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Progressing on difficult matters

The Constitutional Assembly (CA) is forging ahead and making substantial progress, but some matters are proving rather more difficult to settle than they might sound.



CA Chairperson, Cyril Ramaphosa, and his deputy Leon Wessels guiding crucial debates in the Sub-Committee

As the process rolls on, CA members and observers are learning that even those subjects that seem easier to resolve are in fact complex if all factors and views are taken into account.

It is also dawning on many that this is a different process to the one at the World Trade Centre, where every meeting of the Constitutional Committee strived to end with a deal or two being struck. The CA process is about a dialogue towards a national consensus on the new Constitution before any such deals can be sealed.

One difficult matter is the distribution of powers and functions between the national and provincial parliaments and cabinets. But the CA is calmly exploring ways to ensure that a real national consensus is reached.

Two draft constitutional texts have already sat on the Sub-Committee's desk, replacing three earlier ones that had been put by Technical Advisers as options. The last draft seemed to marshal members of the CA charged with exploring consensus on this matter to some form of a central point.

Recognising the difficulty of this matter, CA chairperson, Cyril Ramaphosa once described it as the "fly-

wheel" of the process, adding that settling this matter would make the rest of the process a lot easier.

Hundreds of submissions have been made by political parties, organisations and individuals, yet more are needed in order to multiply the range of options.

At a Sub-Committee meeting this week, Ramaphosa asked political parties to make a few more submissions on the role of the second house of parliament - presently known as the Senate - in the passing of legislation that has a bearing on provincial governments.

He also asked them to make submissions on the issues of framework legislation, lists of the areas that will fall under the jurisdictions of the national and provincial governments. The parties will also make submissions on the kind of powers and functions that should be attributed to national and provincial executives.

Conscious of the work that has to go into this subject, Ramaphosa has warned against parties putting what they perceive to be their bottom lines.

In his usual humorous manner, he asked ANC's Professor Dirk du Toit not to use the term "we will never agree to this" when approaching a discussion of this nature.

"We are exploring the various ways," he said.

See draft text on page 2

Debate on national symbols, language starts

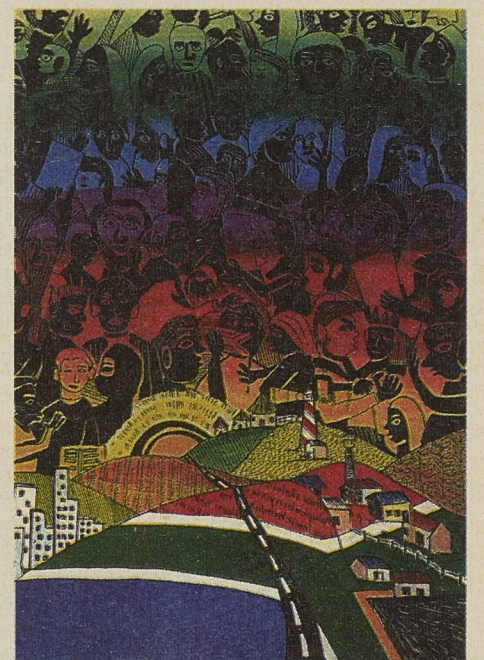
Judging by the number of public submissions made to the CA, there is enormous interest in the new flag, anthem, official languages, symbols and seat of government. Consideration of these issues began in the Constitutional Committee last week.

When members of the Constitutional Committee arrived in the Old Assembly Chamber of parliament, they came armed with hefty volumes containing summaries of all the submissions made to the

CA and a transcript of the lengthy public hearing on the issues considered by Theme Committee 1. Submissions included petitions by almost 700 000 people to keep parliament in Cape Town and by more than a million people for Afrikaans as an official language.

It was with this huge level of public interest in mind that the negotiators from the six political parties - the ANC, NP, DP, PAC, ACDP and the Freedom Front - began to discuss the issues.

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Debate on national symbols

from page 1

However, final agreements are a long way off because some parties have not yet made their positions on some sensitive issues.

At the outset, the PAC withdrew all its previous submissions made to the Theme Committee. Richard Sizani said the party would be making new ones as some of its ideas had changed.

Language

In the Theme Committee report it became clear that the political parties fell into two camps. There were those parties (the ACDP, ANC and the NP) who wish the present system of 11 languages with full and equal status being retained, while allowing the national and provincial governments to explore ways of using just a few of these as official means of communication. They emphasise multi-lingual awareness and education as means of promoting cultural enrichment, human dignity and national unity.

The Democratic Party and the Freedom Front favour constitutional recognition of all 11 but say that, realistically, only some should be the languages of government. They argue that it is better to develop and promote those used most often (the DP suggested the four most commonly used in the National Assembly) than to recognise all 11 and end up using only one or two.

This question was one of only two where draft text was proposed for consideration (see page 3).

In the CC debate, the issue of sign language being recognised as an offi-

cial language was discussed. The NP's Pieter Marais said he had been informed by academics from the University of the Witwatersrand that four million South Africans used sign language and that there was "immense economic benefits" in recognising it.

On the question of Afrikaans, Marais drew attention to provisions in the interim constitution that said the status languages had previously enjoyed should not be diminished.

"This is an extremely sensitive issue. We don't want to start a new language struggle in this country. It could easily happen," he said.

Name of the country and national territory

All parties, except the PAC, support the retention of the Republic of South Africa as the name of the country. However, the best way to describe the territory was discussed at length. The draft text suggests that the boundaries shall be those recognised on 27 April 1994.

Several CA members felt this was too vague. Others felt that the nine provinces should be named. The Freedom Front's Dr Pieter Mulder, leaving the way clear for the addition of a possible Volkstaat, said this was impractical.

The matter was not taken further.

The national anthem

At the moment, both Die Stem and Nkosi Sikelel' iAfrika are sung as part of the official anthem. This, as CA deputy chairperson Leon Wessels pointed out, made our anthem over five minutes long compared with an international average of one and a half.

In submissions to the Theme Com-

mittees, four parties wanted to keep both anthems in some form or other. The ACDP favours the full version of both, while the FF wants "the two anthems" without specifying the length. Both the DP and NP support the shortened combined version produced by Professor Mzilikazi Khumalo.

The ANC has not taken a position and the PAC will be making a new submission on the question.

Wessels commented that Prof Khumalo's version had not been publicised enough and he doubted that all the CA members were familiar with it. He asked that copies be circulated, which they were. After the debate was concluded, and CA members gathered around the snacks, Ramaphosa and Wessels entertained them to a lively, unaccompanied rendition of this combined anthem.

The flag

South Africa has learnt to love the flag chosen by a committee of two (Ramaphosa and Roelf Meyer) last year. The vast majority of public submissions favoured keeping it and none of the political parties have suggested an alternative. Although no formal agreement was reached, fans of the flag can relax because there's unlikely to be a change.

The coat of arms

Debate in the CC sharpened the minds of the negotiators. Many of them did not seem to be familiar with it and only two parties - the ANC and the DP had submitted to the Theme Committee that it should be changed.

Several members rattled the change

in their pockets and pored over the coat of arms on the back of the coins. Ramaphosa looked confused and was referred to the wooden engraving above his head.

"It's got to go," concluded the PAC's Sizani in an outraged tone. "It's an anachronism."

There was some debate about whether the four quarters on the shield represented the old provinces or not. When the NP explained that these represented the old republics before Union in 1910, the matter was clinched. But what would replace it, who would design it and how long would it take?

Sensibly, the DP's Colin Eglin pointed out that it would be impossible to put a picture of it in the Constitution anyway. He said that all that was needed was a clause saying there should be one.

This was accepted and the CA Directorate was charged with the task of arranging for a committee to consider a new coat of arms that would be acceptable to all South Africans.

The seat of government

Since none of the parties appear to have reached a position on this sensitive matter, debate was postponed. Some of the parties told the Theme Committee that cost-effectiveness and national unity should be considered when making the decision.

The documentation included the bids by four cities - Pretoria, Midrand, Mangaung (Bloemfontein) and Cape Town.

This tentative beginning is just the start of what is likely to be one of the most hotly debated items on the constitutional agenda.

Draft text on National and Provincial Legislative and Executive competencies

Legislative authority of the Republic

1. The legislative authority of the Republic vests in Parliament, which shall be competent to make laws in terms of this Constitution on any matter including matters falling within the functional areas specified in Schedule 1

Constitutional Principle (CP) 16, CP 18 .1, CP 19.

Legislative authority of provinces

2.(1) The legislative authority of a province vests in its provincial legislature which shall be competent to make laws in and for its province in terms of this Constitution (CP 16, CP 18 .1, CP 19).

(2) A provincial legislature shall have the competence to legislate on any matter which falls within a functional area specified in Schedule 1.

