

'White male obstacle' to rights bill

By Michael Sparks

The existing make-up of the judiciary — being predominantly white and male — was a stumbling block to any future bill of rights, Chief Justice Michael Corbett said in Potchefstroom last week.

Opening a conference on the interpretation of a future bill of rights for South Africa at Potchefstroom University, Mr Justice Corbett said this had prompted a Law Commission report to recommend a constitutional chamber, which would help overcome the problem.

There is no "quick and ready solution", he said. "It will inevitably take time before suitably qualified men of other race groups and women of all race groups are available for judicial appointment. I may say this is not a problem which is unique to South Africa."

But he added that while the need to diversify the Bench was more urgent in South Africa, "the dangers of an undue lowering of standards are manifest".

"It harms not only the administration of justice in general, but also the person concerned himself if he finds, and others find, that he is not up to the job."

Mr Justice Corbett said there appeared to be general consensus among the parties at Codesa concerning the principle of a bill of rights and many of the provisions it should contain.

He spoke of three advantages of a bill of rights in South Africa, and said these became clear in the light of

what had happened elsewhere in the world.

"The first is that our bill of rights is a modern instrument fashioned by the South Africa of today. We will thus, to begin with at any rate, be spared the fundamental differences of approach which have divided constitutional lawyers in the US in regard to an instrument that is in substance 200 years old," he said.

The second advantage was that those entrusted with interpreting the bill would have "an instrument which sets forth specifically and in some detail the various rights and freedoms which are to enjoy protection".

The third advantage stemmed from the late creation of a bill of rights: "Modern bills of rights have much in common, and it seems likely that many of the provisions of the future South African version will be founded upon, or at least bear close resemblance to, corresponding enactments in other parts of the world," Mr Justice Corbett said.

The Law Commission report recommended that all citizens of the country over the age of 18 be allowed to vote, regardless of race or colour: "a universal norm, without which the bill will have no credibility or legitimacy".

The South African Government had not reacted favourably to notions of a bill of human rights nearly two decades ago because "the policy of apartheid represented the antithesis of the fundamental values normally enshrined in such a bill of rights", Mr Justice Corbett said.