REPUBLIC OF SOUTH AFRICA

DEBATES

OF THE

CONSTITUTIONAL ASSEMBLY

PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

24 May to 14 November 1994

(Vol 1)

ISBN 0 621 16406 2 (Vol 1)
ISBN 0 621 16407 0 (Set)

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OF THE REPUBLIC OF SOUTH AFRICA

§ The sign * indicates a translation. The sign †, used subsequently in the same speech, indicates the original language.
‡ Debates of 24 May, 15 August, 5 September, 31 October and 14 November 1994.

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PARLIAMENT

OF THE REPUBLIC OF SOUTH AFRICA

REPUBLIC OF SOUTH AFRICA

DEBATES
OF THE
CONSTITUTIONAL ASSEMBLY

(HANSARD)

FIRST SESSION — FIRST PARLIAMENT

The sign * indicates a translation. The sign †, used subsequently in the same speech, indicates the original language.

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

PROCEEDINGS OF THE CONSTITUTIONAL ASSEMBLY

Members assembled in the Chamber of the National Assembly at 11:00.

The Usher announced the President of the Senate, Mr H J Coetsee, who was received by members standing.

Members observed a moment of silence for prayer and meditation.

CALLING OF MEETING OF CONSTITUTIONAL ASSEMBLY

The President of the Senate stated that the meeting had been convened in terms of section 68(3)(a) of the Constitution and requested the Returning Officer to read out the Notice calling the meeting.

The Returning Officer read out the following Notice, dated 20 May 1994:

FIRST MEETING OF CONSTITUTIONAL ASSEMBLY

It is hereby notified for general information that under and by virtue of the power vested in me by section 68(3)(a), read with section 69(1) of the Republic of South Africa Constitution Act, 1993, I, Hendrik Jacobus Coetsee, President of the Senate, have fixed Tuesday, 24 May 1994, at 11:00, as the date and time, and the Chamber of the National Assembly in the Houses of Parliament, Cape Town, as the place for the nomination and election of a Chairperson and Deputy Chairperson of the Constitutional Assembly.

H J Coetsee

President of the Senate

MEMBERS OF CONSTITUTIONAL ASSEMBLY

The Returning Officer submitted to the President of the Senate a list of the names of the

members of the Constitutional Assembly, as follows:

National Assembly: Abrahams, M; Adam, F; Ahmed, M O; Alant, T G; Albertyn, J T; Ally, A; Andrew, K M; Appelgryn, M S; Arendse, J D; Asmal, A K; Badenhorst, M J; Bakker, D M; Baloyi, S F; Bekker, H J; Bengu, S M; Bester, B C; Beyers, A S; Bhengu, F; Bikitsha, P I; Biyela, B P; Blaas, A; Booi, M S; Botha, R F; Botha, T; Botha, W A; Botha, W J; Breytenbach, W N; Bunting, B P; Buthelezi, M G; Cachalia, I M; Camerer, S M; Carelse, G M E; Carrim, Y I; Cassim, M F; Chabane, O C; Chait, E J; Chalmers, J; Chauke, P; Chiba, L; Chikane, M M; Chiolé, J; Chuenyane, L D; Coetzee, M P; Coetzer, P W; Coleman, M; Copelyn, J A; Cronjé, P C; Cupido, P W; Dalling, D J; Davhana, M K D; Davies, R H; De Beer, S J; De Klerk, F W; De Lange, J H; De Lille, P; De Villiers, D J; Dexter, P D; Dingani, Z A; Dlamini, B O; Dlamini, C; Doidge, G Q; Dowry, J J; Duna, M W; Du Toit, D C; Dyani, Z D; Ebrahim, A G; Ebrahim, E I; Eglin, C W; Ellis, M J; Erwin, A; Fanie, L M; Fankomo, F C; Farisani, T S; Fazzie, E; Felgate, W S; Ferguson, J; Ferreira, E T; Fihla, N B; Fismer, C L; Fourie, A; Fredericks, G A; Gandhi, E; Gasa, X F; Gcabashe, S J; Gcina, C I; Geldenhuys, B L; George, C M; George, M E; Gibson, D H M; Gininda, M S; Ginwala, F N; Gogotya, N J; Golding, M J; Goniwe, T; Goosen, A D; Gordhan, P J; Govender, D; Govender, P; Graaff, D de V; Green, L M; Grobbelaar, P W; Groenewald, P J; Groenewald, R H; Gumede, A J; Gxowa, N B; Hajaig, F; Hamman, M van S; Hanekom, D A; Hangana, N E; Hani, L; Hendrickse, P A C; Hlengwa, M W; Hofmeyr, W A; Hogan, B A; Holomisa, B H; Holomisa, S P; Jacobsz, F P; Jana, D P; Janse van Rensburg, A P; Jassat, E E; Jele, K J; Jiyane, Z B; Jordaan, D A; Jordaan, J A; Jordan, P; Kasrils, R; Kathrada, A M; Kekana, N N; Keys, D L; Kgauwe, G J; Kgositsile, B; Khasu, M J; Khoza, T S; King, T J; Kondlo, N; Koornhof, N J J van R; Kota, Z A; Kuzwayo, N E K; Landers, L T; Lee, T D; Leeuw, S J; Lekgoro, M K; Leon, A J; Le Roux, J W; Ligege, M G; Lockey, D; Loots, H G; Louw, L; Louw, S K; Love, J Y; Lucas, E J; Luthuli, B N; Mabandla, B S; Mabudafhasi, R T; Mabude, N; Mabuza, M C; Mabuza, L; Macozoma, S J; Madide, D R; Maduna, P M; Mafolo, M T; Maharaj, S R; Mahlalela, A F; Mahlangu, G L; Mahlangu, M J; Mahlangu, N J; Mahlangu, S J; Maine, M S; Majola, N T; Makhanya, D W; Makume, N J; Makwetla, S P; Makwetu, C M; Malan, T J; Malebo, S M; Maloney, L; Malumise, M M; Mandela, N W; Mangaliso, Z K; Manie, M S; Manuel, T A; Mapisa, N N; Marais, J A; Marais, P G; Marcus, G; Maree, J W; Mars, I; Marshoff, F B; Martins, B A D; Masango, N E; Maseko, T M J; Mashamba, H J; Masher, M G; Mashimbye, J N; Mathebe, P; Matthee, P A; Matthews, V J; Mayekiso, J M; Mayimele, H W; Mbeki, T M; Mbongwe, R R; Mboweni, T T; Mbuyazi, L R; Mdladlana, M M; Mentz, J; Meshoe, K R; Meyer, A T; Meyer, R P; Mfayela, S B; Mfebe, M W; Mgidi, J S; Mkhatshwa, S; Mkhwanazi, T R; Mlambo, P G; Mlangeni, A; Mncwango, M A; Mngomezulu, G P; Mnguni, L L A; Mnguni, Z D; Moatshe, P; Modise, J; Modisenyane, L J; Moeti, S E; Mohale, M E; Mohamed, A G; Mohamed, I J; Mohlamonyane, G M; Mokaba, P R; Mokitlane, M C; Mokoena, D A; Mokoena, M L; Molekane, R S; Moleketi, G J; Molewa, B G; Momberg, J H; Mompati, R S; Montsitsi, S D; Moosa, M V; Mosunkutu, E; Mpahlwa, M B; Msane, A T; Msimang, M M T B; Msomi, M D; Mti, L M; Mtintso, T E; Mtshali, L P; Mufamadi, F S; Mulder, C P; Mulder, P W A; Mushwana, G M; Myakayaka, Y L; Myburgh, G B; Mzimela, S E; Mzizi, M A; Naidoo, J; Nair, B; Nash, J H; Ncinane, Z I; Ncube, N Z; Ndawonde, D; Ndlovu, M C; Ndlovu, V B; Neerahoo, H M; Nel, A C; Nel, A H; Netshimbupfe, M A; Ngubane, B S; Ngubane, H; Ngwane, L B; Ngwenya, M L; Nhlanhla, J M; Nhleko, N P; Niehaus, C G; Niemann, J J; Njobe, M A A; Nkadimeng, J K; Nkobi, T T; Nkomo, S A; Nkondo, S D; Nkosi, D M; Nkosi, T J; Nqemesha, K W; Ntaopane, T E; Ntsizi, T C; Ntuli, B M; Nwedamutswu, M J; Nxumalo, S D; Nyembe, N D; Nzimande, B E; Nzimande, B M; Nzo, A B; Odendaal, W A; Olifant, D A A; Oliphant, G G; Omar, A M; Oosthuizen, G C; Padiachey, D K; Pahad, A G H; Pahad, E G; Pandor, G N M; Peires, J B; Peters, E D; Phakathi, N E; Phillips, I M; Phohlela, S; Piliso, M M; Pretorius, I J; Rabie, J A; Radebe, J T; Rajoo, K; Ramaphosa, C; Ramaremisa, N G; Ramgobin, M; Ramusi, M C; Ranchod, B G; Rhoda, R T; Richards, I; Ripinga, S S; Rock-

man, G; Routledge, N C; Saaiman, P W; Saloojee, E; Saloojee, R A M; Schoeman, E A; Schoeman, R S; Schoeman, S J; Schreiner, J A; Schutte, D P A; Scott, M I; Seaton, S A; Sekgobela, P S; Selebi, J S; Seperepere, M S; September, R K; Serfontein, J L H; Serote, M W; Sethema, B E E; Shabangu, J M; Shabangu, S; Shandu, E E N; Shilubana, T P; Shope, N G; Shope, N R; Sigcau, S; Sigcawu, A N; Sikakane, M R; Singh, L; Sisulu, L; Sisulu, M V; Sisulu, N A; Sizani, R K; Skosane, B M; Skweyiya, S T; Slabbert, J H; Slovo, J; Smit, H A; Smith, P F; Smuts, M; Sonjica, B P; Steenkamp, P J; Stofile, M A; Streicher, D M; Suttner, R S; Tambo, A F; Thabethe, E; Tiry, M; Tshabalala, M E; Tsheole, N M; Tshivhase, T J; Tshwete, S V; Turak, M E; Vadi, I; Van den Heever, R P Z; Van der Merwe, J H; Van Deventer, F J; Van Eck, J; Van Heerden, F J; Van Schalkwyk, M C; Van Wyk, A; Van Zyl, I D; Verwoerd, M; Vilakazi, B H; Vilikazi, J N; Vilakazi, M I; Viljoen, C L; Viljoen, V; Vos, S C; Watson, A; Waugh, J C N; Welgemoed, P J; Wessels, L; Williams, A; Woods, G G; Wyngaard, C A; Xingwana, L M; Yengeni, T S; Zitha, D A; Zitha, M C; Zulu, M I; Zuma, N C.

Senate: Ackermann, C; Balie, A; Bhabha, M; Bhengu, G B; Bloem, D V; Bogacwi, K A; Botha, Y R; Bruwer, A A B; Chiwayo, L L L; Coetsee, H J; Cwele, S C; De Ville, J R; Diale, N L; Direko, I W; Fenyane, S L E; Fisher, S D; Foster, J A; Gamndana, T; Gous, P J; Groenewald, P H; Grové, S P; Hendrickse, H J A; Jooste, J A; Kgoali, J L; Khobe, O N; Koornhof, G W; Lamani, N E; Lausberg, C E; Lebona, H J P; Losabe, L K; Lubidla, E N; Lubisi, S W; Mahlangu, J L; Makana, S S; Makgothi, H G; Malatsi, D M; Marais, A; Marais, G; Mashamba, T G G; Mashile, N L; Mbeki, G A M; Mchunu, E S; Mdutyana, S N N; Metele, A T; Mkwayi, Z W; Mnisi, W F; Mogale, M P E; Mohamed, M; Moloto, C P; Mongwaketse S J; Moorcroft, E K; Moosa, M W; Mothoagae, P K; Motshabi, C H; Motsuenyane, S M; Mthembu, J M; Mukhuba, T T; Mushwana, M L; Mutsila, I; Naidoo, A G V; Naidoo, E N I; Ndzanga, R A; Ngcuka, B T; Nobunga, B J; Nogumla, R Z; Nqemesha, K W; Powell, P; Rabinowitz, R; Radue, R J; Rasmeni, S M; Redcliffe, C R; Selfe, J; Sifora, T V; Singh, N; Sosibo, J E; Sulliman, M A; Surty, M E; Swanepoel, L J; Taunyane, D P; Tinto, C F; Tolo, L J; Tonjeni, T L; Tshivase, M P K; Tyobeka, V M; Van Breda, A; Van Niekerk, A E; Van Niekerk, A I; Werth, C H; Wiley, M G E; Williams, A J; Zondi, K M.

ELECTION OF CHAIRPERSON OF CONSTITUTIONAL ASSEMBLY

The meeting proceeded to the election of a Chairperson of the Constitutional Assembly.

The President of the Senate reminded members that nominations had to be submitted in the prescribed form and that a person could not be elected unless he or she was a member of the Constitutional Assembly.

The President of the Senate informed members that in terms of Item 3 of Schedule 5, read with section 69(2) of the Constitution, no debate would be allowed.

The President of the Senate called for nominations.

Rev M A Stofile, seconded by Mrs R S Mompati, nominated Mr C Ramaphosa for election as Chairperson of the Constitutional Assembly.

The Returning Officer reported to the President of the Senate that the nomination paper had been properly completed.

There being no further nominations, the President of the Senate declared Mr C Ramaphosa properly elected as Chairperson of the Constitutional Assembly.

ELECTION OF DEPUTY CHAIRPERSON OF CONSTITUTIONAL ASSEMBLY

The meeting proceeded to the election of a Deputy Chairperson of the Constitutional Assembly.

The President of the Senate reminded members that nominations had to be submitted in the prescribed form and that a person could not be elected unless he or she was a member of the Constitutional Assembly.

The President of the Senate informed members that in terms of Item 3 of Schedule 5, read with section 69(2) of the Constitution, no debate would be allowed.

The President of the Senate called for nominations.

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Dr D J de Villiers, seconded by Mr S J Schoeman, nominated Mr L Wessels for election as Deputy Chairperson of the Constitutional Assembly.

The Returning Officer reported to the President of the Senate that the nomination paper had been properly completed.

There being no further nominations, the President of the Senate declared Mr L Wessels properly elected as Deputy Chairperson of the Constitutional Assembly.

The Chairperson of the Constitutional Assembly was conducted to the Chair by his proposer and seconder.

ACCEPTANCE SPEECH BY CHAIRPERSON OF CONSTITUTIONAL ASSEMBLY

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! I wish to thank all hon members. This inaugural meeting of the Constitutional Assembly is indeed the culmination of many bitter struggles waged by millions of our people to install democratic rule in our country. It is also the embodiment of the vision which is now shared by many in our country that ultimately the final constitution of South Africa should be drafted by an elected body of men and women in order to realise the long-cherished ideal and dream of our people that in the end the people themselves should govern.

The inauguration of the Constitutional Assembly gives our country great prestige and raises the hope of our people that the task of deepening and broadening democracy in South Africa will indeed be accomplished.

We gather here for the first time as a democratically elected body of representatives of our people, charged with the historic and important task of drafting the final constitution. The constitution we draft must reinforce the aspirations of all our people on matters of reconstruction and development. It must also enhance national unity and reconciliation and help us all to achieve lasting peace in our country.

We are living in dramatic times in which we are making history on a daily basis. We who are seated here are privileged to be part of that history. The stirring events of recent weeks, preceded by the long and arduous negotiation process, have brought us now to the point at which we are able to tackle the monumental task of drafting an enduring constitution for this country—a document which must spell out the fundamental principles by which we as South Africans wish to be governed. Such a constitution, if this Constitutional Assembly performs its task truly and well, will be an enduring legacy to future generations.

This being so, I regard it as a great honour, as well as a formidable challenge, to be elected to the Chair of an assembly which is charged with such a monumental task. I undertake to devote my energies to ensuring that the proceedings of this body are conducted in a spirit of fairness and openness. At the same time, I think I speak for the Deputy Chairperson of the Constitutional Assembly, Mr L Wessels, and, indeed, for all hon members of this body when I say that I am eager to get down to the business of drafting the final constitution.

I trust that our deliberations in this assembly and its other auxiliary bodies will be marked by a spirit of co-operation and really good humour. While this process will inevitably entail tough political bargaining, at the same time the quality of what we produce here will ultimately depend on the degree of intellectual and emotional balance, the far-sightedness and the wisdom that each and every one of us is able to bring to this task. I trust that in this we shall not be found wanting, for the people of our country have, by electing us to this body, invested a great deal of trust and confidence in us. We must not and cannot fail them.

APPOINTMENT OF RULES COMMITTEE

(Draft Resolution)

Rev M A STOFILE: Mr Chairman, I move:

That—

(1) the Chairperson of the Constitutional Assembly shall for the duration of this Assembly appoint a Rules Committee consisting of not more than 50 members, inclusive of the Chairperson and Deputy Chairperson, such committee to recommend to this assembly at its next meeting draft rules and orders in connection with the conduct of its business and proceedings;

(2) the Chairperson of the Constitutional Assembly shall be *ex officio* Chairperson of such committee, and if the Chairper-

son is unable to be present at a meeting of the Committee the Deputy Chairperson shall act as chairperson at that meeting.

(3) the Chairperson of the Constitutional Assembly be empowered to appoint, in consultation with the Rules Committee, bodies as specified in section 72(1) of the Constitution.

Agreed to.

The Constitutional Assembly adjourned at 11:18.

PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

COMMITTEE REPORTS:

1. REPORT OF STEERING COMMITTEE: CONSTITUTIONAL ASSEMBLY

The Steering Committee of the Constitutional Assembly, having been appointed under the Resolution adopted in the Constitutional Assembly on 24 May 1994 to consider in detail matters relating to the constitutional process, begs to submit a report, as follows:

1. Proposed structure and functioning of the constitution-making process

Your committee recommends:

That the Constitutional Assembly—

(1) whilst not thereby in any way ceding or derogating from its right to oversee, debate in detail and direct the drafting of the new constitutional text, appoint a select committee, to be called the Constitutional Committee, as the forum to which it routinely refers matters arising out of the constitution-making process for detailed discussion and negotiation among parties, such committee to keep a verbatim record of its deliberations;

(2) instruct the Constitutional Committee, as its first task, to draw up and submit to it an outline of the approach it proposes to adopt in respect of the drafting of the new constitutional text, such outline to—

(a) reflect and incorporate principles and guidelines that emerge from debate on the subject in the Constitutional Assembly; and

(b) include proposals concerning:

(i) the appointment of technical committees and the area of work assigned to each;

(ii) provision for the appointment of "theme" select committees, consisting of approximately 30 members each, to deal with specific aspects of the new constitutional text, and the area of work assigned to each;

(iii) provision for the appointment of commissions to deal with issues arising out of the work of the select committees;

(iv) procedures for regular reporting of progress to the Constitutional Assembly;

(v) procedures for reference to the Constitutional Assembly of issues on which it is unable to reach consensus; and

(vi) procedures for involving, on an orderly and structured basis, outside bodies and the broader population.

Your committee is concerned that the bodies on whose experience it must draw in drafting the new constitutional text, will still be acquiring experience and expertise concerning the operation of the current Constitution at the time the new constitutional text must be finalised. Accordingly it has instructed the Chairperson and Deputy Chairperson to consult with, and consider inputs from, all relevant bodies, structures and persons in order to address this problem.

2. Appointment of Panel of Constitutional Experts.

The public has been invited, through the medium of the press, to submit nominations for the Panel of Constitutional Experts to be appointed in terms of section 72 of the Constitution. In view of the small number of nominations received thus far, your committee proposes to extend the cut-off date for the receipt of nominations and seek further nominations.

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3. Rules and proposed rule changes

Having considered the Draft Standing Rules for the Constitutional Assembly as provisionally adopted by the Rules Committee, your committee has submitted proposals for the amendment thereof to that Committee.

4. Memoranda by parties

Memoranda submitted on behalf of the Inkatha Freedom Party and the Democratic Party on the structure and functioning of the constitution-making system and possible rule changes will be referred to the Rules Committee and the Constitutional Committee for consideration.

5. Management of work programme and timetable for Constitutional Assembly

Your committee recommends that the Chairperson and Deputy Chairperson fulfil a management function in regard to the work programme and timetable for the Constitutional Assembly. The Chairperson and Deputy Chairperson may, however, evaluate the need for the appointment of a whip with responsibility for the business of the Constitutional Assembly should this prove necessary.

6. Financial administration of constitution-making procedure.

Your committee recommends:

That—

(1) provision be made for expenditure on the Constitutional Assembly under a separate programme under the Parliamentary budget;

(2) separate records be kept of Constitutional Assembly expenditure;

(3) the functionaries to be accountable for expenditure under this programme be identified in consultation with the Department of State Expenditure;

(4) reports on the financial affairs of the Constitutional Assembly be made at regular intervals to the relevant committee of the Constitutional Assembly by the Parliamentary Secretariat; and

(5) a report be made on the remuneration of staff and of non-Parliamentary members of bodies established in terms of Section 72 of the Constitution.

The main items to be defrayed from this programme include:

(1) Recruitment of staff and members of Constitutional Assembly bodies;

(2) Remuneration of Constitutional Assembly staff;

(3) Remuneration of Panel of Constitutional Experts;

(4) Remuneration of non-Parliamentary members of Technical Committees, commissions and other advisory bodies appointed under section 72;

(5) Research projects "farmed out" to outside bodies;

(6) Project to involve the general public in the constitution-making process, with the attendant travel expenses;

(7) Office equipment: computer equipment, lease of photocopiers, fax machines, transcribing equipment, stationery, dictionaries, miscellaneous;

(8) Services provided by Parliamentary establishment; and

(9) Furniture and fittings additional to those supplied by the Department of Public Works.

Remuneration of staff and members of the various bodies will be based on the remuneration paid to equivalent personnel at the Transitional Executive Council.

7. Venue for sittings of the Constitutional Committee

It is proposed that the customary venue for sittings of the Constitutional Committee be Room M46 in the Marks Building, but that

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other venues may be considered if and when necessary. It is proposed that provision for sitting in such other venues will be made in the Rules.

8. Proposed staff to support constitution-making process

It is estimated that a staff of 25 to 40 persons—who may be appointed on contract or seconded from the Public Service or Parliament—will be required to support the constitution-making process, headed by an Executive Director with a background in constitutional law and two Deputy Directors (see "*Proposed staff structure*"). The latter three posts have been advertised. Further posts are to be filled shortly. Typing and secretarial staff can initially be provided from the Parliamentary establishment. Accommodation for Constitutional Assembly staff adjacent to the Parliamentary precincts has been arranged. Office accommodation will also be provided for the Panel of Constitutional Experts and the Technical Committees.

The Secretary to the Constitutional Assembly will—

(a) be in charge of procedural services relating to plenary sittings; and

(b) co-ordinate administrative and other support provided to the Constitutional Assembly by the Parliamentary establishment.

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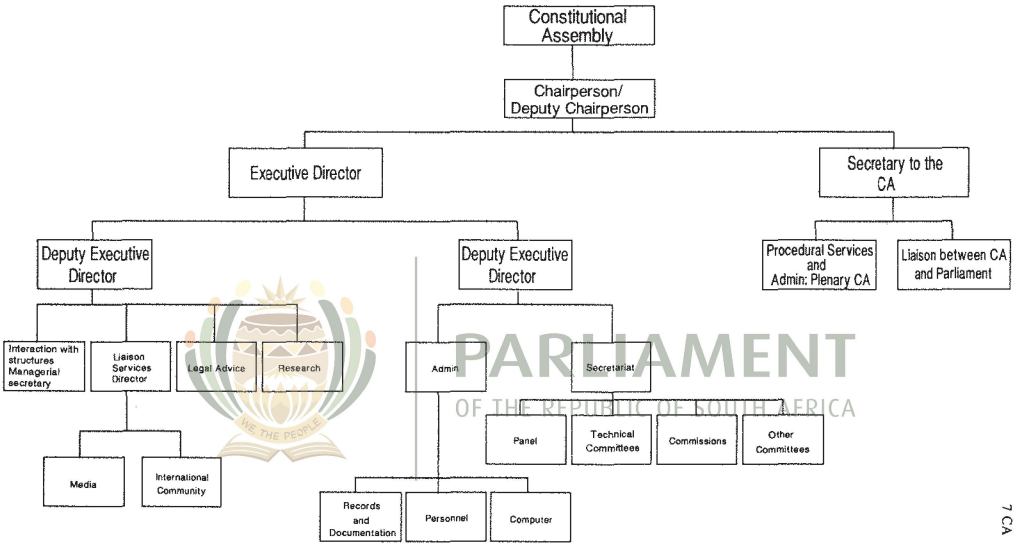
PROPOSED STAFF STRUCTURE FOR CONSTITUTIONAL ASSEMBLY

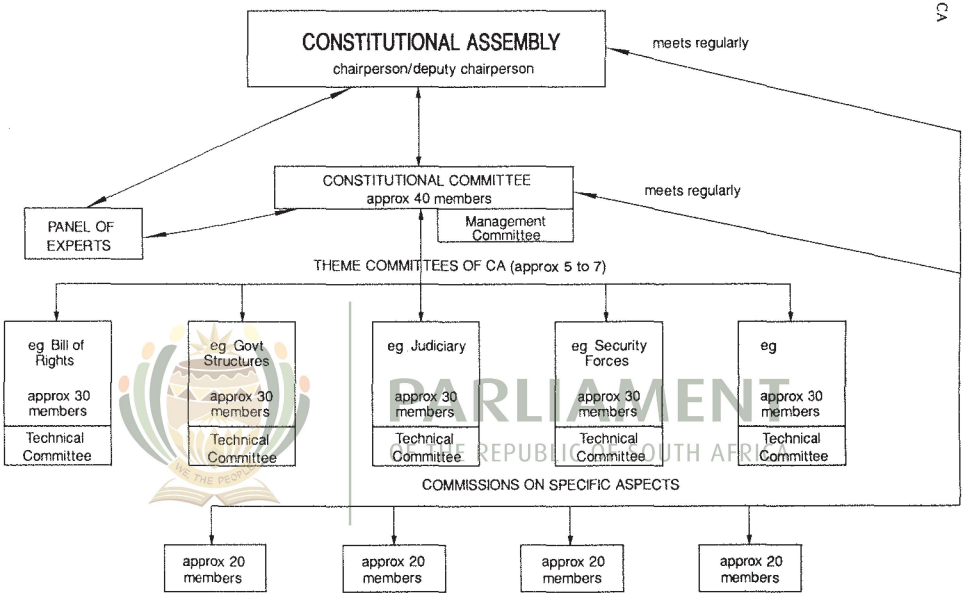


PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA
WE THE PEOPLE

7 CA

PROPOSED CONSTITUTION-MAKING STRUCTURE

8 CA



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2. FIRST REPORT OF THE RULES COMMITTEE: CONSTITUTIONAL ASSEMBLY

The Rules Committee of the Constitutional Assembly, having considered proposals for the amendment of the Standing Rules of the Constitutional Assembly, recommends that the Standing Rules of the Constitutional Assembly be amended as follows:

RULE 11

Substitute the following rule for Rule 11:

Quorum

11. The presence of at least 164 members, other than the presiding member, shall be necesary to constitute a meeting of the Constitutional Assembly.

NEW RULE 17A

Insert the following rule before Rule 18, under the heading "COMMITTEES AND OTHER APPOINTED BODIES:"

Public access to meetings of committees, etc

17A.(1) Members of the public and the media may be present during the proceedings of any committee, commission, technical committee or other body appointed by or on the authority of the Constitutional Assembly, subject to such restrictions and requirements as the body in question may consider necessary in the interest of the due performance of its functions, and further subject to its right to conduct its proceedings in private by excluding non-members whenever it considers it necessary to do so.

(2) A person who attends a meeting by virtue of Subrule (1) shall confine himself or herself to that part of the chamber in question set aside for non-members, and shall obey the orders of the chairperson concerned.

NEW RULE 19A

Insert the following heading and rule after Rule 19:

Constitutional Committee

Appointment and functions of Constitutional Committee

19A.(1)The Constitutional Assembly shall by resolution from among its members appoint a Constitutional Committee.

(2) Every political party in the Constitutional Assembly is entitled to be represented in the Constitutional Committee by a number of members equal to the number obtained by dividing the total number of its members in the Constitutional Assembly by 12, any fraction obtained being regarded as one.

(3) The Chairperson and the Deputy Chairperson of the Constitutional Assembly shall be the chairperson and deputy chairperson, respectively, of the Constitutional Committee.

(4) Subject to this Rule, the provisions of Rules 22, 24, 27, 28, 29, 30, 31, 32, 33 and 34 shall apply, with the necessary adjustments, to the Constitutional Committee.

