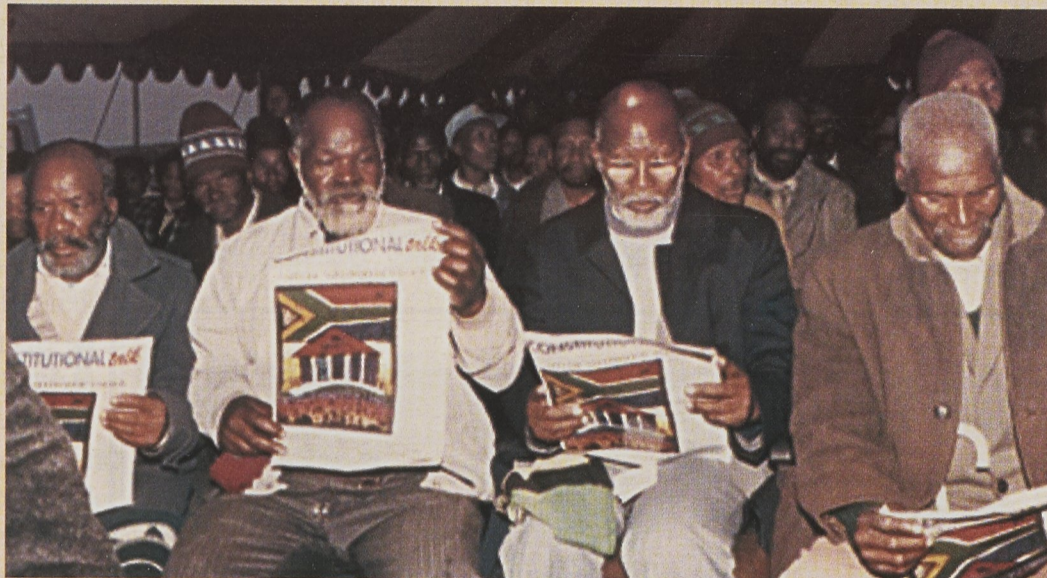


Constitutional Talk grows...

150 000 copies of this edition have been printed. 100 000 will be distributed to taxi commuters throughout the country. 45 000 will be mailed to individuals in their homes, places of work and other addresses throughout the world. 4 000 copies will be distributed at Constitutional Public Meetings (CPMs). 1 000 copies will go to members of the Constitutional Assembly, staff and visitors. This means that an average 750 000 people will read about the constitution - making process. To keep up-to-date with the latest developments, fill in the coupon on page 7 and post it to us to receive your own free copy.



**Traditional leaders
make submissions
- debate on their
future starts**



You've made your *mark*



Now have *your* say

THE NEW CONSTITUTION

Effective service for the people

Political appointments and a strict watchdog system have been recommended for the public service.

The ideal public service should be economic, efficient and effective with a culture of transparency and accountability to both the public and Parliament. The best way to ensure this would be to have a Public Administration Commission, reporting both to Joint Standing Committees of

Parliament and the Provincial Legislatures. This would help to promote democratic values and safeguard the public's right to fair and equitable service.

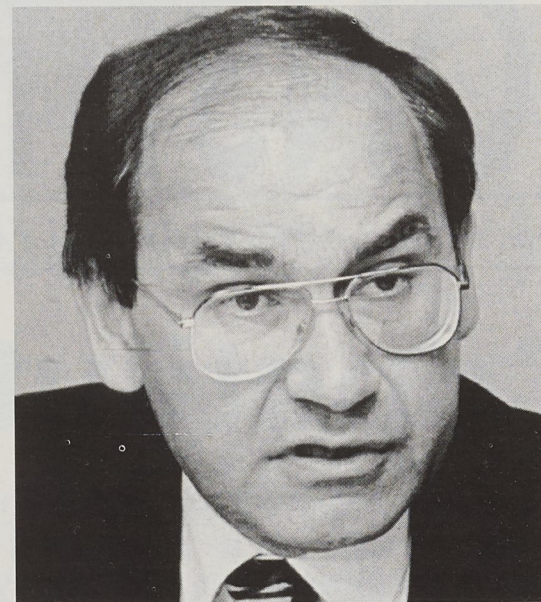
This is the main thrust of the final report of the Constitutional Assembly (CA) sub-theme committee looking into the subject of public administration.

The report also allows for a limited number of political appointments in the public service. How-

ever, there was disagreement on how this should be done. The ANC and NP were in favour of a constitutional clause concerning political appointments, while the DP and Freedom Front preferred to deal with these issues in legislation.

Apart from this point, there was general agreement. The NP's Sam de Beer congratulated the committee and its technical advisors, Professor Piet van der Merwe, Luci Nyembe and Gerrit Grove', for what had been 'a most enriching and informative process'. Sixteen committee meetings were held and dozens of submissions from the public and other interested parties were considered.

With regard to public administration, the report recommended that:



Sam de Beer of the NP

□ The public service shall loyally execute the lawful policies of the government and adhere to a high standard of professional ethics.

□ The terms and conditions of service shall be regulated by law and employees will be entitled to a fair pension. Different regulations for sectors, administrations or institutions will be permitted.

With regard to the Public Administration Commission, the committee recommended that:

□ There shall be a chairperson and one commissioner from each of



Bobby Goodsell makes a presentation on behalf of BSA.

Besigheid en die Grondwet

Die beginsels wat ooreengekom is by Kemptonpark bied 'n gemeenskaplike visie vir 'n toekomstige Suid Afrika en 'n vaste basis vir die nuwe Grondwet, sê die Afrikaanse Handelsinstituut (AHI).

Die Grondwetlike Vergadering (GV) moet in gedagte hou dat aspekte in die Grondwet 'n invloed kan hê op die vryheid van besigheid om hul belange te bevorder en hul bydrae tot die HOP-doelwitte te maak. Dit is die voorlegging wat die AHI aan die GV gemaak het.

Die organisasie pleit vir die behoud van die grondwetlike beginsels wat by Kemptonpark ooreengekom is. Ekonomiese groei as fondament vir heropbou en ontwikkeling word aanvaar, ook in die aanhef tot die witskrif oor die HOP.

Die AHI lê 'n aantal oorweginge voor waarop die GV ag behoort te slaan.