Framework legislation

3.(1) Framework legislation comprises Acts of Parliament in terms of which principles or standards are laid down to ensure uniformity across the nation (CP 21.4) and shall apply equally in all provinces and shall empower provincial legislatures to make laws for the achievement of the objectives set out in the framework legislation.

(2) Parliament is competent to establish framework legislation only regarding the matters specified in Schedule 2.

(3) Framework legislation shall be binding upon all legislatures and shall be implemented in a province in accordance with the laws of the provincial legis-

lature.

(4) Should a provincial legislature fail to implement framework legislation within a reasonable period of time, Parliament shall be competent to implement such legislation until the provincial legislature complies with its duty in this regard.

Necessary ancillary powers

4. The legislative competence referred to in sections 1, 2 and 3 shall include the competence to make laws which are reasonably necessary for or incidental to the effective exercise of such legislative competence (CP 21.8).

Conflict of laws

5.(1) In the event of a conflict between an Act of Parliament and a law of a provincial legislature with regard to any matter which falls within a functional area specified in Schedule 1, the Act of Parliament shall prevail over the provincial law where the elements of the Act that are in conflict with the provincial law are necessary for -

- (a) the maintenance of essential national standards;
- (b) the establishment of minimum standards required for the rendering of any services to the public mentioned in the Act of Parliament;
- (c) the maintenance of the economic unity of the Republic;
- (d) the maintenance of national security;
- (e) the prevention of unreasonable action taken by one province which is prejudicial to the interests of another province or the country as a whole (CP

21.2); or

(f) the determination of national economic policies or the protection of the common market in respect of the mobility of goods, services, capital and labour (CP 21.5);- and the Senate has consented to such Act.

(2) Notwithstanding subsection (1), in the event of a conflict between an Act of Parliament and a law of a provincial legislature with regard to any matter which falls within a functional area specified in Schedule 1, the provincial law shall prevail over the Act of Parliament if the provincial law deals with the specific socio-economic and cultural needs and the general well-being of the inhabitants of the province (CP 21.6 (b), CP 19).

(3) In the event of a conflict between an Act of Parliament and a law of a provincial legislature with regard to any matter which falls within a functional area specified in Schedule 1, which cannot be resolved by a competent court on a construction of this Constitution, precedence shall be given to the Act of Parliament (CP 23).

Integrity of provinces

6. An Act of Parliament shall not empower an organ of state to encroach upon the geographical, functional or institutional integrity of a province (CP 22).

Executive authority of the Republic

7.(1) The executive authority of the Republic with regard to all matters falling within the legislative competence of Parliament vests in the President, who

shall exercise and perform his or her powers and functions subject to and in accordance with this Constitution.

(2) The President may, with the concurrence of the provincial Premier or of a local government, appoint such Premier or local government as his or her agent to perform a specified function within his or her competence in terms of subsection (1) (CP 19).

(3) The President may, with the concurrence of the provincial Premier or of a local government, delegate to such Premier or local government the performance of a specified function within his or her competence in terms of subsection (1) (CP 19).

Executive authority of provinces

8.(1) The executive authority of a province vests in the Premier of the province, who shall exercise and perform his or her powers subject to and in accordance with this Constitution.

(2) The Premier may, with the concurrence of the President or of a local authority within the province, appoint the President or such local government as his or her agent to perform any specified function within his or her competence in terms of subsection (1) (CP 19).

(3) The Premier may, with the concurrence of the President or of a local government within the province, delegate to the President or to such local authority the performance of a specified function within his or her competence in terms of subsection (1) (CP 19).

It's your right to decide your Constitutional rights

THE NEW CONSTITUTION



PROPOSED DRAFT TEXT

Languages

Afrikaans, English, isiNdebele, Sesotho sa Leboa, Sesotho, siSwati, Xitsonga, Setswana, Tshivenda, isiXhosa, isiZulu and sign language will be South African official languages.

- 1) Every person shall have the right to communicate with government, parliament or court in any of the official languages.
- 2) With due regard to 1) above, the National Government may designate certain official language/s as languages of communication based on practical demands.
- 3) The Provincial Government may designate certain of the official languages, based on the demographics and practical demands of languages in the province, as languages of communication.
- 4) Conditions shall be created for the development and promotion of the equal use and enjoyment of South Africa's official languages.

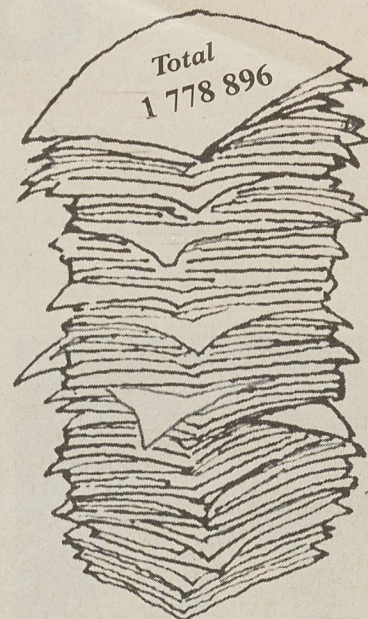
Name and National Territory

- 1) The state shall be called the Republic of South Africa.
- 2) The national territory of the Republic shall comprise the areas which formed the Republic of South Africa on 27 April 1994, including all islands and waters deemed to be part of such areas.

Submissions barometer

The CA has been flooded with submissions from individuals and organisations. These submissions have formed the basis of reports submitted to the Constitutional Committee. This process is reflective of the truly democratic and inclusive nature of the constitution-making process.

The total at present is 1 778 896 written submissions (this excludes oral submissions). This is an increase of 15 521 since the last issue of *Constitutional Talk*.



What the draft constitutional text says about ...

Language



It's your *right* to decide your *Constitutional* rights

THE NEW CONSTITUTION 

On the outside

The Inkatha Freedom Party withdrew from the Constitutional Assembly earlier in the year. In this article, IFP Senator Ruth Rabinowitz puts forward the party's opinion.



Ruth Rabinowitz

Those who claim that the IFP is advocating a secessionist constitution for KwaZulu-Natal are either misinformed or deliberately misleading the public. Since establishing the Buthelezi Commission in 1980 and first proposing a federal solution to South Africa's prob-

When the IFP refused to participate in the election it was concerned that in the CA, the ANC would use its majority to thwart a federal constitution.

lems, Dr Buthelezi has consistently advocated classical federalism. The IFP stance at Codesa and Kempton Park, its submissions to the Constitutional Assembly and its proposals for the province of KwaZulu-Natal, reflect the same federal aspirations.

Shared rule

Behind this lies the belief that with the multiplicity of cultures, societies and economic groupings in South Africa, peace will best be achieved if groups are free to express their differences. People of all races, regions and religions will then be united peacefully in their diversity. This would necessitate a political system which limits central government power and provides for a combination of self-rule by the

provinces and shared rule between the provinces and the centre. It allows people to retain their sovereignty by vesting power at the lowest level capable of administering it, developing it up to the next level of government only when it is in compelling public interest. It allows civil society to be an area independent of government control and for competing factions of society to be a check on government power.

Federal system

Far from preventing national unity and promoting balkanization, the IFP believes that respect for differences in the nine provinces will foster national unity, while catering for social, cultural and economic pluralism within each province. South Africa will be a single country, in which communities will retain their sense of identity.

This will remove the stresses and tensions that are emerging as a result of the ANC's enforced unitary policies. With the stated goal of national unity and correcting the ills of the past, laws are being introduced to enforce uniformity on all the citizens of the country. This engenders tension and resentment as people see their cultures eroded and their autonomy undermined.

The interim constitution grants concurrent (shared) powers to the provinces and the central government but provides no less than 15 reasons why the centre can override the provinces. It is neither simple nor precise and leaves provinces uncertain about the exact extent of their competencies. The result is a great deal of confusion and inaction; the opposite of the desired goals of effective government, transparency and accountability.

Central domination

The problem also arises that central government intervenes in matters of provincial competence. The paying of Amakhosi by central government, thereby making them accountable to the government majority rather than to the people of the province, is an example of this interference.

In many other arenas, policies such as the proposed Police Bill, the National Education Bill, the Land Law and the National Health Insurance Scheme for Primary Health Care, tend strongly towards central domination.

Clarity, accountability and effective

government could be better achieved through respect for diversity and regional autonomy. In terms of IFP proposals, central government would retain all the important co-ordinating functions such as foreign affairs, defence, banking, customs tariffs and tax collection.

Provincial autonomy

As in America, Canada, Australia, Germany and Nigeria, the provincial governments would be given legislative and executive autonomy over matters affecting individual provinces differently, such as education, culture, civil service, local government, traditional affairs and customary law. This autonomy does not amount to secession, it merely implies a degree of independence which is limited by the Bill of Rights and certain essential minimum norms and standards, set by the centre.

Mediation was intended to influence the legislative autonomy of the provinces and would have impacted on provincial constitutions.

