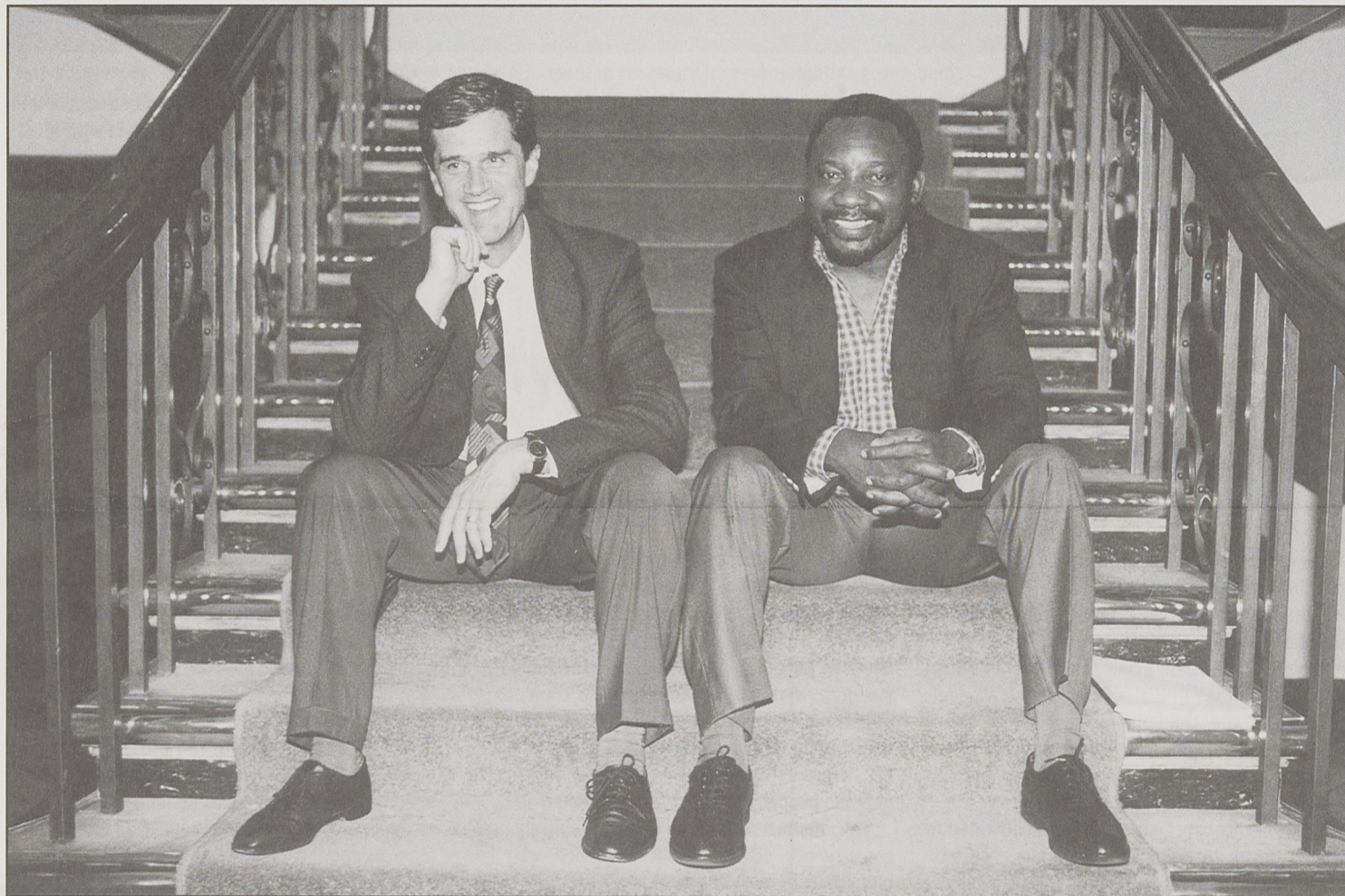


# Parliamentary Whip

17 MAY 1996

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PICTURE SUBASH JERAM

## Changes in electoral system put off to 2004

By RICHARD CALLAND and MARIANNE MERTON

**S**OUTH AFRICA's electoral system will not be changed before the 1999 general election as a result of a deal cut by the ANC and the National Party (NP) during the final period of constitutional negotiations.

This means that there will continue to be no formal constituency representation after the next election and until 2004 at the earliest. As in 1994, the political parties will select lists of candidates who will be elected according to the proportion of the overall vote that their party receives nationally rather than for a specific geographical area.

As a consequence the much-maligned Section 43(b) of the Interim Constitution that prevented individual MPs from changing parties by crossing the floor of the house has also been retained on the basis that otherwise the balance of the national assembly, as determined by the electorate, could be altered by individual MPs.

At one stage a compromise was suggested by which MPs could have changed parties provided their new party was prepared to sacrifice another of their MPs to make room for them, but this new proposal was not included in the final draft.

This means that the party political managers will continue to enjoy huge power over their members and will help them maintain discipline within their parties. This is a special advantage for the large parties.

Pan Africanist Congress (PAC) MP Patricia de Lille said the deal had been struck between the NP and the ANC at the Arniston constitutional

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## All smiles now ... but 'the channel' nearly failed

**T**HIS is "the channel". It's where the negotiations were diverted when the deals and settlements proved elusive. Probably better known as the Cyril and Roelf show, it had a six-year run before its dramatic finale.

This is how it worked. A difficult issue arose. Technical advisers or experts were brought in to help. If the disagreement could not be settled, they were invited — by Constitutional Chairperson, Cyril Ramaphosa — to enter closed, bi-lateral or multi-lateral discussions.

If that didn't produce an agreement, the issue was referred to the channel. What this meant was that National Party general-secretary and chief negotiator Roelf Meyer and Ramaphosa would discuss the matter together, relying heavily on, and taking advantage of, a relationship that has stood the test of time and which is based on a sincere sense of mutual personal trust. Together, they would isolate the issue, and place it in the context of the negotiation process.


Then the real trade-offs could begin, although

as a first step the channel would, typically, call in the main protagonists — chief negotiators — from both sides to present their case. As they did so, Ramaphosa and Meyer would seek to highlight agreement and down-play disputes, inviting constructive suggestions on how both sides could compromise and coaxing a settlement.

This edition of the *Whip* examines the mechanics of the deal-making process and tells the story of the tense final days when the channel nearly didn't make it ... See pages 4 and 5.


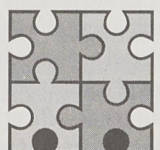
**INSIDE**

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**IDASA**  
WORKING FOR DEMOCRACY



# Parties seek constituency links

**S**OUTH Africans chose their elected representatives in the April 1994 election not on the basis of constituencies, but according to proportional representation and party lists, in accordance with agreements reached at the World Trade Centre negotiations.

To compensate for what has been perceived as a lack of constituency accountability, parliament agreed to set aside money — R36 000 for each parliamentarian per year — for constituency offices throughout the country.

A total of R17,64m from parliament's R344m budget was allocated for constituency work.

An official from parliament's finance department said the allowance was paid to each party according to the numbers of MPs they have. Audited statements must be submitted by the financial year end and only then is the next year's allocation paid. This is the only control parliament has over the allowance, the official said.

While MPs and senators across the board are committed to fulfil constituency obligations, they agree the allowance is inadequate, and the distances, workload and long parliamentary sittings make constituency work extremely difficult.

The National Party's Hennie Smit, whose constituency includes George and Knysna, said he paid around R1 500 from his salary to maintain constituency work. Other MPs do the same.

He added parliamentarians have had to think up innovative ways of fulfilling their constituency work obligations. He uses volunteers, works through local officials and has set up part-time offices to channel queries to the main constituency office.

He also uses a "voters assistance form" to receive grievances and channel them to the correct authorities, at provincial or national level. "We are not reaching the people as in the past and that is most dissatisfactory," said Smit, adding his constituency had grown to over 100 000 people.

Smaller parties, like the Democratic Party, have great difficulties as members are responsible for whole provinces, DP MP Douglas Gibson said. Responsible for Gauteng, Gibson said he had offices in Pretoria, Johannesburg and Kempton Park.

Yet both the ANC and NP maintain constituencies needs are filtered through to the parliamentary process, by raising them at caucus, committees, or study group level, or even by approaching ministers directly.

For example, ANC chief whip Arnold Stofile said a dam would be built for communities at his birthplace, Adelaide in the Eastern Cape, where residents currently get their water transported from Cookhouse 80km away.

Water and Forestry Minister Kader Asmal was approached, and he agreed to allocate half of the required R112m to build a dam in the area. Overseas donors and other likely sponsors are to be approached for the rest of the funding.

**Efforts to strengthen constituency work and structures, as a way of redressing a perceived lack of accountability and transparency in the proportional representation system, have their limitations.**

**MARIANNE MERTON examines the shortfalls of the system (above) while MICHAEL RASSOOL and JOEL MAFENYA visited a number of constituency offices to investigate the situation on the ground.**

## Grassroots workers battle against odds

**C**ONSTITUENCY officers from all parties are concerned that the proportional representation system has undermined their significance as political processes remain focused on the national parliamentary arena.

Despite parliament's attempts to compensate for this lack of constituency accountability by agreeing to back and fund a network of constituency offices throughout the country, most office administrators face an uphill battle, mainly due to a severe lack of resources.

The *Whip* has learned from a reliable source that constituency administrators have held a series of meetings with party whips who have promised to look into their demands.

In terms of their objective of reaching out to the broader public and providing a link between MPs and the people, officers report differing degrees of success. Yet all agree the task is immense, and the R3 000 allowance granted to MPs for their constituency offices is barely adequate.

According to Claude Ipser, National Party (NP) chairperson of the Bellville district council, lack of funding is a major issue. But he also says proportional representation (or the party list system — as retained by the new Constitution for at least the next election) does not clarify the legal responsibility of MPs over constituencies.

This is exacerbated by the randomness with which MPs were allocated constituencies, and the extent to which parliamentary committee meetings and sessions dominate MPs' times.

In the past, MPs used to be based at their constituency offices and the constituency officer played a more subordinate role. Today, the dynamics of constituency work are different, yet the constituency officer's role in relation to the MP remains unchanged.

The officer continues to liaise between the MP and the community, although under the new dispensation a typical constituency office aims to have far greater impact at the grassroots level.

According to Martin Fisher, constituency officer for the ANC office in Elsies River, very few people understand the tremendous constraints facing constituency officers, many of whom have to run their offices alone. Constituency officers in many areas have to undertake many different roles.

"I can hardly cope! Although I am motivated by a deep desire to help the community deal with issues like unemployment grants, old-age pensions and housing, I find I have to liaise with all levels of government to find the help that people need.

### Bread and butter issues

"The community sees this office primarily as an advice centre for all day-to-day problems. There are also those who view the office as a parliament office which deals with parliament affairs, and we also arrange parliament tours for members of the public, but most people don't understand what a constituency office is and how it operates."

Constituency offices differ between middle class and working class areas. The average Elsies River office user, says Fisher, needs help with bread-and-butter issues and the office functions mainly as an advice office.

He would prefer constituency offices to function more as a link between parliament and the people — as they did in the past — serving as the vehicle through which complaints about legislation can be addressed to parliamentarians. However, reality dictates otherwise. Elsies River, like most working class areas, had a history of advice offices during the 1980s, and as these have largely ceased to exist constituency offices have assumed this role.

Paul Kleinsmidt, who runs the NP's new branch office in Elsies River, has had to intervene in marital problems, help draw up bond applications and wills, act as Justice of the Peace, as well as liaise between people and government departments on pensions, workers' compensation, etc.

It is not clear who is entitled to seek advice in constituency offices. Are they intended for all people, irrespective of their political affiliations, or only the people who voted for that party?