Fiskale dissipline: Die HOP-witskrif voorsien dat staatsinkomste verhoog sal word deur uitbreiding van die belastingsbasis, eerder as om belastingskoerse te verhoog. Dit is

belangrik dat die nuwe Grondwet nie geleentheid skep vir baie nuwe belastingsbronne en belastingsinvorderingsvlakke van regering nie.

Wetgewing: Die AHI pleit vir harmonisering, eerder as fragmentasie van wetgewing in die verskillende dele van Suid Afrika. Die meervoudigheid van wetlike bepalings oor basiese aspekte van besigheid soos belasting, maatskappyreg, verskeringsreg, beskerming van beleggers onder meer, sal groei inhibeer en beleggings benadeel.

Minimum beperking van ekonomiese aktiwiteite: Beheer of beperkinge moet tot die noodsaaklike ingekort word. Dit kan eerder in gewone wette van die Parlement as in die grondwet vervat word. Sodoende kan nodige kwalifikasies, besonderhede en uitsonderinge volledig oorweeg en gedebatteer word.

Eiendomsreg en die reg om kontrakte te sluit: Ten einde 'n groeiende ekonomie en 'n voorspoedige samelewing te bewerkstellig is dit van kritieke belang dat dié twee aspekte in die grondwet beskerm word.



Civil servants protesting for better working conditions

□ Public administration at all levels of government, including government-funded institutions, shall be governed by the democratic values and principles enshrined in the constitution.

□ It shall be economic, efficient and effective, transparent and accountable to both the government and the public.

□ The public shall have access to services and information.

□ Public administration shall be development-orientated and responsive to the needs of the people. The provision of services shall be impartial and equitable to all. It shall be orientated towards public participation in policy making.

□ The public service shall be broadly representative of the South African people, with employment and personnel management practices based on competency, objectivity and fairness. It will also be geared towards career development.

the provinces.

□ The commission shall be independent and impartial and shall advise, monitor and inspect public administration.

□ All commission reports and those of the provincial commissioners shall be referred to a Joint Standing Committee of Parliament and those concerning provincial matters to similar committees in the provincial legislatures.

□ The chairperson and members shall be appointed by the President, subject to the approval of Parliament, in terms of a procedure prescribed by law.

□ The provincial commissioner shall have the powers and functions of the commission with regard to his or her province.

□ The Premier of a province may, subject to law, appoint not more than two persons to deputise for the provincial commissioner in this regard.

The report will be considered by the Constitutional Committee.



You've made your *mark*



Now have *your* say

THE NEW CONSTITUTION



Delegates at the CA hearing on traditional authority

Traditional democracy

A strong stand for a real African democracy was made by traditional leaders at an historic Constitutional Assembly (CA) hearing held at Parliament, in Cape Town, last week.

Local government elections, an executive role for chiefs, women's rights, regionalism and the position of the Zulu king were matters of hot debate at the two-day event.

For the first time in history the seats in Parliament were filled not with elected representatives - Members of Parliament - but with kings and chiefs, traditional healers, members of the South African National Civics Organisation (Sanco) and women's groups, all gathered to address the CA on the question of traditional leadership in the new South Africa.

Although the submissions were at times marked by strong disagreement, particularly between Sanco and the Congress of Traditional Leaders of SA (Contralesa) and be-

tween the Zulu Royal Council and the House of Traditional Leaders of KwaZulu-Natal, the general feeling was that African ways and traditions could not be wished away.

The new constitution would have to recognise the status and role of traditional political institutions. Failure to do so wisely, warned academics Dr S Zungu and Professor H Vilakazi, might yet prove to be a future source of "serious instability".

While delegations of traditional leaders stressed the importance of their role as providers of services and keepers of peace, order and stability in many rural areas, there was acknowledgement that the best of the old ways could be married with new democratic ideals for the benefit of all the people.

There were calls for traditional leaders to have a place within legislative structures in houses comparable to the British House of Lords on the provincial level and to be-

come part of the Senate on a national level.

Chief areas of dispute between Sanco and Contralesa remained whether traditional leaders should simply be ex-officio members of the new local government structures or whether they should continue to wield executive power in their own right.

Sanco, while commending those chiefs who played a part in the struggle, said some were appointed by apartheid structures, were repressive and unaccountable to the people.

They called for a referendum to test whether people wanted traditional leadership. Traditional leadership, where accepted by the people, should have a role only at local government level and related mainly to ceremonial matters, a clear job description and should be dealt with in ordinary legislation rather than in the constitution, argued Sanco delegates.

After so many years of struggle,

democratic ideals and principle should hold sway, they insisted.

The position of the Zulu King in relation to other traditional leaders in KwaZulu-Natal was the subject of dispute. The Amakhosi from the province's House of Traditional Leaders called for a constitutional monarch who was above party politics and real powers for themselves.

Royal Council representative Prince Sifiso Zulu said that if the king was to surrender his executive powers and functions in a new democratic South Africa, so should the chiefs who were, after all, merely the representatives of the king.

The apparent discrimination against women in traditional law and practices was another hot issue.

But the supremacy of the Bill of Rights, in general, was acknowledged along with the dynamism of traditional leadership and institutions in a changing society.

Childrens' rights must feature

Stakeholders at a Constitutional Assembly (CA) Sector Hearing held in Pretoria recently, argued that childrens' rights should be enshrined in the new constitution.

Most political parties, with the exception of the DP, were in favour of retaining the section on children in the constitution, and two were in favour of expanding the section to make it more comprehensive.

One of the speakers, S Mabusela of the National Childrens' Rights Committee supported the ANC and Freedom Front's suggestion to expand childrens' rights in the new constitution. "Children represent one of the largest groups of disadvantaged persons in South Africa...

as disenfranchised and vulnerable members of the society, children should have clear constitutional safeguards which would protect their interest and needs. We have seen time and time again that the needs of children are ignored, misunderstood, traded off in political negotiations and otherwise forgotten in the formulation of legislation and policy," she said.

Members of the CA Theme Committees attending the hearing were openly moved by Johnnie Dhlabu's, dubbed "The Lion Of Soweto" submission on the Right To Be Heard, "In the struggle you called on us to roar like lions, today the only people who hear us are drug dealers."