(5) The Constitutional Committee shall—

(a) co-ordinate, under the control and guidance of the Constitutional Assembly, the drafting of the new constitutional text and, in particular, the work of all committees, commissions, technical committees and other bodies appointed by or on the authority of the Constitutional Assembly;

(b) consider and evaluate reports submitted to it by such committees, commissions, technical committees and other bodies, and report thereon to the Constitutional Assembly;

(c) consider and report on any matter referred to it by or on the order of the Constitutional Assembly;

(d) periodically submit reports and recommendations to the Constitutional Assembly; and

(e) perform such other functions as may be assigned to it by the Constitutional Assembly.

(6) (a) The Constitutional Committee may from among its members appoint a management committee.

(b) The management committee shall include at least one member of each political party represented in the Constitutional Assembly and willing to serve on the committee.

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(c) The Chairperson of the Constitutional Assembly shall be the chairperson of the management committee.

(d) The management committee shall, subject to these Rules, perform such functions as may be assigned to it by the Constitutional Committee.

RULE 20

Substitute the following rule for Rule 20:

Definition

20. Committees, other than the Constitutional Committee, consisting of members of the Constitutional Assembly only are in these Rules referred to as select committees.

RULE 23

Substitute the following rule for Rule 23:

Representation of parties

23. Every political party in the Constitutional Assembly is entitled to be represented in a select committee by a number of members equal to the number obtained by dividing the total number of its members in the Constitutional Assembly by 16, or such other number as may be determined by the Constitutional Committee in respect of a particular select committee, any fraction obtained being regarded as one.

RULE 25

Substitute the following rule for Rule 25:

Chairperson of select committee

25.(1) A select committee shall elect one of its members as the chairperson of the committee.

(2) The chairperson shall be elected at the first meeting of the committee and, thereafter, whenever there is a vacancy in the office of chairperson.

(3) The Secretary or an officer of Parliament designated by the Secretary shall preside at the election of a chairperson.

RULE 26

Substitute the following rule for Rule 26:

Deputy Chairperson

26.(1) The appointment of a deputy chairperson may be authorised by or under a resolution of the Constitutional Assembly in the case of a particular select committee or of select committees falling within a specified category or in respect of select committees generally.

(2) A deputy chairperson of a select committee shall be elected in the same manner as that in which the chairperson of such a committee is elected, except that the chairperson shall preside at the election.

RULE 29

Add the following paragraph to Rule 29:

(c) at a venue it considers to be the most suitable, and which may be a venue beyond the seat of Parliament.

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RULE 35

Substitute the following rule for Rule 35:

Report of select committee

35. A report of a select committee shall be presented to the Constitutional Committee.

RULE 44

Substitute the following paragraph for paragraph (c) of Rule 44:

(c) to consider and report on any matter referred to it by or on the order of the Constitutional Assembly, the Constitutional Committee or any select committee.

RULE 64

Delete Rule 64.

PROCEEDINGS OF THE CONSTITUTIONAL ASSEMBLY

Members assembled in the Chamber of the National Assembly at 14:15.

The Chairperson requested members to observe a moment of silence for prayers or meditation.

REPORT OF STEERING COMMITTEE OF CONSTITUTIONAL ASSEMBLY

(Consideration of Report)

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: We are meeting as the Constitutional Assembly today. When we last met on 24 May 1994 we agreed to set up a number of committees to consider the work of the Constitutional Assembly and to make proposals on how the constitutional process should unfold. Since then the steering committee that was appointed has met nearly every week in an attempt to formulate proposals on how this Assembly should function. Its report will be tabled shortly by the Deputy Chairperson of the Constitutional Assembly, Mr Leon Wessels.

In discharging its mandate the steering committee was especially aware that it was, essentially, breaking new ground and that it was traversing uncharted waters in terms of formulating a framework on how this CA should function. In the end the steering committee had to formulate a framework that is unique to our own political situation, as there were no precedents that we could rely on.

The 1993 Constitution has charged us with the honourable task of drafting the final constitution for our country. It was John Jay who in 1777 boasted that "Americans are the first people whom heaven has favoured with an opportunity of deliberating upon and choosing the forms of government under which they will live". He went on to say that "all other constitutions have derived their existence from violence or accidental circumstances, and are therefore probably more distant from perfection".

I believe that we can be even more boastful in that we have here a body of men and women whom history in the twentieth century has favoured with the noble task of deliberating upon the new constitutional text for our country. We can also boast that we shall be executing this task, not through some accidental circumstance, but through the democratic process which will be guided by principles we have already agreed upon and are enshrined in the Constitution.

The key challenges facing this Assembly are no doubt agreeing to the substance of a new constitution within the time-frame that is set out in the 1993 Constitution. This in itself is a daunting task that will require a lot of hard work on the part of every member. We also need to ensure that the constitution-making process is put at the top of the nation's agenda, as the constitution we draft will in the end shape the history of our country.

Our work, as we debate provisions of the constitution, must also crown the success we have already achieved in the political process, and it must also provide a safe compass for the future.

Today's meeting is essentially aimed at planning and setting up the proper machinery for the drafting of the constitution. We shall need to ensure that the structures that we set up are the type of structures that will broaden and deepen participation in the constitution-making process beyond this Assembly. To achieve this, this Assembly will need to function in a way that will allow more interaction amongst members as we search for a compromise that will produce a durable constitution.

It will be necessary that our deliberations be underpinned by a measure of informality and accommodation of the various views that we have. That informality is already evident by the absence of robes that officials normally wear here, and also by ensuring that the process is more user-friendly.

Our inputs will need to be focused on the issues that we shall deliberate upon, and in the end they should advance the debate as we draft the constitution. What we have to say here will no doubt get into the history books, but more importantly, it will lay the foundation for the final constitution. Our success in this regard will undoubtedly be owing to the enormous and exceptional qualifications that all of us have as members of the Constitutional Assembly.

I should now like to call upon the Deputy Chairperson of the Constitutional Assembly, Mr Leon Wessels, to table and present the report of the steering committee, after which we shall proceed with the debate on that report.

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, I have the honour to move the report as it was tabled in today's proceedings. I refer specifically to Annexure A of that report.

This is the first opportunity that I have to congratulate you publicly on assuming this high office. I wish you well and I trust that this office will not only bring about responsibilities, but also joy and work satisfaction.

The Constitutional Assembly is not Parliament, nor is it Parliament with a hat on. It is another institution that came into being through very special circumstances. Therefore it is of paramount importance that the Constitutional Assembly should develop its own rules and conventions.

I would therefore be pleased if the Constitutional Assembly discarded the confrontational nature that sometimes characterises parliamentary debates. Naturally one is entitled to feel strongly about one's own point of view. The CA process, however, is one in relation to which one wants to understand the other point of view in order to find a lasting solution in the interests of true democracy and nation-building. One wants to understand the hopes and fears of all South Africans in the true spirit of constitution-making. Furthermore, the CA should never be asked to rubber-stamp the final product of our deliberations, but should be involved on an ongoing basis, as set out in the document before us.

Thirdly, I believe it should carry the stamp of informality. Our proceedings should be so informally and loosely structured that every member has an opportunity to be involved, either in the committee system, or through public debates here in the CA.

*I would like to make just a few comments on the parameters of the report and would like to stress seven points in particular.

Firstly, the Constitution Committee is being requested in this report to draw up an outline of the further process of constitution-making. The approach should be simple, one of participation and consultation, so that the Constitutional Assembly can, at the end of this process, accept full ownership of the final constitution, together with other South Africans. It must be our constitution and one we can all be proud of.

Secondly, the fact that important practical experience is at this stage still lacking is disturbing, but it does not have to be insurmountable, considering that there will be dialogue on an ongoing basis with role-players from the provincial and local government structures, as well as the Constitutional Court.

Thirdly, the panel of constitutional experts plays an extremely important part in this whole process. A further opportunity is now being created, as outlined in the report, to nominate more people to this panel. The insistence that this panel must reflect and represent the broader South African society is justified. This panel must also bear the stamp of expertise and unimpeachableness, since there is a heavy responsibility resting upon them to give important advice in the normal course of affairs. Their opinions would be of material importance if a stalemate should develop.

Fourthly, it is a special challenge to make the process transparent and comfortable but nevertheless to manage it with all dispatch. The work programme and the timetable is at present the managerial function of the Chairperson and the Deputy Chairperson of the Constitutional Assembly. The appointment of a Whip to ensure the smooth functioning of the Constitutional Assembly is a matter that will receive further attention as we make progress and the desirability or otherwise of such an appointment becomes clearer.

Fifthly, the seat of the Constitutional Committee is Room M46 in the Marks Building, the intention being to make the proceedings accessible to the press and the public. Practical circumstances and requirements may sometimes necessitate another meeting place. The usefulness of such meetings will time and again be weighed up against the cost-implications thereof.

Sixthly, the financial administration should occur on a permanent basis. Therefore steps must be taken as quickly as possible to bring clarity on the accounting functionaries of this financial administration, together with political supervision of the process.

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In the seventh place, the three posts referred to in paragraph 8 of this document have now been filled. I can report that the administrative structures—the report says so too—are also taking shape. Everything indicates that the initial growing pains will soon be something of the past.

†Outsiders have watched our negotiating and election processes with admiration. Let us live up to our own standards and once again show the resolve and determination to develop our final constitution so that all South Africans can realise their hopes and aspirations. Let us demonstrate the patience and tolerance needed to find a solution which is lasting and which will, once again, do us all proud.

Let us commit ourselves to building a constitution that is inclusive and truly home-grown. Let us once again make South Africa the envy of the world. [Applause.]

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Thank you, Mr Wessels. I have been informed that there is a slight problem with documentation. Documents were distributed to members on Friday, but it seems as if a number of members did not bring their documents to the meeting today. We are trying to resolve this problem. Other copies are being sought, and we will have them distributed in due course. I now call upon Mr P Gordhan to address us.

Mr P J GORDHAN: Mr Chairperson and Deputy Chairperson of the Constitutional Assembly, comrades and colleagues, may I also take this opportunity to congratulate both of you on your appointments, and wish you well as you guide us through what is yet another exciting and possibly difficult phase in our country's history.

This meeting initiates a potentially creative, constructive and dynamic process which is required to deliver a new, democratically drafted constitution for South Africa. This Assembly itself is a product of long and tense negotiations over several years. During those years we negotiated and agreed upon a pre-election phase which gave rise to the TEC, IEC and IMC, amongst other structures. We were also instrumental in giving rise to an elected Parliament and Government of National Unity to govern this country. We also agreed that an elected Constitutional Assembly would draft the new constitution of our country which, hopefully, will form the basis of a new democratic South Africa.

Today South Africans can look back with pride, having accomplished the tasks of the first two phases of this process. In particular, this Assembly can today claim that it is legitimate, democratic and representative of all South Africans. In drafting our new constitution, our aim is to produce a product which will be based on the will of our people, as it was expressed during the elections of 27 April 1994.

This constitution must provide a basis, in the years to come, for consolidating a new democratic South Africa, having traversed the present phase of the country's transition. It must embody our collective vision: a vision of peace, stability, prosperity and development, amongst many other characteristics which, together, we must contribute to and imbue in this constitution.

This Assembly must be guided by the constitutional principles which are found in the existing Constitution. These principles will act as parameters within which the political negotiations and debates will take place in this Chamber.

May I also suggest, for our consideration, a number of what might be called process principles. We have established a high level of transparency in some of the parliamentary processes, and our challenge will be to transfer that transparency to the processes in the CA.

We need all structures of the Assembly to be accessible to the public and to all interest groups having a desire to contribute to this new constitution. We are required—and this is a tremendous challenge to us—to build on the reconciliation to which President Mandela has led us in this country and to ensure that it is not just a flash in the pan, but something that we can perpetuate for many generations to come.

We need to foster nation-building and, above all, a spirit of accommodation in the negotiating process in the new constitution.

This Assembly is also required to embrace all role-players who have a role which they may or not may be conscious of at this stage. These include, in the first instance, the political parties. However, they must also include the social movements in our country, the trade unions, civics, various professions, business, particularly women, traditional leaders and nongovern-

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tal organisations. This Assembly and its structures must not be accessible only to the powerful and the organised; we need to endeavour to reach out to all sections of our people, wherever they might be.

In designing the process of drafting the new constitution, we also need to take cognisance of the current political reality, namely the co-operation that we have achieved in the Government of National Unity; the co-operation that we are beginning to achieve in the legislative process; the reconciliation that is sweeping through our country today and the will of our people as it has been expressed in this Assembly itself. In other words, we are now required to extend the "miracle" that the world says we have achieved in our country over the next two years in drafting the new constitution.

In getting down to that task, perhaps one of the first challenges that we face is to decide whether we are merely redrafting the existing Constitution or drafting a new one. That, I am sure, is one of the debates that the structures that we establish today will be engaged in.

The central issues of the day, however, are political issues. Your committee, Mr Chairperson, suggests the establishment of a constitutional committee that goes some way towards ensuring that we have a viable and functional structure which will enable us to negotiate in a meaningful way the political issues that are central to the constitutional process.

Above all, the process that we design must be participatory. We must compliment your committee for suggesting to this Assembly that it accepts your recommendation that theme select committees be established. These committees have a vital role to play in involving the public of South Africa in this process. There are also technical and drafting issues which your committee addresses and suggests structures for.

May I make certain suggestion about the theme committee which, I believe, is a very important concept in you proposals?

These committees will initiate the participatory process that is so vital to the constitution-drafting process. It is important that we start theme committees immediately. We must ensure that these committees are able to reach out to the South African population. But, in so doing, we might well want to consider a staggered process rather than establishing too many committees at the same time.

We might want to ask ourselves how we learn from the current implementation of the 1993 Constitution in order to embody those lessons in the constitution that this Assembly is required to draft. These theme committees must also use an enabling approach rather than wait in Cape Town for people to reach it. In that sense, we have to make arrangements to ensure that these committees are able to visit different parts of the country and receive people's views.

Some subjects on which these theme committees could be established immediately would be that of national symbols, parliamentary structures and procedures, the Bill of Rights, the judiciary and the electoral process. There are also other difficult issues that we might want to address through these structures, namely affirmative action, restructuring and transformation, and participatory democracy.

Finally, Mr Chairperson, we look forward in this Chamber to a spirit of co-operation, reconciliation and accommodation. Above all, we look forward to accomplishing the task before this Assembly and writing a new and exciting chapter in our history.

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*Mr R P MEYER: Mr Chairperson, hon members of the Constitutional Assembly, this is indeed an historic occasion since we are gathered here jointly and more formally, for the first time today, to direct the Constitutional Assembly in its task.

Mr Chairperson, I should also like to add my congratulations to those that have already been conveyed to you and the Deputy Chairperson of this body on the task entrusted to you, namely of not only chairing the meetings of the Constitutional Assembly, but also directing the management of the Constitutional Assembly. According to the Constitution, you have a specific responsibility in this respect, namely to give direction and guidance to the management of the constitution-drafting process as a whole. This means that you have a very special responsibility.

I really wish you everything of the best with the task, and wherever it is in any way applicable, I shall gladly give you the necessary support.

The task of the Constitutional Assembly is very clearly outlined in the Constitution and there are

specific prescribed procedures and rules which have to be complied with. That this must be carried out requires no argument because this is, after all, what the Constitution of the day prescribes. That we have to carry out this process of further constitution-making in all earnest, expeditiously and with responsibility, requires no argument either.

In my opinion there are two requirements that need to be constantly satisfied. Firstly, we must exploit all and the best possible expertise that exists in the constitutional sphere in South Africa, inside and outside this Assembly. Secondly, we must ensure that the population and society as a whole are involved in this process so that in the end it can, indeed, be everybody's constitution.

While the task of drawing up the final constitution—the task of this body—continues, however, there is at the same time, in my opinion, a predominating priority that requires our attention. I am mentioning this for the sake of the overall perspective. That priority is to reconstruct and develop South Africa. That is everybody's task. It is the task of all institutions of the State. The fact is, even if we succeed in the constitutional sphere we run the risk that if we do not succeed in the reconstruction and development task, a new constitution will be of no value anyway. If we therefore do not succeed in our developmental task and what this requires of us, no constitution, the present one or a final constitution, will alleviate the poverty of people in this country, or improve their lot in life.

I believe, therefore, that it is the responsibility of all of us, while we are engaged in this task, to bear in mind that we must also devote ourselves to the reconstruction and development task that all of us are called upon to perform. That is, in my opinion, our main task. To be able to do that we must indeed ensure that there is economic growth in this country. That ought to be our national goal and I think the hon the President emphasised this again over the weekend.

†Mr Chairperson, in the process of the task of this Constitutional Assembly certain matters will come up for consideration immediately. In an earlier debate I mentioned some of those and I should like to elaborate a little bit this afternoon. One is the chapter that deals with fundamental rights, or the Bill of Rights. As chapter 3 of the current Constitution now stands, it is quite clear that we have not concluded our negotiations on this subject and it was agreed also to that extent. Important second-generation and third-generation rights are not included in the present chapter and some enjoy only restricted protection. Environmental rights are a good example of this.

Chapter 3, in essence, makes provision for the limitation and suspension of rights. The need exists to revisit these limitations to make sure that a future bill of rights is not in danger of being thwarted by measures taken by the Executive in exceptional circumstances. Other issues that justify re-examination include the application and interpretation of the Bill of Rights as embodied in the interpretation clause, the enforceability of the Bill on vertical and horizontal levels, the freedom and equality clause in chapter 3, equality and affirmative action, the right to life, freedom and the security of persons, freedom of expression, access of information, administrative justice and the notion of reasonableness, economic activity, labour relations, property rights, as well as the application of customary law. The development of a human rights culture in the political arena is a new experience for us in South Africa. It is an experience that is long overdue and the current Bill of Rights will, in a certain way, be an exploratory document. Therefore, it would require our further consideration.

Earlier I also referred to the composition of the Executive as another area which the Constitutional Assembly will have to attend to. One of the challenges facing us will be to address the question of the composition of the Executive, since the current system will be in place only for a limited time. The composition of the Executive as described in the Constitution was developed with specific goals in mind.

The question that the Constitutional Assembly has to answer is whether the need exists for a totally new approach in dealing with this matter. The bottom line must be to provide for an effective executive system which does not override the other arms of the authority of the State, namely the legislative arm and that of the administration of justice.

The systems that are most common in a democracy are the presidential system of executive authority, similar to the system in the USA; the parliamentary system of executive authority, as in Britain; the presidential parliamentary system of executive authority, as in France; and the

collegial system of executive authority as in Switzerland. I think it would be useful to evaluate some of the examples mentioned to enable us to get a better understanding of the functions and structures of the executive authority that we require.

The composition of the Cabinet is another feature of the Executive that will have to be debated. Elements such as representativeness must also be investigated. In Canada, for instance, it is a convention that each of the provinces must have at least one representative in the Cabinet. Provincial diversities are thus entrenched in the highest decision-making body.

In the third instance, it is also necessary that the provincial system be further investigated. Affordable and effective government at all levels must be our goal. The Commission on Provincial Government must—as is provided in the Constitution—advise the Constitutional Assembly and the Government on a new provincial dispensation, the administration of the provinces, and the laws and resources that may be necessary for effective provincial government.

As far as a new provincial system is concerned, the commission may also make recommendations concerning boundaries, governmental institutions and the powers, finance and transitional arrangements in the provinces. It is, therefore, of the greatest importance that the Constitutional Assembly use the expertise and knowledge of this body. It would be very constructive and, to my mind, logical if the theme committee of the Constitutional Assembly on provincial government liaised closely with the Commission on Provincial Government.

Finally, the fourth matter that I would like to refer to is proportional representation. One of the aspects that need revisiting by the Constitutional Assembly is the proportional representation voting list system. One of the drawbacks of the present system is the lack of access voters have to their members of Parliament.

A direct link between members of Parliament and voters must be provided for in the Constitution. Every voter must have a clearly designated representative to whom he can turn. Accountability will thus be strengthened in the formal and legal sense. Maybe a mixed system, based on proportional representation combined with the first-past-the-post system or the single-member constituency, could be investigated as a possible compromise. Once again there are numerous examples elsewhere.

In conclusion, my Ministry and the Department of Constitutional Development—the department which is responsible for the implementation of this Constitution—will gain a certain degree of experience in the process of implementing the current Constitution. I believe that that experience will benefit this Constitutional Assembly in carrying out its tasks. We will ensure that our experience is made available to this Constitutional Assembly to make use of as and when desired.

Finally, Mr Chairperson, I wish you well, because I believe the structure we have created which is today before us for consideration can enhance the process of constitution-making, and will provide us with the necessary avenues to arrive at the goals we have set, namely the conclusion, drafting and adoption of a final constitution for South Africa within the next two years, starting from 9 May this year.

Mr W S FELGATE: Mr Chairperson, first of all I want to pause to express my own appreciation for the way the Chairperson of this Assembly has conducted the business of the steering committee and the way Madam Speaker has conducted the business of the Rules Committee.

The business of these two committees has increasingly been all inclusive in terms of gathering together the positions of different parties and fashioning a whole out of the pieces. This fits in with the atmosphere that is developing in Parliament as a whole.

In this respect I think one must pay tribute, in particular, to the President of the Republic for the way in which he has inspired a new kind of faith that this Assembly will, in fact, be able to go on and draft a constitution which will be a unifying one. His address to the Joint Sitting and to the National Assembly, as well as everything he has said outside of Parliament, has been very beneficial.

I am sure that the integrity shown by members of the Cabinet, in particular in the Budget debate, has also had a very marked impact on all the members of this Assembly. One remembers the way in which the hon the Minister of Housing stepped right out of his past image and came across in such a way that members on my side

ended up making favourable interjections. One remembers the very impressive way in which the Deputy Minister of Finance called on us to put petty politics aside. One remembers the way in which Executive Deputy President Mr Thabo Mbeki called on us to put party-political differences aside and to get on with the business of going into the future. All these instances have accumulated to produce a climate in which the process of constitution-writing can take off.

We are not talking about something that is fixed, but about a bubble that may burst. It is very wise for us to approach debate—particularly in the Constitutional Assembly—knowing that we have something which might be more fragile than we think and that we must work towards the strengthening of the whole process.

As regards the process of constitution-writing, it is the IFP's point of view that we should avoid a process in which we take the old constitution and patch it up, in the light of experience gained in implementing it, so as to turn it into a new constitution. Few people outside the NP would like to walk that route. We are rather concerned about some of the statements by the Minister for Provincial Affairs and Constitutional Development about the constitution-writing process. I remember his statement that the chapter on provincial affairs would possibly not be written for a year or two.

We want to believe that the best thing about the interim Constitution is that it was established in order to be knocked down and replaced, and I do not think that the best replacement for it would be derived from amending it, because then we would be limited to its limitations, without being able to proceed in the direction we ought to.

Certainly, there is some pure gold in the dross of the interim Constitution. We do not deny that. Quite clearly it would be foolish to throw everything in the interim Constitution out simply because it is an interim one. There are elements there which should be incorporated and enshrined in the final constitution that we are attempting to write.

The IFP wants to support the progress that is being made in the steering committee. In particular, we want to support the proposal to establish a constitutional committee.

The structures through which we are going to be making a new Constitution, cannot be assessed without at the same time assessing the process they will give rise to. The IFP supports the structures which are being laid before this Assembly for consideration. However, we support them with a number of caveats, and these all revolve around the form of minority participation in the drafting process.

In the step-by-step development of the steering committee's thinking about structures more and more of the IFP's submissions were covered. The position of minority groups, whether they are minority parties or a minority group drawn from different parties, needs a lot of attention. The proper development of theme committees will be helpful in this regard. The development of technical committees to serve these theme committees will enable us to select technical experts and employ professional skills in the narrower zones of the real areas of aspiration.

The Constitutional Committee will be the real powerhouse of constitutional proposals. At the World Trade Centre Negotiating Council, we had a difficulty in that what was decided in the Negotiating Council was never subjected to the kind of debate which proposals from the Constitutional Committee are going to be subjected to in this House. There will be a fundamental difference in this regard.

We have in the Constitutional Assembly men and women who have been elected to responsible positions. I do not believe that we are going to end up with an authoritarian form of Parliament or Constitutional Assembly management. There is going to be real participation from the floor and this will transform the process, which will be welcomed. Even Premiers will be shaking this tree to pick up the apples of provincial powers from the very members of this Assembly.

The struggle for the domination of true federalism over unitarianism or some other form of regionalism, will now take place in an arena in which for any party the only unlevelled ground on the playing field will be ground that it churns up itself by its inability to make its own mark. The constitution-making in this House will be a far cry from what it was in Kempton Park.

If we are going to end up with a constitution which unites South Africa, minority views must be given proper hearings. The only way, and I emphasise the words "the only way", this can be done is to provide for minority Bills and minor-

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ity reports to this House. If a minority position is adopted in the Constitutional Committee and we cannot reconcile differences there, those differences will be brought to this House. If minority views are tabled in this House, without the backup of technical committees and having gone through the process of technical committees to give them the professional presentation they need, we will be doing the whole process a grave disservice.

We from the IFP have made a number of proposals to strengthen the role of minority parties and groups in the whole process. These have been tabled for distribution amongst members and they will be referred to the Constitutional Committee for further treatment. I want to argue that minority positions backed by technical committees will establish a far greater degree of both sincerity and competence in the debate.

I will advance the argument that the last recourse parties will have in minority Bills and minority reports, will actually act as a deterrent to irresponsible politicking in the Constitutional Committee.

Minority views will be taken far more seriously and will be much more responsible if they know that in tabling these Bills, motions and reports in this Assembly they will actually be roasted politically if they are not making a major contribution.

*Dr C P MULDER: Mr Chairperson, it is a privilege for me to take part in this debate this afternoon. On behalf of the FF, I would also like to take this opportunity to congratulate you most sincerely as Chairperson, and also the Deputy Chairperson of the Constitutional Assembly, and wish you strength for the difficult task that lies ahead of you. We trust that all will go well.

This Constitutional Assembly is tasked with the creation of a constitution. One of the acknowledged constitution-makers, the French-speaking Prof Haurio, writes as follows about a constitution in his book *Droit Constitutionel*:

> The publication of a constitution is the manifestation of the international position of the new state. There is in the publication of a constitution of a young state that has just gained access to independence, this implicit confirmation: "I have reached the stage of political maturity". One could say that to claim access to the international community without a constitution would be a bit like arriving at a banquet in a bathing costume.

This applies to every State, South Africa included, because in the final analysis, it is the constitution of a State that other countries look at. They know that if they want to know more about that country, it is its constitution that they must examine.

It has become a practice in modern times that all States must have a constitution. This constitution of a State can either be a specific, written constitution, as in the case of the United States of America and South Africa, or it can be an unwritten constitution, as in the case of the United Kingdom.

The United Kingdom with its unwritten constitution can be regarded as the only exception to the rule in respect of written constitutions, with the result that the traditional distinction between written and unwritten constitutions is no longer functional. Constitutions play a major role in the determination of how a State will finally function.

However, the question immediately arises as to how these constitutions come into existence or are created. It is therefore the task of this Constitutional Assembly to create one. There are no fixed guidelines or requirements with which the process of constitution-making must comply. Sometimes it seems as if most constitution-drafters are constitutional copycats. Since there are already many constitutions in the world which also function successfully, it seems logical that there will be a tendency to make use of existing constitutions as examples. As a result of this there is unfortunately a significant forfeiture of novelty and originality.

Regarding the physical constitution-making process of a State, one the following two processes can be used: *Pouvoir constituant* or *pouvoir constitué*. Since there is in constitutional law a clear distinction between these two concepts on the writing of a constitution, both concepts deserve closer consideration.

I begin with the concept of *pouvoir constituant* which Prof Marinus Wiechers sums up very concretely when he defines it as follows:

> Dit dui op daardie dikwels eenmalige bevoegdheid wat 'n konstituerende liggaam of

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> instansie deur investering of eie aanname op homself neem om by wyse van 'n greep in die staatsregtelike geskiedenis 'n grondwet vir 'n land tot stand te bring.

The coming into existence of the German Grundgesetz, *inter alia* through the activities of the Parlamentarische Rat, presents an excellent example of the creation of a constitution by way of *pouvoir constituant*.

Merkl clearly and correctly defines the constitutional position of Germany immediately after the Second World War as follows:

> In the tradition of Western civilisation the making of a national constitution is a sacred act by which a sovereign people decides to constitute itself in the manner its individuality indicates. Such an act implies both willingness and ability on the part of the people concerned. In the case of postwar Germany, however, neither of these preconditions was present.

From this it was clear that any attempt to rebuild the state structure in Germany was partly dependent on an external impulse or stimulus. This stimulus came about with the London Conference which began on 23 February 1948. On 1 July 1948 the Ministers-President of the Länder were summoned to Frankfurt where the decision of the London Conference was conveyed to them.