The administrator of the Democratic Party (DP) constituency office, Jennifer Sanders, who has more than 10 years of experience in running a constituency office for Sea Point MP Colin Eglin, says "any person irrespective of political background can make use of our office and we have helped many people. Most of them like to remain anonymous and we don't ask for more details unless we have to get back to them".

In view of what constituency offices have come to represent, says Fisher, they should not be seen by communities as working strictly for a particular party. Rather they should function as a service to communities.

Despite the pressures of having to run offices singlehanded, most officers were nevertheless quick to defend their MPs. Asked about the accessibility of MPs to the public, Elaine Pearson of the ANC's Claremont constituency said, "Willie (Hofmeyr) is pretty busy with committee work and the constitutional assembly, but we are in constant

contact with him. If there is something urgent and I can't solve the problem I get in touch with him."

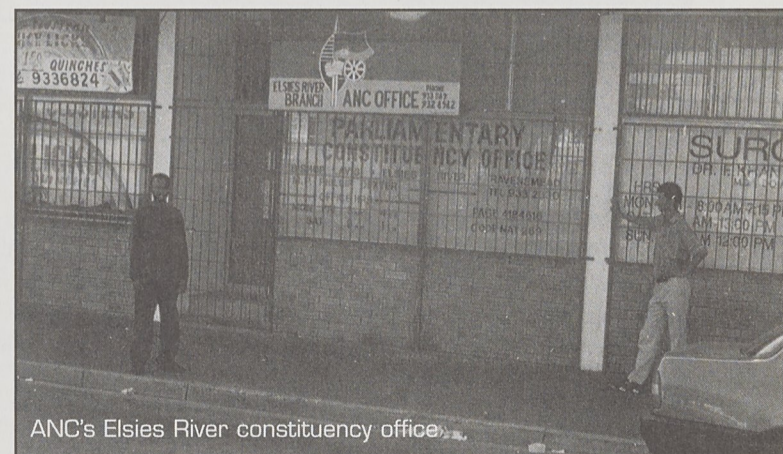
DP administrator Jennifer Sanders said the DP has only seven MPs who have to sit in parliamentary session and committees as well as service their constituencies, "but we maintain close contact with them".

Pearson runs the office singlehanded. She is probably one of the lucky ones. She finds that she still has time to help run the local branch of the Community Policing Forum.

Fisher, forced to cope with running his office alone, in addition to local government work and playing the role of community adviser or mediator, has no time for anything else.

"I have to type letters, give advice to the people, attend meetings, take people to parliament and arrange appointments for our MP." He is supposed to serve an average of 18 people a day.

Officers' salaries are R1 500. This is supposed to come out of the R3 000 stipend, which is also supposed to cover office running costs — electricity, telephone, faxing, etc. Officers are sometimes compelled to shoulder their own expenses. For instance, parliament does not pay for the use of pagers. As Ipser points out those officers with independent means of income, or offices in affluent areas that have access to additional funds from other sources, can deliver a more effective service.



ANC's Elsies River constituency office.

Officers receive no salary slips, no medical aid, no UIF deductions. And although they are expected to possess a range of skills — "you need to be multi-skilled" is how Sanders put it — they are given little training.

One constituency officer said officers have no proper status. They are often unclear about whether they work for parliament or the MPs, and they fear they can be fired at any time.



# Between people and parliament

**Constituency offices are struggling to cope with minimal resources, maximum demands and a marathon task. Two MPs give their views of the problems to MARIANNE MERTON.**

ANC MP Phillip Dexter's constituencies are the Cape Flats sprawl of Elsies River, including the working class suburbs of Ravensmead, Bishop Lavis and Ruiterswagt, and the rural villages of Ashton, Robertson, Montagu and McGregor. He shares the latter constituency with MP Rob Davies and they visit the area alternatively every two weeks. The Cape Flats constituency he shares with MP Sue de Villiers.

"It is very difficult. There is a great deal of stress. Offices are often under-resourced and staff are working long hours for very low pay."

Parliament's R3 000 monthly constituency allowance was inadequate to pay for office rental, equipment and staff.

"We all have to subsidise the offices from our parliamentary allowances," he said. "If you are serious about having a representative parliament, a parliament that is in an organic way responsible to the needs of the people, the problem of resources needs to be addressed."

Much of the work is centred on liaising with other government departments to try to assess constituencies' needs and provide help. Dexter has commissioned a study by students into the development needs of Ashton.

Elsies River has no advice office, and the constituency office has to deal with battered women, runaway children and divorce problems.

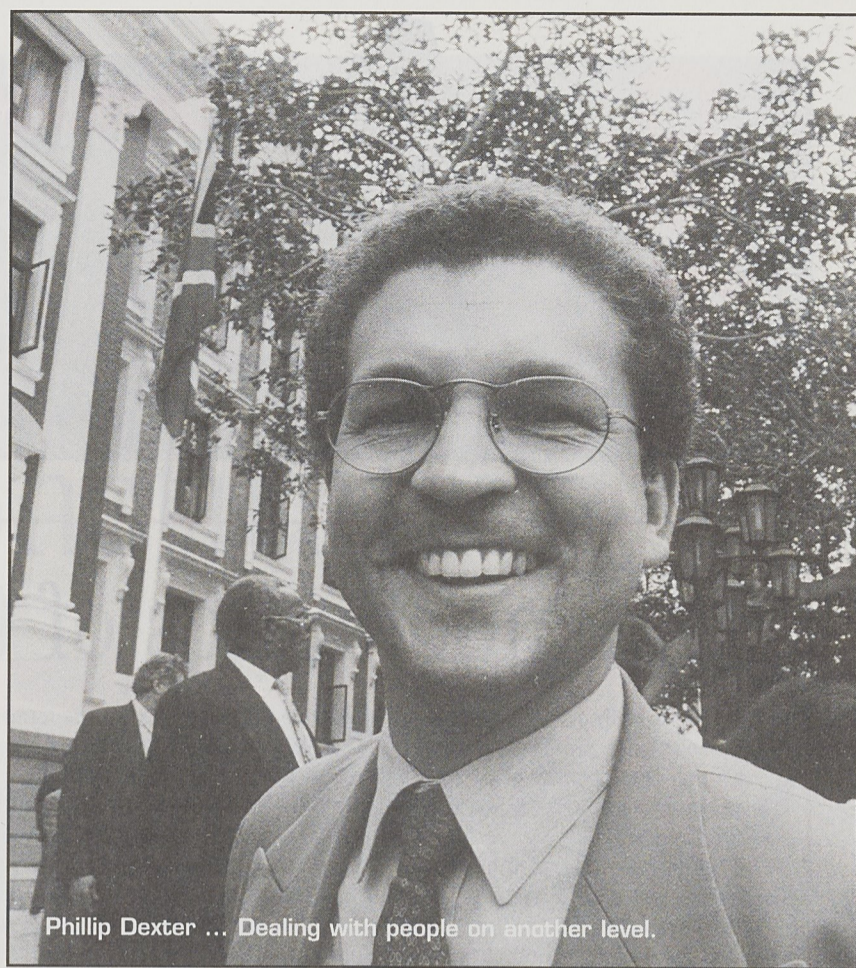
Dexter said the people are politicised and know about current issues and he can get a sense of what they want. He takes this back to caucus and other relevant bodies to inform them and in this way people can make an impact on decision-making through constituency work.

Dexter enjoys constituency work because he finds it interesting to deal with people who may be apolitical or belong to another party. "We have to deal with people on another level."

But it is difficult coping with this work as well as party and parliamentary duties. "I consider myself an activist, I do not want to fill out forms."

Dexter believes that while the Westminster system is not appropriate for South Africa, some constituency arrangement is necessary for representative government.

"There should definitely be a constituency element in the system. It is perhaps a contradiction in the present system that the people of Elsies River have not chosen me."



Phillip Dexter ... Dealing with people on another level.

PICTURE SUE KRAMER

## 'Culture of listening seriously' is a priority

By MARIANNE MERTON

WILLIE Hofmeyr is the ANC MP for Claremont, one of the "more progressive" white areas in Cape Town. His constituency work differs from that of his colleagues who work in rural areas or townships, as most Claremont residents are concerned about crime and policing, rather than water or housing.

Much of his work, Hofmeyr said, involves liaising with local organisations, such as community policing forums or ratepayers' associations, and bringing concerns to the relevant institutions for further attention.

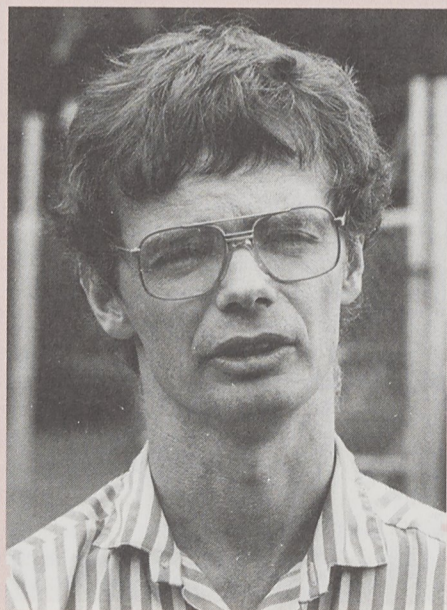
It also means getting up at 5.30am to put up election posters.

"I think it has been a battle to really make oneself known as an MP for the area." One of the difficulties has been the long sessions at parliament, where Hofmeyr arrives at 7am and seldom leaves before 8pm.

At the office — marked by a large notice board — Hofmeyr tries to help people who "see you as government" and who seek general advice.

"You always have to try to address real concerns, but with those people resisting change there is a limit to how much one can help these people."

Setting up "a culture of listening seriously" is a priority, he said.



Willie Hofmeyr: Battled to make himself known in Claremont.

From page 1

*bosberaad* in April. "There were only two of us from the PAC at Arniston and so obviously we could not be at all the meetings at the same time. We were not at the meeting at which the agreement to retain the 1994 electoral system for 1999 was reached. When I complained, they said that it was too bad that we had missed out."

On the retention of S43(b), De Lille said she had been unable to determine who had put forward its retention. The ANC say the NP put it forward, and vice versa.

The Democratic Party (DP) shared this view. Douglas Gibson said: "We have always said that the overwhelming majority of people would like to be represented by a specific member of parliament."

This is one area of the final Constitution that may be subjected to a challenge at the Constitutional Court, whose job it is to certify that the final Constitution complies with 34 constitutional principles set out in the Interim Constitution.

### Constitutional principle "breached"

One critic of the present system of pure proportional representation (PR), Nico Steytler of the University of the Western Cape Community Law Centre, argues that retaining the proportional representation electoral system breaches constitutional principle VI which requires accountable government because it tends to make MPs responsible and responsive only to their parties.

There were several ways, he suggested, to include a constituency component: election based on half PR votes and half constituency votes, multi-member constituencies or dividing South Africa into 100 constituencies where people are elected on PR votes.

ANC chief whip Arnold Stofile told the *Whip* that a mixed system of proportional and constituency representation, such as the German model, was a good one.

The Arniston agreement was negotiated by the ANC despite widespread support for such a mixed system within the party. National assembly Speaker, Frene Ginwala, for example, has always made it known that she supports the immediate introduction of some form of constituency representation.

A Parliamentary Information and Monitoring Service (PIMS) survey of MPs carried out last year showed overwhelming support for a change in the electoral system to include at least an element of constituency representation. About two-thirds of the sample supported a mixed system of PR and constituency representation. Five of

the seven parties favoured such a mixed system: only the NP and the African Christian Democratic Party had less than 50% in favour of such a system.

ANC sources who were close to the negotiations over the electoral system indicated that two main considerations had influenced their approach.