Delegates at the Childrens' Rights hearing posing for Constitutional Talk photographer during an interval



You've made your *mark*



Now have ***your*** say

THE NEW CONSTITUTION

Religious freedom to be guaranteed

The right to hold beliefs and opinions and to practise or reject religion, as well as the issue of academic freedom, has led to some lively debate in the CA's Theme Committee 4.

How far should the state go in regulating an individual's private views? What limits should be set on the right of people to hold beliefs, religious views and opinions that affect the rights of others? Should the state be bound by the constitution to uphold public morality and who decides what this is? These were just some of the thorny issues debated by the theme committee dealing with fundamental rights.

The result was a final report with agreement on a few broad principles but much disagreement on the details and how and where in the constitution these matters should be dealt with.

Basically, all parties agree that freedom of religion, belief and opinion should be guaranteed in the constitution. With regard to academic freedom, the ANC feels this should be grouped with freedom of expression and the DP and FF with educational rights, while the ACDP wants it to stay with this section. The NP argues there should be entirely separate provision for academic freedom.

The ANC wants a provision guaranteeing that no-one should be barred from a place of worship on the grounds of race, while the Freedom Front says that prohibitions on discrimination should not offend the religious beliefs of individuals.

All parties agree that the state should uphold these freedoms, but the ACDP wishes to compel the state to ensure that religious practices uphold public order and Godly morals.

The rights will apply to common and customary law. Some of the parties, including the ACDP, ANC, DP and FF, want the rights to apply horizontally - that is, to be applicable between individuals. But the NP believes that, apart from academic freedom which should apply to the state and academic institutions, only the state would be bound by these freedoms.

It was the question of what limits should be imposed on a person's right to hold beliefs and opinions and practise religion that provoked most debate. The ACDP is in favour of limits being imposed on religious practices that involve ritual murders, enforced polygamy, cultic expressions of violence promoting public immorality.

The ANC believes nothing can limit the holding of a belief or thought, but where actions flowing from these beliefs or thoughts affect other rights, like the right to equality, reasonable limits can be set in an open and democratic society.

The DP and the NP are in favour of reasonable limits. The Freedom Front argues that the only limits of religious practices should be where the activities conflict with the religious beliefs of other people or groups or where the activities affect such matters as public safety, order, the health or morals or the basic rights and freedoms of others.

The outstanding areas of disagreement will be debated by the Constitutional Committee.

Enterprise and entitlement



Mashadu Ramano emphasises a point while Raymond Parsons looks on at the business hearing.

South Africa desperately needs a constitution and a Bill of Rights that encourage enterprise and opportunity rather than just creating expectations. This was said by Business South Africa (BSA) General Secretary, Raymond Parsons, when he addressed the Constitutional Assembly (CA) on behalf of organised business.

In a rare show of unity, South Africa's foremost business leaders and organisations presented to the CA a list of 12 principles they would like to see enshrined in the new constitution (see page 6).

According to delegation leader and National African Federated Chamber Of Commerce (Nafcoc) president Joe Hlongwane, the individual presentations by the various business sectors may have differed in some respects but the principles reflected common ground.

In his presentation Parsons said the pot of gold at the foot of South Africa's rainbow was a vision of peace, democracy and freedom from poverty. But the country des-

perately needed people motivated by a spirit of enterprise, who set out to make more of themselves rather than demanding what they feel they are owed by others.

"Democracy brings new freedoms, but no constitution can guarantee their delivery," he said, adding that the final constitution should strike a balance between cultures of entitlement and enterprise.

High and sustained economic growth, shared by all, was the key. To make a real success of the Reconstruction and Development Programme (RDP), the current growth rate of 3 percent needed to double between now and the year 2000. The RDP was just the first step, he added.

The constitution should support the engines of growth and encourage a vibrant economy and good, efficient government at all levels. The type of economic system decided on would be crucial to foreign investors who were essential for high growth. The constitution would have to be "investor friendly" and supportive of a market-related economy.

"What matters is that there is trust in the new constitution and its ability to limit any possible abuse of political power."

The key elements he asked the CA to consider were effective devolution of power, freedom to engage in economic activity, protection of property rights, fiscal discipline and monetary stability. The last two principles should be reflected in the constitution because, without responsible monetary and fiscal policies, a country could be thrown into a state of chaos and economic opportunity and property rights would be affected, he said.

Business supported a Reserve Bank with a high degree of autonomy, as well as an independent and impartial Public Service Commission, Auditor General and Public Protector.

The rule of law and civil liberties such as freedom of speech and property rights were essential for the free, just and prosperous society everyone wanted to see in South Africa, said Parsons. Because the constitution was so important, he said that the CA should take extra time - six months or even a year - if they needed to do so.

I-Freedom Front ifuna ilanga lokugcina lilelelwe phambile

Umsebenzi weBandla loMthethosisekelo (CA) sewufinyelele ibanga lapho ufanele ubeyele ubuyekeswe khona ukuze kulungiswe lapho kufanele khona, yasho i-Freedom Front ngekathi ithula isicelo sokuba ilanga lokugcina lilelelwe phambile.

Ukusukela embikweni. Wabaphathihlalo ongowamhlazana zingu 3 April 1995 nasekubuyekezeni umsebenzi lona soloko Amakomidi weenhloko athoma ukusebenza ngambala ngoJanuary 1995, kuphawuleka imicabango elandelako, ethi:

- Nanyana kunetlha eyenziwako, angaze kwathiwa umsebenzi lona wafinyelela enanekweni elalikhanyiweko naseenrhuluphlweni zoke.
- Njengoba kwakuphokanyiswe ngabaphathihlalo kuyafuneka bona kufunisiwe ukuthi kgani umsebenzi lona nezakhiwo zakhona uyakgona befuthi uyaphumelela na.
- Mhlamnye kungatjhiwo bona ihlelo lekomodo yesihloko elavela esiqunkeweni sebandla loMthethosisekelo sokuthi amalungu walo angene ngobunengi ngokunokukgonakala akhinkela ekubhalweni komthethosisekelo omutjha, landla isikhathi khulu befuthi lasebenza kuhle. Kuyiqiniso ukuthi ilwazi elijayekekileko nelinye ekingandanga lamanye amalungu lana endabeni yokwakwa umThethosisekelo

khangela lize ekufakeni unfutho wegadango ngitjho nendlela ebekusetjenzwa ngayo.

