impartial and represent broadly the views of society.

**For more details on the Freedom of Expression clause see page 4**

# New clause on property debated

*Discussions on the right to property now centre on a new clause tentatively proposed by the ANC in an effort to find multi-party agreement on this sensitive issue.*

In the search for common ground the three options in the Working Draft of the new Constitution have been replaced by a clause proposed by the ANC and accepted as a starting point for negotiations by the NP and the DP. The PAC still believes that there should be no property clause in the Constitution.

The proposed clause reads as follows:

1. The state shall respect property and foster conditions which enable people to gain access to property on an equitable basis.
2. The nature and content and limits of property shall be determined by law. No one may be deprived of property except in accordance with a law of general application (or, no one may be arbitrarily deprived of property).
3. Property may be expropriated only in terms of a law of general application -
  - (a) for public purposes or in the public interest which includes

land reform,  
 (b) subject to the payment of compensation within a time period and in a manner as agreed or decided by a court.

4. When a court decides the amount of compensation, timing or manner by which payment must be made, the court must determine an equitable balance between the public interest and the interest of those affected, having regard to all relevant factors, including -
  - (a) the current use of the property
  - (b) the history of its acquisition
  - (c) its market value
  - (d) the ability of the state to pay
  - (e) the level of state and private investment in the property; and
  - (f) the purpose for expropriation.
5. This section shall not invalidate reasonable legislative and other measures that are designed to bring about land reform to redress the results of past discrimination.

In a debate in the consensus-seeking Sub-Committee of the Constitutional Committee, the ANC's Ms Baleka Kgositsile said the ANC would

also prefer not to have a property clause but was trying to find other parties on this most divisive issue.

Mrs Sheila Camerer, for the NP, said "the goal was to secure property rights in a way that does not impede land reform". She raised the possibility of having a separate clause relating specifically to land which would deal with access to land, restitution and tenure reform.

She said that, while the NP favoured a statement of the right itself, the party was happy with clause 1, but in clause 3 she would want to see "just and equitable" compensation. The NP would also be happy with 4 (e) because this would mean that the level of state investment could be considered when compensating local authorities for property which was taken for land reform. However, the party was "not keen" on including the state's ability to pay as a factor and said that market value should be the overriding principle.

Democratic Party negotiator Dene Smuts said the state should "guarantee" and not just "respect" property, and that the concept of arbitrariness in clause 2 was very important to her party.

The ANC's Prof Kader Asmal said there was a fundamental difference

between respect and guarantee, and the DP's Colin Eglin asked exactly what this difference was? Willie Hofmeyr of the ANC said that in the modern world, with issues like rezoning and environmental rights, it was difficult to guarantee absolute ownership.

Smuts agreed that the right to property was not absolute, but she said the institution of property should be guaranteed. The aim of the section was really to regulate the circumstances under which property could be expropriated and the compensation to paid, and to prevent arbitrariness.

Kgositsile questioned the definition of arbitrariness. Who would define it and on what basis? "The ability of the state to pay," she stressed, "lies at the heart of whether the government will be able to pursue a policy of land reform or not. This must be a factor, among other factors. It is non-negotiable."

Negotiators from the political parties agreed, however, that when they looked at the "cold, hard words on a piece of paper", they were not that far away from each other on this issue. It was agreed that 23 February would be set aside for a multi-lateral consultation with the constitutional experts present, to try and finalise the property clause.

## Still no agreement on life and labour in the Bill of Rights, but talks continue

*Political parties have reported no progress in discussions on the death penalty in the right to life and on the right to strike and lock-out in the clause on labour relations.*

One of the major areas of disagreement still remaining in the Bill of Rights is in the right to life clause. The National Party is sticking to its position in favour of allowing the death penalty to be reinstated, with support from the ACDP, while the other parties are not in favour of the death penalty.