Firstly, the ANC is anxious to be able to represent a political face that is fully representative and racially diverse. A constituency representation system would probably result in a majority of black candidates being selected by the constituencies, at the exclusion of white, coloured and Asian members who are more than fully represented in the current ANC parliamentary party. The danger of a mixed system with an extra list of candidates to be elected via a PR system to top up the members elected to represent constituencies, is that MPs on that list might be regarded as second class, said one source.

Another very senior source was candid in admitting that the need for the ANC to be able to run a disciplined parliamentary party was also critical in their thinking.

He said that a significant number of members of the parliamentary ANC party were not yet ready for the added responsibilities of formal constituency representation and that the party generally was still on a sharp learning curve. It was still necessary for the central party to be able to guide individual members in the interests of both its and the country's transition.

### System not functioning well

All the ANC sources recognised that these arguments in favour of retaining the PR system in 1999 are underpinned by the urgent need to improve the system of informal constituency representation that they have implemented in the past year. It is conceded that it is not functioning particularly well (*see page 2*).

The NP has also introduced an informal system. NP chief whip Hennie Smit agreed constituency work was important and should continue despite the difficulties.

He would prefer a mix between PR and constituencies. "We will have to come up with a system where MPs are responsible to specific constituencies," he said, irrespective of the actual electoral system employed.

Stofile said, "a good MP is judged on the basis of how many times he or she speaks in parliament. It does not matter if you speak 10 times a day. That means absolutely nothing. Time should be used at the community level."



# Insight

## The mechanics of the deal-making process

**T**HE carefully managed chaos of the negotiation process had one central characteristic: the commitment to produce a final Constitution before the deadline.

After months and months — and rands and rands — of public participation, the constitution-making process ended, inevitably perhaps, with a tension-filled last 10 days of deal-making.

Even though the deals were made behind closed doors, the proximity of the negotiators to the press and observers meant that not all the transparency was lost, to the extent that it was possible to detect the method in the madness.

With "the channel" (see page 1) as the pivot, a whole galaxy of negotiating mechanisms rotated as teams entered into multi or bi-lateral discussions with their opposite numbers. From the outside it appeared chaotic, but according to those involved it was a carefully managed chaos.

As the last two years have unfolded so individual MPs and senators on the 47-person Constitutional Committee (CC) have developed constitutional specialities and, usually in teams of two or three, have emerged as mini-caucuses, reporting back to the full caucuses of their respective parties. With such specialisation emerging, and with the importance of one word, or one phrase, in constitution-writing, this has presented a chal-

lenge to the political parties in terms of ensuring that negotiators do not lose sight of their mandate.

ANC negotiator Dirk Du Toit describes this as theoretical discourse development, based on a political culture of understanding. Thus, he claims, individual negotiators did not have to get a mandate on every word that they negotiated because the basic lines are very clearly delineated. In addition, parties caucused as regularly as the state of the negotiations required, which by the end was at least once a day, and, for the ANC, as many as three times on one day in the last week.

The chief ANC negotiator, deputy minister Valli Moosa, described the process of selection of negotiators and the negotiations themselves as organic.

To Leon Wessels, deputy CC chairperson, it is not a system as such, but a process developed over the past few years. A source close to the channel said that "the mechanics were managed by Cyril Ramaphosa and Roelf Meyer.

Kempton Park taught them how to manage things. Then it was emotional, now it is technical. Here we are thrashing it out; there we were fighting it out."

Senior NP MP Danie Schutte said that the main difference from Kempton Park was that later the pressure was on the ANC to deliver a Constitution, whereas at Kempton Park it was on the NP.

The process of negotiation was also, to a large extent, a question of attrition: "it

before 3am on the morning of Thursday, 2 May, an NP negotiator simply cracked. "He lost it completely, caving in on a whole range of issues which had resulted in the ANC winning a huge victory for local government."

"What a way to write a Constitution!" exclaimed one international observer. "They have been at it for two years and here it is hours before the deadline with crucial issues outstanding, but a commitment to solving them because there is a deadline."

A CC technical adviser posed the question: "can one extrapolate a theory from all this?"

"I think the answer is to check what people's interests are, because in order to reach a

deal you have to show an empathy with other people's interests". Or, as Willie Hofmeyr put it, the essence of a good and fair settlement is that both sides are unhappy.

Thus, he told the CC in its last sitting, "I hope both sides can live with these agreements and that perhaps they will

be a little happier knowing how unhappy everyone else is."

It remains to be seen how good the final Constitution is technically, in terms of the wording and mistakes. Inevitably, however many and however talented the lawyers assisting in the process, the last-minute deals and tiredness will have had a detrimental effect.

Apart from the army of technical advisers and the panels of expert constitutional lawyers that served the CC, there was a small group of Canadian lawyers, headed by Phil Knight (allegedly the author of the spoof *Founding Provisions*) whose task it was to make sure that the final Constitution used plain language, language that was as accessible as possible.

Most of those involved in the process of negotiation accept that there is a tension between the desire to create a clear — plain language — Constitution and the imperatives of negotiated settlements, where the parties often want to retain a certain vagueness, often to enable them to sell the deal to parts of their own party, as one CA source put it.

One of the Canadians, David Legg, noted that you have to specify.

"That is what makes constitutions unique. Legally, you cannot afford to have vagueness. And, the more important the clause, the greater the need for clarity."

### CONSTITUTIONAL DANGER ZONE!

**They took it right to the very wire ... but, after a week of missed deadlines, flexible rules and long nights with very little sleep (see page 5), South Africa's constitutional negotiators finally did the deal that avoided a referendum and delivered the country its final Constitution.**

**Words by RICHARD CALLAND  
Pictures by SUE KRAMER**

is a question of stamina", admitted ANC MP and Bill of Rights negotiator, Willie Hofmeyr, "and we have more of it than them!" Tiredness, incoherence, lead to settlements. Another ANC negotiator, involved in the intense and detailed discussions over local and provincial government powers, told the *Whip* that just

## The spoof *Founding Provisions*

**A**MIDST the tension-filled final days of constitutional negotiations, light relief was found in spoof announcements of deals struck.

The *Whip* brings you one of these spoofs.

1. The Constitution is the Constitution of South Africa and constitutes constitutionalism.

2. The Constitution is applicable to the extent that it applies to all those to whom it is applicable. It furthermore binds all who are bound by it.

3. The rights in the Constitution are limited only to the extent that they are limitable, subject to reasonable limitations imposed by national legislation.

4. The Constitution is the supreme law of the land and may only be amended when the amendment is necessary. Any amendment must be regarded as necessary, unless the national

assembly, with a majority of two-thirds, decides that it is not necessary.

5. In a spirit of decency and propriety, all organs, including organs of state, must remain in their own functional areas, and not encroach on the functional areas and spheres of influence pertaining to other organs.

6. If parties referred to in 5 are no longer in existence or unable to assume the earlier mentioned powers and functions, an Independent Panel of National Unity must govern in a spirit of inter-related independence, mutual trust, the fostering of friendly relations and peace.

The members are: Tony Leon, Johnny de Lange, Andre Fourie, Mavivi Manzini, Constand Viljoen, Sheila Camerer, Essop Pahad, Danie Schutte, Naledi Pandor, Kenneth Meshoe (Convenor), Assisted by Adv George Bizos - AG.

## Constitutional glossary

- Bi-lateral: Closed door discussion between the negotiators of two political parties (invariably, and increasingly as the process moved towards deadline, involving the ANC and the NP to the exclusion of all other parties).

- Alternate use: when a verbal squabble would develop across the floor of the Constitutional Committee, Chairperson Cyril Ramaphosa or his deputy, Leon Wessels, would invite the protagonists to cease their bi-lateral or else continue it outside.

- Multi-lateral: A closed-door negotiation involving more than one party.

- Constitutional Committee: The committee of 47 key MPs and senators who conducted the final negotiations and where the drama of the last few days was played out.

- Constitutional Sub-Committee: A sub-committee of the Constitutional Committee, which, as the process approached the last few tense days and weeks increasingly became equivalent to the closed-door multi-laterals.

- Technical Adviser: A legal expert employed to help draft the politicians deals.

- Panel of Advisers: Legal experts employed to set out options for the politicians.

- Danger Zone: You approach a danger zone when you approach a deadline with no deal in sight. Ramaphosa formally determines when a danger zone comes within range. There were several during the final days of the negotiations, fuelling suspicions that it was one of many techniques used by him to pressurise negotiators to reach agreement.



In the 59th minute of the 11th hour ...

# They pulled it off!

**T**UESDAY 30 April, 1pm: This is supposed to be the last day of the Constitutional Committee (CC) hearings. The committee is due to present an amended draft Constitution that will be able to carry at least two-thirds support in the Constitutional Assembly (CA) when it meets to vote on the bill on 8 May.

But everyone knows it will not be the last day. There is tension in the air. Outside the Cosatu march has just reached parliament. A special ANC caucus meeting has been convened to discuss what the ANC's approach should be to the lock-out clause which has provoked the general strike. Thabo Mbeki addressed it.

The Nats are looking relaxed and good-humoured. Roelf Meyer is confident

slow day. Every few hours the CC reconvenes only to be sent away again, applications for more time having been granted. Out in the lobby a mixture of political journalists, photographers and TV cameramen, legal advisers, CA administrators, politicians and a weird collection of international constitutional groupies congregate, mill around, come and go.

At about 8.30pm there is a stir in the lobby. People pause to look at a young boy wearing a red t-shirt with the slogan *Rhodesia is Super!* on the front. He turns out to be the son of parliament's head chef, who has grown out of the t-shirt and passed it on.

9pm: The CC is adjourned again. Ramaphosa holds an impromptu press conference in the middle of the Chamber. The technical advisers are get-

controversial chapters are disposed of. A bi-lateral between NP MP Sam de Beer and Senator Bully, as Ramaphosa playfully calls ANC Senator Bulelani Ngcuka, is suggested to decide on the prosecutorial authority. But then it is realised that, in fact, a clause has already been negotiated to everyone's satisfaction.

News arrives from G26 where Pravin Gordhan's sub-committee is close to completing a marathon session covering the competences of the various tiers of government: national, provincial and local. But, they need more time. It is granted. A stroll over to G26 reveals that it is one of those closed door multi-laterals where the door is, in fact, open, permitting one to stand and listen. But the detail is too much at this time of night: someone inside asks what amenities list-

There is a telling and almost poetic scene as Ramaphosa and Meyer sit on the stairs leading down to the lobby, heads in their hands. We're in the danger zone, Ramaphosa announces. The channel will not get where it wants to be tonight, but everyone still has to wait for Gordhan to report. Ramaphosa wanders off to look — for the first time in detail, he claims later — at the provisions in the Interim Constitution that deal with breaking a deadlock, including the dreaded referendum.

2.43am: Gordhan strolls into the lobby. He's obviously exhausted, but he can't stop himself from smiling with a sense of achievement.

2.58am: CC reconvenes. There is absolute silence as Ramaphosa begins to read out a new version of the founding provision, which turns out to be a spoof (see previous page). Ramaphosa cracks up as he gets to the section on organs and spheres of influence.

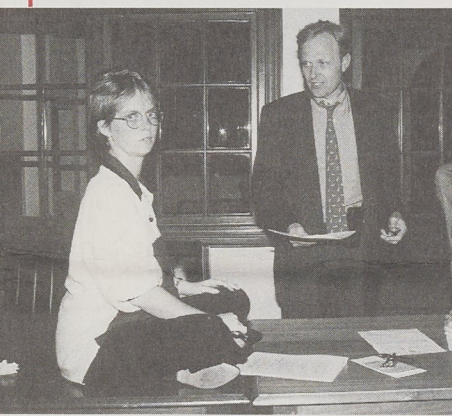
Then it's back to business, with Gordhan launching into a comprehensive report. Slotted, as it was, amongst the legalese, only about four people spot his own humorous, but deadpan response on the excising of the chairper-

not take place. Her request for an apology by mid-day is not met, whereupon Ginwala calls a press conference to publicise the matter. There is little media coverage. Most people share the view of one seasoned reporter that all is fair in love and constitution-making.