From 8 to 10 July the Ministers-President assembled in Koblenz to draw up a general plan of action. These Ministers-President reached a mutual agreement to convene a committee consisting of constitutional experts. The task of this committee would be to draw up constitutional guidelines which would serve as a point of departure for the Parlamentarische Rat, which was to begin with their activities on 1 September 1948. This is very similar to the process we are engaged in at the moment.

The first sitting of the Parlamentarische Rat took place on 1 September 1948 in the Pedagogical Academy in Bonn. Christian Stock addressed the delegates. He made it abundantly clear that it was a break with the constitutional past because the existing State structures in the former Germany had come to an end. We have here a clear example of the basis out of which it developed.

On the other hand we have the term *pouvoir constitué*—a constitution-making device. In contrast with *pouvoir constituant*, *pouvoir constitué* means the competence of an existing legislature to bring about changes to the system in an already existing constitutional dispensation. That occurs without the legislature concerned itself acting constituently. No break with the constitutional past occurs when use is made of this process.

Pouvoir constitué is more generally found in stable communities. In these communities it is found to be unnecessary to make an actual break with the past—not necessarily in respect of the contents of the constitution, but in respect of the process by means of which the constitution comes into existence.

With *pouvoir constituant* the constituted body is free to act as constitution-drafter, and is in no way bound, not even in form and procedure, to any earlier constitution of that State. In cases where one acts in accordance with *pouvoir constitué*, the existing legislative body which creates the new constitution is fully bound to all the provisions of the existing constitution of the State at that stage.

Although this body is presently referred to as the Constitutional Assembly, that is precisely the position in which this body finds itself, namely that it is bound to the present Constitution, particularly in respect of Chapter 5 and Schedule 4. Annexure A of the report before us today states as follows, concerning this body, namely that:

> . . . whilst not thereby or in any way ceding or derogating from its right to oversee, debate in detail and direct the drafting of the new constitutional text . . .

But that is exactly what is happening here. This body, in terms of the constitutional process, is engaged in *pouvoir constitué*, which is a constitutional process without there having been a constitutional break in the process.

Although the transitional constitution and the next constitution substantially represent a radical break with the past, and there is a movement away from so-called parliamentary sovereignty towards a constitutional state (*rechtstaat*), procedurally there is no break and the present process is an example of *pouvoir constitué*, in contrast to what happened in Germany where the total structure had collapsed.

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Having examined the theoretical substructure, one must now come to the practical process of creating and drafting a constitution. Normally there is a practical process which takes its course and in which five clear phases can be distinguished. Firstly, there is the phase of obtaining and formulating evidence. Here I would like to associate myself firmly with the hon member Mr Gordhan, who referred to the theme committees.

†He suggested that these theme committees should go out to grassroots level and get into contact with the people on that level.

*This applies specifically to the collection of evidence. We believe that this phase of collecting and formulating evidence should be used to afford the general public an opportunity to make their inputs.

The next phase is that of consultation and negotiation, and is a very essential phase. The third phase is known as legitimisation, wherein the constitutional product being negotiated is legitimised—whether by way of a referendum or by way of an election. Then the fourth phase follows, namely the implementation. After that comes verification and the final phase is the evaluation.

The collection of evidence is of material importance because in the end a State consists of three major components, namely, a geographically defined area, a community that lives within that area and an authority for that area. It is therefore wise, when a constitution is been drawn up for such a new area, to take the interests of the entire community into consideration. This applies particularly in cases where the community is not a homogeneous group but, as in our case, consists of a plural community.

The method of becoming conversant with the wishes of the various components of such a community, is to create an opportunity for the various groups and individuals to express their views by means of a system whereby evidence is collected.

Once more the theme committees are of material importance here, not only for making contact at grass-roots level with the public, but also as regards the way in which certain specific themes are dealt with. The hon member Mr Gordhan referred to certain important themes, but there are also other themes of equal importance which I would like to mention here. These include themes such as the whole issue of third-tier government which are absolutely topical since they affect our communities directly and require immediate attention. The whole issue of what was known in the past as the so-called "form of State", and which in the previous process caused major differences of opinion to arise, must be addressed so that they can be cleared up as soon as possible.

In the practical process and the five phases, namely, the collection of evidence, formulation and all that follows, it becomes interesting to weigh up the present South African Constitution, under which we are at present functioning in South Africa, against these five practical phases. However, one then discovers that the present Constitution, the so-called interim Constitution, has not even gone through these five practical phases.

Let me cite an example. The collection and formulation of evidence did take place. That is correct. Concerning the question of consultation and negotiation in terms of the present Constitution there were vast differences of opinion. The hon members will remember that not everyone went through the present constitutional process to the end, since there were parties that withdrew from the process. One would then be able to say that consultation and negotiation on the interim Constitution was only partially done.

As regards legitimisation, one could say that the election was used for legitimisation. It must also be borne in mind, however, that there were people who did not participate in the election and who do not want to recognise the legitimacy of the Constitution.

It will take time before the present Constitution is implemented. We have heard what the provincial Premiers are saying. We are aware of what must still happen at the third-tier level of government. On all other levels there are various factors that affect implementation. We are a long way from verification and evaluation. To a certain extent the problem lies in the fact that the present Constitution provides—I hear certain hon members of this Assembly referring to a so-called "final constitution"—that the next Constitution must be finalised within two years.

†There is no such thing as a "final constitution". A constitution is never final. It can always be amended. It can always be changed, but the new

constitution must be completed within two years.

*The fact is, we might find in practice that in two years we have not even finally implemented the present interim Constitution in all respects, to say nothing of observing its progress as it runs its course in practice. Where do the hitches lie? Where should changes be made? Where should improvements be made, because one learns as the process unfolds and one will see what the best options are. One may find that the two-year period is rather ambitious and over-optimistic.

The big problem with the Constitutional Assembly is the following. The criticism expressed at the World Trade Centre was that it was not an elected body, it was an appointed one. I share that concern. The question is: We are sitting here as a body of 490 people. What practical procedure should 490 people adopt in order to write a constitution? Physically it cannot be done. I therefore believe that there is a great deal of sense in the proposal that came from the steering committee today that committees be appointed to involve as many people as possible, but also making it practicable to make progress. In the end a balance must be struck between involvement by everybody and effectiveness.

The hon the Minister for Provincial Affairs and Constitutional Development referred to the question of autochthony and said we could write the best constitution, but it would not help if the RDP did not succeed. The following question immediately arises: What comes first, the chicken or the egg?

We can have the best intentions with the RDP, but in the absence of a stable constitutional process in South Africa and a stable constitution that is accommodating—one with which everybody can identify—the RDP will encounter problems for simple reasons that are obvious. Such a constitutional process will not bring about stability. Ultimately the constitution we write for South Africa and the constitutional dispensation we work out for South Africa, will succeed if it is autochthonous.

†It must be the product of what is in the hearts and the minds of all South Africans, not only the majority. Sometimes the people say that the majority agrees, but one must take into consideration that it is sometimes the minority that causes problems. However, that can be prevented by being accommodating, and accommodating all South Africans in writing a constitution which in the end we can say is truly a home-grown product which we have created on our own.

*In conclusion, we must bear in mind that constitutional law is not static. It changes from day to day. [Time expired.]

Ms J Y LOVE: Mr Chairperson, Deputy Chairperson, Comrade Deputy President Mbeki, colleagues and friends, firstly I would like to add my congratulations on the appointment of both our Deputy Chairperson and Chairperson to those that have already been stated today.

In general, I would like to add my support to the proposals of the steering committee. However there are a number of issues in the report which I think need to be addressed today. The report of the steering committee places much emphasis on the need to facilitate and maximise public participation in the drafting of our new constitution. It is in this regard that I feel we need to draw on some of our past experiences, so that we can realise this objective. There are two areas in particular that I would like to concentrate on. The first is with regard to the role of the media, and the second is with regard to the tension that exists between expertise on the one hand, and popular participation on the other hand.

Public involvement requires the ability of the theme committees, that are being proposed, to rapidly identify and anticipate those issues around which public contributions will be sought and public hearings will be conducted. It is also at that stage that it is very important to identify and understand the vital role the media plays in this regard. The media needs to be seen, once and for all, as an educator with tremendous outreach potential to the public. We need, as part of the lessons and past experiences that we have had in negotiations, to accept that the media cannot, by virtue of the fact that we are sitting in one room, be expected to find all that we say stimulating and interesting—certainly not all the time.

We need to direct our attention to understanding what constraints exist on the media, to ensure that the media is brought on board in the fullest way possible. This cannot be done by merely enabling and facilitating representatives of the media to sit and watch those particular hearings that we think the media ought to see so

that they should not watch only those sessions and not others. They should not only be present at selected meetings, but at all meetings where negotiations occurs, particularly where these negotiations occur around issues in which we want public participation. We want to ensure that people have the right to have their say.

Secondly, it seems that the questions of informality and flexibility that were mentioned by the Chairperson at the outset, should be understood as being a way in which to accommodate the views and maximise the participation of the people. It is here that I am somewhat concerned that we need to ensure that the theme committees do not become committees which are bogged down with detailed technical negotiations at the expense of ensuring that people have their say and make their contributions without having to go through turgid debates and very, very heavy tons of paper. I think we need to accept that it is this Assembly that is the final arbitrator, and that it is here that negotiations finally take place. We are already proposing that a smaller committee be set up in order to facilitate our work in this Assembly.

I feel that this is sufficient when it comes to the bargaining process. The theme committees need instead to be facilitation committees. They should not become bargaining committees in the same sort of way that technical committees carried out their work at the World Trade Centre at the expense of true public participation.

Public participation also cannot be expected to be confined to a single place or a single venue. It does not matter where that single venue is. Whether it is here or the World Trade Centre, we are clear that that kind of thing does not work. Although the Steering Committee makes some mention of the need for the committee to budget adequately—to ensure that there can be certain travelling expenses that are paid for in order to hold panels and discussions in different parts of the country—I feel that we really need to emphasise that it is essential that such a budget is adequate to enable the hearings and the contributions to be sought from the public and not to occur only in one place. There must be adequate financing and arrangements made for these to occur in different parts of the country.

I also believe that the time has come for us to depart from any structure that will marginalise or harness questions relating to gender in a separate structure. The idea of setting up yet another status for women sub-council or some other sub-structure is not enough. We need to ensure from the outset that issues relating to gender are addressed on an ongoing basis as an integral part of the process of discussion, deliberation and negotiation.

Finally, I would like to extend my very best wishes for strength, patience and endurance, to those who will be responsible for the administration of this important structure.

Mr C W EGLIN: Mr Chairperson, we would like to associate ourselves with those who congratulated you, and your colleague, the Deputy Chairperson, on your appointments. We wish you well not only for personal reasons, because if you do well and things go well with you while you are on the Chair, things are going to go well in the Constitutional Assembly. If things go well with us, I think things will, in turn, go well for the whole of South Africa.

We also want to commend your opening comments, as the concept of a maximum degree of informality, and a maximum degree of interaction, is a way in which we are going to make progress. I think we should try to depart from what I call the destructive confrontational style, which has become so much the hallmark of South African Parliaments.

I wish to make a couple of comments in general about constitution-making, because we as we sit here today are embarking on what is perhaps the most important process or the most important task that any of us will ever be called upon to do, and that is to actually take part in the drawing up a the new constitution for South Africa—to decide on the rules and the structures by which South Africa will be governed.

What is even more important is that we are to decide on the rules and the structures within which civil society can function, not only for the next few years, but the next new decades. However, if we are really going to become a model for Africa, it is going to be for the next couple of centuries. What this Constitutional Assembly is going to decide will have a profound impact, not only on the process of government—that is a very abstract process for many people—but on the quality of many people's lives and on the extent of the freedom that our people are going to enjoy. It is going to have an impact on the

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relationship between the groups which form our nation and on the stature of our country amongst the nations of the world.

The constitution must be drawn up not to satisfy the whims of any particular political party, whether that political party represents a transient majority which can be voted away at the next election, or whether it represents a capricious minority.

It has to try to meet the needs of the nation as a whole. Of course there has to be a mechanism for making decisions, but the style must meet the needs of the nation as a whole, and protect the rights of individual citizens, whether they belong to majorities or minorities. They are citizens of South Africa and their rights have to be protected.

In order to achieve this goal, the process has to be inclusive and the decisions must be broadly based. We as a constituent assembly will have to involve mechanisms so that the broader public, and not just the 490 of us who were elected to represent that public, are able to make a direct input. The broader public must be able to feel that they have made a contribution to a constitution that is going to have an impact on their lives and on their future.

The Constitution lays down certain procedures that must be followed. It lays down certain percentages without which decisions cannot be taken. We can take a mechanistic approach in assessing these rules, or we can take a holistic approach to how we are going to proceed.

While we are prescribed to by the rules and percentages stated in the Constitution, we in the DP believe that we should take a holistic point of view and strive to seek consensus on as many issues as possible. If our approach is to seek consensus, the process of constitution-making will also reinforce the process of nation-building. These two processes will go hand in hand if we try to reach consensus as far as possible.

If we do not strive for consensus, if we do not try to make the new Constitution the possession of all South Africans, it is going to be a source of division and strife instead of an instrument of unity.

We can take a lesson from our friends in Namibia who were required to draw up a constitution with a two-thirds majority. Because of the way in which they approached the subject, they ended up with a constitution which was accepted unanimously. We hope we will adopt the same approach towards the constitution-making process.

The DP will approach this task seriously. We believe that whatever happens, the process has to be transparent. It must not be seen to have been a "gekonkel" behind closed doors. It has to be inclusive, not only of all the parties represented here, but also of interest groups and other people not represented here.

Clearly, it also has to be effectively managed in order to produce a result. Because of this, at the second meeting of the steering committee, the DP put forward a memorandum in which it suggested both the openness and transparency, as well as the role of the Constitutional Assembly, supported by theme committees or extended committees.

Although this did not find favour at first, because of a lack of management and of a constitutional committee, in the end a marriage did take place between those original root proposals of the DP and the model which was first thought of by the steering committee. We now have theme committees in which not only members of this Constitutional Assembly can take part, but to which members of the public can also be invited to give evidence. We have a steering committee which can deal with the management process. We have technical committees in which the best minds of the experts on these particular matters can be drawn into the constitutional process. We have commissions on specific issues, where necessary, and there is a constitutional committee to drive the process.

We believe that this is a correct balance. We just hope that under your guidance, Mr Chairperson, and perhaps with a bit of the nagging from a few other members of the Constitutional Assembly, we are going to get a process which will really be inclusive and will lead to consensus. We hope this process will not only help us to find a new Constitution for South Africa, but will also help South Africa in its process of nation-building.

Mr M BHABHA: Mr Chairperson, allow me to congratulate both you and the Deputy Chairperson on your appointments. I already have a problem with the interim Constitution, in that you are only going to be in the position of

chairperson for two years. We are missing you already!

Let me start with a quotation from what was said by a political scientist by the name of S E Finer, who defined a constitution as "a code of rules which aspire to regulate the applications and functions, powers and duties amongst the various agencies and offices of government, and defines the relationship between these and the public".

These applications and functions of our constitution must not be restricted to this document. The constitution must also reflect the norms and standards which lie beyond and outside the document itself. It must reflect our history and the attitudes of our whole nation. The proposed constitution-making structure is sound in principle. Its effectiveness, though, will be dependent entirely on the communication with the ground. The various commissions, and even the technical committees must engage not only the academic talents of our people, but also the practical experience of the man in the street.

If we fail to do this, we shall find these commissions and committees engaged in academic arguments and debate, whilst the human experience is unable to play a role in the shaping of this new constitution. I am particularly pleased to note that procedures have been established to involve outside bodies and the broader population. We must place our focus on this aspect.

I am, I must admit, a bit disturbed to note that the number of nominations for the panel of constitutional experts is small, for whatever reason. We invite these experts to be part of the process, a process which is going to shape the future of our country. Let us not allow history to find us wanting in effort. Their knowledge and expertise will ensure that the constitution reflects the aspirations of the nation and provides sound principles for a civilised society.

We also appeal to extra-parliamentary bodies to make themselves heard. This is what transparency is all about. We urge them to be part of the process so that it truly is their constitution. Let us now actually engage in this democratic process that we have been talking about. There is a somewhat misguided belief, in certain circles, that the interim constitution is sacrosanct and etched in stone.

Every time we want to make a change, there is a hullabaloo. Our constitution-making process has to be buoyant and dynamic. It must always reflect the pulse of the nation and, if need be, it must be changed, failing which we will start producing a document which is very remote from, and unable to relate to, the people.

Mr Chairperson, I find the proposals commendable, and I wish you all the luck.

Mr R K SIZANI: Mr Chairperson, it is with some satisfaction that the PAC takes part in this first historic session of the Constitutional Assembly. The PAC has long contended that a genuine constitution for South Africa should be drawn up by an elected and unfettered constituent assembly. To a certain extent this plenary session is an initial step towards the realisation of that goal.

We are, of course, not entirely satisfied, because this Constitutional Assembly, although democratically elected, is nevertheless fettered by constitutional principles which are unamendable. In addition, its work is subject to the approval of the Constitutional Court. What makes us most unhappy with the above is the fact that these fetters were imposed by an undemocratic process at the World Trade Centre. These fetters when their full implications are known, may undermine the legitimacy of the work of the Constitutional Assembly.

On behalf of the PAC I wish to congratulate you, Mr Chairperson, and the steering committee on this excellent report. The deliberations were characterised by a spirit of openness, genuine inclusivity and a desire to design a democratic constitution making process.

The quality of the committee's work bears testimony to a strict adherence to these noble principles. The PAC is therefore proud to have its name associated with such a process.

The proposed constitution making structure is very inclusive and transparent. Almost all members of the Constitutional Assembly will be involved, either through the Constitutional Committee, the select committees or the commissions. The Constitutional Assembly will therefore not be a mere rubber stamp of the Constitutional Committee. Members of the public will also be able to participate by making submissions to the Constitutional Committee, the select committees or the commissions. In addition, members of relevant academic fields will play a role through the panel of experts, the

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various technical committees and the commission on specific aspects.

Needless to say, the entire process will be open to the media for public scrutiny and reporting. This process, if properly managed, can result in an exciting constitution-making process. The interaction with academics, members of the public and even other countries will be very helpful. It is in this context that we feel that the fetters imposed by the negotiating forum of the World Trade Centre may become a hindrance to a generally satisfactory product. We hope our fears will prove to be unfounded.

Our concern with this new structure and process is in the area of cost and the expansion of the bureaucracy. This structure may not be that costly on its own, but what worries us is the overall cost of the two-stage process of constitution-making. We had the expensive forum at the World Trade Centre, and we are at present engaged in the costly process of implementing the interim Constitution. All kinds of commissions, task groups and negotiation forums are trying, at great expense, to implement this Constitution. On the other hand we are establishing other structures to draft another constitution, also at a cost. We have not even had a chance to see the shortcomings of this interim Constitution.

Some of the money utilised in this duplication could go towards the funding of the RDP. Of course the argument is that this is the price we have to pay for peace. The only problem is that this price does not seem to be fixed and/or decreasing. The more we pay, the more often the price seems to increase.

The PAC intends to participate fully in this new process. We shall be making our inputs at all stages. It is our belief that a lasting constitution for this country cannot be the product of one or two dominant political forces. It should be a national effort. Of course, we accept that it will largely reflect the interests of the dominant social forces in our society. The new structure does go a long way towards meeting this criterion.

In addition, we want to state upfront that it is the belief of the PAC that a genuinely South African constitution should have more functions than only that of limiting governmental power. It should have redefining, rewriting, aspirational, facilitating and legitimating functions. It should redefine our society and rewrite the history of our country so as to demonstrate and reflect that South Africa is not a European country which happens to be in Africa, but is an African country. Public institutions and processes should therefore reflect the composition of our society and where power is really located in our own society.

Equally, the constitution should ensure that institutions and processes which it establishes will enable the government to meet the aspirations of at least the majority of our people without any unfair discrimination on any ground. In that regard it should therefore, apart from limiting governmental power, also facilitate the use of that power in social engineering. It is by meeting these conditions that the new constitution can legitimise the exercise of governmental power over the lives of the majority of the people in this country. The PAC will participate in this process with the sole objective of ensuring that the new constitution facilitates the transformation of our society into a truly nonracial democratic and egalitarian society.

Ms Y L MYAKAYAKA-MANZINI: Mr Chairperson, Executive Deputy President Mr Thabo Mbeki, members of the public gallery, hon members of the Constitutional Assembly, I would like to join others in congratulating Comrade Cyril Ramaphosa on his election to the Chair of this august Constitutional Assembly.

Indeed, he is most qualified to preside over this Assembly, since he has been in the forefront of steering the constitutional negotiation process that gave birth to the new dispensation and to this very Constitutional Assembly.

It is a great moment for me to stand and address a sovereign constitutional assembly, a body which many of our countrymen, women and children have fought for. Some actually laid down their lives. Among others, I have in mind Comrade Oliver Tambo, with regard to whom we all know that the illness he developed, which adversely affected his wellbeing, was triggered by the sleepless nights he spent drawing up the Harare Declaration. This document called for the establishment of a constituent assembly, as it was called at the time.

Many of our people took to the streets of our country to demonstrate their demand for a sovereign constitutional assembly and were met with the brutal apartheid violence which charac-

terised our past. We, the survivors, pay tribute to these gallant sons and daughters of our country. We say their lives were not lost in vain. Indeed, their blood has watered the tree of freedom.

We would like to support the proposals made by the steering committee in the setting up of a constitutional committee, which will be structured to lead and guide this Constitutional Assembly in the preparation of the new Constitution. We urge that this committee be as representative as this Constitutional Assembly. In other words, it should have men and women and it should represent all South African communities.

Furthermore, we support the setting up of the theme committees which will consist of members of this Constitutional Assembly, who, in carrying out their work, will work with technical committees. One of the most important tasks of these theme committees will be to conduct hearings among and process submissions from various communities and interest groups.

Already the women of South Africa, through the Women's National Coalition, have submitted a women's charter to the chairperson of the Constitutional Assembly. This is a document drawn up by women from various political persuasions throughout this country, outlining their aspirations and demands which should assist in the writing of the new Constitution. The women have called on the Constitutional Assembly to consider adopting the charter for women's rights as a working document. In this way we shall indeed be opening up the Constitutional Assembly for grass-roots participation.

The writing of the final Constitution will be guided by the constitutional principles as outlined in Schedule 4 of the interim Constitution, which came about as a result of the constitutional negotiation process which brought about this Government of National Unity.

As we know, this interim Constitution is to function only until 1999 and it does not contain a full bill of rights. One of the theme committees to be established therefore has to deal with the bill of rights. Under this theme we can have various sub-themes to deal with gender, affirmative action and the right to life which will deal with women's right to terminate pregnancy, a matter which has become very controversial in our society. Thousands of women in our country are still dying from backstreet abortions.

Furthermore, the Constitutional Assembly will have to deal with issues concerning the structure of Government, provincial and local government and traditional authorities. It will have to deal with the judiciary and its various structures, for example the Human Rights Commission and the public protector. It will have to deal with issues such as the franchise, citizenship and electoral systems. Some of these are already laid down in the constitutional principles, for example that South Africa shall be one sovereign state with a common South African citizenship and a democratic system of Government, committed to achieving equality between men and women and people of all races. Furthermore, a constitution shall prohibit racial, gender and all other forms of discrimination and shall promote racial and gender equality and national unity.

Principle 7 calls for the establishment of an independent and impartial judiciary which shall have the power and jurisdiction to safeguard and enforce the constitution and all fundamental rights. The constitutional principles also make provision for the participation of minority political parties in the legislative process in a manner consistent with democracy. We hope those parties which boycotted the negotiation process and the elections will find a way of making their input in the writing of the new constitution so as to ensure everlasting peace and inclusivity.

This Assembly, which is the outcome of the elections of 27 April, is charged with the enormous task of finalising the constitution and, at the same time, governing the country. We must find a balance between these two tasks. How we do this will depend on how we structure the Constitutional Assembly to ensure broad participation of our people. Let us make the writing of the final constitution the most exciting and democratic event in our country. The work of the CA must not only be carried out in this Parliament, but should reach out to our villages, townships and factories—wherever our people are. Our people, both men and women, have waited for this moment. Let us not disappoint them.

*Mr M S MANIE: Mr Chairperson, let me join hon members in congratulating you and your hon Deputy Chairperson.

For me the drawing up of a new constitution is something that we will have to look at in a very

serious way. I think the process that we have gone through before was one that went hand in hand with a lot of very difficult political decisions and different feelings around the drawing up of the interim Constitution. At the end of the day the new constitution should be one that accommodates all the various interest groups in our country, both from the right and the left. It will not be an easy task, but it should not be done at the expense of any one group.

In drawing up this constitution, we are given the opportunity to make all the people in South Africa part of a process which they feel they belong to. That is something that will also give people a sense of ownership of the process.

People are talking about the miracle we have achieved, and I want to support that, but I think we also need to recognise that the previous process was also accompanied by shortcomings. For example, a lesson that we need to learn from that experience is that people on the ground found the process to be very complicated. They could not follow it, because it was not only complicated, but also extremely technical. The pace was extremely fast. We did not know what was happening from one day to the next. We must admit that there was very limited grassroots participation in the process.

We are at a point now at which we are basically deciding the structure of the process of drawing up the new constitution. However, a structure cannot be drawn up if we are not clear about what type of process the constitution-making will involve. That process needs to be clear to all of us. We need to ask where the people on the ground and where the people in this Chamber fit into the process, and then develop a structure that ensures that all the people understand where and how they fit into that process. The structure also needs to be sensitive to those shortcomings that we identified in the previous set of negotiations when we drew up the interim Constitution.

One thing that I feel can go a long way towards assisting us is to elaborate on the point made by one of the previous speakers, Comrade Janet Love, concerning the role of both electronic and printed media. We need to ensure that we use the media in a different way, so that people can understand what is going on and issues can be simplified. If we do so as we have in the past, people, even in this House, will find that they are left behind because of the technicality and the complicated process involved in constitution-making.

For that reason, I would like to propose that both the political and the administrative structures accommodate an additional area to deal with public relations and communications and that that be added as an additional block in the diagrams proposed to us.

It is also important to me to find out how political agreements will be reached. It is unclear to me how the theme committees and the steering committee will actually reach political agreement, and for that reason, even though we are talking about 490 members, I would like to raise the possibility, in line with the Chairperson's proposal, that we should have a much more flexible approach. However, I believe that we still need to bow to him when we enter the Chamber.

I would like to suggest that certain key and very contentious issues actually be raised in an informal way in this House. It is going to be difficult to reach consensus on some of these issues, but in the spirit of flexibility we should not only get people to come and make speeches here. Quite honestly, I do not know what I am doing in Parliament other than listening to speeches all the time. I do not know what I am doing, because we are discussing things and saying a lot of things, and I am getting very confused about all of this. [Interjections.]

I want to say, therefore, that in dealing with the constitution-making process, we should not follow the procedure of allowing a certain amount of time for people to speak, and then saying around the corner they should speak on whatever they like. I think we need to speak on issues that are relevant, because we have been elected by people to advance the process of democratising and delivering service to our people.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! That was not very confusing. [Interjections.]

Mr A FOURIE: Mr Chairperson, we are gathered here today to consider the report before us in order to set this process in motion, and, although nothing this side of the grave is final, to finalise a democratic negotiated constitution for the Republic of South Africa.

In fact, we can say that we are gathered here legitimately, representing the entire nation with

minor exceptions. The NP supports this report. After all is said and done, however, we dare not forget that we are also gathered here today after days, weeks, months and years of negotiating this present Constitution for transition at the World Trade Centre.

Listening to some members, I almost felt as if the World Trade Centre had never happened. I say this deliberately, because I sincerely hope that we are not, proverbially speaking, being expected to rediscover the wheel. Four years of negotiations produced a valuable product and cost this country millions of rands. When I look at the proposed structures and procedures, I come to one very definitive conclusion: Surely this cannot be the only or most important task or the most pressing need facing our country at this moment.

Surely, what is more important is that all the effort should be directed at the proper and successful implementation of the agreed to RDP. Surely, all our efforts should be directed at the provision of housing, water reticulation, improved education, better health and welfare services, sorting out outstanding land claims and everything related to the improvement of the quality of life of our people.

The people outside expect this of us. In their minds, there is a perception that we have negotiated, had an election and now have a government in place, and that we must now deliver what we promised South Africa. This is in the minds of the people outside. Therefore, we have to proceed towards a final and conclusive negotiated constitution. We therefore support the procedure, but let us please streamline this process. Let us not start all over again.

I am very grateful to see, in one of the motions that we are going to accept this afternoon, that this is going to fall under the budget of Parliament. I want to plead for one thing; please let it not be an open-ended budget. This country can ill afford millions and millions of rands which are not going to the people outside this Chamber. Besides, as we are gathered here today, with minor exceptions as I have said, we are primarily responsible for the Constitution of transition. Let us, therefore, productively use this opportunity to bring this process to finality.