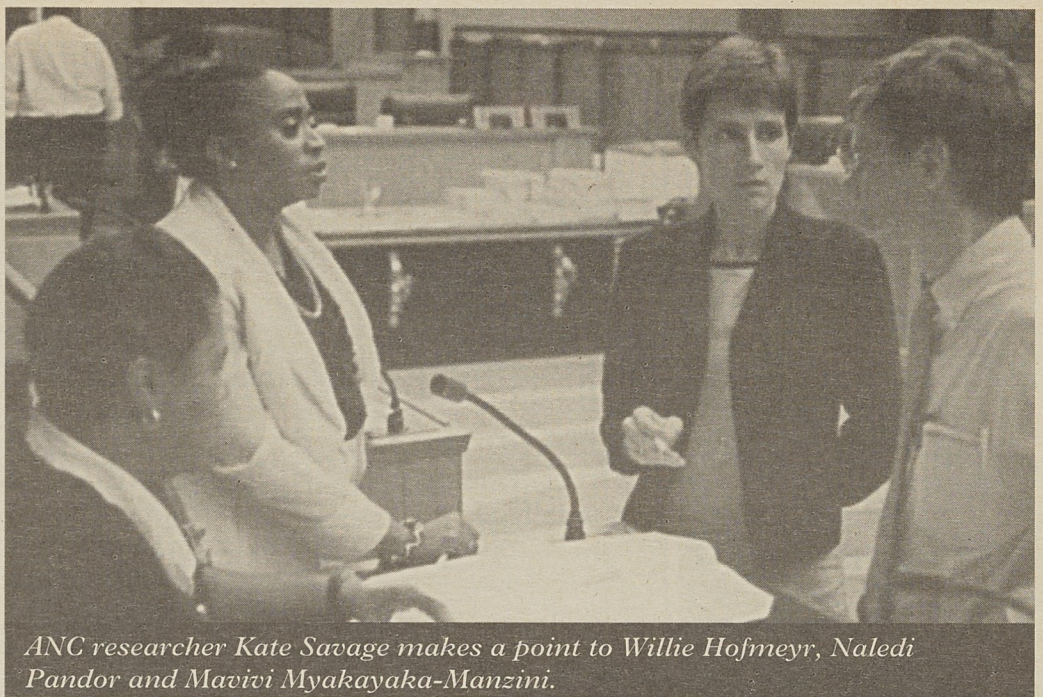
After the deadlock was reported, Rev Kenneth Meshoe of the ACDP said that the Constitutional Assembly should "listen to the voice of the ordinary people" who wanted the death penalty back.

ANC negotiators said that "playing on the emotions of the people" was not the best way to handle the issue. Ms Mavivi Myakayaka-Manzini said that crime had to be approached in a

"holistic way" and asked whether South Africa wanted to be a society that condoned murder by the state? There was a spontaneous round of applause from observers in the public benches.

The NP cited the "very large majority" of people who had sent in submissions and petitions to the Constitutional Assembly. The party did not support including the death penalty as such in the Constitution, but favoured allowing legislation to be passed in Parliament reinstating the death penalty if the government of the time and the people wished to have it.

The PAC's Mr Richard Sizani said the death penalty had be considered in its context. "Let us not forget the use of the death penalty in this country in the past and how it has been applied," he commented.



ANC researcher Kate Savage makes a point to Willie Hofmeyr, Naledi Pandor and Mavivi Myakayaka-Manzini.

Deputy Chairperson Leon Wessels halted the debate saying that it was obvious that there were "deeply held convictions" on the issue and it was unlikely to be resolved in this consensus-seeking committee.

The other issue where there is no progress reported is the question of the right of employers to lock out workers. After private discussions between the

parties, the position is that the NP and the DP want the right to strike and the right to lock out to be both included in the Constitution or deleted. The ANC is not willing to compromise on its position that the right to strike should stay, but that the right to lock out should not be included.

Discussions will continue.

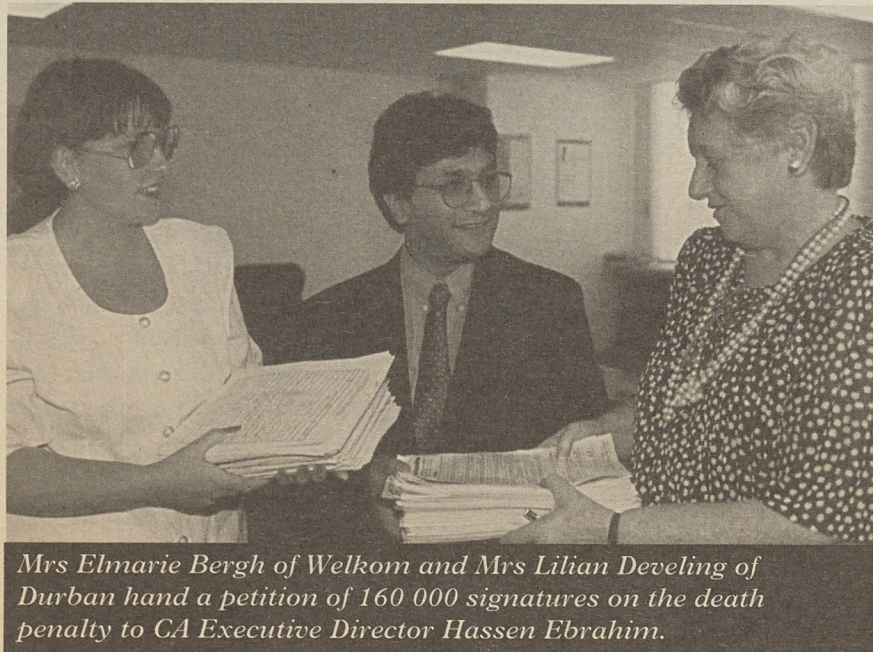
# Submissions flow in

Over 1500 submissions have been received from members of the public and organisations. An analytical team from the Constitutional Assembly is processing them for consideration by the political parties.