Friday 3 May: At around midday, the CA announces that they will ring the bells to indicate that the CC is to reconvene. They do so at 1.35pm, but it is a false alarm. The next time they ring is not until 8.35pm. It is a long day of negotiation at channel level, and higher, say senior party sources.

At 5.45pm Moosa confirms that the three issues remain outstanding and that before the end of the night the ANC will put forward its own proposals for the insertion into the bill whether there is agreement or not. Once again there is the unusual sight of politicians standing alongside reporters in an attempt to learn what is going on and how the other side is putting it. The definition of tonight? By midnight, he says, adding, at this stage. Everyone sighs. It is going to be another long night.

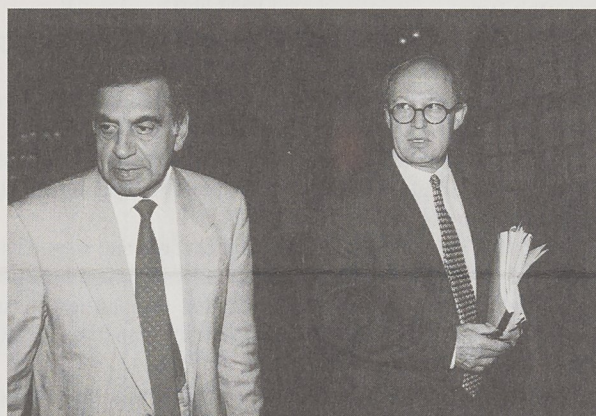
9.15pm: The CC reconvenes, although the news is all bad. No deal has been



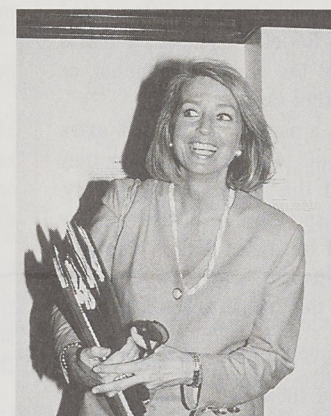
Tabled ... Melanie Verwoerd, Andrew Boraine.



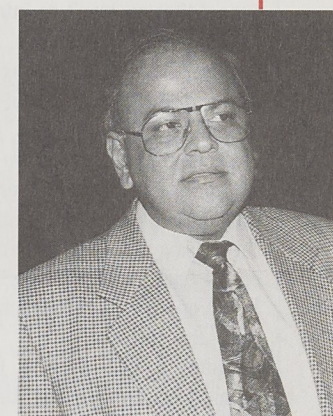
Determined ... Johnny de Lange.



Cross purposes ... Dullah Omar and Danie Schutte.



Elated ... Sheila Camerer.



Tired ... Pravin Gordhan.

that a deal will be done. Eight hours later: nothing has been resolved. There are wild rumours about ugly splits and arguments in the ANC-led alliance. Sources reveal that the rumours are mostly far-fetched. But there is definitely a problem between the ANC and Cosatu. One ANC negotiator, Willie Hofmeyr, says as he rushes by, "we are going to sort it out tonight whether it costs us our political careers or not".

The CC convenes for reports from the four negotiating groups. But there is nothing to report. "When can we expect to see you again?" asks deputy CA Chairperson Leon Wessels, rather plaintively. 10pm: No progress. People are starting to look and sound tired. Little did they know then: this was only the beginning.

Presidential law adviser, and senior ANC lawyer, Fink Haysom is candid as he stands in the lobby outside the Old Assembly Chamber: "My brain's gone ... I don't know where I'm supposed to be." At that very second someone appears from nowhere and sweeps him away: "Fink, we need you in G26."

Wednesday 1 May: It's Workers Day and the negotiators are working, starting with party caucuses at 8am. It is a long,

ting nervous, he says. We are getting close to the danger zone, he adds unless it is all wrapped up tonight. What is the definition of tonight? he is asked. By 6am tomorrow, he says. That is bad news for everyone.

DP MP Douglas Gibson and NP MP Piet Matthee are standing at the back of the scrum of reporters trying to listen. This is rare in politics generally, but increasingly common during these last few days of the constitutional negotiations when each side is desperate to get a better read of the other side's approach. Ramaphosa is asked if the NP will be putting forward a proposal on the education clause. You had better ask the NP, he responds. And the ANC on the lock-out clause? You had better ask the ANC, he says with a straight face, and then loses it, to laughter all round.

10.30pm: The parliamentary law adviser, Anton Meyer, wanders into the lounge adjacent to the lobby looking for a drink. His job is to translate the Constitution into Afrikaans. "It is difficult to keep up with all the different drafts and changes," he says. "If I have to translate the Bill of Rights another time ..."

10.55pm: At last there are some report-backs to the CC. A few of the less

ed in the proposed schedule of local government functions actually are. The answer is provided immediately: public toilets. This is what it is all about: the devil is in the detail.

11.41pm: The CA's photocopier finally gives up the ghost. In contrast to the growing tension and sense of crisis in the lobby, inside the chamber ANC MP Naledi Pandor has stretched out, reading a biography of Malcolm X. One group of people that is positively happy are the international constitutional advisers. One is Canadian Phil Knight, a plain language expert who is helping to write the new Constitution in more accessible language. He describes it as a "career dream ... after all how many constitutions are there in the world?" The parliamentary staff are also happy: they are stocking up the overtime.

1.10am: A member of the Cosatu group reveals that they have done a deal with the ANC (a week later and Cosatu say it was the same proposal that was finally agreed to in the Constitution). The ANC is free to negotiate with the NP now, but it soon becomes apparent it is not going to work. There is deadlock. Education, and single-medium schools in particular, is the stumbling block.

son's organ he referred to just now.

A vast chunk of the Constitution has now been agreed. But there are three remaining, seemingly intractable, problems: education, property and the lock out. Meyer suggests meeting again in 24 hours time. Since it is now 5am on Thursday morning, this is not one of his better proposals. The CC is adjourned until 11am on Friday, when, as ANC senior negotiator Valli Moosa makes clear, the ANC will table amendments on the three outstanding issues whether there is agreement or not.

Everyone trudges off exhausted and tense, with Ramaphosa's words of warning ringing in their ears: "If we take the wrong turn in the next 24 hours we may be dragged onto a course that would spell disaster for our country."

As CC members leave the chamber there is a change of atmosphere between the parties. NP Senator van Breda refuses to enter into a bi-lateral with the ANC over the clause dealing with the Speaker of Parliament if ANC MP and current Speaker of the National Assembly, Frene Ginwala, is part of the ANC's negotiating team. This is said in front of Ginwala, who takes personal offence and complains to the channel. The bi-lateral does

done. It is a sad moment for our new South Africa, says Pandor. The ANC benches are full of serious, even glum, faces. Collectively, one senses, they are wrestling with something. There is an adjournment to allow the ANC to caucus quickly. They return, spirits suddenly restored. The NP's position has been rejected; they are resolved now to fight it out, referendum and all. A number of ANC sources say the same thing: we have gone as far as we can to accommodate the NP, now they are being totally unreasonable.

The three ANC positions are put forward and rejected by most of the other parties, except the PAC (Join the ANC, Patricia! shouts ANC MP Blade Nzimande to the PAC's Patricia de Lille).

Deadlock upon deadlock. But Ramaphosa leaves the door open. The final bill will be printed over the weekend, but the CA management committee will meet on Monday morning to consider the rules which are very flexible, he says. Key ANC MP Baleka Kgotsile has her young son with her on the bench, squashed between her and an increasingly vociferous Johnny de Lange, who repeatedly shouts across the floor: "No,

turn to page 6



From page 5

the door is closed now." DP leader Tony Leon refers to the exclusion of the employer's right to a lock-out and says "the champagne corks, or beer or whatever it is they drink, will be popping in the Cosatu offices now". "That blow on the head is still affecting him," shouts De Lange.

There is a testiness in the proceedings now. Leon accuses Gordhan of calling him a liar. Gordhan responds by saying that the day he wants to call Mr Leon a liar he will do so, but that day has not arrived. Ramaphosa's calming voice enters the fray: "Mr Gordhan has said that the day he does call Mr Leon, he will do so on some other day ..." — it begins to sound like one of his spoof clauses — "... but I'm more interested in finalising the Constitution of South Africa."

Monday 6 May: All the other MPs are back, in order to attend the full meeting of the CA. A packed and defiant ANC caucus meets at 10am. The clapping and liberation songs ring out through the lobby.

Tuesday 7 May, 1.14pm: Negotiations have been going on and off since Friday, says an NP spokesperson, "at about channel level". Both parties have got themselves into a corner, which is frustrating the process and it has been difficult to get things moving. There has been a lot of posturing over the weekend. Things have not been helped by what senior ANC people are describing as an unmandated proposal from an ANC lawyer to the NP over the lock-out clause earlier that morning. It has taken a while to un-do the irritation caused by the retraction of the proposal.

5.20pm: The CC reconvenes, only to adjourn because there is something in the air, says Leon Wessels. The CA debate has started, however, and will continue anyway: "So what do we say in our speeches?" asks Blade Nzimande. "I think you can expect that we won't go into the night with big differences," says Meyer's spokesperson, Izak Retief. This means a deal is virtually done. There is light at the end of the tunnel, or channel, perhaps one should rather say.

8.25pm: CC reconvenes. It is a packed house, with extra chairs and even one or two people who look as though they might actually be members of the public in the gallery. Ramaphosa reads out another spoof set of clauses on the three issues, this time penned by lawyer Halton Cheadle, called back early from his crayfishing holiday. It takes the DP's Dene Smuts rather longer than usual to catch on: "Oh, shit!" she exclaims.

Then, a last minute hitch. There is a new issue, Ramaphosa announces. Stunned silence. It turns out to be pensions, incredibly. Raised at almost the very last possible moment; "this matter has come rather late", says Ramaphosa, digging deep into his apparently vast reserves of patience, tolerance and dry, understated sense of humour.

The NP want the protection granted by the Interim Constitution over their old state pensions extended by the final Constitution. "They're not trying to save the Constitution, they're trying to save their bacon," someone comments in the lobby. "Looters. They're nothing more, nothing less," says ANC cabinet minister, Kader Asmal.

9.35pm: The re-convened CC needs to adjourn again, this time to allow the NP to caucus over the ANC's rejection of their pension proposal.

Although for the audience this is by now a well-worn path, there are rumblings of discontent. "We have waited two years for this Constitution so we can afford to wait another 20 minutes," reasons Ramaphosa.

10.45pm: Now we are waiting for the DP. The ANC benches start to sing and chant. At last everyone is there. "I have a lump in my throat," begins Nzimande, as he takes the CC through the agreed education clause.

In the week that has passed the NP has effectively succeeded in getting only two words added to the clause. But they are significant words. The words are "single medium". Such schools are not entrenched in the Constitution — the ANC did not go that far — but may be permissible in certain situations.

On the lock-out there is no change. And on property, the removal of two words, effectively: "natural resources" which the NP feared could be interpreted as entrenching a right of government to nationalise mineral resources.

Sheila Camerer of the NP responds. "You've come a long way, baby," she quoted to the ANC. At that moment it felt like we had all come a long way, baby, but that it had been worth the journey.