What is more important? Mr Chairperson, that is a question you may well ask me. There is also another very important issue, a matter that seriously concerns me, and I am very happy to hear, in the proposals before us, that there are going to be these theme committees. Let us have no illusions, particularly with reference to provincial government. In some provinces, particularly in the one that I represent, we have an excess dose of political posturing. We are suffering from a lack of experience and we are experiencing total incompetence. Nothing is getting off the ground.

Therefore, one area that needs the attention of this process is finality in regard to provincial government, for the proper rationalisation of the various administrations and the competent, effective and affordable management of these new governmental instruments. We have a negotiated Constitution of transition. We have a set of principles guiding us. We have a negotiated bill of rights which forms a firm basis for future discussions. The people now expect this Government and all of us, as we sit here, to deliver.

Some remarks were made about minority groups and obviously that is important. Two words that are used day after day in this House are democracy and legitimacy. May I just share one remark that I once heard which is very applicable. Some years ago there was the so-called Odendaal Commission that went to South West Africa. The chairman at one stage asked a very respected Black leader whether he understood the concept of democracy. He said: "I understand that, but I have one question. What happens if the majority is wrong?" [Interjections.]

Mr Chairperson, I make this remark because I want to put it to the majority party this House that it will not do South Africa or its people any favours by forcing majority decisions and major changes onto this Constitution purely because it is the majority party.

In conclusion, therefore, let us work towards a final, humanly possible constitution for South Africa in the spirit of reconciliation. May I also add my best wishes to you, Mr Chairperson, and to the Deputy Chairperson. I think a tremendous task rests on you, but please bear in mind the plea that I put to you. [Interjections.]

Mr M V MOOSA: Mr Chairperson, the previous speaker, in his last life, was responsible for the Bantustans, as his post in government. [Interjections.] I think the comment about incompetent political leaders in the Northern

Transvaal should be measured against the high degree of competence that existed in the Bantustans under his control at the time.

This morning's *Business Day* says on the front page, and I quote:

> Opposition parties and ANC backbenchers have indicated their intent to renegotiate substantial sections of the interim Constitution.
>
> However, diplomats who attended the World Trade Centre negotiations warned that the planned, more inclusive process was "remarkably cumbersome". It did not pay adequate attention to the resolution of disagreements . . . threatening the 21-month deadline.
>
> While it was "nice" to broaden the process, people with no idea of constitution-making became involved, the diplomat said.

The whole concept of the Constitutional Assembly is that people with no idea of constitution-making should get involved in that process. The idea of the Constitutional Assembly is that the final constitution should not be written simply by constitutional lawyers and by the law barons, but by elected representatives of the people from all walks of life. This is that Assembly. Whether or not diplomats or anybody else likes it, we shall be drafting the next constitution. We have been elected by the people of this country to do so. [Applause.]

It is for that reason that I support the motion which is before us, because the idea of this motion is to ensure maximum involvement on the part of all members of the Constitutional Assembly in the drafting of the new constitution. This Assembly is not a third Chamber of Parliament. It is a different body. It is a constitutional assembly. In this body there are no Ministers and Deputy Ministers. There are only members of the Constitutional Assembly. It will set up its own committees and structures, and whether or not one serves on a standing committee in any of the other bodies of Parliament, we are hoping that a large number of the members of this Assembly would participate in the various committees which are being provided for in the proposal before us.

In the drafting of the constitution we shall have to continue the process of involving our people and consulting as widely as possible—consulting religious bodies, labour unions, women's organisations, people from the rural areas, etc. Our people in the countryside have been neglected up to now in the constitution-making process. When I talk about consulting people in the countryside, I mean we need to go beyond traditional leaders. We should consult traditional leaders, but also ordinary people in the countryside need to be consulted about the constitution-making process. [Applause.]

In the drafting of the new constitution we would have to take into account that, apart from this elected body, there are other elected bodies that also exist. In the provinces we have nine elected provincial legislatures. Although the provisions in the Constitution do not provide for a direct role for the provincial legislatures, it is vital that these popularly elected bodies are consulted and are able to influence the deliberations of this Assembly. We would need to find a way of doing that.

It is here that the role of the Senate becomes vitally important, because we have no Senate in this body. However, in this body, the Constitutional Assembly, we have 90 people who have been sent here directly by the provinces and by the elected representatives of the provinces.

It is through this mechanism that we should ensure that whatever discussions take place in this Assembly, there should be at least ten persons who could vigorously argue the case that comes from one or other province, that is apart from the people who appeared on provincial lists.

Some of the other important structures that exist outside this Assembly, and outside Cape Town, are the local government structures. Hon members are no doubt aware that in many areas transitional local councils, which are more representative than the old apartheid local structures, are being established. We hope that we will be able to announce, in the near future, an election date for democratically elected local governments.

These local governments will hopefully come into being, prior to the finalisation of the new constitution. The local government structures should also have a say in the finalisation of the constitution. Unfortunately, because none of the negotiators or players specifically represented the local governments, in my own view we neglected the issue of local government to some extent in the drafting of the interim Constitution.

We need to discuss this. There was a tremendous amount of discussion about what the powers of the provinces would be, because we had a number of regionally based political parties and other interest groups in the multiparty negotiations. However, very little was said about what the powers of the local government should be in relation to the central and provincial governments.

What is emerging in the new dispensation are powerful institutions such as the Johannesburg, Cape Town and Durban metropolitan governments. These are powerful institutions. The budget of the Johannesburg Metropolitan Council would be the third biggest budget in the country. It would be bigger than the budgets of at least eight provinces in this country. Surely a level of government such as that should have some significant position in the Constitution as well. These are matters which need to be considered, and this involves proper consultation.

In order to facilitate the consultation, provision has now been made in the Rules Committee of the Constitutional Assembly that committees of the Constitutional Assembly are under no obligation to meet only in Cape Town. For good reasons, committees will be free to meet wherever they may feel it is necessary to meet. I think that this facility must be used in order to ensure that constitution-making does not become an event based in Cape Town, but rather something which involves the nation as a whole.

One other matter that we will have to concentrate on is the size of the government. We have a 490-person joint sitting of Parliament and we have provincial assemblies, and all sorts of questions are being raised, by the public, about what it is costing to run the Government. This is a matter which, in the heat of the situation in the multiparty negotiations, did not receive adequate consideration. It is, however, something that we need to think about.

Do we need a government as big as it is at all levels? Do we need as big a Cabinet as we have at present? Do we need 27 Cabinet Ministers? [Interjections.] Do we need 90 Senators? [Interjections.] I am not picking on the Senate, but in Germany, which has a population almost twice the size of the South African population, and which, Colin Eglin and others will tell us, is a true federation, the Senate is much smaller than the one we have here. We will obviously have to look into all that. Perhaps we have good reason to retain the present size of our Senate, but in my view we should not take all these things as given.

Another matter involves the role of Parliament and herein the question of the separation of powers. The constitutional principles enshrine the separation of powers between the legislature and the executive. It is a matter which needs to be revisited. I am not convinced that we have an adequate separation between the legislature and the executive.

Many of us argued that Cabinet Ministers should be MPs, so that they could keep in touch with the mood, the feelings, the vibes on the floor of Parliament. That is, of course, a good thing and a benefit. On the other hand, we need to ask whether they are not so much in touch with Parliament that they, in fact, control it. It is therefore a double-edged sword, and hopefully we will be able to give more attention to this issue.

I would like to agree with Mr Meyer on the question of the electoral system. The system we used for 27 April was specifically designed for the election of a constitutional assembly and other organs of government. It was never intended to be a permanent electoral system. It was designed in that particular way because it would otherwise not have been possible to register voters. There were all sorts of contingencies which had to be taken into account. It was also designed to ensure that the Constitutional Assembly would be as inclusive as possible.

I remember when Ms Dene Smuts of the DP recently spoke out against the system of pure proportionality which we had for the Constitutional Assembly. We thought it was a good thing, and it was indeed a good thing. A number of parties would not have been in this Constitutional Assembly had it not been for that system. [Interjections.] We thought it was vital, in the constitution-making process, for even the smallest of parties to be here. That system of pure proportionality made it possible for small parties to be here with us today, and that is a good thing.

In the final constitution we need to revise this matter. We need to introduce some sort of constituency-based system, perhaps not doing away with proportionality completely, because even in the future we may still want to allow for

small parties to have a way of getting into Parliament. That system of proportionality may just be the way in which this can happen. [Time expired.]

Dr R RABINOWITZ: Mr Chairperson and Mr Deputy Chairperson, I would like to congratulate both of you on your respective appointments to your positions.

I would also like to repeat Mr Felgate's expression of appreciation to all the parties for their participatory approach thus far in the drawing up of rules and structures for rewriting the Constitution.

If the new South Africa was courted at Kempton Park and conceived at President Mandela's inauguration, it will be in gestation when the Constitution is being rewritten and born only when the Constitutional Court gives its blessing to the final draft. Before we comment on the way to create the ideal environment for our gestation period, I would like to spend some time dwelling on the past, not for the purpose of apportioning blame or reviving old wounds, but to highlight the danger to all of us if we do not embark on the right route towards the future.

Few people will deny that the majority of South Africans were left out of the negotiation process. The speed at which the process took place in the final month, the unfamiliarity of most South Africans with the political and constitutional debate, and a degree of deliberate manipulation through the media for political reasons, were all responsible for this. In the tense days before the elections—during the deadlocked negotiations—it was as if we were walking on a tightrope, with the possibility of plunging headlong into an abyss. Fortunately we were snatched to safety by what some deem to have been a miracle, but we ought not to push our luck. Miracles do not happen on an annual basis.

The backdrop against which we have pushed, like the ANC itself, for amendments to the rules for rewriting the Constitution, can be played out for hon members as a masque which I call "the matter with the myth". First I will tell hon members the myth relating to the IFP stance and, secondly, the matter with the myth and the real truth of the matter.

The first myth is that the IFP abandoned the negotiations. The truth is that the IFP, after achieving nothing by way of compromise during the negotiations, stopped lending legitimacy to deals between parties being portrayed as compromises involving all parties.

However, on a daily basis the IFP continued to battle for pluralism and for devolution of powers to the provinces in the same way that the provincial Premiers are doing now. There are drawers full of our proposals.

The second myth is that negotiations failed because the IFP kept shifting the goal posts. The reality is that the yellow paper signed with the NP on 17 December formed the consistent basis for our negotiations from that day onwards. In that paper we spelt out the same objectives that the Premiers of all the provinces are now supporting. It called for a co-ordinating central government which has limited exclusive powers, including the power of defence, of foreign affairs, banking, customs tariffs, national transport and national culture, and the right to collect taxes.

Such a central government is not weak, but its stranglehold on the provinces is limited. The yellow paper further called for strong provincial governments in which all other exclusive powers would be vested according to the principles of asymmetry and subsidiarity. We also called for provinces to be able to collect taxes to financially support the functions that they administer.

Our present interim Constitution allows for most of the meaningful powers such as health, education and the public service to be shared by the provinces and the central government which therefore, according to the hon Minister of Housing Mr Slovo has, and I quote "overriding powers in all areas of significance". In the coming months we will be working towards the same goals that were contained in the yellow paper.

A third popular myth is that the last lot of amendments granted by the hon President Mr Mandela on 28 February, gave the IFP everything that it had asked for. The reality is otherwise. The negotiations were deadlocked over three principal issues. They were the refusal to allow the provinces to write their own constitutions which need not adhere to all the provisions of the interim Constitution, the refusal to allow the provinces to have exclusive powers and the refusal to allow the provinces to collect taxes or to a fixed entitlement of taxes from those collected by the central government.

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The amendments removed the word "concurrent" from the provincial powers, but did not add the word "exclusive", so that in principle the powers remained concurrent and subject to the overrides which are broad. Furthermore, as regards taxing powers, provinces were granted taxes other than income tax and VAT but only on gambling, betting and casinos. The central government was left holding the purse strings.

While the promise was made not substantially to diminish provincial powers, these were already regarded as insufficient. It should have been no surprise that we found these amendments unacceptable.

The last myth that I want to mention is the one that iNkosi Buthelezi was looking to establish a Zulu fiefdom and that he was not willing to allow democracy to run its course. In reality, as evidenced by the Premiers's concerns, our concerns were also national concerns. Furthermore, our concept of democracy is not one in which the winner takes all, but one in which the majority wins, but minorities are also protected and empowered.

The IFP was motivated in its stance by the fear that once in Parliament and in power, the Government would cling to its stranglehold over the provinces. The next two years will either vindicate this fear or demonstrate that we should have proceeded with greater trust. Recent news that the Government intends to license NGOs so that their activities will only be permitted by virtue of Government authorisation, provides a stark reminder of how the debate on federalism will impact on our daily lives.

This action will violate the most basic notions of social pluralism and respect for the integrity of civil society. It would justify our caution and betray our trust. In addition, we originally feared that the process of rationalisation would be a device whereby the central government would delay the transfer of powers to the provinces. Despite frequent reassurances to the contrary, and despite the fact that the technical work for much of this process has been completed according to Government law advisers who held a meeting with the Premiers on Friday, these powers have not yet been transferred, once again justifying our original fears.

The content of the Constitution will largely be the product of the methods and the procedures that are used to write it. The structure of the constitution drafting body and the rules relating to it are a considerable improvement on the system employed at Kempton Park. However, there is a need for further amendments to ensure that minority parties or even minority proposals within the majority party are allowed to surface and be researched by the technical committees.

We need a constitution which will create a central government that is like a caring parent, which imposes only the basic rules for good living on its nine children, the nine provinces; not a parent who dictates every aspect of its nine children's lives so that they become rebellious and resentful. Together let us create the climate in which our bonny, new South Africa cries out joyously at birth.

Ms B KGOSITSILE: Mr Chairperson, the temptation to respond to the points raised by the previous speaker is great. However, I shall leave them to be dealt with at another time.

I would like to refer to one or two issues in response to matters raised by previous speakers before I come to my own input. Firstly, I would like to respond to a matter raised by Mr Fourie. Yes, the people do expect us to deliver and one matter they definitely want us to prioritise is the new constitution. This is what this Constitutional Assembly is all about. Therefore, when we prioritise constitution-making, we are not divorced from the expectations of our people with regard to our delivering.

The second point about the bill of rights was raised by Mr Meyer. The fundamental rights contained in Chapter 3 of the Constitution at present are quite limited. It should not be surprising that they are limited, because it has definitely always been the view of the ANC that for our purposes at the World Trade Centre, not having been democratically elected, we had to limit the rights to those relevant to the interim phase. Therefore the bill of rights has not been completed. This matter will be attended to within the process that we are discussing today.

It gives me pleasure and deep pride to address this body on this occasion when we are poised to embark on what I consider to be the most important and challenging project facing this country. I had the honour of participating in the negotiations that produced the interim Constitution. We always knew that our task would be complete only once South Africa had adopted a new constitution, drawn up by men and women

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freely and democratically elected by all our people. The meeting of this Assembly today is a manifestation of what was a dream for years, a dream which finally came true at the polls in April.

A paragraph under the heading "National Unity and Reconciliation", after section 251 of the Constitution, reads:

> This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

From reading the report of the steering committee it is clear that these matters and other lessons learnt during the negotiations were carefully considered. The steering committee needs to be congratulated on its good work and the sensitivity reflected in the documents before the House.

There was a time when South Africans knew the number one task of the representatives of the people was the writing of a new constitution. These days one sometimes wonders whether we still remember that, besides governing and making laws for the interim period, our priority is to produce a constitution along the lines spelt out in section 251 of the interim Constitution.

I have sometimes heard that we could possibly take a short cut and simply make some amendments to our interim Constitution so that our task could be finished by the end of the year. I think it would be a grave mistake to have that sort of casual approach to what will become the most important document for this country for all times.

It is on the basis of the new constitution that we will systematically effect fundamental, long-term changes. It will be the supreme law to ensure that the ills that have plagued our society do not become the lot of generations to come. To be honest, the multiparty negotiators did not have the legitimacy that this body's elected representatives have. It would, therefore, be incorrect to take the route of amending the present Constitution as opposed to writing a new one.

I say this being fully aware of the jargon preferred by the legal experts. My view is that we are about to produce a constitution for the people, so we need to be as uncomplicated and unconfusing as possible, even in our language.

The report raises important points concerning procedures. Firstly, there will be regular reporting by the proposed constitutional committee to this body, the Constitutional Assembly. Secondly, outside bodies and the broader population will be involved. These are the most crucial factors in the functioning of the Constitutional Assembly and the whole process. This will minimise difficulties when the time for adoption of the text comes.

If the majority of members seated here feel at some point that they are not part of the major exercise that they were elected for, then they are bound not to be committed to or to identify with the outcome. Having said this, however, I would like to point out that we cannot have a perfect system that can involve every single person in every single facet of the work. That is why regular reporting is important to keep every member informed and to give those who are involved in daily negotiations an opportunity to hear the views expressed during debates in this Assembly before proceeding too far on a track that may later be found to be wrong.

The theme committees and commissions will also present an opportunity for hon members to get their teeth into some of the detailed work involved in this process.

The people of South Africa must be involved. They must be consulted, in an organised fashion, on specific issues in order for the new supreme law to be sensitive to and shaped by their realities, and for it to address these realities.

I think the Constitutional Assembly structure must have a way of facilitating this through some kind of representation at provincial level. In this instance I would remind the hon members of a proposal for the members of the Senate to be considered, in some kind of way, to be facilitators of this process.

Although the public will have access to the proceedings of various structures of the Constitutional Assembly, co-ordination of hearings among and submissions from the public of the nine provinces, will enable the process to reach out to many more citizens of our country than when people have to come to one central venue.

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I am sceptical of the need for a Whip in addition to the Secretary of the Constitutional Assembly. I could agree to the appointment of an additional person only if this person were to liaise with the various provinces to ensure dynamic contact at that level.

I would like to link the matter of public involvement in drawing up the new constitution with the role of the media to inform and let people make their views on various issues known. One of my regrets about the multiparty negotiations was that, even when the process was fully open to the media, our people continued to be in the dark. They got only snippets in the news bulletins about what was happening at the World Trade Centre. Whatever the reasons were, I think this was very wrong and it should not be allowed to happen again.

Radio stations broadcasting in the various languages of the local communities must allocate enough time on a regular basis for the country to work on its new constitution. There are other issues on which I would have liked to comment, but I am sure that they will be covered by other speakers. Some of these issues have already been covered.

Finally, I would like to commend the IFP and the DP on the constructive tones of their memoranda and I agree that they should be referred for further, thorough consideration by the constitutional committee and the Rules Committee. Given the amount of work we are faced with in the next 21 months, we need to maintain a responsible and constructive spirit, even if we disagree on certain details.

If I have one more minute, may I just say with regard to the theme committees that I think it is very important for us to learn from the experiences of the rest of the world in the constitution-making process. However, I think paramount in our minds must be that we need to be guided by the experience of this country. It is the particularities of South Africa which must finally determine how we go forward.

Therefore, even with regard to deciding on theme committees and what those themes should be, it should not be a matter of saying: "Constitutions in the rest of the world are usually divided according to this, that and the other." It should be a matter of what we would like to address through the new constitution which we are drawing up. We could thus ensure that major issues, which might arise when we deal with a particular question, are also attended to with regard to the theme committees.

So, even if an issue is not a section of the Constitution, but it is an important matter—in my view, for instance, the question of affirmative action and the question of creating a climate that would enable the Reconstruction and Development Programme to be implemented even beyond the five years of the Government of National Unity—it would need to be taken into account with regard to the theme committees and the commissions we are going to decide on.

Mr R J RADUE: Mr Chairperson, may I take this opportunity to congratulate you and the Deputy Chairperson on your appointments to these very high positions. I believe you have a tremendous task ahead of you in this historic body. You were quite right when you said earlier today that we faced a daunting task to complete a constitutional text within two years as from 9 May 1994. We need, in fact, a unique constitution for a unique situation. The Deputy Chairperson was also quite correct when he said that the Constitutional Assembly was a special forum where the hopes and fears of all participants could be aired as we built a new constitution.

I also want to say to Deputy Minister Valli Moosa that all of us in the Senate are taking our participation in this body very seriously indeed.

South Africans have by overwhelming consensus decided wisely in favour of a constitutional state. This means that the future constitution of this young democracy will be sovereign, and that Parliament, while retaining its important legislative role within the democratic constitutional framework, will be subject to that constitution. A sound basis for such a constitutional state has already been laid in the present interim Constitution. The heart, the soul and the spirit of the interim Constitution itself and of the new democratic order in South Africa lie in the embodiment of Chapter 3, which deals with fundamental rights, and Schedule 4, which enshrines the 34 constitutional principles already agreed upon.

This same spirit must be conveyed in the new constitutional text. In the light of past transgressions of human rights in this country, and in the light of ongoing violations of human rights and

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that word—of the Chairperson, should that ever occur. They should know when to refer matters back to a committee, a commission or any other body. I think rules should be drawn up to regulate this process.

Perhaps a technical committee could be appointed to review the Rules of all three structures of Parliament, to put before the Constitutional Assembly the implications all these Rules have for the democratic process in Parliament. Parties are thinking about these things. What is being discussed, is filtering through from one party to another. Members are making statements or adopting positions in steering committees and in the Rules Committees. Should these matters not be treated more systematically? Should Order Papers not make provision for debates on these matters? Should the various Houses of Parliament not give specific instructions to the Rules Committees on these matters?

In supporting the recommendations of the Rules Committee, the IFP supports a process of developing rules, and does not regard even the amended version as final. It is proposed that the Constitutional Assembly meet regularly, and the IFP supports that. We would, however, urge that time be set aside for debate on specific Constitutional Assembly issues and processes here in the House. Each sitting of the Constitutional Assembly should have an agenda which permits members to make statements and ask questions about the constitution-writing process.

We should not be left in the dark as to reports from steering committees, other committees and commissions. Furthermore, party caucuses should be empowered to play constructive roles by being fed with information timeously about how the constitution is being written. In the end, members of this House should not endorse themselves out of the constitution-making process by becoming mere rubber stamps to decisions taken by its committees.

Prof A K ASMAL: Mr Chairperson, members of the Constitutional Assembly, molweni maqabane! [greetings, comrades!]

In the best traditions of debating, may I just refer to a point raised by the hon Dr Rabinowitz. In a very sober speech, she raised the very tendentious point that the Government or the ANC wishes to dominate nongovernmental organisations. It is not a warning that one should not accept, or agree with everything one reads in newspapers, but we come from a tradition nurtured by nongovernmental organisations which were banned and harassed.

We are part of that tradition, and the last thing the ANC would do, would be either to direct, control or offend nongovernmental organisations. That is important for the purposes of the record.

The second point is simply a compliment to the ANC's steering committee for having brought the Constitutional Assembly to this stage. The word historic has been much abused, quite rightly, and journalists have been fed up with every occasion being treated as historic.

But this is a unique exercise, and the uniqueness lying in the fact that we have arrived at this stage is a reflection of what kind of process we have entered into. I think it is necessary to look at that process.

What we have is a Constitution of an interim nature which is sloppy, untidy, unstructured, obscure in many places and without the stylistic coherence that we may seek in a constitution. But however messy and untidy it may be, it is like South Africa. It is large, unwieldy and uncontrollable in many ways.

It excludes things that should have been in it, and it includes things that should obviously have been left out of it, but we must, we must remember, that this was drafted over a period, by nonrepresentative organisations and institutions, without that kind of legitimacy that we have. We must remember that it stood the historic test, the historic test being that it brought us peace in our country.

So in a sense, it is a peace treaty, a peace treaty that we must use. We must remember that the United States Constitution was drafted by a small group of people. It has been amended 27 times. And so our amendment process, however modest it may be, cannot be compared to the USA.

I say this because the result of the interim Constitution is a consequence of accommodation, compromise and understanding. It has brought peace because it is what we, in fact, wanted. It may not have the elegance and the beauty of an ultimate constitution, but in the work we are going to do in the next few months

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we must remember that the perfect is the enemy of the good.

We may never receive perfection, but what we want is the kind of solution and arrangement that our people and our society desire. So the grand compromise that came out of Kempton Park is not to be despised, because it has brought us to that stage at which we can now look at things afresh, but afresh only to a certain extent, because we are not going to have a total revision of the Constitution, there are eternal truths in the Constitution. We do negotiate, however, the democratic nature of our society, the multiparty nature of society and the separation of powers. We have therefore crossed the threshold into a liberal democracy, and what we must try to give is that social contract that the Constitution misses, those elements that progressive constitutions in Europe and elsewhere have had.

The third point I want to make is that the debate must be an open one. We are not closet constitution-makers here. We are open constitution-makers. So any posturing that has to take place has to take place openly, and the ANC therefore supports the idea of the constitutional committee which should be the real venue for negotiations, because there must be a limited venue for negotiations.

We very much support the idea of the theme committees which are not technical committees, because the issues we are going to discuss in the theme committees are not arcane, obscure matters for lawyers, but rather the very flesh and blood necessary for the general public to debate on. Lawyers must not therefore dominate proceedings, as elsewhere. [Interjections.] Their task is to draft, not to determine. Foreign or domestic lawyers very rarely do anything without a fee. [Interjections.] Therefore we must ask lawyers whether they will assist the communities in making submissions to the theme committees.

This is a serious matter, because when we talk about community participation it often means elite participation by ourselves. If we want a real community participation, not a mockery of community participation, they must therefore have the resources to be able to determine their claims, to articulate their claims, to present their claims.

I therefore appeal to the lawyers in our society for once to do something with a social conscience. [Applause.] We should remember that when we invite public participation we have to guard against populism. Populism is the enemy of participatory democracy. Populism often invokes those elements in our consciences and make-up which we should be afraid of and keep to our nightmares, rather than articulate in public debate.

The fourth point I want to make is that public involvement will be very important. The role of television, radio and the newspapers is going to be of supreme importance if the public is to be involved. Slightly disagreeing with my ANC comrade, I want to say that Kempton Park was a special stage in our negotiations. The reason the public was not directly informed was in fact because we were taking part in a technical debate which had significant political undertones. I therefore appeal to the media to isolate the technical from the political. This will require assistance from the committees and processes which we are going to establish.

The next point is simply that there will be issues of controversy. We should not be afraid of controversial issues. We should articulate controversial issues. A democracy thrives on the articulation of controversy. The ANC has said in its election manifesto that we would not use our majority to drive through our own proposals. I say this as a matter of public record, but it was stated in the election manifesto. We shall not drive through our proposals because we constitute a majority. We have to arrive at consensus and general agreement, both in this House and in our society.

I want to offer a word of caution. Although there have not been many signs over the past three months of the tyranny of the majority, we should not only guard against the tyranny of the majority. We should also guard against the tyranny of the minority. We should not be bemused by this, because local autonomy can often result in warlordism of a political and strategic nature. We therefore have to try to establish whether our work here and the end product will assist the process of nation-building, because the process of nation-building has to be central to our endeavours.

The final point I want to make is simply that the controversial issues which we skirted at Kempton Park have to be looked at here, not because we are going to rewrite the constitution, but because we have to look at issues that were not fully dealt with. There is the whole question of

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economic and social rights, because we cannot make promises of liberal and democratic rights without a full familiarity with economic and social rights. Another issue is the relationship between our burgeoning charters, such as the Women's Charter, the Prisoners' Charter, the Disabled Charter and the Bill of Rights. This is a matter that was never discussed at Kempton Park, because the charters did not develop in that way.

It is obvious that we have to look at the question of an electoral system, but again a word of warning—we must not throw the baby out with the bathwater. We have so many women here because the electoral system helped to remove the domination of men in choosing the candidates. [Applause.]

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I am sorry but the hon member's time has expired. I hope he has not forgotten that he is also a lawyer!

Dr B L GELDENHUYS: Mr Chairperson, if the previous speaker's clock was working, he would have been mercifully saved by the bell.

I have already congratulated you, Mr Chairperson, as well as the Deputy Chairperson, on your appointments, although you may not be aware of this, unless you are a loyal reader of Hansard, which I do not believe you are.

Instead I would like to thank the members of the steering committee for tabling this report which forms the basis of today's debate. Allow me a few general remarks. I am of the view, or rather it is my gut feeling, that the new constitution will not differ dramatically from the present interim Constitution.

The new national flag has come to stay and, to my mind, the interim Constitution is also here to stay. Against that background I am of the opinion that the procedures outlining the drafting of a new constitution constitute something of an overkill. It is not necessary to invent the wheel all over again. We know that the present Constitution is not an ideal product—there are many reasons for that—but at least the majority of South Africans can live with it.