In addition, the provinces should be entitled to some independent taxing powers so that they are not totally at the mercy of central government for funds. A percentage of taxes should be redistributed from wealthier to poorer provinces. Autonomy is balanced by equalization.

This simple federal system will stimulate people driven initiatives. It will permit tailor made solutions to local problems and will provide incentives by allowing for experimentation and competition between the nine provinces.

Further overrides

The ANC, by contrast, advocates that with regard to shared powers, central government law takes precedence over provincial law. In its latest proposals the ANC advocates still further overrides allowing the Centre to intervene far more extensively in



provincial affairs.

The only factor which would prevent a central government law overriding a provincial law would be a decision by the Senate. The Senate, however, functions as a shadow National Assembly, with a considerable ANC majority, influenced more by party loyalty than by responsibility to the provinces. The ANC's proposal that local government representatives should have seats in the Senate, even further weakens the power of the provinces.

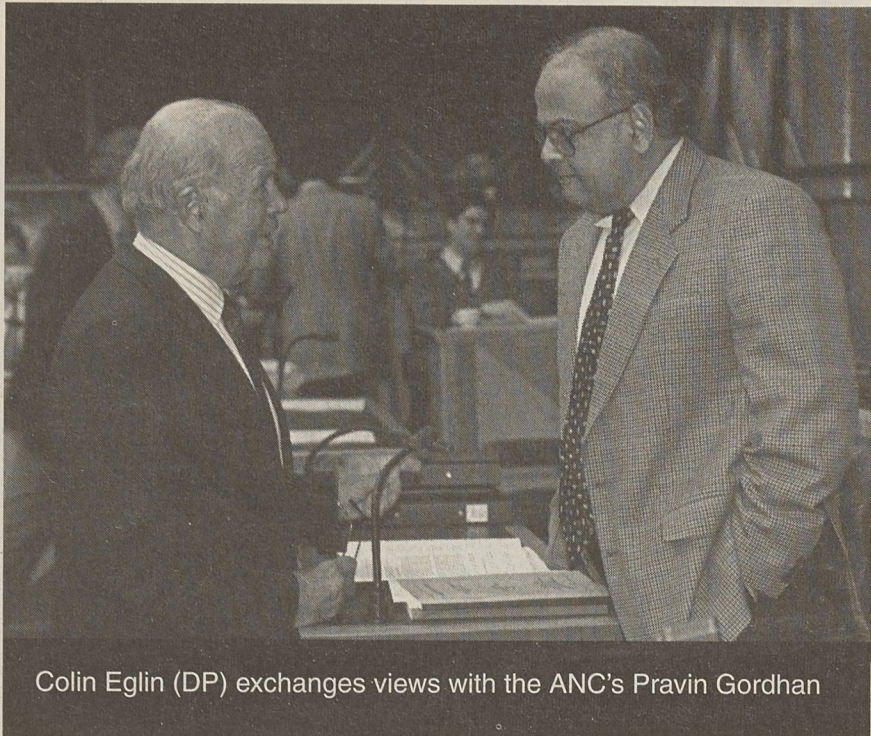
When the IFP refused, initially, to participate in the 1994 elections, it was concerned that in the Constitutional Assembly, the ANC would use its majority to thwart a federal constitution. Therefore it agreed to elections on condition that International Mediation be held to review the federal nature of the constitution, before drafting began.

National unity

That agreement should be honoured, even if only to amend the interim constitution and all parties should be accommodated in the final constitution. Federal constitutions are not arrived at by the decision of the majority parties. They are arrived at by a covenantal agreement between majority and minority parties, in the interest of peace and national unity.

The solutions for different provinces may differ. Asymmetric constitutions often keep different provinces linked to the whole, as with Quebec in Canada, the Basques in Spain and the Bavarians in Germany, all of which have federal systems. This is a less separatist solution than the Freedom Front's confederal proposal for a Volkstaat, which the President appears willing to consider.

If, as now appears to be the case, the final constitution represents only the interest of the majority party, the IFP, which holds the majority in KwaZulu-Natal, will reject it. The founding fathers of the South African Constitution will have robbed our Constitution of the respect and support critical to its long-term success.



Colin Eglin (DP) exchanges views with the ANC's Pravin Gordhan

Ngangisano etjhatsika ha bokamoso ba palamente

Ha Seboka se phethahetseng se etsang Melao se ne se buisana ka ha dintho tse amang le Seboka sa Setjhaba, ho bile le mehopollo e mengata e fapaneng.

Enngwe ya dintho tse bohlokwa hodima lenaane la ditaba tsa dipuisano tsa CA e bile kohoo bokamoso ba Seboka sa Setjhaba bo ka hlophiswang ka teng. Hona ho kenyeletsa le hore ho tlamehile ho ba na le Ditho tsa Palamente tse kae ka palo le hore Seboka sa Setjhaba se tlamehile ho dula neng.

Kamora tsena, mekga ya dipolotiki e ne ya hlahisa maikutlo a tsona. Tse ding tsa tsona, ho kenyeletswa Mokga wa Democratic, Freedom Front le Mokga wa African Christian Democratic, di ne tsa hlahisa hore palo e tla itshetleha hodima bokamoso ba popeho ya Senate le hore ho tla ba na le boikarabello bo bokae hodima dipalamente tsa diporofinse. Potso e nngwe e sa ntseng e batla tharabollo ke hore naha ena e tla fumana tsela ya boemedi bo lekanetseng ka ho phethahala kapa hlophisetso ya lebatowa.

“Ho ho ngata ho ka etsuwa ke dipalamente tse robong tsa diporefinse, tseo hape di emelang batho ka kakaretso,” hona ho boletswa ke Errol Green wa Mokga wa African Christian Democratic. Mogenerale Groenewald wa Freedom Front o itse palo ya Ditho tsa Palamente di ka theoswa ha nnyane empa ho tla

batleha ho ho ngata hodima bathusi ba tla thusang Ditho tsa Palamente mesebetsing ya bona.

Colin Eglin wa Mokga wa Democratic o itse ho tlamehile ho nkuwa mokgwa wa boinyehelo ho dipopeho kaofela tsa mmuso ho tseba ho lekanyetsa tsela e loking ka ho fitisisa ya ho tsamaisa dintho.

Mokga wa National o itse boholo ba ha jwale bo tlamehile ho dula bo le jwalo ho tseba ho nyehelana ka boemedi ka moo ho ka kgonahalang ka teng ho mekga e mennyane.

Mekga kaofela e batlile hore palamente e dule nalo ya dilemo tse hlano, ntle ho Mokga wa Democratic o neng o batlile dilemo tse nne.

Phapang e ngata e bile dipkeng tsa bao ba neng ba tshetsa nako e tsitsitseng ya palamente ka dikgetho ka dinako rileng diporofinseng le setjhabeng kaofela ka noko e le nngwe, le ba neng ba lakatsa hore ho ba ne le dikgetho tsa kapele ba bitswe sebakeng ebang ho hlokahala tshitsinyo e hlohang.

DP, PAC, Le ACDP di ne tsa ngangisana ka ha nako e tsepameng.

Mabaka a kenyeleditse ditjeho tsa ho tshwara dikgetho tse ngata ha kaalo, mathata a dikgetho tsa diporofinse ka nako e le nngwe, le kgonahalo ya bakgetho ba laolang mmuso ka ho bitsa dikgetho tse potlakang ha ho ba loketse. ANC e ngangisane ka hore nako e tsitsitseng “e hloka demokrasi”.

Ngangisano ka ha dintlha tsena e tswella pele Komiting ya Ketsa-Melao.

Om oor te loop

Moet parlamentslede uit hul setels bedank wanneer hulle van een politieke party na 'n ander verander? Stemme is dik gemaak en daar was 'n lewendige woordewisseling toe hierdie saak by die Grondwetlike Vergadering bespreek is.

In die meeste veelparty demokrasie hou LP's hulle setels wanner hulle van partye verander. Dit was ook die geval by die vorige Suid-Afrikaanse regerings. Die tussentydse grondwet bepaal egter dat LP's uit hulle setels moet bedank indien hulle van partye will verander. Die vraag is of die klousule in die nuwe grondwet behou moet word of nie. Alle politieke partye - behalwe die ANC en die PAC - is ten gunste van die afskaffing van die klousule wat LP's verhoed om “oor te loop” na ander partye.

Die Demokratiese Party voer aan dat die voortgesette gebruik van hierdie stelsel “politieke ontwikkeling sal versterk” en LP's “gyselaars van partybase” sal maak.