# Cabinet at odds with Cameron commission

**The Joint Standing Committee on Defence has expressed concern over ministerial changes made to the draft white paper on arms control. These changes, made in accordance with formulations by the cabinet's Arms Control Committee, are not in line with the Cameron Commission recommendations, reports MANDY TAYLOR.**

THE debate has scarcely begun on parliamentary oversight of arms control. That became apparent in a debate on the draft white paper on defence, presented to the parliamentary committee on defence by Deputy Minister Ronnie Kasrils.

Changes in the current draft made by the Minister of Defence, Joe Modise, reveal that the cabinet's view on arms control remains at odds with the Cameron Commission's second report and that there might well be major differences between the cabinet and the joint standing committee on this issue.

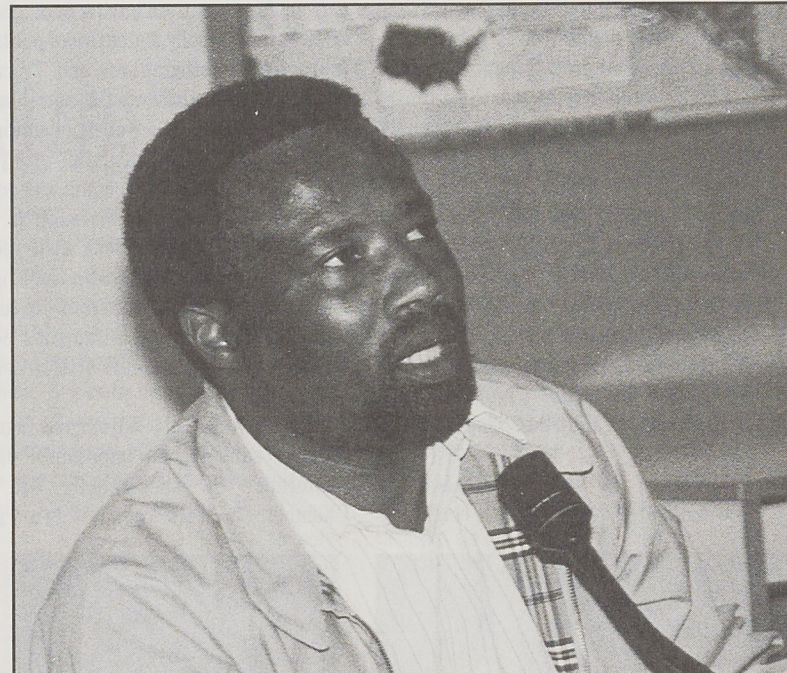
The relevant section in the draft white paper deals with principles governing conventional arms trade. It states:

"The principle of openness and transparency relating to arms trade shall apply. This will be limited only by (national security interests) *the needs of national interest and confidential bilateral agreements with other states.*" (The minister's additions to the previous draft are italicised and his deletions to the draft are in brackets.)

The committee raised concerns about the changes and were advised by Kasrils that the minister could not propose a formulation that differed from a cabinet committee formulation and that the position on arms sales of the National Conventional Arms Control Committee (NCACC) therefore necessitated the change.

Chairperson Tony Yengeni's response to Kasrils was that the joint standing committee should have oversight of various areas including armaments. He pointed out that mechanisms have been established in other very sensitive areas, for example intelligence, and that there was a need to do that here.

Parliament's involvement in this area of work was not at all clear to him, he said. Kasrils suggested that he (Kasrils) takes a strong message



Defence committee chairperson Tony Yengeni.

from the committee to cabinet on this point. The committee advised him to convey to cabinet that the ANC is uncomfortable with the position being taken by the NCACC. The party is of the view that the amendment to the white paper allows too many limitations on openness.

The difference came up again in the discussions on a clause detailing the establishment of an independent inspectorate. A new compromise proposal was put to the committee to the effect that a panel be set up composed of members of the joint standing committee and the NCACC. The panel would conduct interviews for the position of inspector-general and would make recommendations to the cabinet through the NCACC. The ANC was concerned that the proposal had not been put to them previously and said that they would want to debate it fully as they cannot simply agree on the NCACC promoting its authority.

## Project puts parliament on air

"IT WAS a great moment to be able to stand up there and make your maiden speech in parliament and know that you are now speaking in a democratic South Africa and you are representing people who hitherto had no voice in that parliament."

Gora Ebrahim, MP for the Pan Africanist Congress (PAC), spoke these words in a recent interview that formed part of a new radio project. This project aims at demystifying the parliamentary process and making parliament accessible to the public.

The project, undertaken jointly by Idasa's Parliamentary Information and Monitoring Service (PIMS) and the Radio Unit, and sponsored by the Westminster Foundation for Democracy, consists of a range of documentaries, profiles and community announcements.

The profile series examines six parliamentary committees, with profiles of committee chairpersons and 18 individual MPs. It also includes an introductory programme explaining the committee system of parliament.

Independent and community radio stations nationwide have been

**The first products of a range of documentaries, profiles and community announcements about parliament were well received by several radio stations, reports JOY MALAN.**

enthusiastic about airing the series. These stations include Radio Bop, Radio C-Flat in the Western Cape, Channel Med in Ga-Rankuwa, Radio TNT in the Northern Province and Radio BBT in Bloemfontein.

Two half-hour documentaries looking at parliament have also been produced for air on SAFM and other stations. The first, entitled *Women in corridors of power*, explores the role of women parliamentarians in our budding democracy. The programme features MPs Mavivi Myakayaka-Manzini, Baleka Kgositsile and Diphuo Peters, who all speak freely about the difficulty of balancing home and work life and the stresses of being a woman in the still male-dominated environment of parliament.

The second programme entitled *The second anniversary of parliament* looks at the changes in parliament over the past two years.

The next phase of the radio project is a series of short snappy community announcements, in a variety of South African languages, that will be aired on the SABC and community stations. These will highlight and explain the different facets of our new government.



**A central tenet of SA's new democracy is the promotion of citizen participation and empowerment, but what role can ordinary citizens play in national decision-making?**

**MARIANNE MERTON takes a look at how much community involvement has been achieved in parliament and in the constitutional assembly (below).**

# Alliances underpin parliament outreach

**T**HE head of parliament's public education department (PED), Alf Karrim, would like to see his department entering into co-operative alliances with civil society organisations to help citizens take part in parliament and engage in decision-making.

Parliament's programme was not aimed at setting up structures at grassroots level because of its limited capacity, he said, and it is through co-operation with established community organisations that public participation could be maximised.

"Obviously we'd like to reach unorganised people," he said.

Karrim spoke to the *Whip* in the run-up to a consultative conference hosted by his department in Cape Town at the beginning of May. It was the second in a series of such conferences to be conducted in centres around the country to discuss how ordinary citizens can be involved in parliament and the role civil society can play in facilitating this. These conferences will culminate in a national civil society conference.

About R5,5m has been allocated for, among other things, publications, workshops and public meetings to inform the public about par-

liament and how to engage in the parliamentary process. Education projects will also be held in schools and clinics.

Merle Brown, the outreach project co-ordinator, said co-operation with civil society was important because such organisations represented the people who voted for parliamentarians. "Parliament does not see itself as drawing up a syllabus for civil society."

The PED conference, opened by national assembly Speaker Frene Ginwala, brought together MPs, Western Cape members of provincial legislatures, Speakers from other provincial legislatures and civil society organisations.

At the opening, Ginwala announced that a list of MP's names, constituencies, office addresses and telephone and fax numbers would be released to the public and published in some newspapers to promote public involvement. She also reported that parliamentary proceedings would be broadcast on national television.

"While this is not enough, it is beginning to find ways of communicating," Ginwala said.

The national director of Project Vote, Michael Weeder, who addressed the PED conference, said people on the ground should gain insight into how they could intervene in the democratic process. Project Vote surveys had indicated many people believed the 1994 election meant nothing or little to them as their personal circumstances had not changed.

"Our idea is to develop the lobbying capacity from below." This would mean co-operating with community-based organisations or local non-governmental organisations to help them approach the correct government institutions to get relief, Weeder added.

Richard Dyantyi, chairperson of the Khayelitsha Development Forum, appealed for information in simple language and resources to upgrade the skills of its officials. Speaking at the conference opening he said communities had already organised themselves and now needed authorities to help facilitate an understanding of their rights and what was happening in parliament.

"If we are to talk of democracy, I think we need to talk about improving the living conditions of the people. If we are not improving the living conditions, I don't think we can call it democracy."

Provincial legislatures have initiated their own public education programmes. In Gauteng, for example, the legislature had produced a pamphlet to explain what it does and a radio programme for local community stations and had opened a public petitions office, provincial Speaker Trevor Fowler told the conference.

Another conference contributor, Andrew Dalling, a former chairperson for Lawyers for Human Rights in Cape Town, said lobbying was an important part of the new democracy. "There is a need to formalise lobbying so it does not become a scrum."

At present individuals and organisations have the opportunity to approach committees or members through public hearings which have accompanied the legislative process.

"I'm not sure the idea of access to parliament per se is a sensible mechanism. The access via a committee is much better. It does not mean people are out of touch because there is a committee interposed," Dalling said.

## PIMS promotes provincial participation

**T**HE Parliamentary Information & Monitoring Service (PIMS), which produces the *Parliamentary Whip*, has launched a rolling provincial tour of workshops. The first workshops were held last month in Umtata and East London in the Eastern Cape.

Entitled an *introduction to parliamentary monitoring*, the aim of these provincial workshops is to inform non-governmental organisations and other organs of civil society about how parliament



Joleen Morris, PIMS Public Relations Officer.

works and who their elected representatives are, to enable them to intervene effectively in the parliamentary process.

Commenting on the Eastern Cape workshops, PIMS Public Relations Officer, Joleen Morris, said the region can be likened to a sponge, soaking up every drop of information, gobbling at every morsel — such is the hunger for information about parliament and MPs.

PIMS hopes to develop working relationships with other organisations to extend its monitoring, information dissemination and capacity-building work with a view to forming provincial parliamentary monitoring forums or networks.

PIMS Project Co-ordinator, Joel Mafenya, said: "one of the main purposes of these initial workshops is for us to consult and listen. We learnt a great deal".

## Civil society had impact on CA process

**W**HILE South Africans celebrated the achievement of the constitutional assembly (CA), questions surfaced about the extent to which public submissions played a role in the final product. This process of drawing up the Constitution, described in some media as horse trading between political parties, comes at the end of almost two years in which the CA received more than two million submissions from individuals, non-governmental organisations and lobby groups.

Inputs were also made at public hearings when six theme committees heard submissions. As part of the drive to solicit public input, the CA published a tabloid newsletter and produced a television programme called "Constitutional Talk". Its media campaigns reached 73% of South Africa's population, according to a survey by the Community Agency for Social Enquiry (Case). Another 117 184 individuals were reached through face-to-face talks in the year since February 1995.

CA media liaison officer Catherine McKenzie said there had been input from civil society right up to the last minute, as the 30 April Congress of South African Trade Unions march against the lock-out clause showed. McKenzie said many public submissions dealt not with the Constitution itself, but with possible legislation. These would be used as a basis for redrafting legislation.

ANC negotiator Willie Hofmeyr said the public submissions process had been "remarkably open and transparent". Speaking days before the final Constitution was passed he said: "We've tried to include public submissions whenever possible."

"I think we've gone further than any other constitutional process to elicit responses from the public."

Public submissions have been directly included in some clauses of the Bill of Rights. For example, the clause dealing with consent for scientific or medical experiments now includes the word "informed" because many South Africans are illiterate and may not understand an ordinary indemnity form signed ahead of such experiments, Hofmeyr said.

Also, two sections dealing with children were included on the basis of public input. One clause reads "a child's interest is of paramount importance in every matter concerning the child" and the other defines a child as anyone under 18. Hofmeyr said while it was unfortunate some compromises were reached without referral back to the public, time pressure made this inevitable.