What needs to be done is not an "Umwertung aller Werten" to use the terminology of the German philosopher Nietzsche, but to amend and improve the interim Constitution wherever it needs improvement.

*The interim Constitution must, in my view, be given a chance to prove itself, before summarily tampering with it. Implementation in practice is the best way of pointing out deficiencies in the functioning of the Constitution, which can then be amended accordingly.

A constitution dare not ever be the product of an academic exercise based on a specific ideological school. For this reason I have a problem with the timetable of two years that is envisaged for the writing of the so-called "final" constitution, and it appears as if the steering committee itself is also experiencing problems. I refer to the committee's report, and in particular to the concluding paragraph of Schedule 1, point 1 on page 6. It appears that the committee is concerned that the bodies upon whose experience it must rely in the composition of a new constitutional text, will still be acquiring experience and gathering expertise on the functioning of the present Constitution, at the time when the constitutional text has to be finalised. In my opinion the only solution to obviate the problem is to give the interim Constitution a chance to put down roots. It is after all the result of consensus among 26 political parties. Switzerland took 800 years to finalise their constitution, and perhaps we are a little optimistic about two years.

†In my view the setting of a timetable for constitution-writing should therefore be reviewed. I welcome the fact that the procedures provide for a panel of experts, as long as one keeps in mind that, in the final analysis, the Constitution should reflect the character and nature of a specific nation. This may necessitate deviations from so-called classical constitutional models. For example, the winner-takes-all concept of democracy is clearly not suitable for South Africa. Nor is it suitable for many other states in Africa. Rwanda is a case in point. [Interjections.] If they are not going to have a government of national unity in Rwanda, there will never be peace in that country. [Interjections.] If one does not know that, one should go back to school. [Interjections.]

*The fact that so few names were put forward to serve in this panel of experts is perhaps an indication that even in the minds of academics a conception exists that the writing of a constitution is already a finalised matter, and for that reason there is no ongoing interest from the ranks of these persons. We hope, however, that these experts will also come forward.

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The foundation has been laid for a process which will give South Africa a new constitution, and we would like to contribute to it.

Ms L B NGWANE: Mr Chairperson, the hon Deputy President of the Republic of South Africa, Mr Mbeki, hon members of the Constitutional Assembly, ladies and gentlemen in the gallery, and comrades, I greet you all this afternoon in this august sitting.

It gives me great pleasure to rise and speak for the first time in this Assembly. Let me, at the outset, congratulate you as well as your Deputy Chairperson on your election as Chairperson and Deputy Chairperson of this Constitutional Assembly.

I am speaking today in the Constitutional Assembly which was created in terms of section 68(1) of the interim Constitution of the Republic of South Africa, 1993. This body is charged with the task of drawing up and adopting a new constitutional text which, when passed, must be certified by the Constitutional Court as the constitution of the new democratic South Africa.

The final constitution which this Assembly will adopt must be one for all South Africans, the former oppressors and the oppressed people alike. It must express the sovereignty of the whole nation, not just a part. If it is to be binding, it must protect all and must speak on behalf of all the people of South Africa.

When we set about drawing up this constitution, we must ask ourselves what kind of a public order we are looking for. Are we looking to the Constitution to protect and defend? Once we are clear about what we want, we must ask ourselves whether the processes that we have initiated and the instruments that we are putting in place are, in fact, realistic enough for us to achieve the objectives which we see as part of the desired future of this country.

To be effective, the constitution must be rooted in South African history and tradition. It must draw on the traditions of freedom in all communities. That is why we have heard so many speakers referring to the need for consultation. There must be consultation with the masses of our people.

I am thinking here, for example, that if the constitution-making body or even the Constitutional Committee wanted to know what people were thinking or saying about an issue or even a constitutional principle, it could prepare a questionnaire which all members of the CA could take back to their constituencies where they could set up and address constituency forums and get responses from ordinary people, the masses, indicating what they think and feel should be included in the new constitution.

The advantages of the process which I have just outlined are two-pronged. Firstly, it will generate debate around the culture of human rights within our communities. Secondly, it will assist us, as a body, to arrive at informed decisions.

In terms of section 71(1)(a), the new constitutional text shall comply with the constitutional principles as stated in Schedule 4 which deals with various fundamental human rights which are to be entrenched in a bill of rights that is justiciable. Very few of our people know what a bill of rights is. It is foreign to us. It falls outside our own experience, belonging as it does to the developed nations of the world.

The battle for human rights in our country has essentially been a struggle for the vote, and when our people won the right to vote, they put us here. They put in place a democratic Government and have given us a mandate to write a constitution which embodies a fundamental bill of human rights. To be meaningful a bill of rights must be associated with the people who have sent us here. However, to enjoy these rights, the people must know what their rights are and how to claim them.

There is apparently a perception that the RDP is about bricks and mortar. Whilst that is necessary, we must not lose sight of the fact that without the empowerment of our people in terms of the ethos of fundamental human rights, they will not, in the first place, be able to claim what is rightfully theirs. Secondly, they will sadly continue to be passive recipients of the goodwill of this august body. What would then have happened to the saying "The people shall govern"?

To summarise, I would like to state that I am advocating continuous and regular consultative meetings with constituencies by members of this Assembly. I am also advocating the redeployment of some of the RDP funds for the empowerment of our people on the ethos of fundamental rights. I am not sure if I have enough time to elaborate on this matter.

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I would like to touch on the issue of how these funds are to be redeployed. We have read in the newspapers and we hear that the advice offices which were a source of information which was accessible to our people during the apartheid years up to the elections, are threatened with closure because of the lack of finances. The foreign donors have changed their funding policy, and all money is being redirected to the RDP.

We all know that these offices played a major role in informing our people and helping them to fight for their rights in our communities. They are community-based and are accessible. I am appealing to the Minister without Portfolio, Comrade Jay Naidoo, when he prepares his White Paper on the implementation of the RDP, to address this issue of the redeployment of some funds for developing the human rights culture of our people and also to save these offices from closure.

In conclusion, I also wish to align myself with the report of the steering committee. Finally, I wish to tell a short story about a parliamentarian who spent more than 15 years in Parliament and never spoke in all that time. He was respectfully referred to as the silent one. I hope that after my speech today, no one in this Assembly will refer to me as the silent one. [Applause.]

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Well, you certainly are not silent.

Mr C ACKERMANN: Mr Chairperson, I want to congratulate Lindiwe Benedicta Ngwane on her maiden speech. I hope that she will have an interesting and joyful term in Parliament of at least 15 years, for it seems that she can make a good speech.

I also want to associate myself with the congratulations extended to you and the Deputy Chairperson and I wish you well in your formidable task.

It is an honour to take part in this historic debate. South Africa is surely showing the world, and to Africa in particular, that peace does not have to come through the barrel of the gun, but that the will to compromise through negotiations is a far better way to overcome deep-rooted divisions and diverse aspirations.

I have no doubt in my mind that the road ahead will be full of stumbling blocks, but as long as we put South Africa first, and extremism and self-interest in the cupboard, a bright future awaits this country.

On the other hand, no constitution is static, but is a dynamic and on-going process. Therefore, the result of our product might serve the needs of the present generation, but could change in the years to come.

What is therefore important is that we will lay the foundations of this Constitution in such a way that the future generations can build on it, but never again on exclusivity or on the domination of one race group over another.

The Constitution will be more successful if it is written in the hearts of our people. If it is not accepted in the hearts of our people, the new Constitution will remain a worthless piece of paper.

*As a representative of the Senate in this Constitutional Assembly my request is that the interests of that unique institution be taken to heart. We as Senators will devote ourselves with dedication and commitment to this Constitutional Assembly.

As a watchdog over the interests of the provinces and custodian of the Constitution, the Senate has a role to play, also in the drawing up of the final constitution. This standpoint is not based only on self-interest—I take note of what the hon Minister said about the Senate's representation, namely that it must be reduced—but also on the knowledge that the Senate is even now playing a unique role in South African politics, and is not simply a rubber stamp of the National Assembly.

The report on the Table, as previous speakers pointed out, also makes provision for theme select committees. Today I want to make a specific plea for a local government theme, as the hon member of the FF, Mr Mulder, as well as Mr Moosa of the ANC advocated. A stable third-tier system of government is a prerequisite for a stable community.

†If we want peace in our towns, especially in our townships, we have to have a stable community. The challenge of the committee will be to ensure that an accepted legitimate third-tier system of government will be enshrined in the constitution, that the constitution will provide for strong administration, non-racism and that local governments will be viable and stable and also that

their functioning will be under the guidance of our provinces.

*That the composition and activities of this committee are of the utmost importance is reflected in the fact that the local government elections, as announced over the weekend by the Deputy Minister, could take place between April and November 1995. By that time we could have made a good deal of progress with the "final" constitution.

I want to add that if the Deputy Minister was correctly reported, I could perhaps come to the conclusion that local government will not be forced to hold the elections on the same day, as was the case with the general election, but that the provinces could possibly, as local negotiations make progress, be able to decide on a date in their own areas. This Assembly must also take cognisance of that.

It is important that we do not find ourselves in the situation again where unnecessary deficiencies arise or half-baked agreements are drawn up which will appear, after the election, to have been destabilising and unproductive.

The question of voters' lists is also important. Voters' lists are absolutely necessary for local government elections.

While the Department of Provincial Affairs and Constitutional Development has already made a start with the appointment of technical committees and deliberations between the provinces and organised local government structures, the foundation has already been laid for the theme select committee on local authorities. I am therefore looking forward with anticipation to the new challenge to give expression in our "final" constitution to a third-tier system of government that will serve as the backbone of a stable South Africa.

Mr T G G MASHAMBA: Comrade Chairperson, congratulations. I wish the Houses of Parliament were more user-friendly, because I would have then started off with the traditions I am used to. I would have started off with the toyi-toyi and a slogan. [Interjections.]

Dr B L GELDENHUYS: You can end with a toyi-toyi. [Interjections.]

Mr T G G MASHAMBA: Thank you. Comrade Chairperson, I would like to say that we have all asserted that we accept the Reconstruction and Development Programme. I think that applies to all facets of society including the Constitution. I hope that in redrafting the Constitution we will not only amend it, as some members would like us to do, but really develop it to a stage at which it will be the highest authority in the land.

Further, I would like to confine myself to addressing this House on two points, because I would like to deal with reality. I am not a legal expert. I think as we sit here and deliberate we must take two things into consideration. Firstly, we must consider the quality of our leadership. What was said on this issue has been very honest. I will start off with the Deputy President Mr de Klerk.

The other day he addressed the Senate and he made us understand that the NP has accepted the RDP, but only in name—only in name. He said that the other parties would come with their own RDPs, and ultimately we would come up with a negotiated RDP. [Interjections.] I am very happy that the NP accepts this. I shall develop the point further.

I am also happy to say that Deputy President Comrade Thabo Mbeki has been very candid too. He pointed out the other day in this Chamber that, although we have reached so many agreements through consensus, although we have agreed to a Government of National Unity, the fact remains that we come from different positions, we come here with different interests and if we want to be honest, those facts must be clear as we draw up the constitution.

It is a fact that the Parliaments and the constitutions of the past actually have operated as—with all due respect—some form of trade unions for various property classes against the dispossessed masses of our country. I do hope that the constitution that we shall draw up will take cognisance of that.

At this point I would like to point out that when we went for negotiations we succeeded in overcoming one obstacle, namely the exclusion of the majority from the vote. When we went for elections, we achieved one thing, namely the right to govern. We never got the power to govern. I do hope that the constitution that we shall draw up will lay down some conditions in that direction. We shall be able to address the socio-economic set-up in this country, so that ultimately our people will have the power to

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govern their lives, not only by making a cross after five years, but that they will really be in control, not only in politics, but in the economy, in society, in education and all other spheres. I do hope that the constitution that we shall draw up will envisage such empowerment of our people.

It is in this light that I want to say that Deputy President Mr De Klerk was very honest and I think the NP is very honest too, because we from this side have been saying that we actually represent the dispossessed, the working people of this country. The NP has been representing capital all these years and the Government of National Unity is not simply a unity of Black and White, men and women, young and old, but of labour and capital. It is being negotiated here. [Applause.]

What emerges, if one wants to be honest—we cannot gloss over that—is that at the end of the day it is wrong to say that a property owner, a millionaire, will in substance be equal to a squatter in Crossroads, or to an underpaid worker in the mines. Reality will not be like that, but before the law they will be totally equal. We would like to go beyond the Magna Carta. We would like to go beyond the rights of man in France. We would like to go beyond the American Constitution, because if we do not do that, we will not be able to address the many evils that have been created in this country, ever since—not 1948—but since colonisation began in this country, because as we all know, the ANC is much older than apartheid. We have been struggling here long before apartheid and there are reasons why we have been struggling. We think those things need to be addressed, not simply constitutional matters.

An HON MEMBER: What is the reason?

Mr T G G MASHAMBA: The reason is that capital, with White people, came to our country, dispossessed us, took the land which used to be the base of our economy and turned us into workers, to beggars, unemployed in the streets today. That is the reason. We are saying that it should be redressed. If we really did mean it when we commended the President when he started talking here about a people-centred society in his speech, we must make sure in our constitution that, whatever we do, actually serves the people. The people must participate, otherwise we are actually serving the President. We are going to have an economy which should not be a fetish. We must not live for the economy, but the economy must live for us. The economic arena in this country must be of such a nature that we will do away with squatter camps like Crossroads, that we will do away with unemployment and with ignorance. The same applies to the political system and the constitution. The yardstick should actually the people, not the economic system, because that is something that we shall create to serve our needs. The needs must underlie that whole process.

I know that we shall not agree on this question. That is why I have suggested that we be honest in dealing with this matter. I would like to state that I accept and endorse the report, together with the recommendation that has been made that the media is not enough when consulting our people. Radio, TV and newspapers are not enough. I come from the backward sector of South Africa. We need to . . . [Time expired.]

Debate concluded.

APPOINTMENT OF CONSTITUTIONAL COMMITTEE

(Draft Resolution)

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! We will now move to the second stage of our business, which is the consideration of the draft resolutions. We will not read the draft resolutions. However, already there are a number of members who would like to express their views on them.

By and large I would think that the debate has been quite thorough and focused, and will go a long way in crystallising the views in the various structures that we will be setting up in terms of these draft resolutions. When next we meet as the Constitutional Assembly to discuss substantive matters, I am sure the issues raised here will have been taken into account by those structures.

Mr P J GORDHAN: Mr Chairperson, I rise to move that the draft resolution, which asks this Assembly to accept the recommendation of the steering committee that a constitutional committee be established, be endorsed. Quite clearly, what we as an Assembly require is an engine room. We require a structure that will be accountable to us, take its instructions from us,

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and will be manageable, efficient and effective in the responsibilities that it is given. It should also be able to prosecute the various tasks that are required of it in drafting the constitution on our behalf.

What is important in this resolution is the provision that this structure is accountable to this Assembly, and reports to it regularly. This Assembly will then be able to review its progress reports and give it new instructions from time to time. We appreciate these provisions in the resolution, and ask the Assembly to accept it.

Mr D M MALATSI: Mr Chairperson, allow me to extend my congratulations to you and the Deputy Chairperson on your being elected to your respective positions. On behalf of my party I rise to support the draft resolution before the Constitutional Assembly that a constitutional committee be appointed and that there be detailed discussions and an exchange of views between the parties.

The committee, as we are all aware, should also be able to keep records, and must be accountable to this Constitutional Assembly. I believe that is very important in the run-up to what we in this country are trying to find in a new constitution. However, as we are all aware, the setting up of the committee does not necessarily constitute the reinvention of the wheel.

I would like to elaborate on what one of the previous speakers said. The hon member quoted from what is found after section 251 of the Constitution. I wish to add to that, as follows:

> The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.
>
> These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation.

There is a need for our country now, through this Constitutional Assembly, to seek a new constitution for our country once and for all.

Mr W S FELGATE: Mr Chairperson, the IFP supports the resolution, but at the same time asks for consideration to be given to the need to develop rules and conventions as to how to distil the wisdom out of the debates on committees' reports to this Constitutional Assembly. We do have different parties with different perceptions of what the collective wisdom was.

Mr C W EGLIN: Mr Chairperson, we support the draft resolution. However, I want to draw attention to the fact that in the organogram of the proposed constitution-making structure, the issue of a rules committee seems to have fallen off the page somehow and, likewise, the issue of a steering committee. It may well be that the steering committee now falls away in favour of a management committee or a constitutional committee. However, could I ask the steering committee, which meets tomorrow, to consider where a rules committee should fit into the organogram and whether, in fact, there is a steering committee and where it should fit in.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! We will certainly take that into account.

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Mr R K SIZANI: Mr Chairperson, we would also like to support this draft resolution. We feel that the setting up of the constitutional committee is to be supported, because this committee will be very transparent and inclusive. It will promote effective co-ordination and management of the entire process. It can also lead to genuine accountability to the Constitutional Assembly. We therefore support this resolution.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! That concludes the debate on this draft resolution.

I am now able to put this draft resolution forward for formal adoption. However, before doing so, I think that the point raised by Mr Eglin is an important one, as it raises the question of a smaller committee like the steering committee—which has done the work that we have been discussing up to now—as well as a rules committee. These two committees are not provided for in the organogram.

The resolution itself says that the constitutional committee should "co-ordinate, under the control and guidance of the Constitutional Assembly, the drafting of the new constitutional text . . .". Could that be read to include empowerment to set up whatever structures the constitutional committee requires?

Clearly, there is a need for a smaller structure as well as a rules committee, which have not been provided for. I should add, though, that a rules committee was provided for by the earlier resolution taken by the Constitutional Assembly on 24 May.

In order to accommodate Mr Eglin, one could leave things as they are and rely on the original draft resolution or, alternatively, we could read into this draft resolution that there is an empowerment for the Constitutional Committee to set up committees that will enable it to manage its work.

Mr C W EGLIN: Mr Chairperson, I think that the word "empowerment" should be included specifically, because it is not easy actually to read that into the rules. I believe it is a word that should be added to this clause. I therefore move that it be included.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Mr Eglin moves that the word "empowerment" be included in this draft resolution.

I take it that the proper wording can be determined and a further report made to the Constitutional Assembly. [Interjections.] Indeed, I am reminded that the Rules Committee has actually provided for this type of structure in the Rules. This will be looked into in conjunction with what Mr Eglin has said.

I now move:

That, in regard to the appointment of the Constitutional Committee, the Constitutional Assembly,

Noting:

(a) that it has been charged with the responsibility of passing a new constitutional text within two years from the date of the first sitting of the National Assembly, on 9 May 1994;

(b) the need for a committee of its members to co-ordinate the work of the various committees and other bodies appointed by the Constitutional Assembly for the purpose of drafting the constitution; and

(c) the need for open debate in the Constitutional Assembly and among the wider South African public on the process and the substance of the constitution-making procedure,

Resolves:

(a) Whilst not thereby in any way ceding or derogating from its right to oversee and direct the drafting of, and debate in detail, the new constitutional text, to appoint a committee, to be called the Constitutional Committee, of not more than 50 members, as the forum to which it routinely refers matters arising out of the constitution-making process for detailed discussion and negotiation among parties, such committee to keep a verbatim record of its deliberations; and

(b) that such committee shall—

(i) co-ordinate, under the control and guidance of the Constitutional Assembly, the drafting of the new constitutional text and, in particular, the work of all committees, commissions, technical committees and other bodies appointed by or on the authority of the Constitutional Assembly;

(ii) receive reports from such committees, commissions, technical committees and other bodies, consider and evaluate such reports, and report thereon to the Constitutional Assembly;

(iii) consider and report on any matter referred to it by or on the order of the Constitutional Assembly;

(iv) periodically submit reports and recommendations to the Constitutional Assembly; and

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(iv) perform such other functions as may be assigned to it by the Constitutional Assembly.

Motion agreed to.

CONSTITUTION-DRAFTING FRAMEWORK

(Draft Resolution)

*Mr A FOURIE: Mr Chairperson, I should like to refer to Resolution 2 as it appears on the Agenda of Proceedings. This draft resolution recog-
nises the need for a framework for the drafting of the constitutional text, in which we would all like to participate. Of course we support it. A properly structured process and orderly planning can only produce the best product, which is what we want. I only want to say one more thing. This also became clear from the debate this afternoon.

This framework must be drafted in such a way that on the one hand it reflects the guidelines and standpoints of this Constitutional Assembly and takes them into account, while on the other—I consider this very important, and it has emerged in the debate—it creates the opportunity for inputs and representations from extra-parliamentary individuals and interest groups. Let us make the process easy; let us make the system uncomplicated, and let us use standpoints which have already been agreed upon as guidelines.

†In the light thereof, Mr Chairperson, and on behalf of my party I support the draft resolution.

Mr W S FELGATE: Mr Chairperson, the IFP supports the draft resolution, but we ask that the notion of an outline of the process should be detailed and not simply an outline.

Mr J SELFE: Mr Chairperson, we will have to work purposefully and very quickly to meet the deadline of 8 May 1996. The draft resolution before the Assembly provides a simple way to organise and manage the workload that this Constitutional Assembly will have to deal with. The DP therefore supports it.

At the same time we should bear in mind two factors. The first is to avoid the pressure cooker approach to constitution-making which at times characterised the negotiations at Kempton Park, particularly towards the end. We hope that the Constitutional Committee, will provide an outline which will avoid rushing into decisions without adequate research and debate.

The second is to involve the public in the constitution making process in such a way that the eventual product will carry the broadest possible approval. Depending on the framework agreed to, theme committees and commissions will be appointed and my appeal is that when appointed these committees and commissions meet at places and at times at which all South Africans can see them at work.

With these few words we support this draft resolution.

Mrs P DE LILLE: Mr Chairperson, the PAC wishes to support this draft resolution. We also call on the Constitutional Committee to take into account the relationship between the implementation of our interim Constitution and the writing of the final constitution. I thank you.

Ms B KGOSITSILE: Mr Chairperson, I rise to support the draft resolution and in doing so to draw attention to the issue raised by the member of the PAC. She spoke of the tension between the need to learn from certain processes that will happen in the implementation of the interim Constitution and our inclusion of those in the new constitution, as well as of having to work on the new constitution within the timeframes set up by the Constitution itself. We need to be sensitive to the need to put before South Africans as soon as possible a draft of a constitutional text.

With regard to the lessons that we want to learn from the implementation of the Constitution, we should research and learn from the experiences of the world and work within the timeframes that we have set up for ourselves. We should create a mechanism which will enable us to take on board whatever lessons we might have learned from the interim period.

With these words I would like to support this draft resolution.

Debate concluded.

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The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I now move:

That, in regard to the constitution-drafting framework, the Constitutional Assembly,

Noting:

The need to establish a framework for the drafting of the new constitutional text,

Resolves:

That the Constitutional Committee be instructed to draw up and submit to the Constitutional Assembly an outline of the envisaged constitution-making process, such outline to reflect and incorporate principles and guidelines that emerge from debate on the subject in the Constitutional Assembly.

Motion agreed to.

APPOINTMENT OF COMMITTEES, TECHNICAL COMMITTEES AND COMMISSIONS

(Draft Resolution)

Ms Y L MYAKAYAKA-MANZINI: Mr Chairperson, we rise to support the draft resolution which will make it possible for the Constitutional Assembly to appoint theme committees, technical committees and commissions. These theme committees will indeed allow all members of the Constitutional Assembly, having been democratically elected to carry out this task, to participate in its work. They will be involved in consulting the broad masses of our people outside this Assembly, which will allow for inclusivity and grass-roots participation.

The draft resolution also allows the setting up of technical committees and commissions to assist in the work of the theme committees. In addition to the technical committees, we also need to have a drafting committee to avoid a situation in which the same technical committees do the drafting. We move for the acceptance of this draft resolution.

Mr R J RADUE: Mr Chairperson, we in the NP component of this Assembly also support the third draft resolution. This resolution authorises, amongst other things, the appointment of select committees to assist in the constitutional drafting of various themes in order to prepare the constitutional text.

The Assembly as a whole is too large to function efficiently in regard to detail. It will have to rely on committees, technical advice and even evidence on commission, if necessary, on a host of subjects and issues which have to be dealt with in the new text.

The draft resolution before us is a major practical step forward in the constitution-making process. The draft resolution will facilitate the work of this Assembly and we therefore support it wholeheartedly.

Mr W S FELGATE: Mr Chairperson, the IFP supports the draft resolution. We ask that in the debates on the theme committees, due regard be given to the chapters usually found in modern constitutions. We suggest that the names of these committees should be drawn from examples of modern democratic constitutions around the world.

Mr A J LEON: Mr Chairperson, I speak in support of the third draft resolution before us. However, there are a number of lessons that we should remember from the negotiations completed recently at Kempton Park.

Those of us involved in Codesa and thereafter in the Multiparty Negotiating Process will recall that one of the problems we experienced when we set up technical committees was that when the politicians got together to resolve an issue, the temptation always existed, when the issue was too difficult to resolve, to defer it to the technical committee. The technical committee would then respond that the issue was actually a political one. So the lines got crossed. Mr Chairperson, as you in particular will remember, this led to great delays, confusion and even enmity on occasion between the technical committees and the Negotiating Council. Let us not repeat that mistake.

The second problem was always that of deadlines. According to this draft resolution we will be setting up theme committees, technical committees and various different groupings. However, let us not allow the deadline to

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become the determining factor. Let us strive to achieve durability of the instrument we are creating.

Members will recall that we have already had to amend our Constitution simply because when, at Kempton Park, it came to the discussion of and agreement on, for example, the Constitutional Court, we were so rushed that matters of great substance were determined on the back of an envelope because of the looming deadline. Let us not do that again now that we have the opportunity, the legitimacy and, hopefully, the expertise as well.

Mr R K SIZANI: Mr Chairperson, the setting up of these commissions is very important. [Interjections.] It is imperative to the work of this Assembly, and we in the PAC do not have a problem with this, especially as this will encourage public participation.

Debate concluded.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I now move:

That, regarding the appointment of committees, technical committees and commissions, the Constitutional Assembly,

Noting:

(a) the desirability of involving a broad cross-section of its members and experts in various fields in the drafting of the new constitutional text; and

(b) the wide variety of issues to be covered in the new constitutional text,

Resolves:

That as part of the constitution-drafting framework—

(a) select committees (called theme committees) of the Constitutional Assembly, consisting of not more than 30 members each, be appointed to deal with such themes of the new constitutional text as the Constitutional Committee may determine; and

(b) that the necessary commissions and technical committees be appointed in terms of the Rules.

Motion agreed to.

FINANCIAL MANAGEMENT

(Draft Resolution)

Mrs B S MABANDLA: Mr Chairperson, I rise to move for the support of the draft resolution on financial management. This draft resolution provides appropriate management guidelines for the expenditure of the Constitutional Assembly. The system proposed by this resolution promotes transparency and encourages accountability.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! I now call on the hon member Dr Geldenhuys. [Interjections.] I have Dr Geldenhuys on my list. [Interjections.] The hon member Mr A G V Naidoo may proceed.

Mr A G V NAIDOO: Mr Chairperson, I would like to congratulate you and your Deputy on your appointments and also compliment you on the very professional manner in which you are conducting proceedings from the Chair.

Draft resolution No 4 refers to financial management. The proposal on the table is that the Constitutional Assembly's expenses be recorded separately, that is, provision be made for a separate programme under the parliamentary budget. This will be in line with the fact that the expenses of the Senate are also recorded separately.

If adopted, this will not mean an additional staff. The existing staff in the Finance Section will be able to keep separate records without having to employ additional staff. The main expenses will include the remuneration of staff, constitutional experts and advisers, travelling expenses, office equipment, furniture and fittings and other services as provided by the parliamentary establishment. It is important that reports on the financial affairs of the Constitutional Assembly will be made available to a select committee of the Constitutional Assembly.

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The NP supports this draft resolution.

Mrs P DE LILLE: Mr Chairperson, the PAC also supports draft resolution No 4. However, we were surprised that there were no Budget allocations for the process, but we welcome this one because it will show that the CA is an independent, sovereign body and not just a substructure of the other Houses.

Mr W S FELGATE: The IFP has pleasure . . . [Interjections.]

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order!

Mr W S FELGATE: The IFP has pleasure in supporting the draft resolution as worded.

Debate concluded.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I now move:

That, in regard to financial management, the Constitutional Assembly

Resolves:

(a) That provision be made for expenditure on the Constitutional Assembly under a separate programme under the Parliamentary budget;

(b) that separate records be kept of Constitutional Assembly expenditure;

(c) that the functionaries to be accountable for expenditure under this programme be identified in consultation with the Department of State Expenditure; and

(d) that reports on the financial affairs of the Constitutional Assembly be made at regular intervals to the relevant committee of the Constitutional Assembly by the Parliamentary Secretariat.

Motion agreed to.