- Lindaba exiqakabheke kle njengehloha lombuso ekungizo eziqatheke okukukhoma emsebenzini woke, azikabi ukurerwa ngendlela eyanelisako.

Ngako ke sifanele sicabangisise ukuthi kgani ukulungiswa kwemithetho esakhiwako (drafts) ngeze kwasebenzeka ngcanywana ezandleni seenqhenyane zamalungu azingcono weBandla lesiBethamthetho zisebenzisana nobochwephetjhe bakhona. Imithetho leyo ingayokuhlaliswa ibe irerwe NgamaKomidi Weenhloko (Theme Committees). Nettlelo lokubandakanya umphakathi (Public Participation Programme) nemiye imihlangano yomphakathi yezomthethosisekelo. Ngalindlela aseke nokungathintela khulu amalungu webandla lesibethamthetho.

- Futhi sekukungengi tle okulahlweleko ukufikela manje mayelana neendaba eziqathekile ukusuka eMakomidini Weenhloko, okuphoselwe ngumphakathi, imihlangano yokufundisana, esesikuthulelwa, njalo njalo. Lokhu kusipha isisekelo esihle esingathomela kiso. Manje umsebenzi lo ufinyelela ibanga lapho iinqunto zifanele zizanywe ngeenkulumiswano eendabeni eziqathekile. Imibhalo elapho le minengi ingakhi izakuliya umsebenzi bese kubanzima nokufinyelela. Nasikhumbula iimpahakamiso ezenziwe

bomphathihlalo, sesifanele sibawe amaTechnical Advisors isishunyezo seendlela ezilandeleka msinyana ekufunisiweni bona ngiziphi iindaba ezifanele ukukungiselelwa ukuyaphambili, iBandla loMthethosisekelo, iinkulumiswano, ukuphenyisiso, ukubonisana nonama ngiyiphi enye indlela. Loku kuyakhambelana godu nesiphakamiso saBaphathihlalo nababnawa diKomidini yoMthethosisekelo. Nabasizi bakhona bafanele benze isiphakamiso ngemva kokubonisana neKomidi, bona iindaba ziyolanyaniswa njani.

Iindaba ezingavamanga ezingathi seziyavelela ngalesisikhathi ingathi ngeyombuso owabiwe iinkoro (Federalism), indlela yokungafundelaliswa kwamandla wokubusa.

Koke lokhu kuphehlelelwa godu ngilokhu.

- Isilil seIFP sabalamuli bangaphandle
- Ilwazi elitholakele "ngokuphenyisisa" ngamaprovinsi-sekuthatwa nembalo yamaprovinsi nokuhlukaniswa kwawo. Lokhu kungahle kube nepehla eenkulumiswaneni zokuphadihalalisa amandla ombuso, nombuso weenkororo, njalo njalo. Amaprovinsi ambalwa, ahlukaneke ngcono angakgona ukuphumelelisa ukuphadhlalalisa kwandla kanki ubujamo bamanje bugasebenzeka ngcono nakungamukuleka iqiniso lokuthi akunakufundelana (Asymmetry).



You've made your mark

1994



Now have your say

1995

THE NEW CONSTITUTION

Debate on style and language of new constitution starts

The debate on the format and language that will be used in drafting the new constitution has started in earnest with the appointment of a sub-committee of the Constitutional Committee (CC) to investigate the matter.

And the seven-person Panel of Independent Constitutional Experts has tabled a document in which the criteria for deciding on the style and language of the new constitution is discussed.

To start the debate, the CC received two drafts - one from Technical Advisors of Theme Committee 5 and the other from the CA's own legal advisors.

The Technical Advisors' draft was a detailed one, while the other was a concise document.

Maximalist vs Minimalist

The debate is based on two schools of thought. The one - the so-called minimalist position - is that the new constitution should be drafted in as simple and concise a way as possible, with details of how the country will be governed be left for legislation.

The other thought - so-called maximalist - is that in view of the fact that South Africa is supposed to be a constitutional state, a country where the constitution is the supreme law, the constitution should give as much detail as possible of how the country should be run.

Presenting the case for a constitution with as much detail as possible, Judge Pierre Olivier, who is a Technical Advisor for Theme Com-

mittee 5 that deals with the judiciary and legal systems, said this would "pay homage to the idea of constitutionalism".

"... Because the constitution will be the source of rights and obligations, it means that a citizen can look at the constitution and say 'these are my basic rights and this is how the state functions'," said Olivier.

He said if such details were not included in the constitution, citizens would then rely on parliament to pass laws from time to time, giving essence to what is contained in the constitution and these laws would always be subject to Constitutional Court testing.

"... With the Interim Constitution, everything is supposed to be tested (by the Constitutional Court)," he added "it is important to bring clarity and certainty into the constitution."

However, he said, his view was that of a "balance between a very full and a bare outline" of constitutional provisions, and not a maximalist or minimalist position.

CA legal advisor, Advocate Gerrit Grove', who had presented a draft constitutional text that was less detailed than that presented by Olivier's team of TC advisors, said that Olivier's draft was in the "style of ordinary legislation". He presented no position on either of the two schools of thoughts saying that he would draft according to instructions that he would be given by the CA.

ANC's Professor DC du Toit said adopting a maximalist approach

would pose the question as to what should be included and what should be left out in the drafting of the new constitution.

It might also, he said, lead to a situation where "constitutionalism undermines democratism", meaning that the constitution would undermine the wisdom of elected representatives in future parliaments to pass laws.

He said Olivier's draft text which included provisions on matters such as the remuneration of



Richard Sizani of the PAC

judges, was too detailed and that might create a situation where the constitution might have to be "changed every second month" by the parliaments to accommodate any difficulties of practical applications of such provisions.

"The constitution must be a symbol of stability and must have a feeling of permanence," he said.

But DP's Colin Eglin, NP's Danie Schutte and PAC's Richard Sizani argued that the issue was neither a maximalist nor a minimalist approach.

Issue based

"All should depend on a particular issue," said Sizani "we should include what we want and leave out what we don't want and leave it to philosophers to argue whether we have taken a maximalist or minimalist position."