The April survey by Case showed 60% or 15,2 million South Africans knew of the CA. A significant proportion of these (39%) knew it was drafting a new Constitution while another nine percent knew the CA was "getting people's views". Just under half (48%) of

all adult South Africans felt part of the CA process, with 28% feeling excluded. The survey showed that men, those living in urban areas and the more educated, were more likely to be informed about the process.

Case found most South Africans wanted to be left alone rather than engage in difficult notions of constitutionalism. "Few organisations in civil society — with the notable exception of the trade union movement — have made a concerted attempt to draw their members into meetings or discussions about the constitution-writing process."

Of the respondents who belonged to organisations, clubs or societies, 79% had not been informed through these. Thirty seven percent of respondents belonging to a trade union, however, had been informed through their union. Of these 29% had the opportunity to attend meetings and 71% had done so.

"This suggests that the civil society partnerships which the CA needed to form for a successful participation campaign were less effective than they may have been with limited follow-through by key organisations," the survey said.

Where the CA was in charge, responses were better. Almost 60% knew how to take part in the process with 29% specifically knowing they could send written demands to the assembly.



This week **WHIP** launches a focus on life in the provincial legislatures. The aim is to inform people about their various provincial legislatures and facilitate public participation in the democratic process at provincial level. **GARETH NEWHAM** and **REINETT VAN HEERDEN** report on these aims and the implementation of the project.

## Provincial legislatures the focus of new Idasa programme

**I**DASA has embarked on a provincial parliamentary monitoring and information programme funded by the Dutch Government. Based in Pretoria, this unit is working in the North West, Northern and Mpumalanga Provinces.

It is foreseen that its activities will be extended to include the other provinces, once funds become available.

The main aim of the project is to facilitate processes that inform the public about their rights and responsibilities, and to educate the public about what happens in parliaments and how democracy and parliaments work. The project will empower individuals and organisations to take responsibility and engage constructively with the legislature.

The project started in January, when project members visited parliament and the Parliamentary Information and Monitoring Service (PIMS) in Cape Town to assess processes and evaluate activities which have taken place so far within the PIMS project.

Some of the principles involved at national level were used to conceptualise the project at provincial level, but as the provincial legislatures differ politically, geographically and culturally from the national parliament, the project will adopt different approaches where necessary. Three co-ordinators run the project, one for each province.

The initial phase of the project entails compiling easy to understand booklets in the relevant languages of the provinces. These will explain what the provincial parliaments do and how the public can make use of them. Also included in the booklets will be members' photographs, brief biographical details, responsibilities and access numbers. The next step will involve using radio as a medium of public education.

The projects will get involved in conducting research and workshops and will release articles and reports to accentuate provincial issues and concerns. Idasa has already facilitated government workshops and human resource audits in the Northern and Mpumalanga provinces.

The successful implementation of the project depends on negotiation and consultation to establish a clear working relationship between the project co-ordinators and the provincial legislatures. A draft project programme was developed and presented to the various Speakers, Secretaries and Chief Whips of the legislatures.

## Pomp and ceremony

By **PRINCE MOKOTEDI** and **GARETH NEWHAM**

**T**HE second session of the Mpumalanga Province legislature was opened with grandeur and celebration on 29 March in the Nelspruit Civic Centre. The many dignitaries and other

guests were received by the Mayor of Nelspruit and the Secretary of the legislature, Alfred Mahlangu.

The Premier, Mathews Phosa, arrived to a salute by a contingent of soldiers and the national anthem. This was followed by the ululation of a praise-singer and the conducting of the opening ceremony in the legislature's chamber.

The members of the legislature and guests proceeded to a formal lunch during which the new coat of arms was unveiled. The police choir performed in between the various courses, speeches and presentations, and were joined by all present for a rendition of the national anthem.

## Baking bread in the North West

By **REINETT VAN HEERDEN**

THE North West Province has embarked on an ambitious project to help uplift rural women. In co-operation with South African Breweries (SAB) this project empowers women with the necessary skills to earn a living on a sustainable basis.

The project originated a few months ago when the parliamentary multi-party caucus on women visited a rural village in the Vryburg/Ganyesa area. This village has no running water or electricity and receives bread only twice a week from Vryburg. On this visit no bread arrived. In discussions with the visitors about their needs, the woman of the village put forward the idea of building a bakery.

SAB agreed to fund the project and provide training, the local chief agreed to the usage of land to build the bakery, and Telkom, Eskom and the Water Board agreed to supply telephones, electricity and running water and sanitation. The MEC for Labour agreed to supply uniforms for the woman and assist with training, while the MEC for Public Works agreed to have access roads built. The first 50 women are already being trained in workshops held by SAB. Not only do they learn baking skills, but also managerial and administrative skills. Links are being forged with other businesses in the area. The MEC for Health has also been approached for the bakery to tender for school nutritional programmes and to supply the hospital with bakery goods.

## **From** **THE GALLERY**

By **JOEL MAFENYA**



## Criticise our MPs with respect

**W**HEN you start mentioning or talking about parliament to ordinary folk they tend to associate it with glamour, sleek cars and fame. They don't mention the gravy train, which has become a fancy word to describe the life of parliamentarians.

What is sad is that the other side of the story is not mentioned: MPs being away from home for long periods, the sleepless nights they spend trying to analyse bills referred to their respective committees. The list is endless.

I was in the gallery as usual, sitting next to a *gogo* (granny). I mean a white *gogo*. They normally don't miss such parliamentary proceedings, maybe because they don't live far from parliament. It is difficult to say whether she was interested in the debates or just came to parliament to while away the time.

I was shocked when she said to me that some MPs do not deserve to be in parliament. When I asked why — because I did not want to jump to conclusions — she said: "the previous speaker was reading the speech from paper and was not creative. It was repetitive and dull." I was touched by the MPs speech, maybe because that

particular MP was sketching the history of how the youth have liberated this country. I had to ask myself whether this is because I am a township boy.

Mind you, we were referred to as *klipgooiers* (stonethrowers). Surely the public have the right to criticise, but let's criticise with responsibility. By attacking poor MPs for the sake of attacking, are we not closing avenues for constructive criticism and holding them accountable? Viva freedom of expression with respect for others.

I need to be understood clearly here. I am not for or against what members of the public feel about their MPs, and of course MPs are supposed to be our servants and the representatives of the people "on the ground".

The point I am trying to drive at is that the MPs are also human. They need our support to cope with their daily tasks. It hurts me to see some of them roaming around the streets of the Mother City doing window shopping during parliamentary sessions. Could this be a sign of frustration with an unresponsive system, which I presume they are trying hard to transform.

So we should not envy and glorify our MPs when we come across them in the streets. Instead we should, if possible, stop and talk to

them and hear what angers them in the chamber and committee rooms. This might lessen rumours and inaccuracies created by the media about them.

Madam Speaker Frene Ginwala committed herself to fair play and accessibility when she announced at a public education workshop held in parliament recently that plans are underway to have MPs' personal telephone numbers made available to the public. Imagine being connected to your MP directly without the hassle of first having to get past the secretaries who can decide whether to give you access. I cannot wait to have Frene's direct number.

Let me end by recalling my encounter with a certain MP from a particular party who is "highly educated" and who tried to intimidate me the first time I met him in the corridors of parliament.

This "chap" tried very hard to convince me that he is a champion of the struggle. You know, the kind of people you come across who try hard to make you feel that your contribution to the struggle was minimal because you have never been to the other side of the world.

Why blame him, instead of the system. He is privatising the struggle.

**EDITOR** Richard Calland ♦ **ASSISTANT EDITOR** Moira Levy ♦ **LAYOUT** Rob Meintjes

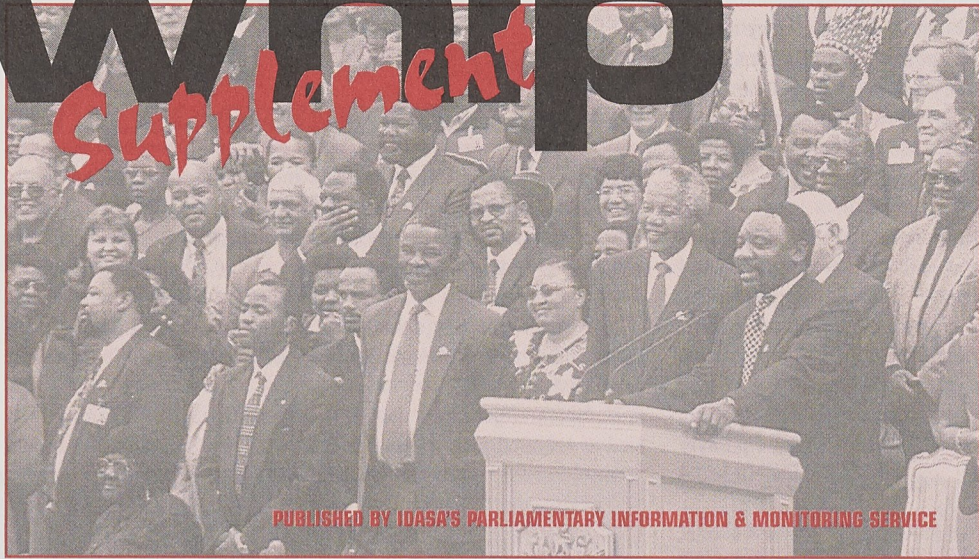
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# A guide to the Constitution

## Preamble

**We, the people of South Africa,  
Recognise the injustices of our past;  
Honour those who suffered for justice and freedom in our land;  
Respect those who have worked to build and develop our country; and  
Believe that South Africa belongs to all who live in it, united in our diversity.  
We therefore, through our freely elected representatives, adopt this  
Constitution as the supreme law of the Republic so as to —  
Heal the divisions of the past and establish a society based on democratic  
values, social justice and fundamental human rights;  
Lay the foundation for a democratic and open society in which government is  
based on the will of the people and every citizen is equally protected by law;  
Improve the quality of life of all citizens and free the potential of each  
person;  
Build a united and democratic South Africa able to take its rightful place as  
a sovereign state in the family of nations.  
May God protect our people.  
Nkosi Sikelel iAfrika. Morena boloka setjhaba sa heso.  
God seen Suid-Afrika. God bless South Africa.  
Mudzimu fhatutshedza Afurika. Hosi katekisa Afrika.**

## Chapter 1 FOUNDING PROVISIONS

SOUTH Africa is committed to equality, human rights, non-racialism and non-sexism. There must be a common voters roll of all adults and a multi-party system of democratic government. The Constitution is supreme. This means that all the laws of the country must comply with the Constitution.

The Pan South African Language Board is responsible for promoting respect for the 11 official languages which are: Sepedi, Sesotho, Setswana, siSiswati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.

*Note: the first two points above can only be changed by a vote of 75% of the national assembly [Section 74(2)], whereas any other part of the Constitution requires only a two-thirds majority.*

## Chapter 2 BILL OF RIGHTS

THE rights that are protected include:

The right to equality before the law (*note: affirmative action legislation is allowed in order to promote equality. The state may not unfairly discriminate against anyone on one or more grounds, including: race, gender, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.*)

The right to life.

The right not to be detained without trial, and not to be punished in a cruel or degrading way.

The right to control over one's own body and the right to make decisions concerning reproduction (*note: the intention is to make abortion both lawful and constitutional.*)

The right not to be subjected to slavery, or forced labour.

The right to privacy.



The right to freedom of conscience and religion.

Freedom of expression, including specifically, the press and academic freedom (*note: freedom of expression is limited, however, where it constitutes propaganda for war, advocacy of race hatred or incitement of violence.*)

The right to demonstrate and picket.

The right to freedom of association.

The right of citizens not to be deprived of citizenship.

The right to a passport and the right to leave SA.