REPORT OF RULES COMMITTEE OF CONSTITUTIONAL ASSEMBLY

(Consideration of Report)

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! In this regard, I need to report that at its very first meeting, the Rules Committee which was set up by the Constitutional Assembly, resolved that the draft rules of the Constitutional Assembly be adopted on a provisional basis until amendments had been considered. The Rules Committee has considered amendments to the rules and would now like to have these rules, together with the amendments, adopted by the Constitutional Assembly itself. In this regard, we have a resolution which we will be putting forward once the discussion on the general report of the Rules Committee has been completed. In this regard there are a number of speakers who have indicated that they wish to speak.

Mrs G J FRASER-MOLEKETI: Comrade Chairperson, I rise on this occasion before this assembly in support of the amended Standing Rules of the Constitutional Assembly.

The Rules and the amendments to the Rules attempt to reflect our priority, which is to ensure that the process of constitution-making is a participatory one and an overall inclusive one. Hence, if we look at the amendments, they are so designed to ensure public participation in the overall process. Furthermore, the Rules themselves allow the presence of the public, formerly referred to as "strangers", in all meetings of committees, commissions, technical committees or any other body appointed by or on authority of the Constitutional Assembly.

A further principle which guided the Rules Committee was the principle of transparency. This is seen by the presence of the press, in addition to that of the public, at all deliberations of the structures of the Constitutional Assembly.

I hereby move for the adoption of amendments following inputs from various members to the Standing Rules of the Constitutional Assembly which I believe will be setting us on the road to drafting a truly democratic constitution for our country. This will ensure the participation of every South African, if we as members of this Constitutional Assembly take our task of drafting a constitution seriously.

*Mr A VAN BREDA: Mr Chairperson, it is a pleasure for me to speak after the hon member Mrs Fraser-Moleketi, because she made a

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remarkable contribution to the amendments to the Standing Rules, for which we want to thank her.

It is not necessary to go into the principles again which were debated during the previous Order of the Day and agreed to. Our main task now is to adjust the Rules so as to give effect to the decisions that have already been taken. The Standing Rules for this Constitutional Assembly must be kept as flexible as possible so that the Constitutional Assembly does not serve the Standing Rules, but that the reverse is rather the case. We must therefore never hesitate to adapt the Standing Rules to make them serve this Constitutional Assembly and its committees. However, we must jealously guard against not amending the Rules out of political considerations, because that would be a certain recipe for confrontation.

†This report before us is the result of general agreement reached in the steering committee. One could probably cross the t's and dot the i's differently, but by and large it makes sense, and therefore this report is acceptable.

An important deviation from the Rules of the National Assembly and that of the Senate is contained in the proposed new Rule 35. A select committee will now be enabled to report directly to the Constitutional Committee, in essence a variation of an extended public committee, instead of following the time-consuming route of reporting to the Constitutional Assembly. My colleague who will speak later may highlight the need for the possible presentation of minority reports as well.

The proposed addition to Rule 29 which will make it possible for select committees to sit at a venue other than the seat of Parliament may raise expectations with those who are considering the folly of moving Parliament. This is not a preparatory step in that direction. It is merely an effort to take a part of Parliament to the people from time to time.

The large-scale implementation of this provision will, for practical reasons, be difficult because of the cost implications and the need to maintain a quorum here at Parliament. Rule 25 on the other hand will make the election of a chairperson by the select committees possible. I do not want to debate the merits of this new principle, except to plead that the chairmanship of these select committees should not be regarded or treated as another paid position. The Constitutional Assembly cannot afford a gravy-train perception right at the outset.

*The most important amendment to the Rules is of course the establishment of the Constitutional Committee as contained in Rule 19A. In itself this is too large a committee to pay attention, in detail, to the co-ordination and monitoring of the activities of the various committees and commissions and the programming of meetings.

Therefore, it is of particular importance that Rule 19A(6) makes provision that the Constitutional Committee may appoint a management committee from among its own number to fulfil functions of that kind. The fact that all political parties present in the Constitutional Assembly will be able to serve on the management committee, will not only give it credibility, but will also give it considerable authority. If there is any need for a Whip for this Constitutional Assembly, which will become clear in due course, that Whip's functions will and can be exercised under the direction of the management committee.

Mr Chairperson, I wish you and your Deputy Chairperson exceptional wisdom in the accomplishment of this enormous task that has been placed on your shoulders.

†We support this draft resolution.

Mr W S FELGATE: Mr Chairperson, the IFP is happy to support the rules as drawn up under the understanding that they are in a process of being further evolved. In particular we want to point to the fact that in constitution-writing it is going to be the instructions from the Constitutional Committee to technical committees which actually drive the process forward. When those instructions are unanimous and there is no difficulty in reaching consensus in the Constitutional Committee, then the process will go forward. But we still have to face the situation that in cases in which we cannot resolve issues in

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the Constitutional Committee, major differences or major breakdowns in the process will obviously be referred to the Constitutional Assembly for resolution.

However, there must also be a process by which minority views—not necessarily minority parties—in the Constitutional Assembly can be empowered by going through a process of submitting those views to technical committees, so that when the debate takes place in this Assembly, it is a balanced debate which is technically supported on both sides of our arguments. Therefore, we believe that the Rules Committee and the Constitutional Committee should pay particular attention to the development of further rules which would govern the process and avoid the confrontations which would come out of disagreements which are not made manageable by a proper set of rules.

Mr D H M GIBSON: Mr Chairperson, in view of the vehement opposition of Minister Asmal to lawyers, I must say that I am a little diffident about standing up and addressing the House. But let me assure the members that I am not doing so in my capacity as a lawyer, so I am appearing neither *pro amico* nor *pro deo*. I am appearing as a politician *pro patria*.

The DP supports the proposed amendments, but I would like to caution hon members about this question of the possible exclusion of the media from deliberations. I think it is quite clear that during this whole process, ever since the elections, all of us have stressed over and over again the necessity for being all-inclusive and seeing to it that the public go along with us. The public can only do that if the media is there to hear and to report, and I would caution that it can only be by way of exception that we could consider excluding the media from the deliberations of these various committees.

I think it is important for us to have a look at the lessons, good and bad, which we learned from the multiparty talks. Some of the good things were of course the very relaxed procedures which we had at the World Trade Centre. There was a spirit of give and take and a spirit of attempting to reach a compromise. We used technical and ad hoc committees in order to expedite proceedings and seek consensus. That was a very good attitude and one that I hope will continue here.

There were some bad aspects at the World Trade Centre and I think that the worst of that has been referred to a couple of times, and that is the question of speed at which we had to work sometimes. There was undue haste in some cases because of unrealistic target dates. This placed an unreasonable load on the workings of some of the technical committees and some of the important role-players. Really, Mr Chairperson, at times persons such as yourself and others were expected to carry an almost inhuman load. I do not think that is fair, right or necessary. It is also a fact that documents became available very late and could not be properly studied. This resulted in shoddy and rushed decisions on some issues. I could talk from personal experience of several aspects, but I will not do so because I have limited time. We did it in too rushed a way. I want to come back to that in the end.

We have a great advantage over the multiparty negotiations in that we do not have 26 delegations here, we have now managed to slim ourselves down as a result of the decision of the people of South Africa. We do not have to reach sufficient consensus among all these delegations. We also have another advantage, we do not have Mr Rajbansi with us. [Interjections.] We can therefore be more focused and efficient in our constitution-making.

I would like to dwell for a moment on Rule 35, which refers to reports being made available to all members. We would like those reports to be available in their original form and would like to be sure that they will not have been edited or censored by the time they come to ordinary members.

My final point is just a question of deadline. We have a two-year deadline for drawing the final blueprint or constitution that we have been empowered to do. I want to suggest that as time goes along we must consider whether the two-year deadline is realistic. I really would not like to end up with a rushed or shoddy constitution, simply because we feel that we have to meet the

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two-year deadline which was laid down in the Constitution. We have a five-year term, we are going to be here for that period and if we occupy a good proportion of that period in drawing up the Constitution, it will not be a bad thing.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Thank you, Mr Gibson. I should say that we now have less than two years. We have twenty months and a few weeks within which to draft the constitution. Your views will be noted and no doubt we may need to come back to that issue of time frames.

Mrs P DE LILLE: Mr Chairperson, we also want to support the proposed amendment to the rules of the Constitutional Assembly. I just want to say to Mr Gibson that we are not only rid of the concept of sufficient consensus, but we must also leave behind the horse trading that took place at the World Trade Centre and have a far more transparent process here. As far as Rule 25 is concerned, we support the provision that the chairperson of the Select Committees must be elected, but we are also of the opinion that it must not be elected from one or two parties only.

Mr P W COETZER: Mr Chairperson, both you and the Deputy Chairperson referred to two basic principles in your opening remarks: Firstly, as you said, the process should be broadened and deepened in terms of participation. The Deputy Chairperson referred to the fact that this body should not be a mere rubber stamp for what happens in the committees. In that context I want to address the subject that Mr Felgate referred to twice this afternoon, namely the question of minority reports.

If we want to enable this institution to make a meaningful contribution once it gets the reports from the committees, I believe that we should make it possible for wide-ranging debates to take place in this Chamber, rather than go for minority reports which will immediately get a tag. We should also make it possible for amendments to be approved by this Assembly. I believe we should explore that avenue if we do not want to become embroiled in confrontational types of debates in which there are winners and losers. We cannot afford this while we are seeking consensus on the most important document in our country, namely the constitution.

*When we consider the Rules, we notice that provision is also being made for committees to meet in places other than Cape Town. In other words, the constitutional process should, as it were, be taken to the people. We have no problem with that principle. On the contrary, we welcome it.

Seen against the background of the deadline for the completion of the constitution, however, the fear arises that this could eventually cause a clash between the demands of the programme of Parliament as an institution and those of the Constitutional Assembly. We shall have to consider this very carefully in order to ensure that there is no clash between these two programmes. We shall also have to ensure that the importance of one programme does not take preference over that of the other. It therefore becomes clear that we need to devote further attention to the Rules in order to provide for these requirements.

We want to congratulate the steering committee on the report in its present form and on the work that has been done to date. I want to associate myself with Senator Van Breda in wishing the Chairperson and the Deputy Chairperson every success with the very important task which lies ahead.

Debate concluded.

ADOPTION OF DRAFT STANDING RULES FOR THE CONSTITUTIONAL ASSEMBLY

(Draft Resolution)

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! The last leg of our work relates to the adoption of a resolution on the Rules. Hon members will note from the Order Paper that it has been suggested that the report be adopted. However, we would like to deviate from that and propose that the Constitutional Assembly adopt a resolution which reads as follows:

That the Draft Standing Rules for the Constitutional Assembly, as amended in accordance

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with the Report of the Rules Committee, be adopted.

We are putting this forward, because the Constitutional Assembly has not yet adopted the Draft Standing Rules. These were adopted by the Rules Committee. I would now like to propose that this draft resolution be formally adopted by the Constitutional Assembly.

Mrs G J FRASER-MOLEKETI: Mr Chairperson, I rise to support the adoption of the draft resolution as presented by the Chair.

Mr R P MEYER: Mr Chairperson, I also rise to support the draft resolution before us that the Draft Standing Rules for the Constitutional Assembly be adopted. I am doing so because I believe we have a set of Rules which will allow the kind of debate and the kind of work the Constitutional Assembly must do.

If we look back at the process we have been through, we see that it is true that the Constitution that we now have, is basically a record of the agreement on the settlement of the past conflict that brought us together as we are here today.

For that reason the current Constitution should not and cannot be measured properly, in the first instance, as a technical document that substantially is a constitution. It is rather an accord or an agreement that resolves the conflict and problems of the past.

Now, we can sit down and start the work that we should actually do in regard to drafting a real constitution for the country. And that is the process we have adopted here today.

*I think the Draft Standing Rules before us for the Constitutional Assembly provide for an orderly and responsible process, so that we can finally write a constitution of which all South Africans will be proud.

Finally, in the past—perhaps even today—many people inside as well as outside this country had the perception that the composition and the problems of South Africa were of such a nature that there could not possibly be a constitution which could solve or contain them. However, I think we can be proud of what we have achieved so far in the constitutional sphere. I also think we will be more proud of the final product which this Constitutional Assembly will be drafting—not only as a constitution for future generations of South Africans, but also as an example for other countries as to how constitutional difficulties of this nature could be solved.

For this reason we should like to wish the Constitutional Assembly well in its task.

Mr W S FELGATE: Mr Chairperson, the IFP has the pleasure of supporting the motion as stated.

Mr C W EGLIN: Mr Chairperson, the DP supports the draft resolution as the Chair has indicated. The fact that this CA has not endorsed its own draft rules has been highlighted by the Chairperson. In other words we have got all the structures in place, but at the moment we still have only draft rules.

And I would urge that at the earliest possible opportunity the CA confirms its rules so there could be no uncertainty as to the status of any of the work or the documentation we produce.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Eglin, I would have thought that through this resolution that I will put forward once again, the CA would effectively be adopting the rules.

The rules were put to the Rules Committee when it first met. Fifty or 60 people did adopt those rules at that meeting on a provisional basis. We had not submitted those rules to the CA yet, for the CA itself to adopt them even on a provisional basis. We have now received a report from the Rules Committee in which they have given consideration to those rules, and have proposed amendments.

This is now the report and we are moving the resolution that this CA adopt those rules in accordance with the report which we have just dealt with. It would be the CA adopting those rules and it could still all be on a provisional basis.

Mrs P DE LILLE: Mr Chairperson, I also rise to support the draft resolution.

Debate concluded.

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The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I now want to read the draft resolution, as we have not been able to put it on the Order Paper for this meeting. It reads as follows:

> That the Draft Standing Rules for the Constitutional Assembly, as amended in accordance with the Report of the Rules Committee, be adopted.

Motion agreed to.

Adjournment of meeting.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: That brings us to the end of our proceedings in the Constitutional Assembly. We are able to say that we will all be notified at the next meeting of the CA in due course. We have adopted rules and a report which says that we should meet on a regular basis. The Constitutional Committee will be meeting and it will work on the various issues as charged by the CA.

We can say that we have put a constitution-making process on a proper course and we hope that from now onwards these various structures will be firmly seized with the task of drafting the constitution.

The meeting adjourned at 18:14.

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ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

ANNOUNCEMENTS:

The Chairperson of the Constitutional Assembly:

1. The following members have been appointed to serve on the Constitutional Committee of the Constitutional Assembly, viz:

   Ackermann, C; Asmal, A K; Bhabha, M; Chabane, O C; Coetzer, P W (Alternate); De Beer, S J (Alternate); De Lange, J H; De Lille, P (Alternate); Du Toit, D C; Ebrahim, A G (Alternate); Eglin, C W; Felgate, W S; Fourie, A; Fraser-Moleketi, G J; Ginwala, F N; Gordhan, P J; Groenewald, P H (Alternate); Holomisa, S P; King, T J; Kgositsile, B; Kgoali, J L; Kota, Z A; Lekgoro, M K; Ligege, M G; Lockey, D; Mabandla, B S; Mahlangu, N J; Makhanya, D W; Malatsi, D M (Alternate); Marais, P G (Alternate); Maree, J W (Alternate); Mchunu, E S; Meshoe, K R; Meyer, R P; Moosa, M V; Mtshali, L P; Mulder, C P; Mulder, P W A (Alternate); Myakayaka-Manzini, Y L; Ngcuka, B T; Ngwane, L B; Nzimande, B E; Pahad, E G; Rabie, J A; Rabinowitz, R; Ramaphosa, C *(Chairperson)*; Ripinga, S S; Schoeman, S J (Alternate); Schutte, D P A; Selfe, J (Alternate); Sifora, T V; Sizani, R K; Smit, P F; Steenkamp, P J (Alternate); Swanepoel, L J (Alternate); Van Breda, A; Van Deventer, F J; Van Heerden, F J (Alternate); Viljoen, C L; Wessels, L *(Deputy Chairperson)*.

PARLIAMENT
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CONSTITUTIONAL ASSEMBLY RESOLUTIONS

THE ESTABLISHMENT OF THEME COMMITTEES

1. CHARACTER OF DEMOCRATIC STATE

1.1 Preamble of the Constitution

1.2 Matters dealing with the establishment of a single sovereign state, common citizenship, democracy and equality (Constitutional Principle I)

1.3 The supremacy of the Constitution, binding on all organs of State (Constitutional Principle IV)

1.4 Matters dealing with representative government, regular elections, suffrage and proportional representation. (Constitutional Principle VIII)

1.5 Matters dealing with freedom of information and accountable administration. (Constitutional Principle IX)

1.6 Name and description of State and symbols

1.7 Citizenship and franchise

1.8 Matter dealing with the separation of powers etc (Constitutional Principle VI)

2. STRUCTURE OF GOVERNMENT

2.1 Matter dealing with the separation of powers etc (Constitutional Principle VI)

2.2 The adherence to formal legislative procedures by legislative organs (Constitutional Principle X)

2.3 Participation of minority political parties in legislative process in manner consistent with democracy (Constitutional Principle XIV)

2.4 Amendments to Constitution require special procedures involving special majorities (Constitutional Principle XV)

2.5 Structure of Government at national, provincial and local levels (Constitutional Principle XVI)

2.6 Democratic representation at every level of government—without derogating from the role of chieftainship (Constitutional Principle XVII)

2.7 National Assembly, the Senate and Parliament in general

2.8 The Electoral System

2.9 Matters dealing with the constitution, status and role of traditional leadership (Constitutional Principles XIII)

2.10 Traditional Leaders

2.11 The Executive

3. RELATIONSHIP BETWEEN LEVELS OF GOVERNMENT

3.1 The details and nature of the relationship (Constitutional Principle XVI and XVII)

3.2 Local Government in context of Constitutional Principle XXIV

3.3 Establishment of Provincial government

3.4 Establishment, status and powers of local government

3.5 Legislative competence of Provinces and concurrency

4. FUNDAMENTAL RIGHTS

4.1 The enjoyment of fundamental rights by all— entrenchment in Constitution etc (Constitutional Principle II)

4.2 The prohibition of racial, gender etc discrimination and the promotion of equality and national unity (Constitutional Principle III)

4.3 The diversity of language and culture to be recognised—promotion and encouragement (Constitutional Principle XI)

4.4 The collective rights of self-determination, civil society and free association (Constitutional Principle XII)

4.5 The right to form trade union and collective bargaining (Constitutional Principle XVIII)

4.6 Community self-determination based on cultural and language heritage (Constitutional Principle XXXIV)

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4.7 Protection and enforcement of fundamental rights

4.8 First, second and third generation rights

4.9 Relationship of various Charters of Rights to the Bill of Rights

5. JUDICIARY AND LEGAL SYSTEMS

5.1 Matter dealing with qualities of judiciary and enforcement of Constitution (Constitutional Principle VII)

5.2 The institution, status and role of traditional leadership and indigenous law (Constitutional Principle XIII)

5.3 Judicial functions, appointment of judges, Judicial Services Commission and Constitutional Court

5.4 Traditional authorities

6. SPECIALISED STRUCTURES OF GOVERNMENT

6.1 The independence and impartiality of the Public Service Commission, Reserve Bank and the Public Protector (Constitutional Principle XXIX)

6.2 The status and role of public service (Constitutional Principle XXX)

6.3 The performance of functions of police, military and intelligence to be in the national interest (Constitutional Principle XXXI)

6.4 Auditor-General, Reserve Bank and the Financial and Fiscal Commission

6.5 Establishment, powers and function of the Public Service Commission and Public Service

6.6 Powers and function of the Public Protector, Human Rights Commission, Gender Commission and the Commission on Restitution of Land Rights

6.7 Traditional authorities

6.8 South African Elections Commission (formerly IEC)

NOTE :There are other issues such as transitional provisions and the reception of international law into our domestic law which do not lend themselves very easily to allocation to a Theme Committee, and will have to be dealt by the Constitutional Committee of the Assembly. Not all of the structures under the Interim Constitution will be relevant under a permanent Constitution. Finally, international and comparative experiences can be discussed under any of the themes identified above.

The above categories are to be treated as a guideline and not adhered to mechanically. Theme Committees may establish Commissions on special topics. It is further proposed that certain principles and topics (for example; Constitutional Principle XXXIV dealing with community self-determination) may be discussed in more than one theme committee.

It is also proposed that Theme Committee 1 (Character of the Democratic State) be dealt with as a matter of priority.

THE PROCESS AND FRAMEWORK FOR THE DRAFTING OF THE NEW CONSTITUTIONAL TEXT

1. INTRODUCTION

Set out below are proposals for a broad framework for the constitution-making process. While no firm timescales have yet been recommended, principles for guiding the process are dealt with.

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2. GENERAL GUIDELINES

2.1 Open debate in the Constitutional Assembly

2.1.1 All elected representatives in the Constitutional Assembly should be directly involved in the constitution-making process. Open debate will afford members the opportunity to follow the process and participate in it.

2.1.2 A measure of informality during proceedings in the Constitutional Assembly would encourage members to participate in debates. Further recommendations with regard to the structure of debate will be made at the next meeting of the Constitutional Assembly.

2.2 Integrated process

The new constitution should be the result of a process which integrates the ideas of political parties represented in the Constitutional Assembly, civil society and the broader public.

2.3 Transparent Process

Meetings of the Constitutional Assembly and itsstructures will, subject to the provisions of

Rule 17A of the Standing Rules, be open to the public and the media.

3. PROCESS

3.1 Public Participation

3.1.1 There should be a programme for ensuring maximum public participation in the constitution-making process. Mechanisms for promoting public participation, including public fora, distribution of information bulletins and appropriate media strategies, should be employed.

3.1.2 Public fora should be held in all Provinces, specific attention being given to the population in rural and underdeveloped areas.

3.1.3 Some fora would be targeted at specific sectors of the community while others could be broad-based and reach out to all members of the public. Appropriate mechanisms for collecting views at such broad based fora should be employed.

3.1.4 There should be co-ordination in all provinces for the success of the community liaison programme. The Constitutional Assembly will have to work with a network of people, organisations and institutions across the country and facilitate the process of the effective organisation of public fora. Assistance and co-operation will be sought from the structures of provincial and local government.

3.1.5 Members of the Constitutional Assembly will be invited to participate in public fora dealing with various themes and constitutional issues. Schedules for such public fora will be compiled by the Administration after consultation with the Management Committee.

3.1.6 The Administration will need to compile regular information bulletins for the purpose of informing the public of the constitution-making process and stimulating their interest and participation.

3.1.7 In addition to the canvassing of public views by means of public fora, the Administration is in the process of establishing a liaison desk.

3.2 Media

3.2.1 There appears to be general consensus that the new constitution should be a living document that can and must be owned by the people of the country. The media would play a vital role in the process of drafting this constitution. There is therefore a need for a clear media strategy.

3.2.2 The underlying principles that should inform the media strategy have already been identified in the debates of the Constitutional Assembly. They are; transparency, democratic accountability and public involvement and participation in the process of drafting a new constitution.

3.2.3 In terms of the principle of transparency and democratic accountability, the media is allowed to witness and report on the proceedings of the Constitutional Assembly, the Constitutional Committee, theme committees, commissions and public hearings. In this regard, the media should as far as possible be accommodated at each of these meetings and provided with the necessary documentation.

3.2.4 In addition to reporting on proceedings, the media can and should play a more direct role in the process. This stems from the fact that the media, both electronic and print, enjoy a direct relationship with the public. It may therefore be beneficial to the process to enter into a relationship with the media which would allow it to become an organised forum for the expression of views on the constitution. This would ensure that there is public debate and participation.

3.3 Role of theme committees

3.3.1 Theme committees should be responsible for the in-depth examination of constitutional matters which fall within the scope of the Constitutional Assembly mandate. Theme committees should submit regular reports to the Management Committee for processing and discussion by the Constitutional Committee.

3.3.2 It is suggested that the structure of the theme committee reports will include:

(a) issues in respect of which there was agreement,

(b) issues in respect of which there was no agreement, and

(c) recommendations of the committee.

3.4 Debate in the Constitutional Assembly

The Constitutional Assembly is responsible for finally deciding on the new constitutional text. Its structures exist for the purpose of facilitating

the decision-making process of the Constitutional Assembly.

3.5 Processing by the Constitutional Committee

The Constitutional Committee will receive and consider reports of the theme committees to be tabled in the Constitutional Assembly. This will facilitate the decision-making process in the Constitutional Assembly.

4. STRUCTURES

4.1 Constitutional Committee

The Constitutional Committee has been established and has met on three occasions. This Committee has also appointed a Management Committee from amongst its members.

4.2 Management Committee

4.2.1 A Management Committee consisting of 12 members has been established. The composition is as follows; 3 ANC, 2 NP, 1 PAC, 1 ACDP, 1 DP, 1 FF, 1 IFP, the Chairperson and Deputy Chairperson of the Constitutional Assembly.

4.2.2 It is suggested that the Management Committee should attend to process and not substantive issues. Its tasks should also include the following:

(a) preparing agendas for Constitutional Committee meetings;

(b) preparing reports to be considered by the Constitutional Committee;

(c) co-ordinating the activities of the theme committees;

(d) co-ordinating the activities of all structures of Constitutional Assembly;

(e) attending, between meetings of the Constitutional Committee, to the day-to-day management and overseeing of developments in the structures.

4.3 Theme Committees

4.3.1 Theme committees will be made up of thirty Constitutional Assembly members, or such smaller number as decided by the Constitutional Committee, in accordance with the provisions of Rule 23 of the Standing Rules. The chairperson of a theme committee shall be elected from amongst its members.

4.3.2 Each theme committee should have a core group of no more than 6 or 7 members who will be responsible for managing and co-ordinating the work programme of the theme committee.

4.3.3 Functions of the theme committees will include the following:

(a) Receiving and collating views from the broader community on the Constitution;

(b) Receiving submissions from the political parties;

(c) Developing and processing these concepts and views;

(d) Referring processed views for technical drafting;

(e) Submitting the processed concepts in the form of reports to the Constitutional Committee for debate in the Constitutional Assembly.

4.3.4 A manager and managing secretary will be appointed and allocated to each theme committee and will be responsible for providing it with the necessary support services.

4.3.5 During deliberations, theme committees will have the services of technical experts.

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4.4 Technical Committees

4.4.1 It is suggested that technical committees should consist of up to three members. Each theme committee should be assisted by a technical committee. However because of the range of issues each theme committee may be required to address, membership of these technical committees may vary from time to time depending on the issue at hand.

4.4.2 The Administration is in the process of compiling a database of legal experts to be used to provide more specialised assistance when required.

4.4.3 The functions of technical committees will be to give technical advice to the theme committees at their meetings and to provide drafting facilities.

4.4.4 Members of technical committees need not be employed on a full time basis.

4.5 Independent Panel of Constitutional Experts

An Independent Panel of Constitutional Experts will be established in terms of the Provisions of

section 72 of the Constitution (Act No 200 of 1993).

4.6 Commissions

4.6.1 Commissions may be appointed by resolution of the Constitutional Assembly, to investigate any specific matter or issue.

4.6.2 The terms of reference of such commission shall be determined by the Constitutional Assembly.

4.6.3 The Administration shall be responsible for providing administrative support services to these commissions.

5. TIME FRAMES

5.1 Having regard to constraints of time, it is recommended that the theme committees be appointed as soon as possible and start functioning at the earliest opportunity thereafter.

5.2 The Constitutional Assembly will, on a continuous basis, consider and review the mandates of theme committees.

6. PROGRAMME OF WORK

6.1 The Constitutional Assembly shall determine its own programme with due regard to the programme of Parliament.

6.2 The Constitutional Assembly and the Constitutional Committee shall meet on alternate Mondays. The Management Committee is presently considering the work programme of the Constitutional Assembly and will report on that at the next sitting.

7. EVALUATION/ASSESSMENT

It is recommended that the constitution-making process be continuously evaluated. This evaluation system will ensure that the process is effective and will allow for appropriate adjustments.

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PROCEEDINGS OF THE CONSTITUTIONAL ASSEMBLY

Members assembled in the Chamber of the National Assembly at 14:18.

The Chairperson requested members to observe a moment of silence for prayers or meditation.

ADOPTION OF REPORT OF CONSTITUTIONAL COMMITTEE

(Draft Resolution)

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: At our last meeting of this Constitutional Assembly we adopted a number of resolutions on the constitution-making process. The Assembly also established a Constitutional Committee and instructed this committee to work on an outline which would set out the framework for the constitution-making process.

The Constitutional Committee has met a few times and has deliberated on the issues it was directed to deal with. It is now able to present a report and I believe that copies of that report have been circulated. We are going to ask the Deputy Chairperson, Mr Leon Wessels, to present the report to this Assembly, whereafter we shall give members an opportunity to make inputs with regard to the report.

The main objective of our meeting today is to deliberate on the report and to determine whether the Assembly can see its way clear to adopting the proposals that have been put forward.