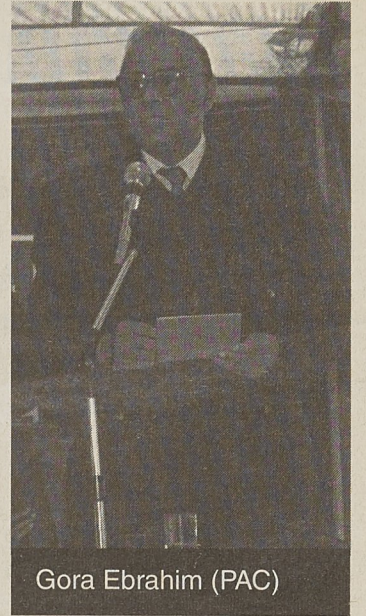
Colin Eglin van die DP meen dat LP's nie net die mense verteenwoordig wat hulle gekies het nie, maar die belange van die land as geheel. Gereelde verkiesings sal wangebruik verhoed.

Die DP het aangevoer dat, om LP's toe te laat om hul setels te behou, die beginsel van die reg van vereniging, openheid en deursigtigheid sal bevorder.

Die mening van die ACDP is dat hierdie bepaling LP's verhoed om hul eie gewetens te volg. Daáárom moet dit afgeskaf word. Partye kan, nadat hulle verkies word, hul beleid verander en LP's moet hul kiesers se wense in ag neem.

Nóg die Vryheidsfront nóg die Nasionale Party was ten gunste van hierdie klousule.

“Dit word nie in hedendaagse demokrasie erken nie,” het Andries



Gora Ebrahim (PAC)

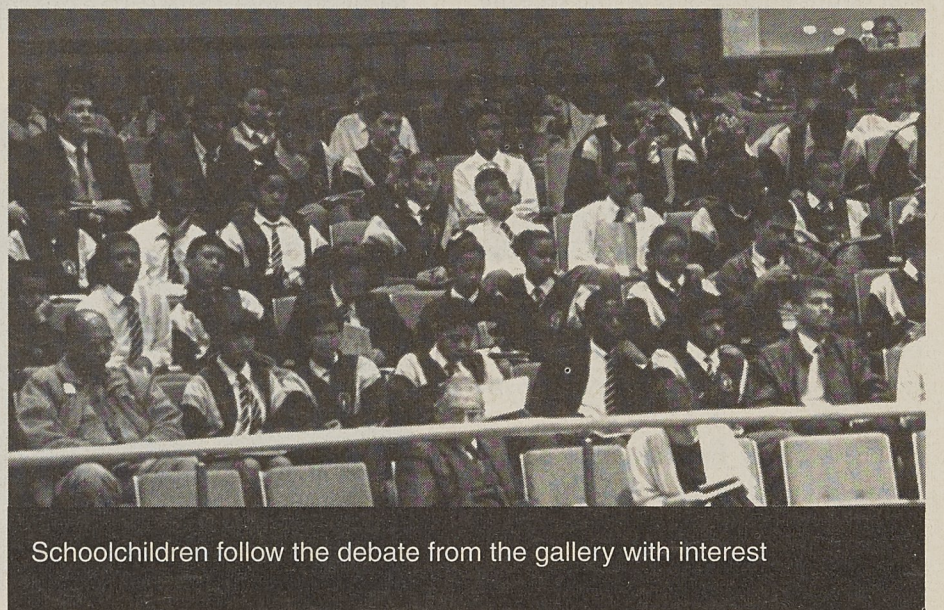
Beyers van die NP gesê. “Dit verleen te veel mag aan partye en verbied oorspronklike denke”.

Maar die ANC se redenasie was dat lede volgens ‘n lysstelsel verkies word en nie regstreeks deur die kiesers nie. Hulle is dus verantwoordelik aan die partylede en daarom mag hulle nie hul setels behou wanneer hulle van partye verander nie. Mits die stelsel van eweredige verteenwoordiging gewysig word om kiesafdelings in te sluit - en LP's wat van partye wil verander die opinies van die kiesers in ‘n tussenverkiesing will toets - moet die huidige stelsel bly.

“Ons word op ‘n demokratiese wyse deur ons lede gekies. Daarom het hulle die reg om ons terug te roep as hulle meen ons doen nie goeie werk nie,” het Dr Essop Pahad van die ANC gevoer. “Indien daar ‘n soort verkiesingstelsel was wat tussenverkleinsings toegelaat het, dan sou ons dit oorweeg.” Die ANC se Johnny de Lange en Collins Chabane het hierdie mening gesteun.

Die PAC het ook die ANC se standpunt gesteun. “Indien u volgens ‘n partylys gekies word, moet u trou sweer aan die party,” sê Gora Ebrahim. “Ons wil nie graag politieke rontloperij op ‘n opportunistiese grondslag sien nie.”

Die Grondwetlike Vergadering sal die saak debatteer wanneer hulle die verkiesingstelsel oorweeg.



Schoolchildren follow the debate from the gallery with interest

It's your *right* to decide your *Constitutional* rights

THE NEW CONSTITUTION 

Umbutfo wemaphoyisa kumaphrovinsi

I Constitutional Assembly beyinenkhulumo-phikiswano ngesakhekho sembutfo wemaphoyisa - nekutsi kutsi kumele uphatfwe ezingeni labo bobalili yini boHulumende, Hulumende lomkhulu naHulumende wephrovinsi.

Katawentiwa sibonelelo kumtsetfosisekelo mayelana nemaphoyisa ezingeni lekuphatsa lwaHulumende lomkhulu nasezingeni lekuphatsa kwaHulumende lomkhulu nasezingeni lekuphatsa kwephrovinsi, kepha emacambu asengakavumelani ngekuhlukaniselana emandla ekhatsi kwalababoHulumende lababili.

Kunkhulumomphikiswano ye-Constitutional Assembly, Jenny

Schreiner we-ANC utsite umbutfo wemaphoyisa awube munye futsi ulawulwe nguHulumende lomkhulu.

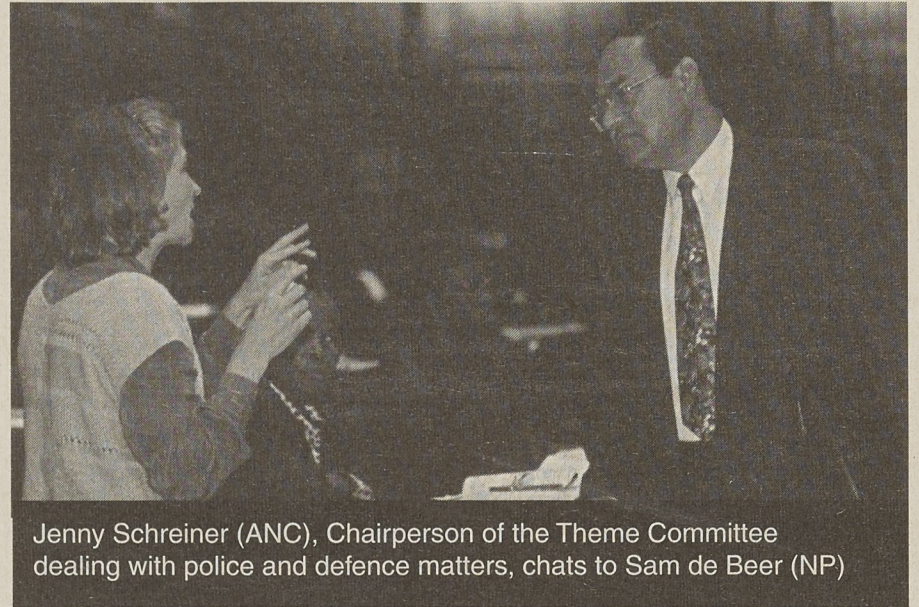
Utsite" Akekho lovumelana ne-IFP ngesiphakamiso sawo sembutfo wemaphoyisa lonebusotja ekhatsi lolawulwa nguHulumende wephrovinsi.

Kepha ubuye wengeta ngekutsi sidzingo sona sikhona sekutsi umbutfo wemaphoyisa usebente ezingeni lephrovinsi. Indzaba isemandleni nasemisebentini yawo.

Zakwabo ku-ANC Gregory Rochman utsile emandla lamakhulu ekulawula kumele abe kuHulumende lomkhulu.

Umnu Mathee we-NP utsite itfo lebalulekile kuba nembutfo wemaphoyisa lonebubele lotawemukeleka emphakatsini. Kusebenta kwawo kufanele kulawulwe ezingeni leliphasi kwentela kutsi ube sedvute nebantfu. Kepha-ke lizinga lekusebenta kwawo akumelanga kutsi libe lehle.