The right to join trade unions or employer organisations and the right to bargain collectively.

The right to strike (*note: the compromise on the right of employers to lock out their workers was the inclusion of a clause at the end of the Constitution [section 241] which states that the Labour Relations Act 1995 [LRA], which makes lock-outs lawful, is not unconstitutional and cannot be amended or repealed by national legislation unless there has been consultation with national employer and employee organisations. In other words, employers may lock-out their workers until such time as the LRA is amended or repealed by parliament.*)

The right to a healthy environment.

The right not to be arbitrarily deprived of property (*note: the state has a duty, however, to take steps to achieve equitable land reform.*)

The right to adequate housing.

The right not to be refused emergency medical treatment and the right to have access to health care services, sufficient food and water and social assistance.

Children have the right to basic nutrition, shelter, basic health care and social services. They have a right not to be detained, except as a last resort, and then not to be held with people older than 18 years.

The right to a basic education and the right to receive state education in the official language of one's choice, where reasonably practicable (*note: single medium schools are not necessarily unconstitutional, and the state must consider such schools, after taking into account what is fair, practicable and the need to redress the results of past racially discriminatory law and practice. Independent — private — schools are protected by the Constitution as long as they do not discriminate on the basis of race.*)

The right to use your language of choice and to participate in cultural associations — as long as this is not in a manner inconsistent with any other of the rights.

Turn to page 2



From page 1

The right to any information held by the state and any information held by another person that is needed for the exercise or protection of any rights (*note: the government may, however, pass laws which will limit the administrative and financial burden on the state*).

The right to just administrative action, including the right to be given written reasons where your rights have been adversely affected (*note: the government is allowed to take into account the need for an efficient administration when passing laws to give effect to this right. The government must create an independent tribunal or provide for judicial review by a court of law*).

The right to have a dispute resolved in a fair, public hearing in court or an impartial tribunal.

The right to remain silent on arrest and to be informed promptly of this right.

The right, if detained, to have a lawyer to help you at state expense if substantial injustice would otherwise result. The right to adequate accommodation, nutrition, reading material and medical treatment in prison and the right of prisoners to be visited by their partners, next of kin, chosen religious counsellor and chosen doctor.

The right to a fair trial, including the right of appeal or review to a higher court. Evidence obtained in a manner contrary to the Bill of Rights must be excluded if it results in an unfair trial.

Rights may be limited only to the extent that the limitation is reasonable and justifiable in an open, democratic society based on dignity, equality and freedom [section 36] (*note: when deciding matters the Constitutional Court is allowed to take into account anything it thinks is relevant to this important test, including: the nature of the right; the importance of the reason for the limitation; the nature and extent of the limitation; the relationship between the limitation and its purpose; and whether there is a way of achieving this without restricting or negating the right*).

A state of emergency may only be declared by an act of parliament and only when there is the threat of war, invasion or some other public emergency and it is necessary to restore peace and order.

Not only people directly affected by an infringement of a right listed in the Bill of Rights may approach a court for relief, but also people acting on behalf of someone else or on behalf of a group of persons, or even just someone acting in the public interest. The Bill of Rights does not only bind all state institutions, but is also applicable to all individuals and corporate bodies.

## Chapter 3 CO-OPERATIVE GOVERNMENT

THIS chapter sets out the principle of co-operation between national, provincial and local spheres of government. The chapter states that parliament must pass legislation facilitating inter-governmental relations, and that all reasonable steps to settle a dispute between different spheres of government must be taken before a court is approached (*note: this is a new, and possibly unique, concept*).

## Chapter 4 PARLIAMENT

THE Constitution decrees that parliament — consisting of the national assembly and the national council of provinces — will remain in Cape Town unless an act of parliament determines that it should be elsewhere (*note: this means that a simple majority in the national assembly can move parliament elsewhere*).

(See chart on back page for composition of national assembly and national council of provinces and their respective functions.)

The voting procedures in the two houses of parliament differ from each other. In the national assembly questions are decided by a majority vote, whereas in the national council of provinces each province has one vote and a decision requires the support of at least five provinces. If a constitutional amendment affects the council or the provinces, it also requires the support of the council by a vote of six provinces. If it affects only specific provinces, the council cannot pass it without the support of the relevant provincial legislatures.

The President and any other cabinet member who is not a member

of the national assembly may attend and speak in the assembly but may not vote. Similarly ministers and deputy ministers may attend and speak at national council meetings, but may not vote. The national council may require the attendance of a cabinet member or a national or provincial executive official. When necessary not more than 10 part-time representatives designated by local governments may participate in national council proceedings, but they too are not allowed to vote.

The national assembly must create mechanisms to ensure that national government in all its forms is accountable to parliament and must maintain oversight of its use of its power by national government. Both the national assembly and the council of provinces or their respective committees may summon any person before them to give evidence and may receive submissions from any interested person.

Cabinet members, members of the national assembly and members of the national council of provinces are privileged in that whatever they say in parliament may not be used against them in civil or criminal proceedings.

The national assembly and the national council of provinces must facilitate public involvement in parliamentary processes, and must conduct their business in an open manner.

Once a bill is passed, it must be signed by the President. If the President has reservations about the constitutionality of the bill, he/she must refer the bill back to the national assembly for reconsideration. If the President's reservations are fully accommodated in amendments made to the bill the President must then sign the bill. If, however, his/her reservations remain, then he/she can refer the bill to the Constitutional Court.

If a third of the members of the national assembly feel that aspects of a bill are unconstitutional, they may apply to the Constitutional Court for an order on the constitutionality of the bill.

In terms of the transitional arrangements, no election of the national assembly may be held before 30 April 1999 unless there is a motion of no-confidence in the President. The clause allowing the national assembly to dissolve prior to the completion of its term of office is suspended until 30 April 1999.

In terms of the Constitution, elections are to happen in a way that generally results in proportional representation, with legislation being required to flesh out the details of the electoral system (*note: the transitional arrangements mean, however, that the electoral system employed in the 1994 election — ie proportional representation based on a party list system without any constituency representation — will apply for the 1999 elections*).

(Also as a transitional arrangement, the permanent delegates to the national council of provinces must be nominated by the parties in the provincial legislatures from the ranks of current senators. Other people may only be nominated if there is an insufficient number of former senators available. If a former senator is not appointed as a permanent delegate he/she is entitled to become a full voting member of the relevant provincial legislature.)

## Chapter 5 THE PRESIDENT and the NATIONAL EXECUTIVE

THE President and cabinet together make up the executive (national government). Their task includes:

Implementing national legislation.

Developing and implementing national policy.

Co-ordinating state departments.

Preparing and initiating legislation.

The cabinet consists of the President, Deputy President and ministers. The Deputy President and ministers are appointed by the President and the Deputy President and all but two of the ministers must be members of the national assembly. The cabinet is collectively and individually accountable to parliament and members of the cabinet must report regularly to parliament. Deputy ministers may also be appointed by the President.

The cabinet may intervene in a province when a province does not fulfil its executive functions. If the cabinet intervenes in the affairs of a province, it must give notice of the intervention in the national council of provinces which must approve the intervention within 30 days of its first sitting after the intervention began, and must review the intervention regularly. If, by a majority vote, the national assembly passes a motion of no-confidence in the cabinet, excluding the President, the President must reconstitute the cabinet. If, however, the motion of no-confidence is in the President, the President, the entire cabinet and any deputy ministers must all resign.

## Chapter 6 PROVINCES

THE provincial legislatures operate in a very similar fashion to the national assembly (*see chart on back page*).

Thus, the main task of provincial legislatures is to pass legislation and have oversight of the provincial executive, including any provincial organ of state.

The legislature may dissolve before the five-year period is up, if three years have passed and the legislature resolves (by majority vote) to dissolve.

Members of provincial legislatures have the same immunity from civil or criminal proceedings for things said in the house as national members of parliament. Provincial legislatures must facilitate public involvement in their affairs and must conduct their business in an open manner.

Members of the executive council, members of the legislature or members of a committee may introduce a bill in the legislature. This applies to all bills, except money bills which must be introduced by the executive council members responsible for provincial finances.

The premier of a province must assent to a bill that has been passed, unless he or she has reservations about its constitutionality in which case he or she must refer it back to the legislature stating his/her reservations. If the bill is then amended to accommodate his/her concerns he/she must assent to it. If it is not amended, he/she may assent to it or may refer it to the Constitutional Court. Members of the legislature may also refer a bill to the Constitutional Court, but only if the referral is supported by 20% of the legislature.

A permanent delegate to the national council of provinces may attend and speak in the provincial legislature but may not vote.

The provincial legislature, or one of its committees, may summon any of the province's permanent delegates to appear before it. The executive authority of a province rests with the premier and his/her executive council. Their task is the administration and implementation of legislation and the co-ordination of provincial departments. The national government must assist provinces in developing their administrative capacity for these tasks.

The premier is elected at the first sitting of the legislature once elections have been held. The premier may only hold office for two terms. If the premier is absent or cannot fulfil his/her functions, an acting premier may be appointed.

The executive council consists of the premier and 5-10 members of the provincial legislature appointed to the council by the premier. The executive council is accountable to the legislature and must report regularly to the legislature.

The provincial executive may intervene in the affairs of a municipality to maintain essential services, economic unity and to prevent a municipality from taking unreasonable steps that might prejudice another municipality or the province as a whole. The intervention must be approved by the cabinet member responsible for local government affairs and notice of the intervention must be given to the provincial legislature and the national council of provinces. The council must approve the intervention and must review it regularly.

The Constitution sets out conditions that must be met for national legislation to prevail over provincial legislation if a conflict between the two arises. If those conditions do not exist, the provincial legislation will prevail over national legislation. However, if a conflict cannot be resolved by a court in terms of these conditions, national legislation will prevail.

The transitional arrangements dictate that elections may not be held before 30 April 1999 and that the electoral system used in the last elections will be used in the next elections.

## Chapter 7 LOCAL GOVERNMENT

LOCAL government affairs are carried out by municipalities. An independent authority is to determine the demarcation of municipalities, according to national legislation. Provincial governments must establish municipalities and then monitor and support them in carrying out their tasks. A municipality may make and administer by-laws as long as these do not conflict with national or provincial laws.

Municipal councils are elected either in terms of a proportional representation system or a system that combines proportional representation and ward representation. If this second option is chosen, the total number of members elected from each party must reflect



the total proportion of the votes recorded for those parties. The demarcation of wards must be done by an independent authority. A municipal council's term must be no more than four years.

## Chapter 8 COURTS AND ADMINISTRATION OF JUSTICE

THE independence of the courts is protected. Thus, a court decision is binding on all persons or organs of the state to which it applies.

A hierarchy of courts is established with the Constitutional Court being the highest court in all constitutional matters and the Supreme Court of Appeal being the highest court of appeal in all matters except constitutional matters. The jurisdiction of high courts and magistrates' courts will be determined by legislation, but while high courts can hear constitutional matters, magistrates' courts cannot. Only the Constitutional Court may decide disputes between national and provincial organs of state involving their constitutional status, powers or functions; decide on the constitutionality of any bill; decide that the President or parliament has failed to comply with a constitutional duty; and certify a provincial constitution.

If a court declares a law to be unconstitutional, it may make an order suspending the declaration of invalidity to give the relevant authority time to correct the defect. If a supreme court or a high court declares an act unconstitutional, its decision must be confirmed by the Constitutional Court. The court may grant some kind of interim relief (eg a temporary interdict) pending a decision of the Constitutional Court.

The constitutional court consists of a president, a deputy president and nine other judges. There must be a quorum of eight judges before it can hear any matter. Constitutional Court judges are appointed for a non-renewable term of 12 years, but must resign by the age of 70. The Supreme Court of Appeal consists of a chief justice, deputy chief justice and any number of judges (to be determined by legislation).