Staying with the approach of looking at the matter on a case by case basis, Eglin said in the case of constitutional provisions for the judiciary "it should be sufficiently clear (in the constitution) because the judiciary is the custodian of all other rights that will be embodied in the constitution".

But he also stressed that this detail should be as little as possible.

Schutte also favoured a "case by case" approach, but suggested that the matter be thoroughly debated by the envisaged sub-committee.

The document from the panel of experts advises that "only those principles which will ensure that the constitutional state will be provided for" should be included in the new constitution.

These principles, it adds, must be such that ensure that the said state "functions effectively and that the values underpinning this order will be enforced".

The new constitution must also provide for the establishment of "properly equipped institutions which will allow effective and democratic government.

"Control over the exercise of powers including checks and balances must be provided for," says the document.

Outcomes

The outcome of this debate will certainly be crucial in the sense that it will give clarity on whether the new constitution will be specific or not when dealing with the issue of right to life in relation to abortion and the death penalty.

The present constitution is vague on the two subjects, as is the case with several constitutions in the world where the interpretation of such clauses has often been left to constitutional courts.

Constitutional *Talk*

Now you can read and watch it!



Every Monday on NNTV at 9pm and every Tuesday on CCV at 10h15pm, members of the Constitutional Assembly representing the various political parties meet to debate constitutional matters with a panel of members of civil society. Here is the list of the topics that will be debated in the next few weeks:



★

Monday 29 and Tuesday 30 May *Traditional Authority*

The contradiction between a democratic system of government and traditional authority as well as the relationship between traditional authorities and local governments will fiercely be debated.

★

Monday 5 and Tuesday 6 June *The Language*

Should the present status quo where the constitution makes provision for 11 official languages be maintained in the new constitution or should the country choose one official language? Politicians and experts on this subject will exchange their views.

★

Monday 12 and Tuesday 13 June *Does South Africa need a new flag and national anthem?*

Members of the CA and representatives of civil society will meet and debate this all-important matter.

Remember your views are important, send your ideas to us at P. O. Box 15, Cape Town.



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Now have your *say*

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THE NEW CONSTITUTION

Abafundi bafuna ukhuseleko

Indima ethe yadlalwa ngabafundi, ukuvakaliseni okulungileyo, bephikisana nonkqubo yamandulo yocalulo calulo, nangoku kufanele baqhuba ngohlobo lokuba abafundi baphose isandla ekwakheni oluntu lwethu olutsha.

Ngesi sizathu ke, i SA Students Congress(Sasco), ikholelwa ekubeni abo ke baqulunqa umgaqo siseko omtsha kufuneka bachukunyiswe ngumbono woluntu apho:-

* imfundo enomsila ibonelela wonke ubani ngezemfundo kuluntu luphela.

* kukho indlela ecace gca ephethelene ngqo namalungelo abafundi ekufundeni futhi

* ozimeleyo nongoka wonke umbutho wabafundi, ukhululekile ukugaya igalelo labafundi kwinqubela phambili nakumalungelo oluntu.

Ezi zindululo ke zenza imbono yezimvo ze Sasco eziyakufakwa kwindlu yoqulunqo mgaqo siseko. Ukubaluleka kwezi zindululo kuye kwangundoqo emva kokuba kufumanisekile ukuba amalungelo equmrhu elimele abafundi (Students' Representative Councils SRC) athe aphazanyiswa ngumthetho othe wabekwa ngu rhulumente nje emva konyulo luka April 1994.

Lo mthetho uphazamisayo, ufuna ukuba ii SRC kumaziko emfundo zifumane "imvume ebhaliweyo kwangaphambili kwibhunga

elihambisana nenqununu:, ukuba banomdla woku "zibandakanya" okanye "babonxibelelwano" nemibutho engaphandle kwamasango eloziko lemfundo, sithi oku kuphazamisana namalungelo abafundi okuzibandakanya.

Isiphumo ke kukuba,ke esinye sezindululo ze Sasco kukuba, isahluko esikhusela isiseko samalungelo sidibanisa umhlathi onesihloko esithi "Amalungelo Abafundi" njengoko abasebenzi kwanamanye amaqela ekhuselekile phantsi kwalo mqaqo siseko wethutyana.

Ngokunyanzelisa amalungelo abafundi lo mgaqo siseko uyakuba usalandela indlela yawo youkukhusela amalungelo omntu ngamnye, hayi xa ngaba kuphela basezingxakini ezizezabo, koko naxa bephakathi kwamaqela athile abantu bephantsi kwemeko ezifanayo neengxaki ngokunjalo.

I Sasco iphakamisa ukuba isilungiselolo "Samalungelo Abafundi", masenze ukuba lamalungelo alandelayo acace gca:- ilungelo lokhetha ummeli anomagunya apheleleyo; ilungelo lokugaya amalungu ngokukhululekileyo nakwamanye amaziko emfundo ngaphandle kokuphazanyiswa: ilungelo lokuzityandigila unabanye kwakunye nelungelo lokumelwa kumasebe apheleleyo kumaziko emfundo enomsila.

Iyamkeleka ke into yokuba lamalungelo kufuneka enziwe ayinyani

nokuba abonakale kumaziko emfundo enomsila ngokuwenza umthetho omtsha kunye nokufakelelwa komthetho okhoyo ngoku, njenge Various University Act, I Sasco ikholelwa ukubeni kubalulekile ukuba lomithetho ifakwe kulo mgaqo siseko mtsha.

Ukufakwa kwamalungelo abafundi kumgaqo siseko omtsha kuyakuhambelana nohlobo lo mgaqo siseko olulo, kuba iyakucacisa imigangatho nemigaqo esinqwenela ukuba uluntu lwethu luyikandele.

Ukwengeza kwilungelo lokukhuseleka kwabafundi kulomgaqo siseko, iSasco iphakamisa kwanjalo ukuba kujongwane nobudlelwane buka rhulumente kwakunye namaziko emfundo enomsila. Isiphakamiso se Sasco sithi ubu budlelwane mayibe bobo buqinisekisa uxanduva lokucacisa bamaziko emfundo enomsila kuluntu abasebenzela lona, futhi elo lihlonipha ukukhululeka ngokwemfundo.