Umnu Danie Schutte, naye we-NP, utse kutiphoyisa kwemphakatsi



Jenny Schreiner (ANC), Chairperson of the Theme Committee dealing with police and defence matters, chats to Sam de Beer (NP)

kuyinkhambiso lesetjentiswa emhlabeni wonkhe washo futsi nekutsi tindvuna temaphoyisa kumaphrovinsi letifana nabo Jessie Duarte na Patrick Makendzi tenta "umsebenti lomuhle kabi"

Umbono we-DP wona wekutsi umbutfo wemaphoyisa kube newavelonkhe, wemaphrovinsi newtitifundzadolobha kumbe emadolobha. Kulawulwa kwemaphoyisa mimango kutawenta kutsi asebente ngekutikhandla ekuyinetinesi, ngekusho kwaMnu

James Selfe.

I PAC yona itsite emaphoyisa "angumbutfo lonemandla" nekutsi ngembi kwekutsi kuphatfwa kwawo kwehliselwe phasi kumele lombutfo "ufundziswe inhlonipho yemalungelo eluntfu nekwenta kahle umsebenti wawo " nekutsi nguHulumende lomkhulu kuphela longenta loko.

Lenkhulumomphikiswano ngekusenta kwemaphoyisa itawuchubeka kuKomiti yemtsetfosisekelo

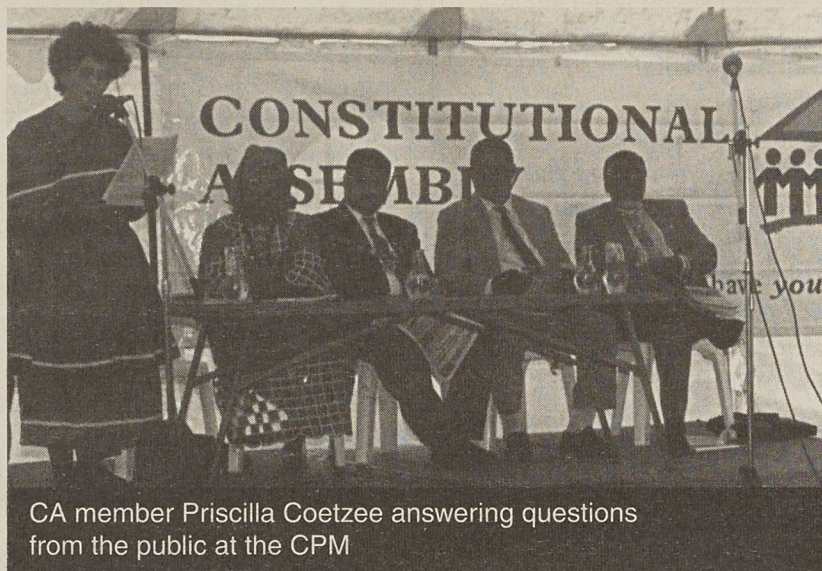
Low turnout at CPM

A Constitutional Public Meeting went ahead in Empangeni, KwaZulu-Natal on the 26 August 1995, despite the few people who attended.

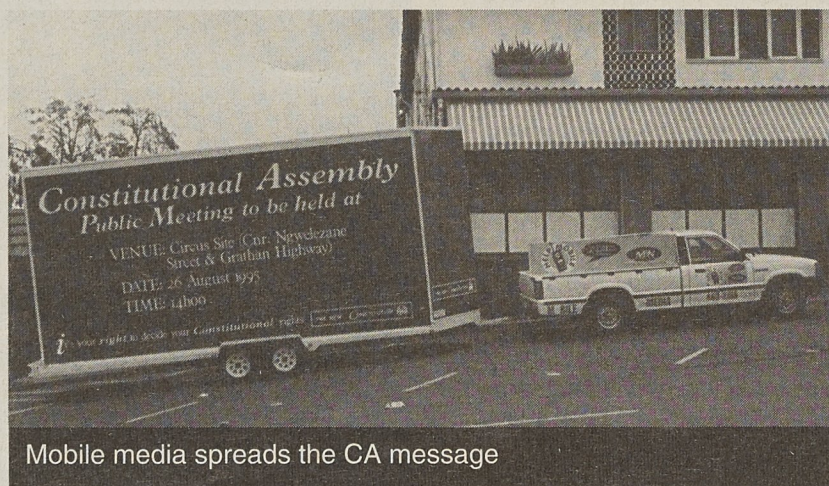
The low turnout was largely due to the fact that scores of people were prevented from reaching the venue of the meeting by alleged IFP supporters. As a result of this and reports of the security situation in Port Shepstone, the CPM that was supposed to have been held in this town was subsequently cancelled.

Unfortunately, the CPM - the third one the Constitutional Assembly has held in the province - was spoilt by a low turnout, but there was an interesting exchange of ideas between the people and the political party representatives who are writing the new Constitution.

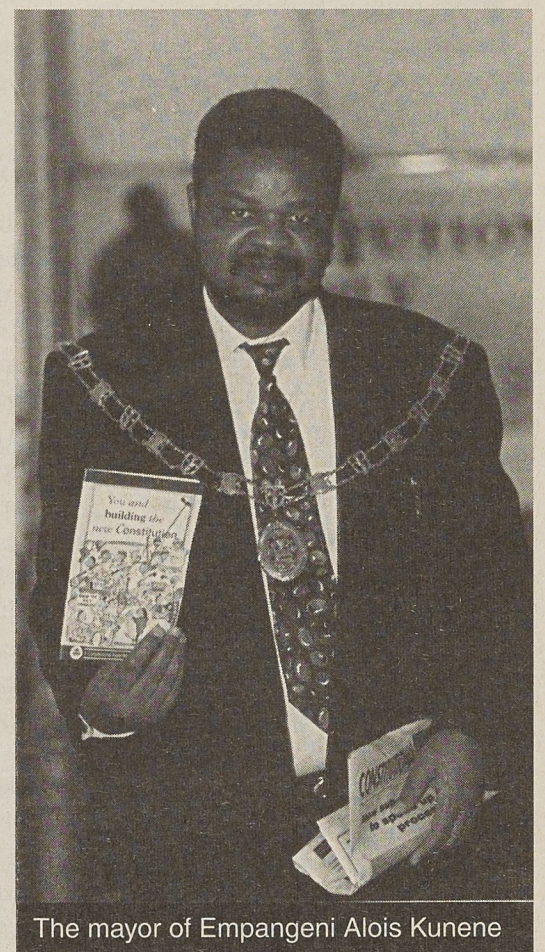
The security situation, bail conditions and the reimposition of the death penalty were just some of the concerns raised at the meeting.



CA member Priscilla Coetzee answering questions from the public at the CPM



Mobile media spreads the CA message



The mayor of Empangeni Alois Kunene

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THE NEW CONSTITUTION 

Land reform and the Constitution

The Constitutional Assembly Theme Committee on Land Rights will soon table a report proposing the need for land reform and the protection of land ownership and use. The draft report from the committee proposes that land reform should include land re-distribution, tenure reform and the restitution of dispossessed land.

The draft report maintains that land redistribution is necessary in order to correct the existing imbalances with regard to land holding in South Africa. If a property clause is included in the future constitution the draft report proposes that such a clause should not be in conflict with the redistribution process. In order to ensure that the redistribution process is not inhibited, the following proposals were mooted; the positive right to land should be included in the constitution, the current provisions relating to rights in terms of land restitution should be broadened to incorporate rights to redistribution and tenure reform.

The draft report also emphasises the importance of tenure reform for the following purposes: the provision of security of tenure in instances where it does not exist; ensure that land rights that people have held in practice are legally recognised; the accommodation of a variety of forms of tenure on the basis of local preference; to adjudicate between conflicting rights in land in a way which will provide for alternate redress; and ensure that the land rights of women are protected under communal systems. The draft report goes on to argue that it must be ensured that the tenure reform process is protected under the Constitution and that it will not be jeopardised by the property clause.

The draft report also calls for the inclusion of a land restitution clause in the final constitution. However, concerns relating to the property clause have also been raised in this regard. Stakeholders and other interest groups are quoted in the report as arguing that

if the property clause remains in the constitution, in one form or another, it is necessary to give constitutional protection to the land reform process, of which restitution is a necessary component.

The draft report also says some stakeholders are unhappy with cut-off date of 1913 for restitution claims as provided for in the Interim Constitution. Among the arguments against a fixed cut-off date, is the fact that the 1913 date was "arbitrarily selected with little historical significance".

"Much land was lost by the indigent population through conquest and/or unjust laws before 1913. The right to restitution of such land should be as strong as the right of land dispossessed after 1913," says the draft report.

But these arguments do not go without challenge. Those in favour of the 1913 date argue that "if restitution claims were allowed to go further back in time, there could be a large number of competing claims from different groups who occupied the same land at different points in time."

Those who favour the 1913 date argue that going back in time might result in a situation where ethnically-based land claims could emerge and lead to severe conflicts.

The draft report concludes by stating that land reform is necessary and measures need to be taken to ensure that it is not impeded by constitutional obstacles.

The report will be finalised at a meeting of the Theme Committee on 11 September 1995 and will be transmitted to the Constitutional Committee for further debate.