*The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, honoured colleagues, the report which is placed before you today is a continuation of the deliberations of the Constitutional Committee and basically consists of two parts. I just want to refer to a few elements of each of these components.

Firstly I want to refer to the composition of the theme committees. As hon members are aware the objective is that the theme committees will perform the in-depth work with regard to the development of the Constitution.

†However, it is foreseen—and we would love to see—that these theme committees will be functioning by 19 September. At that particular juncture the theme committees will be asked to establish management committees or a core group that will actually manage the process of those particular theme committees and will, furthermore, be called on to draft and formulate their own programme and objectives as they see them.

*The second leg of the report which the hon the Chairperson submitted to the Constitutional Assembly deals with the process and the framework. As he and others have indicated, the aim is to make for open, informal, relaxed and constructive debate.

†I would like to focus on three aspects and make some comments relating to those three interrelated aspects in particular. This has to do with the Management Committee—I refer to paragraph 4.2—the theme committees and the technical committees in paragraph 4.4. It has been clearly established and highlighted in this report that the Management Committee will attend to the process. The Management Committee will, therefore, not be involved in the substantive issues placed before either the theme committees, the Constitutional Committee or the Constitutional Assembly. That will be the responsibility of the theme committees and the Constitutional Committee.

Right at the outset I want to say that in the course of the debate or after the conclusion of the debate, an amendment will be moved in consequence of a discussion this morning by the Management Committee, to establish the fact that the theme committees will be made up of not more that 30 members, as stipulated in the report. At this moment it stipulates that the theme committees will be made up of 30 members of the Constitutional Assembly. However, that amendment will be moved by one of the members of the Management Committee.

One should, however, read what is set out regarding the theme and the technical committees in tandem with one another. Clearly it is the responsibility of the theme committees, which will comprise members from this Constitutional Assembly, to formulate the decisions.

The technical committees will be there to assist, advise and guide when called upon to do so. We have in the past had the experience that similar

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committees referred their differences to the technical committees to be resolved through technical assistance. However, it has been clearly established that the theme committees will conduct their business. They will do the deliberations and the negotiations, and will be guided and assisted by the technical committees.

Finally, I wish to highlight one point, and that is paragraph 4.5, which deals with the Independent Panel of Constitutional Experts. This particular paragraph in the report is clearly governed by a relevant section of the Constitution. The panel of experts has at this moment not yet been established, but it is our intention to do so. Nominations have already been called, and we have received a wide variety of these.

The exact function of the Independent Panel of Constitutional Experts has as yet not been highlighted, and no debate has been conducted on the issue. Therefore, the debate has not been exhausted at all. However, it is clear that the panel members will on the one hand receive documentation and view proceedings of the Constitutional Assembly, and on the other hand listen to other relevant discussions and topics. Those hon members who have not yet submitted their nominations, and still wish to do so, are advised to act immediately.

Mr P J GORDHAN: Mr Chairperson, colleagues and comrades, may I firstly compliment the Chairperson and his deputy for having been able to steer this process to the point where the Constitutional Assembly is today in a position to launch the process of drafting the new constitution for our country.

The report of the Constitutional Committee, which is before us, has both a process and a preliminary substantive element. This is because the framework and process section of the report outlines how the process will actually work, whereas the designations of the committees indicate the subject that each of these theme committees will look into. As members of this Assembly, each of us will be required to participate in the drafting process itself. I believe that both these elements lay a very positive basis, and hopefully, an optimistic start to the process of drafting the constitution.

Another important aspect in the report is the emphasis that it places on the need for openness and transparency. Whilst these have become buzz words of the current political period, the practices of the Constitutional Assembly and its substructures are extremely encouraging in this regard. We trust that this will be sustained throughout this process.

The second emphasis is on an integrated and inclusive approach. In a country where we still—notwithstanding the fact that we sit in the same portals, politically speaking—have a fair amount of suspicion and apprehension about each other's political motives, this commitment to an integrated approach which allows all sections of our society to contribute to the drafting process, and an emphasis on inclusiveness, is one which needs constant reminder and emphasis.

Perhaps most important is the emphasis that the elected constitution-making body be the key determinant of how this process starts and where it should ultimately end. That body is the Constitutional Assembly itself. It is vital that this structure, which our people have fought for for so many years, remains at the centre of this process, and that it should at no stage be marginalised by any of its substructures.

In that sense the framework document describes how the Constitutional Assembly is, in the first instance, the initiator of the processes and debates on the various aspects that will eventually find their way within the Constitution of this country. Secondly, it describes the process through which sub-structures for example the Constitutional Committee or the Management Committee itself, will process the various debates and the crucial issues that will arise from those debates, before those matters are referred to the Constitutional Assembly for further debate and, hopefully, adoption or new instructions to its substructures.

In other words, the Constitutional Assembly remains a sovereign structure that will initiate these processes. Hopefully, having gone through the various structures of the Constitutional Assembly, we will determine the final outcome of the contents of the document that will be the new constitution of our country.

In this regard, the Constitutional Assembly has to date successfully established the various structures that will manage and steer this process. They are the Constitutional Committee, which has met on a few occasions and is finding its feet; the Management Committee, which has just

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been installed; and the Administration, that seems to be working with increasing efficiency.

However, today we are also launching into a second part, namely what we might call the outreach part of this programme. The Theme Committee will be the outreach structure which will help us to link with the rest of our society and will enable people in various parts of our country to contribute to this process. Thus the theme committees will be formally launched. We are excited by the fact that the Deputy Chairperson said we would see this process beginning no later than the 19th of this month. Each of us needs to give serious thought to how we can contribute to the theme committees in helping to manage and steer that process, ensuring that we become facilitators for public participation in the process.

These theme committees are vehicles for both public participation and the participation of party-political groups and interest groups. As we have said, in the first instance they will be the recipients of contesting and divergent views on various subjects. It will be their task to isolate these views, to find common ground where that is possible and to process key issues in such a way that we can constructively manage that debate here.

We should constantly remind ourselves of the warning that technical experts should not take over this process. Whilst they have the task of supporting and guiding the theme committees and the Constitutional Assembly itself, they should not become a substitute for political debate and discussion.

In this context, let me briefly scan the various subthemes that the first theme committee will be required to investigate. This theme committee, entitled "Character of Democratic State", will have to look into the quality of the South African democracy that will be entrenched in the new constitution. In this section we will have to set out the basic tenets of the new democracy in our country.

Under the first constitutional principle we shall be required to investigate the nature of the single, sovereign state that we will have in South Africa and the impact that this concept of a single, sovereign state will have on intergovernmental relationships and on other relationships within our society.

We shall have to give new content to what a democratic system of government actually means in our current context and to how we should promote gender and racial equality in a society that will still take decades to remove the inequalities that we have inherited.

Under the fourth constitutional principle we are required to entrench in the new constitution the supremacy of the constitution itself, over all organs of society and all levels of government. In that sense we are required to extend the experience that we will gain over the next few years in enjoying the supremacy of the current Constitution and to investigate ways and means of actually improving that.

The eighth constitutional principle requires us to investigate the concept of a representative government. What does this actually mean? Does it merely mean a government elected once in every five years or does it go beyond that? What substructures do we require in a representative government and how do we ensure that people have access to this government and an ability to impact upon its decisions?

What do we mean by a multiparty democracy? How do we ensure that different political voices have an existence in our country while at the same time ensuring that we do not become victims of a minority veto?

How regular should regular elections be, is another important question. What should our future system be in these elections? Should it be the proportional representational system that we have had to date? Or should we begin to investigate other mixes between the proportional representation system and other systems? An obvious deficiency that it has is that it does not assign constituencies to each of us.

Under Constitutional Principle IX, we are required to entrench the freedom of information in order that Government and administration remain open and accountable to the public. How best to achieve this is a task that the theme committee will have to look into.

The name of the State is also open for grabs. Those who are advocates of Azania, or any equivalent, are now welcome to stake their claim, and to raise debates around those issues in order that we can come to a new consensus on a vital matter. A new flag and anthem will also be subjects that this theme committee, either

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through a commission or some similar structure, will be required to go into.

However, one of the most important issues that this theme committee will have to look into is the question of the separation of powers. What does it actually mean to say that there will be a separation of powers, as Constitutional Principle VI says, between the legislature, the judiciary and the executive authority? What checks and balances do we create within our country? What is the interrelationship between these structures? These are obvious questions which arise. How do we ensure maximum accountability and responsiveness in this context, and not crudify the concept of separation of powers?

Finally, let us also draw some general lessons from our previous experiences in negotiating a constitution. Perhaps one of the first we will have to look into ourselves is the relationship between governing and drafting the new constitution. Quite clearly, we have lessons to learn from the current period and how we translate those lessons into the new constitution is a vital challenge that we face.

How do we keep our people in constituencies informed, not only as distant partners, but also as co-participants in this process? That is also a crucial challenge and one we dare not fail in answering.

Finally, how do we keep this process inclusive? How we accommodate divergent views and sustain all interests, so that the final product is a product of all South Africans, is a primary challenge that we all have to tackle. [Applause.]

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Thank you, Mr Gordhan. Your reference to Azania seemed to elicit quite a lot of excitement amongst members. I am sure that it will be taken up in motion form by a few other people. Could we ask Mr Fourie to address us.

Mr A FOURIE: Mr Chairperson, if you will bear with me, the eve of the Jewish New Year begins this evening, on 5 September, and so the first day of the new year is tomorrow and the second on 7 September. The eve of Yom Kippur is on the 14th, the Day of Atonement on the 15th and the Day of the Fast on the 16th. In acknowledgement of our diversity in South Africa, the NP wishes all our South African Jewish friends a happy and peaceful new year.

I will restrict myself to remarks to a specific theme committee. The NP accepts its full responsibility to participate in the theme committee dealing with the relationship between the various levels of government with full acknowledgement of its importance. Obviously, we will play our role in the spirit of the negotiated settlement, bearing in mind the constitutional principles that have been agreed to. We regard those principles as very strict guidelines in the process of negotiation.

Constitutional Principle XVI states categorically that:

> Government shall be structured at national, provincial and local levels.

Furthermore, Constitutional Principle XXVII states:

> A Financial and Fiscal Commission, in which each province shall be represented, shall recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account the national interest, economic disparities between the provinces as well as the population and development needs, administrative responsibilities and other legitimate interests of each of the provinces.

This I regard as the single most important guideline. What I read into this, is that co-responsibility should be established right from the start, not only with regard to the collection of revenue, but also with regard to the distribution and spending thereof.

We will have to deal with the contents of Chapter 9 of the Constitution. It refers to a variety of subjects, namely the establishment of the provinces, their areas of jurisdiction, their legislative powers, their supremacy, their elections, the roles of their Executive Councils and the Premiers, their finances and the Commission on Provincial Government. Most of these matters are in progress at present, and cognisance will have to be taken of that. At this stage we would like to urge all powers to assist in getting our provinces functioning. Of course, in dealing with the provinces, these matters will have to be dealt with in relation to Schedule 6, which refers to the legislative competence of the various provinces.

Secondly, the whole issue with regard to local government is dealt with in section XXIV of the Constitutional Principles. Here one also finds very strict, but straightforward guidelines, and I quote:

> 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.

The entire Chapter 10 also refers to local government.

Obviously a lot of work still lies ahead. I would like to caution hon members and remind them of the old saying that "Rome was not built in one day". Let us therefore not behave like fools and rush in where angels fear to tread.

If I may interrupt myself, I would venture to advise hon members to implement the transitional arrangements, as set out in the Act, and to tread warily to ensure a sound foundation for good local government.

In conclusion, I would like to repeat that I sincerely hope that we do not reinvent the wheel. Codesa and the World Trade Centre was not a dream. I hope it was not a nightmare, either! When Parliament first met, every speaker at this podium was jubilant with excitement, and full of praise for the negotiated Constitution that brought us here after the first nonracial, democratic elections. Let us build on that. Let us not destroy the good work that has been done.

Dr R RABINOWITZ: Mr Chairperson, fellow members, as a Jewish South African I would like to thank the hon member Mr Fourie for his kind wishes. As a member of the IFP, I wish to extend the same good wishes to the entire Jewish community of South Africa.

We have many objectives as we rewrite South Africa's final constitution, but three of our most urgent objectives relate, firstly, to the plural nature of the South African society, secondly, to the creation of an effective avenue through which the RDP can be implemented and, thirdly, to facilitate peace, which goes hand in hand with reconciliation and addressing the needs of the people.

The negotiations at Kempton Park produced a constitution which did not cater fully for any of these. It was a compromise document. It was drafted under pressure. In its favour, it did at least bring us this far, but over many of the unsettled issues there is, even now, a simmering discontent.

Although the rules for redrafting the Constitution are an improvement on those at Kempton Park, focal issues, such as powers for the provinces and traditional authorities may well still result in a deadlock. Events in recent months have shown these to be of general concern to the entire country. They have also given a clear indication of the value of proceeding with international mediation to help resolve our problems.

The way in which the Constitution provides for powers to be subdivided between the central Government and the provinces, is creating a major snarl-up in the implementation of the RDP. In KwaZulu-Natal, for example, there are four different types of laws which must be sorted out in the process of rationalisation, and they involve the Department of Constitutional Affairs, the Commission on Provincial Government, the Department for the Public Service and Administration, and a host of legal advisors and other departments.

In KwaZulu-Natal these laws cover, firstly, laws previously administered by KwaZulu-Natal under the Joint Executive Authority, secondly, provincial ordinances, thirdly, laws of the Republic which were administered on an agency basis and, fourthly, laws administered by the Republic of South Africa, but regarded now as being in the competence of the provinces.

The teasing out of these laws and their implementation is being delayed in KwaZulu-Natal, as well as the other eight provinces in which a similar, but not the same, process must occur asymmetrically. If one works out the combinations and permutations of four groups of people, involved in assigning four different groups of laws, numbering hundreds in nine provinces, one need not wonder why the process of rationalisation is taking so long, and why the implementation of the RDP is being delayed, to say nothing about the efficient government of the country.

The other major issue is that of peace. Referring again to KwaZulu-Natal, that region is fortunate in retaining strong traditional values. It gives the people of that region the kind of community,

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traditions and identity which Alan Paton lamented the loss of in *Cry the Beloved Country*. In that book, he pointed out not only the dangers of apartheid, but also the sadness of urbanisation and loss of identity. This is linked to the weakening of Ubuntu which is the culture of respect common to all Africans. Reconciling these traditional values with modern democracy and legitimacy is a sensitive and highly important issue.

I referred once before to the new Government's actions as either justifying our past fears or indicating that we should have proceeded with greater trust in the past. One of the political promises made to the IFP before the elections was that international mediation would be held. This would serve to approach both of these topics, the kingdom of KwaZulu and the power to the provinces, not from a political point of view, but in an objective impartial arena. The mediation would give us the benefit of people who have been through what we are now going through and can hopefully prevent us from making more of the mistakes which we are already making. We need pragmatic solutions which will benefit all the provinces and all the traditional authorities.

When Dr Buthelezi wanted Parliament reopened so that the entrenchment of the kingdom of KwaZulu-Natal could become a fact and not a political promise, he was also promised international mediation. The monarchy of KwaZulu-Natal remains a sensitive issue, as do the provincial powers. The IFP now calls on the ANC and NP members of the Government to honour that political promise and arrange for international mediation to proceed as soon as possible. Not to do so, would be a blatant betrayal of our trust and contravention of a signed agreement.

Mrs B S MABANDLA: Mr Chairperson, today we are gathered here to define the process for the Constitutional Assembly and to elaborate a framework for a new constitution. An efficient consultative process should be set in motion to enable our people to participate in the constitution-making process. We in the ANC are satisfied that the present structure of the Constitutional Assembly and its support committees provide an adequate mechanism for consultation.

However, effective participation implies more than the establishment of consultative mechanisms. It also means that the concerns of our people should be taken seriously. Accordingly, people should not only be heard, but we must deliberate seriously on the needs and concerns articulated by our people. An important aspect of our deliberations will be the conceptualisation of a bill of rights or a charter of rights.

The challenge we will face in this regard is whether we can legitimise the needs and demands of our people. We must recall that during the negotiation process hundreds of workshops by workers, women and special interest groups such as child-centred organisations and the disabled people of South Africa, had been organised to formulate constitutional rights for the interim Constitution as well as for the respective charters of rights such as The Women's Charter for Effective Equality.

It has been argued that many of the supposed "rights" articulated by these sectors or groups are not rights but aspirations or needs. The Constitutional Assembly will have to consider all these charters. One of the issues it will have to address is that of defining what "rights" are. There are two overarching views about the substance of a bill of rights. There is the perspective which holds that civil and political rights are the only appropriate rights for entrenchment in a bill of rights, and another which says that in addition to civil and political rights, social, economic and environmental rights ought also to be entrenched.

A list of arguments for and against either of the models has been advanced in the constitutional debate that took place during the negotiations preceding elections. The major arguments against the inclusion of social, economic and environmental rights were that these categories embody "aspirational rights", as I have already indicated, and should therefore be cast as objects of State policy. It has been said that they are not justiciable since they were indeterminable, and further that the inclusion of these rights will lead to the courts formulating policy.

The question that should concern us is whether these are sound legal arguments against the inclusion of these rights in a bill of rights. For example, would the courts be freed from making policy decisions if the only rights entrenched are civil and political rights?

The main argument for the inclusion of these rights is that all rights—civil, political, social,

economic or environmental—are indivisible and should be treated as such. The proponents of this model dismiss the legal arguments advanced against such an inclusion, as they mention that such arguments are without substance. It is hoped that the constitutional experts who will be advising the Constitutional Assembly shall be seized with these issues and thereby provide quality opinion. The Constitutional Assembly and the theme committees will provide the guidelines for a homegrown constitution. I repeat, we need a homegrown constitution which should be tempered by sound legal advice from a well-informed panel of experts.

As we deliberate over the new constitution, in particular as we consider the substance of a bill of rights, we should be guided by the constitutional principle on the promotion of equality between men and women in our society. One other issue we need to consider is whether rights, in their traditional form, incorporate women's concerns? Does the right to dignity, in its traditional form, extend to women? Should we recast rights to embody an expansive meaning, incorporating women's concerns? Are there any precedents elsewhere, and what form of specificity, if at all, is required to accommodate women?

We also need to consider religious, cultural and linguistic rights and the concept of self-determination. Should any of these rights trump equality, what would the legal basis for such an approach be, and what would the social context for this approach be?

The question of whether the bill of rights operates vertically, that is between the citizen and the State, or whether it operates both vertically and horizontally, is one that will be determined through our conceptualisation of a charter of rights or a bill of rights.

In conclusion, the major challenge facing this Assembly with regards to determining the bill of rights or the substance thereof, in the coming months, is to establish the critical balance between competing interests. In whatever we do, we should remember that the bill of rights should provide an enabling environment for the implementation of the RDP. [Applause.]

Mr G B MYBURGH: Mr Chairperson, our country is being governed and administered according to the present Constitution. In terms of the provisions of this Constitution, we are also beginning to experience the effects of the application of the Charter of Fundamental Rights.

Bills put before the standing committees of Parliament have been scrutinised against the background of the bill of rights to ensure that they are not in conflict therewith. From the legislature's point of view, one can then safely say that a new culture of fundamental rights has been developed and established in the fora where our laws are being made.

I also find that the SA Law Reports are reporting on court decisions where fundamental rights' issues were addressed, debated and decided upon.

It would appear that this has taken on such proportions that a separate series of constitutional law reports will now also be published. One also finds that the current fundamental rights issues are being published in the *SA Journal on Human Rights*, and that more and more specialised academic publications on the workings, interpretation and application of Chapter 3 of the Constitution are beginning to appear. We are therefore in the process of developing our own literature on the subject with the help of specialists, academics and practitioners.

Fundamental rights as *Grundnorm*, which is the supreme law and to which all laws and executive decisions are subject, is a new terrain for most of us, having come from a Westminster system in which Parliament is supreme and sovereign. The paradigm leap having been made by all concerned, I believe that the time has now come to review the chapter on fundamental rights for incorporation in the new constitution.

Because of the intrinsic importance of fundamental rights in any contemporary democratic constitution and the fact that these rights at present form the cornerstone of our Constitution, I am thrilled about, and the NP supports, the proposed establishment of a theme committee of the Constitutional Assembly on fundamental rights.

Generally, it has been accepted that the political parties have not as yet concluded their negotiations on this very important theme. Important second-generation and even third-generation rights have been excluded in the present Constitution. Where some of these rights are reflected,

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they seem to enjoy very restricted protection. On a previous occasion, Minister Roelf Meyer has for instance cited environmental rights as a prime example. He also pointed out that a revisit of the provisions relating to the limitation and suspension of the rights would become inevitable to ensure that a future bill of rights is not jeopardised by executive actions.

Of importance to the public generally would be the application of such a bill of rights, and more particularly the interpretation thereof. Further aspects that will need more attention relate to the vertical and horizontal enforceability of the bill of rights, of which we heard earlier from Mrs Mabandla, the freedom and equality clauses, equality and affirmative action, freedom and security of persons, administrative justice, and so one could go on. The forum to be created by the establishment of this theme committee will no doubt afford all an opportunity to discuss these burning issues in depth, to make use of the published literature and to ensure that the best solutions will be offered for inclusion in the constitution.

After all, we will all be dependent upon the success which this committee makes of the tasks assigned to it.

*Gen C L VILJOEN: Mr Chairperson, for translation purposes let me indicate that I will deliver the first half of my speech in Afrikaans, and the second in English.

Firstly, the object of these theme committees which we are now putting into operation is of course to analyse, thoroughly and logically, all aspects of the Constitution and to make it applicable to South Africa's unique situation.

It is a good thing to do, because we had a first chance, and in it we experienced many problems. There was the legitimacy problem, the pre-election tension and the tension which existed between the various groups, simply because they did not know each other. The old adage, "unknown, unloved" applied here. There was also suspicion between the various groups. The situation during our first trial run was not favourable.

In the second chance which we are now exploiting there is no transitional tension. It is all over. There is calmness and willingness from everyone to find out what is best for our country, South Africa. The various population groups understand each other a bit better now, and greater tolerance is developing. There is also a deeper general understanding of the functions of a constitution. I think the second chance is offering all of us in South Africa this opportunity and that is why we have established these theme committees.

I would like to raise a few points in respect of the theme committees. These theme committees must be an instrument making it possible for political parties, for the public and for organisations to participate in this process. It is therefore necessary that we remain simple in our writings, in our terms and in our arguments, so as to enable everyone to understand.

As a first suggestion, I would like to advocate that all theme committees must in the beginning try to define their task in such a way that it is understandable and is simple enough for all who want to participate, and that they also invite the public and all groups to participate.

I feel that this must be a broad, general and popular definition of their theme and an explanation of how they want to fit it into the constitution, so that the public—parental associations, farmers' associations and all the others—can be invited in this way to participate. By dong this we shall be spreading the process further than just this Assembly.

In my opinion the second task of the theme committees is very important, namely to analyse the theme and to draw up a list of factors which influence the theme. In this regard we must look at South Africa and also at other countries. We must analyse the unique requirements peculiar to South Africa. We must identify the factors which are important and by so doing, determine which priority the various factors must receive. Each theme committee's list of factors will bring an important facet into prominence. This will create order and give us a goal to pursue.

The third task is to set up a work program for the theme committees on the basis of the various factors analysed. It must be determined which factors are applicable; whether commissions should be set up, for which study groups may be needed; what further information—perhaps academic information—must be obtained; and how we can allow consultation to take place in the theme committees to ensure that matters proceed as smoothly as possible.

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The fourth task of each theme committee will be to pay attention to how its theme impacts on the other theme committees. The committees will then have to liaise with one another. I know that this is a function which is being envisaged for the Managing Committee, but I want to ask for a healthy interaction between the different committees to ensure that they respect and understand one another's themes.

I would now like to discuss the self-determination principle and how it affects the theme committees. The self-determination principle is one of the stepchildren of the World Trade Centre. It was not fully considered there. There were many reasons for that, one being the lack of time, another an insufficient grasp of precisely what was meant by that and a general tendency—I personally came across it there—that self-determination meant ethnicity, and ethnicity apartheid.

A resistance was developing against an important principle which is favourably applied in many constitutions in the world. I want to ask that we abandon this approach and that we eventually make a full study of how this self-determination principle can be included in the various theme committees. Constitutional Principle XXXIV was included too late and was consequently not discussed fully at the World Trade Centre. It was discussed here in Parliament.

There were also bilateral and trilateral negotiations on self-determination which could, for various reasons, not be completed. The hon members can therefore see that there are various reasons why I am appealing to the different theme committees to pay a great deal of our attention to this important matter.

The course of the self-determination principle nearly resulted in a disaster in our country, but fortunately it was averted. Self-determination must therefore be regarded right from the beginning of this process as unfinished business which stood over. This Assembly and the various parties are in honour bound to tackle this important principle in such a way as to demonstrate that we are not afraid or suspicious of it, and that we shall go elsewhere in the world to learn about what is good in it and applicable to South Africa.

†I would like to discuss the self-determination principle as an important topic in the themes. Firstly, it is a fundamental right and therefore it is correct to place self-determination within the ambit of Theme Committee 4, which deals with fundamental rights. The contents of the concept of self-determination can certainly be explored and should be discussed in Theme Committee 4.

However, because too little attention has been given to this aspect in the past, we have to bear in mind that this fundamental group right will certainly influence thinking in most of the other concepts, such as character of state, structures of the government and relationships of governments.

It is, therefore, important to take note of the Constitutional Committee's decision as minuted "that it was further proposed that certain principles and topics, such as Constitutional Principle XXIV, which deals with self-determination, could be discussed in more than one theme committee". May I request all the other committees to please do so.

However, it is even more complex, because we have the Volkstaat Council, which is a statutory body but not part of the Constitutional Assembly. Fortunately, we had an early start in the Volkstaat Council and a lot of work has already been done by it, because it is important for the council to feed in its recommendations as soon as possible in order not to hold up the thinking on the whole constitutional process.

Towards the end of the proceedings of the theme committees, I think this will have to be done. The theme committees will therefore have to discuss the principle of self-determination and its application, so that the Volkstaat Council, when it presents the recommendations to the different theme committees, might actually be preaching to the converted.

The other point that I should like to mention in regard to the theme committees is the direct talks being held between the CP and the State President or the top echelons of the ANC. This I welcome. I do not wish to oppose this. I think it is the right thing for Dr Hartzenberg to do, to speak to the ANC and to speak to the President himself, in order to get that section of the Afrikaners out of isolation. It would serve no purpose if those people removed themselves from the South African scene. It is not possible. They are part of the scene and we therefore have to accommodate them. However, we shall need an input from the ANC Government with regard

to what exactly is decided and with regard to the talks that go on between the CP and President Mandela.

I now come to the NP. I should also like to say that I am happy that the leader of the NP has also expressed certain views on self-determination, and that they are also in favour of certain aspects of self-determination. I also welcome their preparedness to discuss this with us. I think we, the Afrikaners, owe it to the Constitutional Assembly, to the country and to our own people, to present as united as possible a view regarding our desire for self-determination.

In this way we in the FF are prepared to co-operate and will co-operate with all the other parties to facilitate the process within the Constitutional Assembly, so that we can find a solution that will prevent conflict in our country between important groups.

Mr P M MADUNA: Mr Chairperson, I shall confine my remarks to theme committee five, which is to deal with the judiciary and legal systems. Needless to say, the ANC regards the Theme Committee 5 as an extremely important one. It will provide an opportunity for us to debate numerous questions pertinent to our legal system and the judiciary, bearing in mind the experience of the past three and a half months since the interim Constitution became law. As we debate issues it will be useful for us not merely to repeat stated party political positions, but to do so with the sole intention of giving our country a proper constitution suited to the needs and peculiarities of our situation.

The tasks of Theme Committee 5 derive in particular from the provisions of Schedule 4 to the interim Constitution. In this regard two principles in particular are of great importance, namely Constitutional Principles VII and XIII. Constitutional Principle VII provides that:

> The judiciary shall be appropriately qualified, independent . . . and shall have the power and jurisdiction to safeguard and enforce the Constitution and all fundamental rights.

Constitutional Principle XIII provides that:

> The institution, status and role of traditional leadership, according to indigenous law, shall be recognised and protected in the Constitution. Indigenous law, like common law, shall be recognised and applied by the courts, subject to the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.

In addition to these principles, there are also substantial implications for the structure of the legal system as a result of the provisions of Chapter 7 of the Constitution. These questions relate particularly to the appointment of judges, the jurisdiction of the courts and the process by which cases are dealt with.