Ukulandela imihlathi ethile yalomgaqo siseko ukhoyo wethutyana, esisikhokelo sobudlelwane phakathi kwe SA Reserve Bank kunye norhulumente, I Sasco iphakamisa ukuba kubekho kulomgaqo siseko mtsha ukuqinisekisa ukuba kukho "ukubonisa rhoqo" phakathi kwamaziko emfundo enomsila kunye norhulumente ukuze kuqinisekise ukuba kukho ingcaciso nonxibelelwano oluyakwenza kube lula ukufaka inkqubo

ye Reconstruction and Development Programme(RDP).

I Sasco kwanjalo iphakamisa ukuba amaziko emfundo enomsila nawo abeyinzalenyane kwinkqubo yorhulumente welizwe. Oko ke kwakuthetha ukuba kuya kufakelelwa lomgaqo siseko sinawo wethutyana, ukuze kufakwe phantsi kolawulo lorhulumente welizwe, iikholeji kunye nee Technikons, ekungoku nje ziwela phantsi kolowulo lwengingqi. Oku ke kwakwanza lula ukuphuhliswa kwinkqubo yophando, itheknoloji kwanophuhliso noqeqesho.

Kumhlathi owabhalwa ngu Albie Sachs ngo 1989, wayibika yacaca into yokuba umqulu wamalungelo oluntu, awuthethi amalungelo ezityebi kwabo bahluphekileyo, koko onke amalungelo oluntu akumgaqo siseko angasetyenziselwa ukwandisa amalungelo oluntu nokuvula amathuba kwabo bahluphekileyo kulinganwe.

Ukuze ke kufikelelwe koku u Gasha wathi makubokho inkqubo apho " bonke abaphambili babenenxaxheba kumacandelo (omgaqo siseko) ahambelana nabo". I Sasco ke ngoku ihlaba elikhwelo ngokuzimisela ilamkela elithuba likuba negalelo ekusekweni komgaqo siseko wokuqala lawonke wonke woluntu.

Molao-theo o bolelang kgwebo

I Leano la Bonolo

Molao-theo o motle wa Afrika Borwa e tla ba o beilweng ka puo e hlakileng ebile e kgothatsang. Sepheo sa ona e tla ba maano a sireletsang demokrasi le ditokelo tsa tokoloho tsa motho ka mong.

II Leano la Bonnete

Jwaloka motheo oo ho hauweng lefatshe ho ona, molao-theo o bontsha maikemisetso a setjhaba, o be o tiisetse melao ya setjhaba. Phapano e tlameha ho hlaka hare sha dinto tse amanang le molao-theo le tseo e leng tsa ketsa-molao le mmuso wa nako eo. Ho se hlahise phapoano ena ho ka nyenyefatsa botshepehi ba molao-theo ho be ho setise ketsa-molao le lefapha la tlhokomelo ya melao.

BOEMO BA MMUSO

III Leano la demokrasi le boikarabelo ho bakgethi

Molao-theo o tlameha ho tiisetisa ho batho kaofela ba naha hore ba kgetha mmuso, o be o hlokomela hore ba kgethuweng ba na le boikarabelo ho bakgethi.

IV Leano la toka ho tsa phedisano-mmoho le tsa kgwebo

Re dumaellana le hore bofutsana le mathatha a mang a bophelo a batho a hlahisitse ke kgethollo ya ka boomo dipolitiking le kgwebong, re kholwa hore toka ho tsa bophelo le kgwebo, ho netefatsa tokollo bofutsaneng le mathatha

Mekgahlo ya dikgwebo e tletseng pele mona Afrika Borwa e ne ya tjhakela Kopano ya Molaotheo ho etsa dinehelo tseo ho tsona ba hlahisang diponelo pele tsa bona molaotheong wa naha.

Ba hlakisitse dintlha tse 12 tsa ditsitsinyo tse hlahisitsweng ka mona tlase.

a mang a bophelo, e tlameha ho ba maikemisetso a malao-theo.

V Leano la mmuso o hlokomelang

Ntshetsong pele ya kopanelo ya kgolo ya moruo le kgwebo, mosebetsi wa mmuso ke ho etsa matsapa a ho kgothaletsa batho ho itshitshinya ba sebetse. Jwale he mmuso o tshwanela ho tlisa kgotso setjhabeng, ho rupela batho le ho ba neha tse hlokehang bophelong, le ho hlokomela ho tsitsa ha tsa moruo naheng yohle.

VI Leano la Tshebedisano-mmoho ya mafapha a mmuso

Malao-theo o tlameha ho hlalosa hantle mesebetsi, matla, le ditokelo tse ka sebediswang ka bokgoni ke mafapha a fapaneng a mmuso. Kabo ya matla e tshwanela ho dumellana le boima ba mosebetsi le tjelele ya mafapha ka ho fetana a mmuso.

DIMMARAKA LE BONETE BA MOLOA

VII Leano la Dimmaraka tsa bohle

Molaoe-theo o tshwanela ho tiisetisa kgwebo e bulehileng, moo ho nang le tlhodiso, tshireletso ho ba lekango ho thibela ba bang ho ba le seabe ho tsa kgwebo.

VIII Leano la Botshepehi ba molao

Kgwebo le kenyo ya tjelele naheng di tla tswela pele ha ditokelo tsa leruo di le teng, ditumellano di tlama ba di etsang molaong le ha ho na le dikotlo ha molao o tlotswe.

TSE BOHLOKWA TSA HO ATLEHA

IX Leano la ditokelo tsa baahi ba naha

Ditho tsa setjhaba-difeme, diyuneone(unions) mekgatlo e thusang ba hlophelileng, dikereke, makga ya dipolitiki le dikopano tsa mesebetsi, moo ho lokelang, le tsona di tshwanela ho sireletswa tlasa Molao wa Ditokelo jwaloka batho ka mong.

X Leano la Tshebedisano mmoho

Hore takatso ya setjhaba e be nnete, batho ba tshwanela ho tshwara ba tiise ditokelo tsa setjhaba moo mmuso o sa finyelleng. Ho tla thusa mmuso hore malao-theo o dumele hore ho be le dipuisano tse nthle mahareng a setjhaba le mmuso, ho sa lebalwe hore mmuso o na le tokelo ya ho busa. Ka tsela ena bohlae bo ka aheha, diteko di koipanelwe, tse neng di sa ikemisetwa di pengwe.