The following are the various draft formulations being considered by the Theme Committee.

Redistribution

(1) Every person shall be entitled to equitable access to land.

or alternatively

Every person shall be entitled to equitable ownership.

Restitution

(2) Every person and community dispossessed of rights in land after [insert decided date] as a result of any law or practice which would have been inconsistent with [the section of the Constitution which prohibits discrimination] had that section been in operation at the time of dispossession, shall be entitled to restitution of such rights or equitable redress, in the manner described by and Act or Parliament.

Tenure Reform

(3) Every person and community whose existing rights or interests in land are legally vulnerable as a result of discriminatory laws and practices shall be entitled to legally secure rights to that land or comparable redress as prescribed by and Act of Parliament.

or alternatively

Any right or interest in land may be replaced on an equitable basis by an alternative right in terms of any law providing for tenure reform.

Protection from eviction

(4) No person may be evicted from his or her home except in accordance with an order of a court of law or other independent and impartial tribunal which shall, before making any order for eviction, take into account the circumstances under which such person occupies the home, the duration of the occupants and the availability of alternative accommodation.

"For purposes of this section, 'property' shall not include land or any interest in land".

"This section shall not apply to measures aimed at bringing about land reform through the restitution of rights in land, redistribution of land, or land tenure reform for the benefit of persons previously disadvantaged by unfair discrimination."

or alternatively

"This section shall not impede measures aimed at bringing about land re-

form through the restitution of rights in land, redistribution of land, or land tenure reform for the benefit of persons previously disadvantaged by unfair discrimination."

"The provisions of [the property clause] shall not apply to measures taken in order to realise the achievement of the right to land in terms of this section."

(1) Every person shall have the right to acquire and hold rights in property; and, to the extent that the nature of the rights permits, to dispose of such rights."

(2) No deprivation of property shall be permitted otherwise than in accordance with a law."

(3) Where property is expropriated, such expropriation shall be permissible for public purposes or for social interests only and shall be subject to the payment of agreed compensation or, failing agreement, to the payment of such compensation and within such period as may be determined by a court of law as just and equitable, taking into account all relevant factors, including, in the case of the determination of compensation, the use to which the property is being put, the history of its acquisition, its market value, the value of the investments in it by those affected.

Property clause in the Interim Constitution.

28. (1) Every person shall have the right to acquire and hold rights in property and, to the extent that the nature of the rights, to dispose of such rights.

(21) No deprivation of any rights in property shall be permitted otherwise than in accordance with a law.

(3) Where any rights in property are expropriated pursuant to a law referred to in subsection (2), such expropriation shall be permissible for public purposes only and shall be subject to the payment of agreed compensation or, failing agreement, to the payment of such compensation and within such period as may be determined by a court of law as just and equitable, taking into account all relevant factors, including, in the case of the determination of compensation, the use to which the property is being put, the history of its acquisition, its market value, the value of the investments in it by those affected and the interest of those affected.

advert

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THE NEW CONSTITUTION

Money matters for discussion

Work on the Financial and Fiscal Commission has been completed by the Theme Committee and a report and proposed draft constitutional text has been presented to the Constitutional Committee for debate. This commission, which was established for the first time in the interim constitution, decides how national revenue should be allocated to provinces.

While there are still some sections of the text to be agreed upon, including the appointment, tenure and dismissal of members, a clear picture of this important institution is emerging. One aspect where parties differ is on how much detail should be in the Constitution and what can be left to legislation.

In general overall comments, the ANC said that many of the broad principles in the interim constitution could be carried over to the new Constitution, but much of the detail can be contained in laws. These include provisions for meetings, how much members will be paid, the co-opting of members and their length of service. The party also feels that the interim constitution provisions lack clarity.

The National Party is in favour of carrying over the provisions from the interim constitution. It also proposes that

there should be greater representation for experts on local authority finances.

The Democratic Party emphasised that the primary purpose of the FFC should be to make recommendations on equitable financial and fiscal allocations between different levels of government.

"The FFC should be composed of suitably qualified people who fulfill their functions as technical experts impartially and independently rather than as party political representatives," said the DP.

Financial and fiscal policy should be based on simplicity, stability, equity and efficiency, argued the ACDP, adding that there should be a process of community or regional consultation.

The PAC said the FFC should be given constitutional recognition, but only when the relationship between the three levels of government have been spelt out. There should not be detail, but merely a framework of these functions in the Constitution. This was in line with the PAC view that provinces and local government levels should have only administrative powers. The budget allocation should be done by the central government in consultation with the FFC.

A submission by the Commission on Provincial Government also supported a framework approach with provisions similar to those in the interim constitution but details could be left to legislation, after consultation with the provinces and organised local government.

Interesting discussions lie ahead before this matter is finally agreed upon.

Provisional Draft Text

Financial and Fiscal Commission

Establishment

1. There shall be a Financial and Fiscal Commission for the Republic. The Commission shall be independent and impartial and subject only to this Constitution and the law.

Powers and functions

2.(1) The Commission shall apprise itself of all financial and fiscal information relevant to national, provincial and local government, administration and development. It shall render advice and make recommendations to the relevant authorities regarding the financial and fiscal requirements of the national, provincial and local governments in terms of this Constitution, including -

- (a) financial and fiscal policies;
- (b) equitable financial and fiscal allocations to the national, provincial and local governments from revenue collected at national level;
- (c) any form of taxes, levies, imports and surcharges that a provincial government intends to levy;
- (d) the raising of loans by a provincial or local government and the financial norms applicable thereto;

criteria for the allocation of financial and fiscal resources; and (f) any other matter assigned to the Commission by this Constitution or any other law.

(2) In performing its functions the Commission shall take into account -

- (a) the national interest, economic disparities between the provinces as well as the population and development needs, administrative responsibilities and other legitimate interests of each of the provinces;
- (b) and the provisions of this Constitution dealing with the allocation of revenue to provinces.

Appointment, qualifications, tenure and dismissal of members

3. No text

Reports

4. (1) The Commission shall present regular reports to both Parliament and provincial legislatures as may be prescribed by a national law. {9}

Provisional Draft Text

General Financial Matters

National Revenue Fund

1. (1) There shall be a National Revenue Fund. All revenues, as determined by a national law, raised or received by the national government shall be paid into the National Revenue Fund. Parliament shall make appropriations from the National Revenue Fund in accordance with national law.

(2) No money may be withdrawn from the National Revenue Fund except under appropriation made by a national law. Revenue to which a province is entitled in terms of this Constitution shall form a direct charge against the National Revenue Fund to be credited to the Provincial Revenue Fund concerned. Annual budget

Procurement administration

3. (1) The procurement of goods and services for any level of government shall be regulated by national and provincial laws. Such laws shall make provision for the appointment of independent and impartial tender boards to deal with such procurements.

(2) The tendering system shall be fair, public and competitive. A tender board shall give reasons for its decision if requested by an interested party.

(3) No person and no organ of state shall improperly interfere with a tender board in the discharge of its functions. {8}

(4) All decisions of a tender board shall be recorded and shall be open to public inspection.

Guarantees by national government

4. The national government may not guarantee provincial or local government loans, unless -

- (a) the guarantee complies with the norms and conditions for such a guarantee as set out in a national law; and
- (b) the Financial and Fiscal Commission has made a recommendation concerning compliance of the guarantee with such norms and conditions.

Accountability of Public Enterprises

5. Any enterprise in which public money is invested or whose sources of revenue are regulated by law or which is able to raise revenue in terms of legislation may, in a manner determined by national law, be required to report to and to give evidence before Parliament.

Dealing with national revenue

How money is collected and spent by the government is covered in provisional draft text on General Financial Matters, presented to the Constitutional Committee by the Theme Committee.

All parties broadly agree on the need for the constitution to say something about this matter, but there is some disagreement on what the details should be, according to the report from Theme Committee 6.2.

The DP and the IPF support the inclusion of a "balanced budget principle" in the Constitution. The Democratic Party argues that budget deficits are an abuse of economic power which should be prevented by the Constitution. The DP and the National Party, which also supports the objective of a balanced budget, suggest that this constitutional proviso could take effect in the future, for instance in five to 10 years times.

The Freedom Front said the country should move towards a balanced

budget but that allowance had to be made for times of emergency and recession. They favour a constitutional limit on government spending.

The ANC does not support a balanced budget provision because this is a particular economic policy which should not be constitutionally binding and could make passing a budget "almost impossible". The ANC also said such a provision would make budgets the subject of political manoeuvring and confuse the current process of budgetary reform. It didn't take into account the fact that a budget could be unbalanced but still fiscally disciplined.

The Freedom Front raised a concern that provinces should not be prevented from raising revenue themselves or from retaining revenue due to them. The IPF argued that all transfers of money from the national government to the provinces should be paid directly into the Provincial Revenue Funds.