Since the publication of the Working Draft at the end of last year, submissions have been reaching the Constitutional Assembly on a daily basis. Four sets of petitions have also been received, with more than 160 000 people supporting the death penalty and 2 867 the right to own firearms. A further 149 people were against including sexual orientation in the Right to Equality clause as a ground for non-discrimination, while 203 people support the idea of a secular state where no one religion is favoured above another.

The organisations making submissions range from the Ministry of Housing, the African Ministers Churches and Amnesty International to the Integrated National Disability Strategy, the National Preparatory Committee for Beijing, Project Vote and the South African Constitutional Property Rights Trust.

Here are some interesting extracts from submissions received:



Mrs Elmarie Bergh of Welkom and Mrs Lilian Develing of Durban hand a petition of 160 000 signatures on the death penalty to CA Executive Director Hassen Ebrahim.

## From callers to the Telkom Constitutional Talk-line

The Telkom Constitutional Talk-line has received over 10 000 calls from the public. Apart from listening to the latest information from the Constitutional Assembly, there are also four interesting topics taken from the Working Draft. The service is available in a choice of five languages - English, Afrikaans, Xhosa, Tswana and Sesotho.

Callers can also make leave messages on the line. Hundreds of callers have been requesting copies of the Working Draft of the new Constitution and dozens of submissions have been made.

This is what some of our callers have been saying:

*"I want to wish you good luck. The Constitution of our country is clear and understandable."*

**Mr Mahlangu,  
Johannesburg**

*"I am concerned about this question of the death penalty. My proposal is that if someone kills somebody, they must not be hanged, but their hands must be chopped off."*

**Nelson Marindi,  
Pretoria**

*"I wish to support provincial autonomy, free from central government interference, based on the United States model, so that we can have power from the bottom up and not from the top down."*

**Mr Davis,  
Claremont**

*"I would like all the police to have a chance in the constitution-making process. They must be allowed to make suggestions because without them the crime is going to escalate."*

**Mr Kulati,  
Mdantsane.**

*"I am very pleased to see that reproductive rights are included in the draft Constitution. A lot of women are dying from poor paediatric care and from the denial of certain obstetric care. Reproductive rights are basic to the health of women in South Africa. I congratulate you on this and hope it will be included in the final Constitution."*

**Ms Jones,  
no address given.**

*"The Constitution guarantees a right to life but how do you implement this guarantee for the ordinary citizen, the victim or potential victim of criminal assault? It can be done solely by making the individual responsible for his own defence, and this can only be achieved by a constitutional guarantee for the citizen to carry, own and use firearms for defensive (and recreational) purposes."*

**N C Cutler,  
Selcourt.**

*"I write not as a member of any religious or pressure group, but claim solely to represent the views of the silent majority. While it suits the missionary zeal of religious denominations to postulate the dictum "sanctity of human life", it seems not generally appreciated that this only holds true when the survival of the human race is under threat. The greatest threat is overpopulation. The new Constitution should not accentuate the preservation of human life to the detriment of freedom of choice. For example, the right to life should include the right to death (euthanasia), freedom to abort a foetus must be respected and the death penalty should be allowed."*

**J Dredge,  
Garsfontein.**

**Remember submissions  
close on 20 February  
1996.**

*"I would like that clause 8 (2) be retained in its present form to protect the rights of gays and lesbians same as other minorities in a democratic society."*

**C M Sanders,  
Northlands**

*"IsiSwati must not be an official language. The very few people who speak it are not South Africans and those that are probably have dual citizenship with Swaziland. To allow such an 'imported' language would be taking language rights too far."*

**Siyabulela Xhanti Mapoma,  
Umtata.**

*"I wish South Africa to be called Nguni Republic and for the provinces to be called by indigenous African names. As we are a black majority government, we want one or two indigenous language. I think we must use Zulu and SeSotho. One nation, one national anthem, Nkosi Sikelel' iAfrika."*

**Glenton Vusi Maribuke,  
Egoli**

*"It seems to me that the wording of the Working Draft is still unduly vague in regard to the circumstances in which the rights in the Bill of Rights can be limited. May I ask the Constitutional Assembly to look again at the need to recognise that all members of society have responsibilities as well as rights."*

**J P McDonagh,  
Benmore.**

## From the CA's postbag

The public relations office at the Constitutional Assembly receives many letters from the public offering comments on the constitution-making process and requesting information and help on a wide range of subjects, from customary marriages to prisoners' rights. Public Relations Officer Leonora de Souza and her assistant Sibongiseni Hintsho respond to and assist as many as they can, referring the writers to the relevant government departments or organisations when necessary.