The Judicial Service Commission advises the national government on any matter relating to the administration of justice.

A single national prosecuting authority is established headed up by a national director of public prosecutions. The prosecuting authority is to establish uniformity in criminal prosecution policy.

## Chapter 9 STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY

SIX independent institutions are established. They are to act without state interference and are to be directly accountable to the national assembly.

The Public Protector (appointed for a non-renewable period of seven years) has the task of investigating improper conduct in state affairs. The only thing he/she may not investigate are court decisions. The Human Rights Commission is to promote respect for human rights and to monitor the observance of human rights in South Africa. Organs of state are required to report to it annually on the steps they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities is to promote tolerance and respect for the different groups in South Africa. The Commission for Gender Equality is to facilitate the attainment of gender equality. The Auditor-General audits and reports on the accounts of all national and provincial state departments and municipalities as well as on any institution funded from a national or provincial revenue fund or by a municipality or any institution that is authorised by law to receive money for a public purpose. The Electoral Commission manages all national, provincial and municipal elections and ensures that those elections are free and fair.

In addition to the above commissions, the Independent Authority to Regulate Broadcasting is established to ensure that broadcasting is regulated in the public interest, that it is fair and that a diversity of views is presented.

## Chapter 10 PUBLIC ADMINISTRATION

THE principles and ethical and professional standards that must govern the public administration are set out. These principles include efficient, economic and effective use of resources, impartiality, transparency and accountability, and stipulates that the public administration must be broadly representative of the South African people. The Public Service Commission is an independent body with representatives from each of the provinces, and its task is to promote these principles. The commission is accountable to the national assembly.

## Chapter 11 SECURITY SERVICES

THE security services of South Africa consist of a single defence force, a single police service and any intelligence services established in terms of the Constitution.

The defence force's primary role is to defend the Republic in accordance with the Constitution and international law. If the defence force is used in co-operation with the police, in defence of the Republic or in fulfilment of an international obligation, it must have the authority of the President, who is Commander in Chief of the defence force.

The President appoints the military command to the defence force, who must act in accordance with the directions of the Minister of Defence. A civilian secretariat for defence also functions under the direction of the minister.

If the President declares a state of national defence, he/she must inform parliament, summoning it to a special sitting if necessary.

Unless approved by parliament within seven days of its declaration, the state of national defence will lapse.

The national police force must function in the national, provincial and local spheres. National policing policy is to be determined by the relevant minister in consultation with the provincial governments. The provinces can monitor police conduct and have oversight of the effectiveness of the police.

The President must appoint a national commissioner of the police service and the national commissioner must appoint provincial commissioners. A civilian secretariat must be established to function under the direction of the minister.

An intelligence service may only be established by the President and only by national legislation. Legislation must provide for the co-ordination of all intelligence services and for civilian monitoring of the services by an inspector appointed by the President and approved by a vote supported by at least two-thirds of the members of the national assembly.

## Chapter 12 TRADITIONAL LEADERS

THIS chapter recognises the institutions and roles of traditional leaders and states that the courts must apply customary law when that law is applicable. The role of traditional leaders and customary law is to be determined by legislation.

## Chapter 13 FINANCE

ALL money received by national government is to be paid into a national revenue fund and money may only be withdrawn from the fund in terms of the Constitution or an act of parliament.

Legislation must establish a national treasury and must prescribe measures to ensure transparency and expenditure control. Transfer of funds to an organ of state may only be stopped for a serious and persistent breach of these measures. Legislation must also provide for the contracting of goods by the state in a transparent, cost-effective and competitive way. This should not prevent the implementation of a procurement policy that protects or advances disadvantaged groups. Legislation should also determine the remuneration levels of people in public office, and must take into account the recommendations of an independent commission, to be established by legislation.

An independent Financial and Fiscal Commission shall be established to make recommendations to parliament on implementing this chapter. As well as a chairperson and a deputy chairperson, it will be made up of a representative from each province, two persons representing local government and nine other persons. It will report regularly both to parliament and to the provincial legislatures.

The South African Reserve Bank is the central bank of the Republic and its primary object is to protect the value of the currency. Provincial revenue funds shall be established for each province and money withdrawn from these funds may only be in terms of the Constitution or a provincial act. Local government and provinces are entitled to an equitable share of national revenue and their share cannot be offset against other revenue raised by them. Provinces may levy taxes as long as this does not prejudice national economic policies and as long as it is done in terms of national legislation. Similarly, municipalities may impose rates and taxes but this must be done in terms of national legislation passed.

## Chapter 14 GENERAL PROVISIONS

THE national executive is responsible for the signing of all international agreements. Technical or administrative agreements need only be tabled in the two houses of parliament, but other agreements must be formally approved by both houses before they become binding.

In interpreting a law, a court must prefer an interpretation that is consistent with international law over an interpretation that is inconsistent with international law.

Recognition of the right of self-determination of any community — such as a *volkstaat* — within a territorial entity in the Republic is not precluded by the Constitution, as long as it occurs according to national legislation and within the framework of the right of the South African people as a whole to self-determination.



## THE PRESIDENT

THE final Constitution leaves the position of President, broadly speaking, unchanged. He or she will be elected by the new national assembly.

bly once it has met for the first time after the 1999 election. At that point, as now, the President will cease to be a member of the national assembly. Under the present system this has meant there has been no head of government in parliament: although the President may attend sittings of the national assembly and address parliament, questions cannot be directed to him as head of the government. The Constitution

retains the position of Deputy President, to be appointed by the President, and states that it is the Deputy President who will be the leader of government business in parliament. The Deputy President must be a member of parliament. It is important to note that no person may be President for more than two terms; in other words, the maximum period a President may remain in office is 10 years.

*appoints*

*elects*

## THE CABINET

THE cabinet consists of the President, Deputy President and ministers. The Deputy President and all but two of the ministers must be members of the national assembly. They are all appointed by the President, who may appoint any number of ministers. Cabinet ministers are

accountable to parliament and must report regularly to parliament. The cabinet, together with the President, carries out the executive functions of government, ie implementing legislation, developing and implementing national policy, preparing and initiating legislation and co-ordinating the functions of state departments.

In addition, when a provincial administration fails to fulfil its executive obligations, cabinet may intervene to maintain essential services, economic unity and national security, and prevent that province from taking unreasonable action that is prejudicial to another province or to

the country as a whole. When the cabinet does intervene in this way, the national council of provinces must be notified and must approve the intervention within 30 days of its first sitting after the intervention began.

If the national assembly passes a motion of no-confidence in the cabinet, excluding the President, the President must reconstitute the cabinet.

If the vote of no-confidence is in the President, the entire cabinet must resign.

*accounts to*

## THE PARLIAMENT

THE national assembly and the national council of provinces make up parliament.

*constitutes parliament*

*constitutes parliament*

## THE NATIONAL ASSEMBLY

THE national assembly has between 350 and 400 members, who are elected nationally for a period of five years. The main roles of the national assembly are passing legislation; electing the president, and overseeing the executive (ie the cabinet and the state bureaucracy). The national assembly elects a Speaker to preside over its meetings.

## THE MEDIATION COMMITTEE

THE mediation committee will sit when there is a deadlock between the national assembly and the national council of provinces over a prospective piece of legislation.

To become law, bills must be passed in both houses, which gives rise to the possibility of disagreement. If one of the houses refuses to pass a bill with the amendments suggested by the other house, the bill is sent to mediation committee which is made up of nine national assembly members and nine national council of provinces members. The national assembly elects its nine representatives in a way that proportionally reflects the distribution of the parties, and the nine council representatives include one delegate from each provincial delegation.

The mediation committee may accept the version of the national assembly or the national council of provinces, or it may come up with its own version. At least five of the national assembly representatives and at least five of the national council representatives must support the decision.

In many ways the proposal formalises the process of resolving differences by consensus and/or the cutting of deals. A small committee with the power to come up with a new compromise solution that satisfies all parties reflects the process that became dominant in the constitutional negotiations. Often a matter that could not be resolved in a large forum would find resolution in a smaller forum made up either of high-level party representatives or of party experts who could propose alternative presentations that might satisfy everyone.

It is this form of conflict resolution that appears to have been the model for this proposal, rather than the standard version of mediation where an outside facilitator seeks to establish a consensus between differing factions. ANC negotiator Senator Mohammed Bhabha said that the idea of a mediation committee was first floated as far back as two years ago in an ANC constitutional commission.

Although Bhabha added that it was a unique and very imaginative way of doing things that had not been taken directly from anywhere else in the world, senior ANC negotiator Pravin Gordhan said that the forging of the mediation committee was very similar to the German system.

If this consensus-seeking style fails to achieve resolution, either because the mediation committee itself cannot come to a decision, or because one or both of the houses will not accept the committee's recommendation, then the proposal reverts to majority rule, with the matter being voted on by the house of assembly. However, and again as a way of ensuring a degree of consensus, the bill must be supported at this stage by no less than two thirds of the members of the house of assembly.

This is the major difference with the German system, where only a majority decision of the lower house — the Bundesrat — is needed. A German constitutional expert, Jutta Kramer of the German Institute for Federal Studies, who observed the negotiations in and around the constitutional committee in the past few weeks said that the German mediation committee works fairly well.

She added, however, that in the new South African Constitution the range of competences given to the provinces is greater than in Germany and so there will be a greater range of potential disputes.

The national council of provinces has been given substantial legislative powers. It is clear, however, that it remains subservient to the national assembly. The mediation committee proposal in the final Constitution is a means of ensuring that the council's objections to a bill are taken very seriously. In the final analysis though, if even the mediation committee has failed to achieve consensus, the national assembly stands alone in being able to pass the bill, albeit with a greatly increased margin.

## THE NATIONAL COUNCIL OF PROVINCES

THE new Constitution does away with the senate in its current form and establishes a national council of provinces in its place. This new body will be made up of nine provincial delegations, each consisting of 10 delegates elected by each provincial legislature on a proportional representational basis.

The premiers of provinces will lead their delegations, which guarantees them participation in central government. The chairperson of the council will be a member of the council, elected by it to serve for five years. The council will ensure that provincial interests are represented and will be a way of maintaining strong links between the provinces and central government. It will wield considerable legislative muscle, but with certain limitations. The council will have the power to initiate, amend or reject national legislation, especially in those areas (listed in a schedule) where provinces have concurrent legislative and executive authority.

However, while it can often delay the passing of bills, it cannot block bills that fall outside the confines of the schedule, such as appropriation bills or amendments to the Constitution. The national council of provinces may prove crucial in monitoring inter-governmental relations. It will ensure that provincial interests are raised at a national level and will also make known the concerns of parliament to the provincial governments.

*mediates*

*mediates*

*elects*

## THE PROVINCIAL LEGISLATURES

SOUTH AFRICA's nine provinces are governed by provincial legislatures that may pass their own provincial constitutions and pass legislation dealing with matters that fall within their jurisdiction (as set out in a schedule to the Constitution). They may also recommend to the national assembly legislation concerning any matter that falls outside their jurisdiction.

A provincial legislature consists of between 30 and 80 members who are elected for a period of five years by those people whose names appear on the provincial segment of the national common voters roll. Each provincial legislature elects a Speaker to preside over its meetings.

Provincial executive functions are carried out by the premier of the province together with the executive council. The premier is elected by the provincial legislature and may hold office for no more than two terms. The executive council consists of the premier and no fewer than five and no more than 10 members appointed by the premier from the members of the provincial legislature.

Included in its executive functions is the power to intervene when a municipality fails to fulfil an executive obligation. This intervention must be approved by the cabinet minister responsible for local government affairs, and notification must be tabled in the provincial legislature and in the national council of provinces.