There was also consensus in the Theme Committee on several other issues. However this section will be further debated in the Constitutional Committee.

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Indigenous or traditional?

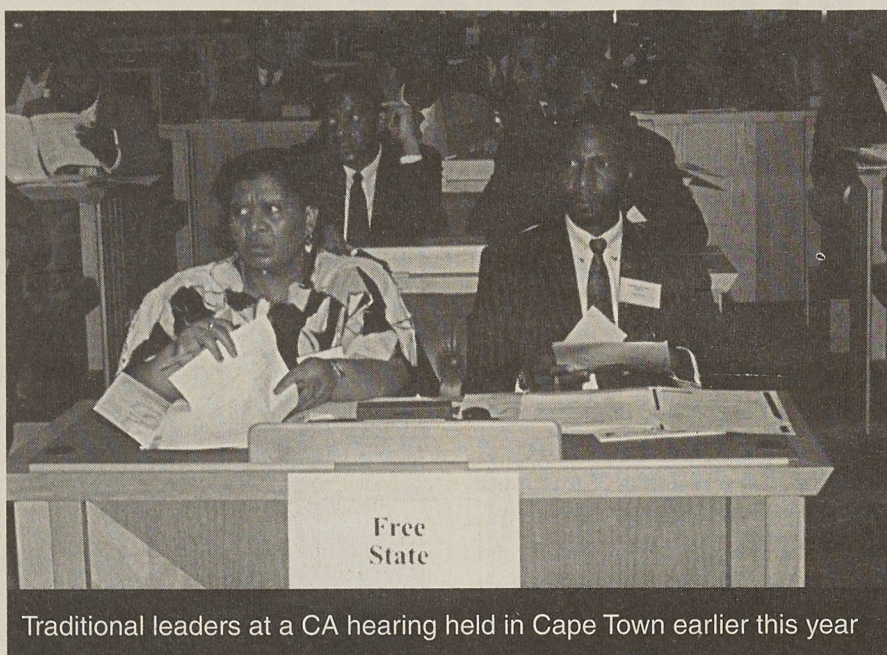
Should South Africa's leaders be called traditional or indigenous when they are referred to in the new Constitution? This was one of the questions considered by the Constitutional Committee recently.

The Congress of Traditional Leaders of South Africa (Contralesa), told the Theme Committee that the term 'indigenous' was better, because 'traditional' did not distinguish between genuine leaders and "untraditional" elements that had crept into the system.

The National Party supported the name change. They said that indigenous was a more accurate description of African leadership when it was translated into all the African languages. But Collins Chabane of the ANC and Richard Sizani of the PAC queried whether the name could be changed in view of the Constitutional Principles.

Members wanted to know if the two terms meant the same thing.

After a discussion, it was decided to get a report from the legal experts to explain the difference, if there was any, before deciding what the African lead-



Traditional leaders at a CA hearing held in Cape Town earlier this year

ership should be called.

Theme Committee 2, dealing with this section, also called for a Commission of Enquiry to be established to look into the legitimacy and authenticity of indigenous leaders, but it was decided that this was not the function of the Constitutional Assembly. The Department of Justice was doing this.

The ANC's Naledi Pandor wanted the Constitution to make it clear that the right to equality in the Constitution

would be the supreme law as opposed to indigenous or traditional law. This was agreed.

This part of the Constitution will be discussed again when other Theme Committees have finished their work on traditional courts and other related matters.

The Constitutional Committee decided that it wanted more information before deciding to adopt the term indigenous leadership.

Provisional Draft Text

Recognition of indigenous leadership

1 (1) The institution of indigenous leadership is hereby recognised.

(2) The status, role and functions of indigenous leaders shall be spelt out in the legislation subject to the provisions of the Constitution and of indigenous law.

(3) Provision legislatures shall have the competence to make provisions relating to the institution, role, authority and status of any monarch in the provincial constitution, subject to section 1(2) above.

What the draft constitutional text says about ...

Traditional leaders



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Dit gaan goed in die Wes-Kaap

Die Grondwetlike Opvoedingsprogram het in die plattelandse gebiede van die Wes-Kaap reeds goed wortel geskiet. Honderde mense het al deelgeneem.

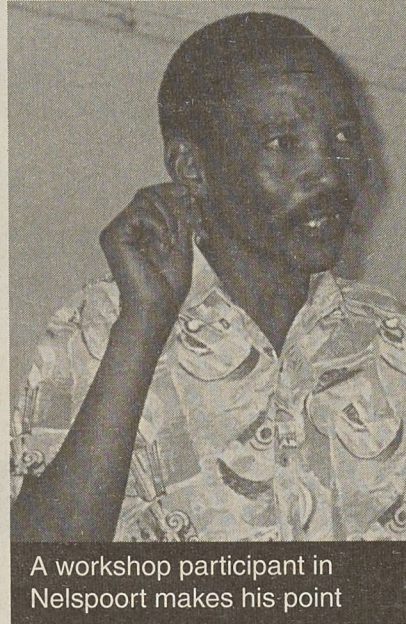
Die Wes-Kaap koördineerders beoog om so gou moontlik loodsprogramme in al die streke van die provinsie van stapel te stuur en om steun te verleen aan aktiwiteite wat reeds aan die gang is.

In die Sentraal Karoo het mense in dorpe soos Leeu Gamka, Merweville, Prins Albert, Murraysburg, Nelspoort en Beaufort Wes reeds getoon dat hulle honger is vir inligting en vasbesolte is om deel te neem. "Kindermishandeling moet gestop word." "Ons kinders moet nooit opgroei met vrees vir aanklokreëls nie." "Ons het die reg op ons eie moedertaal." Dit was van hulle sienings.

Op Herberdsdal langs die Suidkus het werkers van aalwynplase seker gemaak

daarvan om tussen skofte iets te hoors omtrent die Grondwet. Fabriekwerkers op George weer het hulle etenstyd ingeruim om meer uit te vind van die Grondwet. Ook die plakkersgemeenskappe van Plettenbergbaai en Sedgfield is by die proses betrek terwyl die gemeenskappe op Riversdal hulle aandete opgeoffer het om hulle insette te lewe. Voorlopige veldwerk in Albertinia, Knysna, Grootbrakrivier, Mosselbaai en Thembalethu toon dat mense met groot belangstelling uitsien daarna om aan die program deel te neem.

Daar is ook reeds met die program begin in die Olifantsrivierkom waar besprekings programme gehou is in Vredendal, Klawer, Koekenaap, Lambertsbaai en Clanwilliam. "Sal die Grandwetlike Vergadering werklik aandag gee aan die insette van mense van so 'n klein vissersgemeenskap?" het een van die deelnemers op Lambertsbaai gevra. Die eerste besoeke aan die Olifantsrivierkom het getoon dat daar groot entoesiasme is vir



A workshop participant in Nelspoort makes his point

gesamentlike programme in die streek.

Plaaslike Oorgangsrade en HOP Forums blyk om baie effektiewe platforms te wees waardeur mense bereik kan word. In 'n poging om 'n samewerkingsproses daar te stel is alle oorgangsrade in die provinsie oor die opvoedingsprogram ingelig. Baie het reeds positief hierop gereageer. Vir die Boland area word beplan om verteenwoordigers van HOP Forums saam te trek, insluitende dië van Paarl, Wellington, Ceres, Montagu, Ashton, Touwsrivier, Robertson, Worcester en omgewings. Op dië wyse word gepoog om grondwetlike aangeleenthede na elke uithoek van die Boland te bring.

Daar is egter nog gebiede wat nog nie deur die voorlopige programme bereik is nie. Alle belangstellendes in die Overberg, Swartland, Weskus, Klein Karoo en alle ander gebiede wat nog nie betrek is nie, moet asseblief met Stuart Mciteka of Merle Brown in verbinding tree by (021) 21-5070. Laat ons saam plan om 'n kultuur van menseregte te skep en die Grondwet te laat leef.



Voorbereidingswerk in Vredendal vir opvolg aktiwiteite in die Olifantsrivierkom

Read Easy

To assist Constitutional Talk readers, the newsletter will be explaining 5 words in every edition which are often used in constitution-making

Constitution

A Constitution is the highest law of a country. All other laws must follow what the Constitution says. It says what powers a government has and what limits there are on these powers. It stops governments misusing their power and makes them democratic and accountable.

In a similar way, many organisations also have rules which guide them. These rules are also known as constitutions. For example, burial societies, community organisations and sports clubs may have constitutions.

Democratic and Accountable

Democracy is a system of government where people in government are chosen by the majority of people of the country. A democratic government is one which has been elected by the majority of people who are old enough to vote. We say that this type of government is accountable, which means that it has to do what the majority of people want, and has to tell the people what it is doing. If it does not, people can vote for a different government during the next elections.