Here are some interesting excerpts from recent letters:

*"I would like to thank the Constitutional Assembly for the wonderful work that you have done for the nation. It is not an easy task to draft a constitution, especially in South Africa because of the past governmental problems. But do not allow people to waste your time. Some people do not like the changes in our country. That was shown by the withdrawal of some parties from the Constitutional Assembly. Please send me a copy of the draft Constitution so that I can read and understand my rights. Masakhane sindawonye, this is our land South Africa. Keep up the good work."*

**Rev. Banjo Amalinze the  
Cat, Bergville.**

*"Thank you for the fine newspaper that you supply to us. It is not just a free copy but an important one. Constitutional Talk is understandable and straightforward. After receiving a copy, I pass it on to my sister and she agrees that the paper is enjoyable. I have learnt a lot about the new Constitution and am proud of having it sent to me every month."*

**Miss T M Mogazelwa,  
Mqhweiereng.**

**Write to the CA at;  
The Executive Director,  
P.O. Box 1192, Cape  
Town, 8 000**

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# Education workshops in full swing

More than 10 000 people have attended 50 Constitutional Education Programme workshops around the country in the last week of January. In each province, CEP provincial co-ordinators are liaising with communities and organisations to hold the workshops at which constitutional issues and the Working Draft of the new

## Die Weskaap

Die volgende aangeleenthede is tydens die sewe werkwinkels wat in die Weskaap gehou is, bespreek: die setel vir die Parlement, die privatisering van Mosgas en hatige toesprake. Die werkwinkels is deur 403 mense bygewoon. Die meeste van die kwessies wat tydens die werkwinkels geopper is, het basiese lewensnoodsaaklikhede soos werk, behuising, grond, gesondheidsorg en gemeenskapsdienste aangeraak. Daar was egter ook besprekings wat met die politieke sisteem verband gehou het. Een van die groepe het die magte van

die provinsies aangeraak en het federalisme verwerp. Die groep was ook gekant teen Lede van die Parlement wat van party verander sonder om hul setels prys te gee. Die voorgestelde reg van werkgewers om werknemers uit te sluit, is verwerp. Groepe uit twee werkwinkels het Kaapstad as die setel vir Parlement ondersteun. Die mening is verder gehuldig dat gesinsgeweld verbied moet word en dat meer ondersteuning vir slagoffers van geweld gebied moet word. Die mense was egter verdeeld oor kwessies soos die doodstraf en aborsies. Sommige was van mening dat

hatige toesprake verban moet word, terwyl ander van mening was dat vryheid van spraak nie beperk moet word nie. Daar was ooreenstemming dat die Grondwet toegang tot grond moet vervat. Mense wat deur geforsierde verskuiwings van hul grond verwyder was, moet die grond terugkry en voldoende daarvoor vergoed word.

## Die Noordkaap

Tydens die twee werkwinkels wat in die Noordkaap gehou is, was daar oorweldigende ondersteuning vir die beindiging van die Regering van Nasionale Eenheid en 'n oproep vir 'n totaal nuwe landslied. Die mense het gemeen dat die mag in die hande van 'n sentrale regering moet berus in teenstelling met mag in provinsies. Die stemgeregtigde ouderdom moet na 16 en ouer verander word. Lewendige debat is gevoer oor die toekomstige setel vir Parlement met ondersteuning vir Kaapstad, Pretoria en Kimberley as moontlikhede. 'n Mening is gehuldig dat die groote van die Nasionale Vergadering van 400 na 300 LPs gesny moet word. Daar was geen ondersteuning vir die insluiting van akademiese vryheid, die reg om werkers uit te sluit, regeringsbefondsing vir skole wat op kultuur gebasseer is of 'n eiendomsklousule totdat grondhervorming voltooi is nie. Oor die algemeen wou die mense die doodstraf terug he, met ondersteuning dat dit slegs in sekere situasies toegelaat moet word. Ondersteuning vir aborsie is uitgespreek.