TSE BOHLOKWA TSA HO ATLEHA

XI Leano la Botshepehi ho tsa Ditjelele

Tshwara ya ditjelele ho batleha e be e ntle, ho dumellanwe ka tsela e sebediswang, ebe e bohlale. Hoseng jwalo naha e tla ba legqoba la dikoloto naheng tse ding le hae mona. Mmuso o tlamehile ho beha meedi ho tjelele ya lekgetho le e sebediswang naheng yohle, diporofinsing le ditoropong- o be le matla ahoqetela dhore ho ka kadingwa bokae. Ditsheyehelo di tshwanela ho shebiswa hantle le ho hlahlojwa, hore ho sebetse hantle.

XII Leano la ho Tsitsa ha tjelele

Theko ya tjelele e tsitsiseng e ka ba ha ho na le Banka ya naha (Reserve Bank) e ipusang molaong le ka nnete. Matla a Bank a tlameha ho hlahiswa ho molao wa Palamente, hape ho be le diipuisano kgafetsa le letona la tsa matlotlo.



You've made your *mark*



Now have *your say*

THE NEW CONSTITUTION



Community police forums – meeting the people constitutionally

One of the positive contributions of the Interim Constitution is that it mandates the police to organise Community Police Forums (CPFs) in respect of every police station (section 221). It is probably the only section of the whole constitution where the government “meets” the community.

As a person who attends the Guguletu Community Policing Forum (GCPF), a body which sits every Wednesday evening, I have learned about the importance of this constitutional clause and about the problems experienced by both the police and those representing the community.

A major problem is the lack of clarity about the duties and powers of the forums. The new Police Act, which will clearly define the duties and powers of the forums, is still pending.

In this regard, communities such as Guguletu are being guided by the principles of the Interim Constitution and have had to expand in practice what section 221 states.

The GCPF is attended by representatives of the civic associations from the community, members of non-governmental organisations, community-based organisations, interested individuals and the police. More than 40 people attend these meetings every week. The level of debate, interaction, and sometimes

healthy conflict, is fascinating. This meeting has become a “public forum”, where issues related to the monitoring and accountability of police services are integrated to other discussions which are also relevant to the community.

The community relates discussions on police matters to broader issues of a developmental nature. For example, the lack of adequate first-aid medical facilities in the police station, to deal with injured people, has been solved by opening a “first-aid mobile container”, next to the police station.

The constitutional clause has a double virtue. On the one hand, it regulates interaction between members of civil society and the state.

There have been other attempts to establish similar interaction, although not constitutionally, through the Reconstruction and Development Programme forums. These occur in a more ad hoc, voluntary, way. The CPFs in certain provinces like Gauteng and the Western Cape, for example, have been taken very seriously.

The second virtue of these forums rests in the mandate provided in the constitution to monitor the service delivery of a state agency, the police. It is remarkable that in the new South Africa, the police could be constantly monitored by the community, so that transparency and accountability takes place. It is problematic, however, that of all state agencies, it is only the po-

lice that has such community supervision.

Do we need to have these type of forums in the final constitution? There are different responses to this question. It seems as if the police would rather have this clause (section 221) removed from the final constitution, because it does not represent a principle of police service but a strategy. Certain communities on the other hand, like in Guguletu, would like to keep this clause guaranteeing the forum as one of their “constitutional rights”.

The answer to the above question is not an easy one. However, we should all get involved in the discussion, so that the final constitution reflects the view of the people.



Rising community needs - can the constitution assist in building relationships between communities and the police?

Name: _____

Address: _____

Code: _____

Tel: _____

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**Letters****Write in English please!**

Dear Editor

The idea of wanting to use 11 official languages in “Constitutional Talk” is really praiseworthy! Really, a fine idea! Only, it doesn’t work. Nobody in this country understands all 11 official languages, therefore, nobody will even be able to read all the articles - what a waste of paper!

Two or three weeks ago on *Good Morning South Africa*, one of the people discussing the newspaper articles quoted “Bleed” as saying that the new official language of South Africa is “Bad English.”

So be it. But at least everybody will understand.

DIRK J. VENTER
ROTHDENE**Back copies of Constitutional Talk**

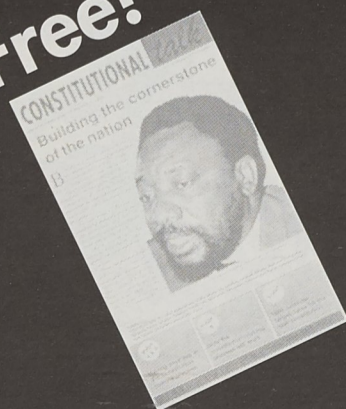
We have received several letters from readers asking us for back issues. Unfortunately, we cannot meet these requests as all copies have already been distributed – Editor

Constitutional Talk is the official newsletter of the Constitutional Assembly.