Fundamental Rights

Fundamental Rights are the rights and freedoms which everyone agrees that all people should have, just because they are people. They include things like Freedom of Speech, the Right to Life, and Freedom from Discrimination. These are also known as Human Rights.

Jurisdiction

It means the power that the courts have. For example, when we talk about the jurisdiction of the Constitutional Court, we are talking about what power this court has to decide certain cases. Certain courts have limited jurisdiction. This means that they only have the power to decide some cases. So, the Magistrates' Courts only have jurisdiction over minor criminal and civil cases. They do not have the power to decide in cases such as murder or rape, or where one person claims a large amount of money from another person.

Provisional Draft Text

When we talk about the actual words which appear in a written law, we call this text. The Constitutional Assembly (CA) is writing the text of the new Constitution. Before this is finished, the CA will prepare different versions of what will be in the new Constitution. The text used in these versions is called draft text. Where draft text is made available to the public before it has been agreed upon by all the parties in the CA, we say that this draft text is provisional draft text. Provisional draft text may change from time to time.



Provincial helplines

If you want to find out more about the constitution-making process, contact the Constitutional Education Programme Co-ordinators who are based in each of the nine provinces.

Eastern Cape

Andile Matshela (Port Elizabeth)

Tel: (041) 55-9141

Fax: (041) 55-9293

Nkuli Mayende (East London)

Tel: (0431) 43-9912

Fax: (0431) 42-0306

Mpumalanga

Meshack Nkabinde

Sydney Mokoena (Nelspruit)

Tel: (01311) 52397

Fax: (01311) 52531

Free State

Glen Netshivodza

Dodo A. Ranth (Bloemfontein)

Tel: (051) 48-4504/5

Fax: (051) 30-7032

Gauteng

Oupa Moshebi

Nellie Malefetsa (Johannesburg)

Tel: (011) 337-3120/1

Fax: (011) 333-2028

KwaZulu-Natal

Cassandra Gabriel

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Tel: (031) 301-6787

Fax: (031) 305-9431

Northern Cape

Joseph Ngubo (Kimberley)

Tel: (0531) 21378

Fax: (0531) 21377

Gert Maarman (Upington)

Tel: (054) 27206

Fax: (054) 27218

Northern Province

Alvina Chabalala

David Mmela (Pietersburg)

Tel: (0152) 291-4689

Fax: (0152) 291-2045

North-West

Samuel Present (Potchefstroom)

Tel: (0148) 294-5306

Fax: (0148) 294-6586

Bouy Gaorekwa (Mafeking)

Tel: (0140) 81-1333

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Just a phone call away

Now the Constitutional Assembly is as accessible as the nearest telephone. Find out all about the constitution-making process and make your comments and suggestions on our new audio-text Constitutional Talk-line, (011) 329 8000.

One of the most user-friendly and informative new types of technology, inter-active voice response, is being used by the Constitutional Assembly to keep in touch with the people.

Constitutional Talk-line has been made possible by Telkom, which is spon-

soring the line to the tune of R370 000.

Pre-recorded information is available to interested members of the public who dial the Constitutional Talk-line number. What's more, callers can choose to hear the information in the language of their choice (there are five available at present) and which of the five topics they would like to listen to. At the end of the message, they can request more information, put their names on the mailing list for CA publications, including Constitutional Talk, or make submissions on any matter relating to the new Constitution.

All the responses and requests will be monitored by the Constitutional Assembly and submissions will be fed into the constitution-making process.

The topics will be regularly updated

and there will be a Constitutional Newsflash giving the latest developments in the drafting process. The initial topics include:

- What is the Constitution and how does the process work?
- The rights and duties of citizens.
- The future of the Public Administration.
- The Human Rights Commission.
- The Judiciary and Courts System.

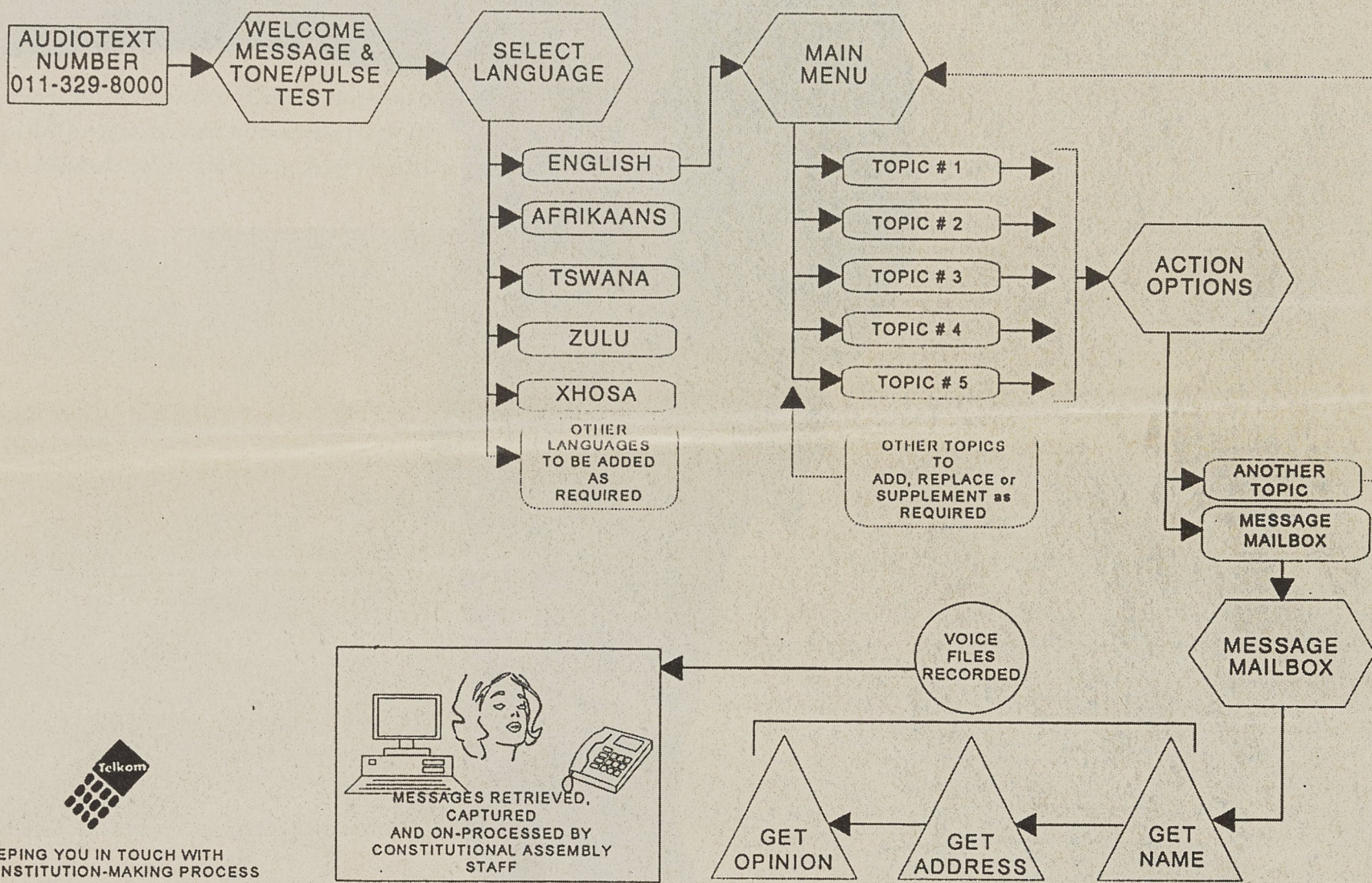
After listening to the line, CA chairperson Cyril Ramaphosa said the line was "another first" and he hoped thousands of South Africans would be talking to the CA. The CA was setting an example in its communication with the people not only to other countries, but also to the South African government.

"There are some departments that could learn from this," he said.

He also thanked Telkom and its chairperson Advocate Dikgang Moseneke who was present at the launch for their sponsorship in this valuable exercise. The Minister of Post and Telecommunications, Dr Pallo Jordan was also there to extend his good wishes to the CA.

The system has been set up in conjunction with Voice Media Telephone Audiotelex Information Services.

At present, the caller will pay the normal rate for a local call if she or he is calling from the (011) code area and for the applicable long-distance rate if the call is made from other parts of the country. Negotiations are underway to introduce a uniform charge at the local-call rate.



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Editor:
 Enoch Sithole
Assistant Editor:
 Pat Govender
Journalist:
 Sarah Hetherington
Illustrations:
 Trish de Villiers
Photographs in this issue by:
 Subash Jeram

Address: P. O. Box 15, Cape Town, 8000
 Tel: (021) 24 - 5031
 Fax: (021) 24 - 1160
 e - Mail: conassem@iaccess.za

Constitutional Assembly Talk-line



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my submission.**

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