## Gauteng

Dithensano tse supilent tsendineng di tshoaretswe propensing ya Gauteng di ne kenetshe he batho ba dinete tse tselelang (6000) Boemo bo tiileng ba beile, le mehoto e thata tgahlanong le bosenyi, hape le ho kgutliswa ha kahlolo ye lefy, di tle tsa tshetswa hahdo ho tse ngata tsa dihoano tse ileng tsa tsharwa. Batho baile ba thshetsa ho bogellwa ha puo, tikclo ya ho teraeka le hore Palamente e nto iswa Gauteng. Dikopano tsena bo di a ka tsa utlwana hore dipropense di lokela ha pumana maatla a kaanang le hore ho tasha mpa ho dumelwhe. Ba bang ba ntshitse mnikulle a hore sexual orientation e tlosue mo melang wa (equality clause), ba ba tal ditsela tse kaone tsa ho thala matlo le lepatshe le o le nang le melao e tsitsitseng ya ho gebela le ditsela tse koane tsa maphelo le thuto. Dintlha tse ding tse ileng tsa



Ayandi Royi from the Kayamandi Civic Organisation called for strong central government at a workshop held last week.

buiwa diahlokeho yo bopanesa ba setshaba hope le tsebiso ka na ditokelo tsa molaotseehe le ditsela tsa ho di sirdetsa.

## North West Province

Go tshwere peal kopano e le nngwe e e neng ya tselwa ke batho ta le Macomeamakedi-thano (25) mo profinsing enc. Dintlha di le tharo di'netsa tsesinngua gone e nne tsone tse go tla buiwang ha tsone. Ya ntlha e ne e le katlhola ya loso, eo bontsi jwa batho bo neng bo rata fa e ka bosetswa, ya diragatswa. Kgant to ga diteme/dipuo e he yo sokasokwa ka botlalo. Botho bo ne ba re go nna le dipuo dile lesomengwe (11) go ka se dire mme puo ya seismare (English) ke yone e tshwanetseng go ma ya semmuso. Ba ne ba tlaleletsa ka gone. Puso ya mothakanelwa e ishwanetse go dinsa leleme la seisemane le pou e e buiwang mo profinsing eo fa e golagana (communicate) le dipropinsi. Ga go ake gwa hna le tu melelano mabapi le pina ya setshaba.

## Northern Province

Go ile ga swaiwa di workshop tse polomoka ya ye gomme bohlokotsebe, thuto le gore sehlapa e be cono sesomiswago semmuso e bile tsono ditlha tseo tseueletego ele tsona tse dibohlokwa kudu gareng ga tieo di ilego tsa ahlaahlwa. Kahlolo ya boima, bail fela maago ga go latopatswa le tshweletso ya dihlalsi e bile tsona ditshisingo tseo di ilego tsa piwa tuckgo ye kgolo dikopano tse supago go tse lesometse tseo di ilego tsa swarwa. Modikopanong (workshop) tse lesomefee kamokajbontshi bja batho bao ba bego ba le apna ba be kwana le go simiswaga kahlolo ya lehu. Kitaba tsa buuto tsona di ile tsa hlagiswa dikoponong tse seswai (8) kimoka. Go ile go sisnwa gone gohlongwe molao wo elego wona wootla gapen moya moetlo ua goralatuupo. Gape go ile qwa ba ie thekgo ye ntshi ditabeng tse di laklago: gore dinamelwisa tse bamitwana le ba rutisi ba tlogo go di somisa e be cse di lepelwang ke mmuso; lenaneothuto le le kgethegilego la taitho ba bagole; gere thuto ditilong tse nnyane le tse di phagamego.

## Things people looked at on our Internet site



Total searches, on the database	49.2%
People looked at the third working draft	20.4%
People looked at draft text	12.8%
Accessed other sites from our home page	8.0%
People looked at our annual report	6.3%
Studied the process so far	3.2%

## Surfing the new Constitution

Since September, an average of 53 people a day have accessed the Constitutional Assembly's home page on the Internet, with requests coming from as far afield as the United States military, Singapore, Zambia, Japan, Iceland and Slovenia.

All you ever wanted to know about the constitution-making process is at your fingertips if you have a connection to the Internet system of worldwide computers. There is a copy of the Working Draft of the Constitution, plus articles and other information on the process, minutes of committee meetings and a massive searchable database of all the submissions that have been made to the Constitutional Assembly.

In the last four months, 7238 people have made 56798 requests for information. The highest number (14 724) come from within South Africa, but that's closely followed by over 10 000 from the United States commercial sector and nearly 6000 from American educational institutions. There was also keen interest from Australia, Canada, Germany and Britain.

The CA's home can be accessed on, <http://www.constitution.org.za>. It is regularly updated.

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