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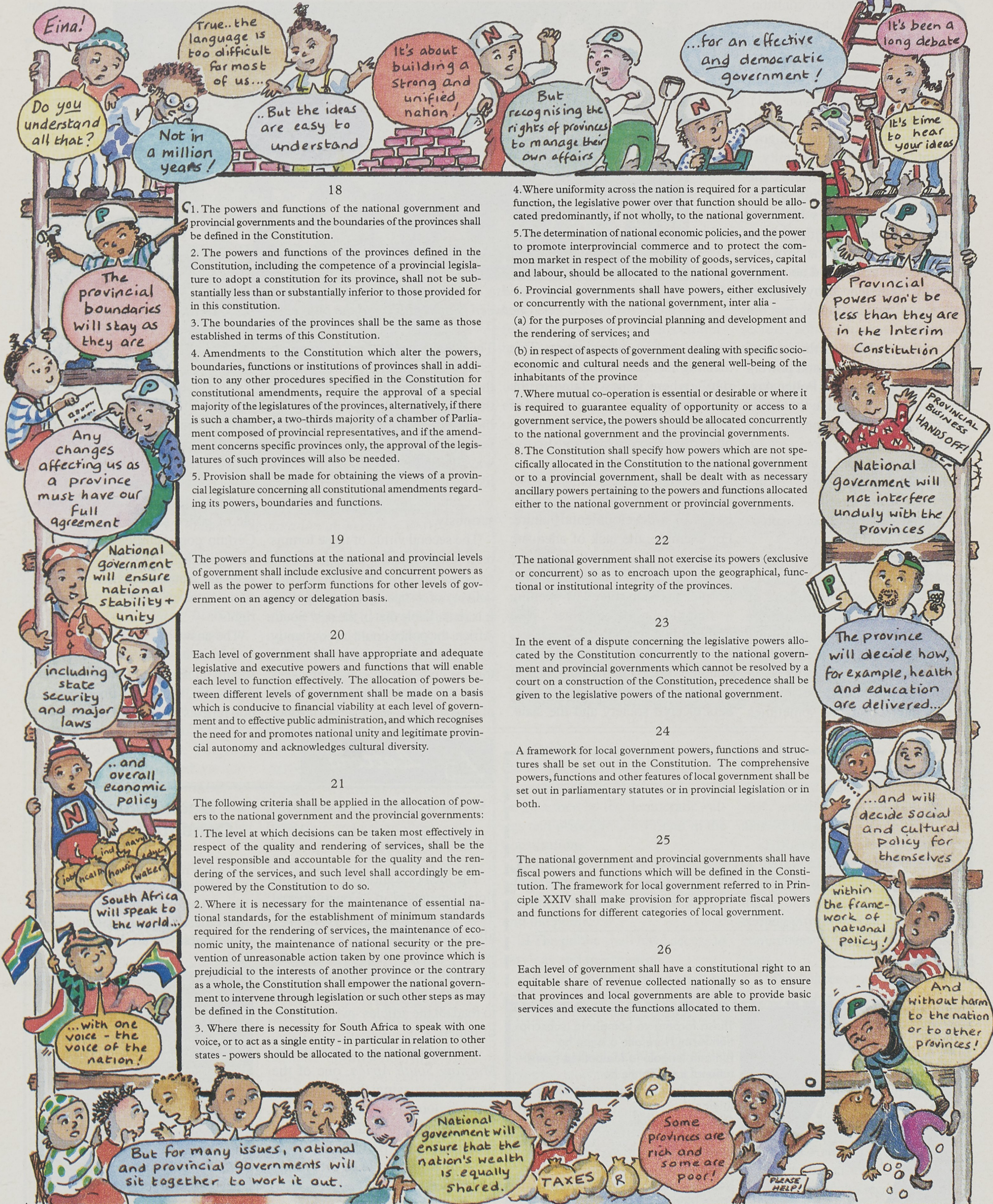
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**You've made your *mark*****Now have your *say*****THE NEW CONSTITUTION**

The 34 Constitutional Principles

PART 3
NATIONAL AND
PROVINCIAL POWERS

The Constitutional Principles is the framework within which the constitution must be worked out. In the last issue of Constitutional Talk, we talked about principles number 11 to 17. They act as a safeguard to make sure that the transformation of our country takes place justly and democratically. In this issue we look at principles 18 to 26.



18

1. The powers and functions of the national government and provincial governments and the boundaries of the provinces shall be defined in the Constitution.
2. The powers and functions of the provinces defined in the Constitution, including the competence of a provincial legislature to adopt a constitution for its province, shall not be substantially less than or substantially inferior to those provided for in this constitution.
3. The boundaries of the provinces shall be the same as those established in terms of this Constitution.
4. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of provinces shall in addition to any other procedures specified in the Constitution for constitutional amendments, require the approval of a special majority of the legislatures of the provinces, alternatively, if there is such a chamber, a two-thirds majority of a chamber of Parliament composed of provincial representatives, and if the amendment concerns specific provinces only, the approval of the legislatures of such provinces will also be needed.
5. Provision shall be made for obtaining the views of a provincial legislature concerning all constitutional amendments regarding its powers, boundaries and functions.

19

The powers and functions at the national and provincial levels of government shall include exclusive and concurrent powers as well as the power to perform functions for other levels of government on an agency or delegation basis.

20

Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. The allocation of powers between different levels of government shall be made on a basis which is conducive to financial viability at each level of government and to effective public administration, and which recognises the need for and promotes national unity and legitimate provincial autonomy and acknowledges cultural diversity.

21

The following criteria shall be applied in the allocation of powers to the national government and the provincial governments:

1. The level at which decisions can be taken most effectively in respect of the quality and rendering of services, shall be the level responsible and accountable for the quality and the rendering of the services, and such level shall accordingly be empowered by the Constitution to do so.
2. Where it is necessary for the maintenance of essential national standards, for the establishment of minimum standards required for the rendering of services, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one province which is prejudicial to the interests of another province or the contrary as a whole, the Constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the Constitution.
3. Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government.

4. Where uniformity across the nation is required for a particular function, the legislative power over that function should be allocated predominantly, if not wholly, to the national government.

5. The determination of national economic policies, and the power to promote interprovincial commerce and to protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.

6. Provincial governments shall have powers, either exclusively or concurrently with the national government, inter alia -

(a) for the purposes of provincial planning and development and the rendering of services; and

(b) in respect of aspects of government dealing with specific socio-economic and cultural needs and the general well-being of the inhabitants of the province

7. Where mutual co-operation is essential or desirable or where it is required to guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the provincial governments.

8. The Constitution shall specify how powers which are not specifically allocated in the Constitution to the national government or to a provincial government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national government or provincial governments.

22

The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the provinces.

23

In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national government and provincial governments which cannot be resolved by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the national government.

24

A framework for local government powers, functions and structures shall be set out in the Constitution. The comprehensive powers, functions and other features of local government shall be set out in parliamentary statutes or in provincial legislation or in both.

25

The national government and provincial governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in Principle XXIV shall make provision for appropriate fiscal powers and functions for different categories of local government.

26

Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that provinces and local governments are able to provide basic services and execute the functions allocated to them.

To help build the new constitution, talk to your friends, organisation or political party. Then send your your ideas to the Constitutional Assembly, P. O. Box 15, Cape Town, 8000. Tel: (021) 245 031 or fax (021) 241 160.

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