In this regard I should like to highlight a few issues which will require the attention of the Constitutional Assembly in its deliberations. These are the process of appointment of the judges. In this regard, the question must be debated squarely as to the role of the Judicial Service Commission and the procedure by which it makes its decisions. A compromise approach was reached by the Judicial Service Commission in its present form by agreeing to have public hearings on the appointment of Constitutional Court judges, although there will be no radio or television coverage of these hearings.

In addition to a debate on these particular questions, the other issue which arises is the appointment procedure of ordinary judges. Will they be required to be subjected to hearings as well? In so far as responsiveness and openness of the judiciary are concerned, two fundamental questions in this regard arise for consideration.

Firstly, should we have a Judicial Service Commission as it is constituted at present? Criticism was expressed during the negotiations at Kempton Park that the present composition was weighted heavily in favour of the established legal profession and therefore was weighted against the concerns of the overwhelming majority of the population. Debate will need to take place regarding the alternative proposal of an all-party committee of both the National Assembly and the Senate which could be convened to nominate members of the judiciary. This is a model which, needless to say, will then borrow from the German model.

Secondly, consideration will also have to be given to questions relating to the composition of the Constitutional Court itself and its tenure of office. At present, it has a seven-year term of office, and there are three categories of appointments, namely a president, four members of the existing judiciary, and six other members. It would appear that a more appropriate compo-

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sition would be a president and ten other members, so as to dispose of the entrenchment of the existing members of the judiciary. Consideration might also be given to whether the appointment of non-lawyers would at all be appropriate, particularly in constitutional cases where intricate questions of political science do arise.

With regard to the question of openness, the debate must again be commenced as to whether some form of jury system would not be appropriate in South Africa. What is clear is that the present system of judges and assessors has not worked well in that in the vast majority of cases, if not in all cases, judges appointed two assessors who generally were retired magistrates, ex-colleagues, or retired or serving advocates, so that the broader view of the community was not reflected in the approach of the assessors and thus of the courts. Whether the judicial system should maintain a revamped version of the assessor model, or implement a model based on the jury system, must be debated if we are to have a judiciary and legal system which responds to the question of openness and responsiveness.

There also has to be a question as to the nature of the court structure. There has been some criticism as to the strange structure which has been adopted within the Constitution. It can be illustrated by the following example: A is charged with an offence under the Abuse of Dependence Producing Substances and Rehabilitation Centres Act, No 41 of 1971, in that he was found with 200 grams of dagga in his possession. He confesses to being a dealer and is charged in the magistrates' court. In that court he raises three defences, namely that he was not guilty, that the State is relying on a confession which he gave in violation of his rights under section 25 of the Constitution, and the statute contradicts the presumption of innocence provision in section 25 and hence is constitutionally invalid.

Under present procedures the magistrate arguably can hear the matter on the assumption that the law is valid. Of course there is some doubt as to whether he can admit the confession. However, he can decide to refer the matter to the Supreme Court. The Supreme Court would have jurisdiction to decide the constitutional validity of the confession, but not of the legislation. This must be decided by the Constitutional Court after appropriate evidence is heard regarding the constitutionality of the Act in the Supreme Court.

Once the Constitutional Court has decided upon the validity of the Act and the Supreme Court upon the validity of the confession, the matter reverts to the magistrates' court, where the determination of guilt is to be ascertained. Assuming that the person is convicted, the appeal will follow to the Supreme Court. Assuming that the Supreme Court upholds the conviction but gives leave to appeal to the Appellate Division, the Appellate Division can decide the matter, although it cannot decide any constitutional question.

Accordingly it might well, if it feels it will convict, refer the matter to the Constitutional Court for final decision on the matter of the constitutionality of the confession hitherto decided by the Supreme Court. In short, there are seven hearings for one matter, which could well be possible in terms of the present structure, namely a Magistrates' Court, a Supreme Court, a Constitutional Court, a Magistrates' Court again, the Supreme Court again, the Appellate Division and the Constitutional Court.

Clearly, this is an unwieldy system. It is also costly, and therefore does not respond to the basic needs of the public. Consideration will therefore have to be given to the role of the Appellate Division and its relationship to the Constitutional Court, extended constitutional jurisdiction for magistrates and the Supreme Court, and possible integration of all courts into one coherent adjudicative structure.

Mr Chairperson, I would like to use the time left to me to deal with the question of traditional authorities and indigenous law. At present there is some ambiguity in this regard. Section 33 refers to the infringement of rights in terms of this chapter. This could well mean that certain forms of traditional leadership, with regard to both the equality and the property provisions, could be set aside under the present Constitution. The question that will have to be addressed is whether this is made clear in terms of legislation envisaged in Constitutional Principle XIII. Accordingly, this has an impact on the nature and content of the bill of rights in its attempt at harmonisation with traditional law. Furthermore, the question that arises is whether indigenous law should be applied throughout our court system or be subject to a specialised

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system of tribunals. This point is also left somewhat ambiguous in Schedule 4.

Constitutional Principle XIII, which merely provides that indigenous law, like common law, shall be recognised and applied by the courts, subject to the fundamental rights contained in the Constitution and to legislation dealing specifically therewith, is not very helpful.

A further complicating factor is that, because the whole issue of indigenous and customary law is a Schedule 6 matter, the fairly complex provisions of section 126 may come into play when Parliament seeks to utilise the provisions of section 181(2) of the interim Constitution in terms of which Parliament can regulate indigenous law.

Mr C W EGLIN: Mr Chairperson, the DP supports, in substance, the recommendations in the report that have come from the Constitutional Committee, both because it outlines a framework and because it emphasises the need for flexibility and for re-evaluation. I have no doubt that we are starting on a certain course of negotiation and discussion, but it is quite likely that we will end up with a different procedure, as we learn from experience.

I just want to emphasise a few of the areas in which we are going to have to look at flexibility and re-evaluation. The first one relates to the theme committees. We are in substantial agreement that there are six theme committees. Each one of them has a title and a number of subsections to which it refers. Yet, each of us knows that none of these theme committees are separate from the others. Somehow or other they are all interlocked or intertwined, and while the accent is going to have to be on one theme committee, there is going to have to be consultation and integrated discussion between the various theme committees if we are going to succeed in our work.

Paragraph 6.6 of the Announcements, Tablings and Committee Reports document under the heading "Specialised Structures of Government" reads as follows:

> Powers and function of the Public Protector, Human Rights Commission, Gender Commission and the Commission on Restitution of Land Rights.

Those are all structures, but they relate in a very integrated way to the whole issue of fundamental human rights. Therefore the question of fundamental rights is also integrated with the structures that are going to give effect to those particular rights.

Theme Committee 5 deals with the question of the judiciary and legal systems. Read on its own, it looks as though those legal systems are going to be unitary systems with a certain amount of devolution. Yet, one cannot decide on the legal or judicial system until one has discussed the question of the relationship between the levels of government, because it may well be that in dealing with the relationship between the levels of government, one decides to fragment one's judicial and legal system into a three-tier system of government.

Likewise, paragraph 4.6 which deals with community self-determination cannot be separated from the structures which give effect to that community self-determination or the separation of powers within the various structures that exist. Therefore, while the theme committees are separate on the one hand, they are all integrated and interlocking on the other.

The second question relates to the matter of constitutional principles. The present Constitution is unique in that it contains all the provisions for governance in South Africa. However, Schedule 4 contains a set of constitutional principles which are not binding on this Constitution but on the next constitution that we are going to draw up.

The question is whether the next constitution, in addition to having structures for government, should not also include some overarching fundamental constitutional principles. I will mention some reasons why.

In the next constitution there will still be provision for drawing up provincial constitutions. There will also be provision, in terms of Acts of Parliament, for drawing up local government structures. These local government structures and provincial constitutions still have to fall within the framework of a declared set of constitutional principles. It may well be that we will have to incorporate some constitutional principles in the next constitution in addition to the structures of Government.

I can mention further that the whole question of collective rights of self-determination will not be concluded when the next constitution is drawn

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up. It will be an ongoing process. If there is going to be an ongoing process of self-determination, surely there should be constitutional principles which will regulate that particular process.

The third issue is that of time frames. This document is silent on time frames and yet there is a time frame set down in terms of the Constitution at the moment that we should complete our work within two years. I believe it is appropriate that there should be a constitutional target date. However, I do not believe that we should make this target date a sacred cow and be trapped in what I call a time trap of pressure on decision-making, when we could make better decisions if we had more time to do so.

Secondly, we will not in 18 months have had time to learn from experience or the mistakes of the existing Constitution. Regional provincial governments will scarcely be in place and functioning. Local government, even of a temporary nature, will only be installed in October of next year, some six months before the next constitution is to be drawn up. The bill of rights will not have been adjudicated upon to see to what extent it is influencing the whole judicial process and the judicial system in South Africa. The Financial and Fiscal Commission will also only have produced, or assisted to produce, one Budget if it gets going. Thus, we will not have had the opportunity of learning from the experience of the current Constitution.

While I am not advocating a fundamental shift away from the two years, I believe that in the end we should note that the substance of the next constitution is more important than the time frame by which it has to be drawn up.

The fourth point is that we are determining our own programme. However, I must draw attention to the fact that under section 161, there is a very specific injunction and I will read it to the House:

> The development of a system of provincial government shall receive the priority attention of the Constitutional Assembly . . .

The issue of the evolution of provincial government, is not an option. There is in fact an injunction in terms of section 161 to give priority attention to the restructuring and the formulation of provincial government in South Africa. For this purpose we have the Commission on Provincial Government. All I can say is that we should determine our own procedures and continue on our own, but that we should take into account the injunction that provincial government must take priority in terms of the overall procedure.

*Mr P G MARAIS: Mr Chairperson, the Constitutional Committee and its steering committee deserve thanks and appreciation for the work they have done so far. The fact that the ground work for the establishment of theme committees has been completed testifies to the good progress that has been made. With these committees new ground is being broken, and it may be expected that in view of the experience that is being gained in the course of the process, the terms of reference of the various committees will be adapted and augmented.

In particular I would like to suggest that the Constitutional Committee should at the earliest possible opportunity, make it clear which theme committee will be responsible for dealing with the issue of official languages. It has been proposed in documents previously submitted to the Constitutional Committee that theme committee one, which will deal with the issue of the nature of the democratic state, should be responsible for the name and the description of the State and its symbols. Dealing with languages and specifically official languages, however, had to be excluded from this committee's terms of reference.

In the proposals now before this Assembly, reference to that exclusion has been omitted, and no specific reference is made anywhere to the official languages. Theme Committee 4, which deals with fundamental rights, will be tasked with dealing with those language issues which Constitutional Principles XI and XXXIV are concerned with.

But not one of those principles deals with the official languages. Constitutional Principle XI in particular has been formulated in very vague and general terms and is pervaded by more or less the same spirit as section 31 of the present Constitution, which grants every person the right to use the language of their choice and to participate in the cultural life of their choice. It does not extend into the range of the present section 3 which has official languages as subject. It has more to do with languages as a cultural heritage.

I would like to suggest to the Constitutional Committee that official languages are one of the most important factors which determine the nature and character of a state. The Swiss state would have had a completely different character if German, French, Italian and the Raeto-Romance dialect, Romansch, had not been its official languages. Without English, Britain would have been something different to what we know it to be today. If Welsh had been the official language of Wales, we would have had a different view of that part of the world and Welsh would not have been almost extinct today.

It therefore seems to me that the question of official languages, as opposed to dealing with languages as a mere cultural heritage, falls within the ambit of theme committee one. I ask the Constitutional Committee to reflect on this. What procedure to adopt with official languages is a matter that is enjoying high priority in our country today. An acrimonious and acute public debate is taking place and feelings are running high. The sooner we clear up this issue the better for us all. Since it is proposed in the report that Theme Committee 1 be regarded as a matter of priority, it is therefore also desirable that official languages be dealt with there.

Mrs P DE LILLE: Mr Chairperson, the PAC welcomes the establishment of the theme committees which will engage all members of Parliament in the writing of our final constitution.

I hereby wish to express the view of the PAC on the report of the Constitutional Committee, which was tabled here today.

With reference to Theme Committee 2, which deals with the character of the state, we propose that the name of our country must be changed to rid ourselves of our colonial past and of the dispossession of the African people. The name South Africa now belongs to the dustbin of history. I will not make a proposal, hon members know what my proposal for a new name is. [Laughter.]

Dr M G BUTHELEZI: We know it is Malundi. [Laughter.]

Mrs P DE LILLE: The character of the state must be democratic and socialist, and not removed from society as a neutral state. It must be willing to intervene in the conflicts of society, and to protect the historically disadvantaged communities in contrast to those who have benefited from colonialism and apartheid.

I now refer to Theme Committee 2. The structure of the future state must have a one party executive because an enforced coalition, as we have now, is too weak to address the reconstruction and development of our country effectively. The democratic decision of the electorate on their choice of Cabinet must be respected.

Thirdly, the PAC believes in a unitary state in which power is decentralised to provincial and local government. We cannot allow our country to be Balkanised again. As the provinces are now constituted, the potential for conflict based on ethnicity dressed up as federalism, is real. The time has come for all of us South Africans to develop allegiance to South Africa first, irrespective of which province we come from.

With reference to Theme Committee 4, second generation human rights must be extended to all South Africans and not only to our children as is the case with the interim Constitution. Specialised agencies must also provide for accountability and transparency. There was a serious lack of these in the old system.

The PAC supports the participation of the public, transparency and the role of the media in the writing of the final constitution. We must caution the media though, to inform the public of the views of all parties to enable the public to engage in a healthy debate and to make up their minds objectively as to what is the best ideas to support.

The writing of the constitution must mean exactly that. It must also be clear to everybody that this is not merely a review of the interim Constitution.

Contentious and controversial issues must be dealt with as and when they arise. They should not be left until the closing days of negotiations, when, due to time pressure, these issues will just be glossed over. Documentation should be made available timeously to allow parties to make proper submissions.

Although the time frame allocated to finalise the constitution is limited, it should be utilised to the fullest extent with due regard to reasonable considerations that make provision for the integration of ideas of all political parties represented in the Constitutional Assembly, the civil society and the public at large.

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Technical committee assistance must be provided for all parties to enable parties to make meaningful and researched submissions to the constitution-making process.

Finally, we support the ongoing evaluation and assessment of the constitution-making process, which will act as an early warning system to the process.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I take it that the proposal is that South Africa should be called the Democratic Socialist Republic of Azania. [Laughter.]

*Mr J A RABIE: Mr Chairperson, the NP endorses the subjects compiled by the theme committees. I am going to concentrate on Theme Committee 2 only, which deals with the framework of government. It is important that these themes be dealt with. The framework of government is in fact an inextricable part of the substructure of any constitution. There is a great responsibility resting on this committee.

As many of us are aware, many disputes arose in the Negotiating Forum on this subject. Such disputes must be avoided by this committee. The committee must be far rather strive for consensus. The advices of experts, as has been envisaged, could help a great deal in this respect.

In my opinion, the interim Constitution needs to be further refined to give stronger expression to federalism, instead of what we have now. The concept gave rise to profound differences of opinion at the Negotiating Forum. What we should guard against in particular is to try to reinvent the wheel.

The advocates of centralised authority, as we have just been given to understand again, and those advocating the devolution of powers could not easily find common ground. Experience has taught us that it is not necessary to repeat this episode in the Constitutional Assembly. It impairs reconciliation initiatives. Devolved powers must be given stronger expression in the new Constitution. A situation must not arise again in which Premiers mutter and complain because the central authority has not invested them with powers. Because of this, they are hampered in the execution of their task.

It must also be ensured that the new constitution does not precipitate a large-scale rationalisation process, as is the case at present. This causes disruption and demoralises the officials. The coming into existence of the interim Constitution and the subsequent election was described as an unbelievable miracle, both at home and abroad. Let us make sure that the drafting of the new constitution will likewise be experienced as a miracle. This is the greatest test we are facing. Let us think innovatively.

Let us invest the Senate, for a start, with exclusive powers in respect of the protection of the rights of minorities, for example cultural and other aspects, the powers and functions of the provinces and traditional leaders. In fact, the latter should be represented in the Senate.

We must drastically transform the electoral system. We must make sure that the elections on local, provincial and national level will never again take place without a voters' roll. Proportional representation and electoral divisions must be thoroughly studied in this committee. The prohibition on the change of party membership needs to be seriously reconsidered. The leader of the FF referred earlier to a great amount of work that has already been completed by the Volkstaat Council.

I requested that the work of the Volkstaat Council should no longer be held over for submission to the theme committees until such time as these committees have finalised their work in respect of these aspects. The duties of the Volkstaat Council must be presented in good time so that no misunderstandings exist and it becomes too late to give thorough consideration to the ideas of this council and their concept of self-determination, since that is a subject that requires profound debate.

Mr L M GREEN: Mr Chairperson, hon members, the ACDP welcomes the creation of the six theme committees in order to develop each theme thoroughly.

With regard to the character of a democratic state, we in the ACDP are striving for the following constitutional principles, whilst participating in the drafting of a new constitution. Firstly, the main purpose of a constitution and a bill of rights is to set limits on the power of a government and on what it is able to impose upon its people. The tyranny of a minority government was not acceptable in the past, but tyranny in any form, including that of a numerical majority, is problematic. It is therefore necessary that the new constitution be a consen-

sus document. The unilateral imposition of a new constitution by any one party, irrespective of its majority, is a recipe for conflict.

The main functions of the State are the protection of its citizens, the arbitration of conflict and the application of justice through an independent judiciary. A federal dispensation based on direct democracy would empower individuals and communities to take charge of their own lives and affairs in all matters for which individuals and communities wish to carry responsibility.

We believe in a two-tier government, consisting of a central government and a district government. Delegation of authority should be from community level upwards. At the moment we have nine regional governments, including local government structures, but there are problems in developing these structures and the ACDP is of opinion that it could become too costly to maintain them.

The State is only one of a number of spheres of authority ordained by God. The ACDP also recognises the family and the church as authorised by God to act as his ministers in their respective areas. A strong family, a strong church and a strong state, all serving in their respective areas without interfering with each other, are mutually affirming, and provide a stable society, political liberty and the basis for economic prosperity.

With regard to central government, we believe in a small, but professional central government, responsible mainly for the order functions of foreign affairs, international relations, defence, finance and the maintenance of the health and stability of the currency, as well as the formulation of sustainable economic policies. Central planning should only apply to areas of the design of national infrastructure. The proliferation of central government departments should be stemmed and their number reduced to the practical minimum, in accordance with the functions of central government.

The ACDP has the following firm affirmations with reference to Theme Committee 4 and the bill of rights. We believe that all human beings are created equal and are endowed by the Triune God, Creator of all things, with equal dignity and inalienable rights.

We believe that a bill of rights should promote a just society and should be entrenched in the new constitution. We believe that in cases of human rights violations all parties should have equal access to legal representation. We believe that everyone has the right to responsible freedom of speech and expression, as long as this does not include slander, obscenity, utterances reflecting hatred or incitement to violence. We believe in religious freedom, including the right to propagate one's own beliefs. We believe in the sanctity and inviolability of life, including the sanctity of life of all unborn children.

We believe that a basic education should be provided for all and that the educational, moral and spiritual development of children is the prime responsibility of parents, guardians and religious communities, which should include the right of parents to provide home schooling for their children. We believe that women should have equal rights in all matters before the law. We believe that respect for human rights depends on a culture undergirded by moral and spiritual values, without which any society would disintegrate.

In conclusion, we believe that human rights will only survive if there are accompanying responsibilities. A constitution cannot guarantee human rights in practice. Only the collective will of a nation to respect the rights of every single individual could, in practice, guarantee the rights of all our people.

Mr L P H M MTSHALI: Mr Chairperson and hon members, the constitution-making process is characterised by the establishment of theme committees, which are in harmony with the proposals made by the IFP to ensure that the final constitution is the true result of the wishes of this Constitutional Assembly.

With our proposals we are committed to ensuring that all possible constitutional alternatives will be considered by this Constitutional Assembly on their respective merits and that there is full debate on what our country really wants and needs. For this reason, as we approve the report of the Constitutional Committee, we want to stress that it is important that there is true cross-pollination between theme committees and that each theme committee be free to seek and redraft its own terms of reference.

The IFP would encourage the development of thinking about structures in which the chairpersons of the various theme committees can be brought together and can take collective respon-

sibility for the management of the work of the theme committees. The theme committees are given licence to be flexible about the subject matter that the Constitutional Assembly is allocating to them. That same flexibility should be encouraged to ensure that the cross-fertilisation occurs. This is needed between different theme committees that have specific issues in common.

Each theme committee should specifically be able to determine which one of the guiding Constitutional Principles may be relevant to its scope and work. In fact, Constitutional Principles, by their very nature, will apply to two or more given theme committees.

A typical example would be the principle of self-determination, which affects the character of the State, the debate on the form of state, the entire chapter on human rights, the structure of the legislature, the relationship between different levels of government and the debate on whether or not South Africa should have one judicial system for both levels of government.

This would mean that in this constitution-making process, as was the case at the World Trade Centre, there is the logical need for some preliminary determinations which this Constitutional Assembly must make. One of these is the determination of the form of state, which requires a decision about the degree to which South Africa should be transformed into a federation of states modelled after systems adopted in, for example, the USA or Germany.

As we talk about the logical progression of the issues we are to be faced with in the drafting of the new constitution, we must raise in this forum the historical misfortune related to the promised international mediation. On several occasions during the past three months our President, Inkosi M G Buthelezi, has raised the issue, and has written more than one letter to the President of the ANC and to the leader of the NP, asking them to fulfil their obligation to resume international mediation.

To date a reply has been received only from the leader of the NP and Deputy President, Mr De Klerk.

On 19 April 1994 a formal and solemn pact was entered into among the IFP, the ANC and the NP. This agreement was the basis on which the IFP agreed to enter the elections. The IFP accepted participation in the process of the transformation of our society as it was shaped by the 1993 interim Constitution.

The core of this agreement was the promise to resume international mediation on all outstanding constitutional issues, as soon as possible after the elections. The purpose of such mediation and the finality of this promise, was to ensure that when the work of the Constitutional Assembly began, there would be consensus among the three signatories to the agreement, on the preliminary issue related to the constitution to be drafted.

Clearly there was no possibility of reaching consensus at the World Trade Centre, where a deadlock had developed on the issue of the form of state. For this reason it was agreed that we would attempt to resolve the deadlock after the elections, by resorting to the expertise and wisdom of world-renowned constitutional experts and political scientists.

The fact of the matter is that we are now entering constitutional negotiations without having had the opportunity to resolve this deadlock by way of international mediation. To resolve what the April 1994 agreement referred to as "outstanding constitutional issues", is at the core of determining the preliminary issues in drafting a constitution, such as determining the form of state.

The IFP hopes that the ANC will honour its solemn obligation to resume international mediation "as soon as possible after the elections". [Interjections.] In the spirit of the April 1994 agreement, this solemn obligation clearly meant that mediation would be resumed before the work of the Constitutional Assembly began. Once we begin our discussions, international mediation might be an exercise in futility, because the determination of the outstanding fundamental constitutional issues by the international mediators would no longer direct our constitution-making.

*Mr C ACKERMANN: Mr Chairperson, freedom of the press plays an indispensable role in any enduring and stable democracy. In countries where democracy has collapsed, a sign of this is the fact that the media's right to relay the true facts was initially restricted and then suspended and nationalised to further the avaricious interests of individuals and radical groups.

In this connection we can look at countries like Angola, for example, where at least 300 jour-

nalists have been killed or have disappeared since the civil war was resumed. Our own country has sustained several scars in the struggle for freedom of the press. Someone once said "a country's press can never be more or less free than its citizens". Consequently it is not only our responsibility to cherish freedom of the press in the new South Africa, but also to preserve it.

It is encouraging in this regard that South African leaders are in the forefront of the struggle. Dr Buthelezi describes the media as "a key to democracy, a catalyst of change and a gateway to the freedom of thought and expression."

†Deputy President Mr De Klerk said "we support constitutionally guaranteed free expression precisely because we know from our own experience how counterproductive any attempt to interfere with the free flow of information can be."

President Mandela said "a critical, independent and investigative press is the lifeblood of any democracy. The press must be free from State interference. It must have sufficient independence from vested interests. It must enjoy the protection of the Constitution. It is only such a free press that can temper the appetite of any government to amass power at the expense of the citizen."

*On the one hand it is these standpoints which can promise only a bright future for South Africa provided they are adhered to. On the other hand, the media also has a duty to inform the public correctly and to comment critically and responsibly wherever and whenever it is justified. This three-way interaction between the drafters of the constitution, the public and the media will, particularly now, be absolutely necessary to instil the new constitution in the hearts of our people. The NP therefore supports the media strategy as set out in the report presented to this Assembly.

†This implies that we are in favour of the media being accommodated and provided with all the necessary documentation of the Constitutional Assembly, the Constitutional Committee, theme committees, commissions and public hearings. This is of utmost importance if one wants to achieve transparency and accountability.

We are also in favour of the media being assisted in becoming a forum for the expression of ordinary people's views on the constitution, thus ensuring public debate and participation.

Supporting these views, the NP believes that we can meet one of South Africa's biggest challenges, namely to make our nation into a nation state, changing primary loyalties from the ethnic group to that of the constitution.

*There is a proverb which says, "the pen is mightier than the sword". Let us show the world that South Africans have the will and potential to use the pen to write our new constitution permanently in the hearts of our people.

Prof D C DU TOIT: Mr Chairperson, firstly, we are no doubt all in agreement that the process of developing the new constitution should be a rational process and, secondly, that it should not endanger the valuable reconciliation which is taking place in South Africa at present.

The problem is, of course, one of political management: How to make it happen in this way. South Africa has at least one thing going for it in this regard, namely the experience of the people who concluded the negotiations which produced the interim Constitution.

I would like to dwell on some aspects which should make the work of one of the important theme committees, namely Theme Committee 3, dealing with the relationship between different levels of government, provinces and local government, more rational.

I would like to suggest that this committee, perhaps more than other theme committees, should adopt an attitude based on five methods of approach.

Firstly, the process should be as non-ideological as possible.

Secondly, the drafting of chapters on provinces and local government should be done from an understanding of the empirical aspects of government on the second and third tiers of government.

Thirdly, an interparliamentary process, not just an intergovernmental executive process, should be instituted for the carrying out of the work of the Constitutional Assembly.

Fourthly, the main culture which should prevail in writing the constitution in this regard, should be one of a common, undeniable and firm loyalty to South Africa, our beloved country.

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Lastly, to be rational, for every single clause and for every single word that we write into the new constitution, on provinces and on local government, we should consider the financial and fiscal implications. What will that clause cost?

Let us consider these aspects briefly. I plead for a non-ideological way of writing the constitution, because ideology always has a way of distorting the fullness of reality, leading to some form of suppression or the other, and eventually to violence. It is actually a form of censure, which closes the mind. These days, we know that ideology arises first and foremost in the sphere of communication. The process of writing the constitution is a communication exercise. Undue ideological penetration in this process will assuredly lead to distortions.

The end perspective of the new constitution should be the end of violence. The provincial or federal scene, for those who like the term, if conceived of in narrow ideological perspectives, is pregnant with violent possibilities. It comes to us in the terms of the saying of Feuerbach:

> The philosophers just interpreted the world; the point is to change the world.

The new constitution must change our world of violence, remove the threats of violence and end the ideologies which drive us to violence. The people of South Africa have had enough. They will not be manipulated by bad ideologies any more.

In the second place, the drafting of the new constitution should not just be a deductive process, deducing from the Constitutional Principles in Schedule 4 what is to be written into the new constitution. It is true that they form the parameters within which the constitutionality of the new constitution must be decided. However, a very dynamic process was unleashed by the interim Constitution in the nine different regions of South Africa. It does not stand still. The provincial scene is changing almost weekly . . .

*Mr J T ALBERTYN: May I ask the hon member a question?

Prof D C DU TOIT: No, I do not have time. I am sorry.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Let Prof Du Toit continue and then we will allow the hon member to ask the question.

Prof D C DU TOIT: Anything that we write about provinces in the new constitution should be intimately acquainted with the detail of what happens empirically in the provinces. Everyone in the know is aware that worldwide the dividing lines between federalism proper and regionalism of some kind or another have become increasingly indistinct in recent years.

If one looks, for example, at fiscal matters, in Australia, Canada, the United States and Germany, we find that all but Canada have been experiencing a move towards more centralised government in the postwar era. The majority of these states no longer conform to any classic federal model.

What we have to ascertain is exactly what types of regional levels are developing empirically in South Africa, because that is what lives among our people. It is a question of diagnosis for us here. The prescription will follow almost automatically.

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When we start thinking about the provinces, our point of departure should rather be the problem of equality. Equal protection means, *inter alia*, that a person's chances in life should not be affected by the part of the country that person was born in. Even if we succeed in removing all race and gender discrimination, the fact still remains that there are discrepancies in social infrastructure and the levels of poverty which vary between the different regions in South Africa.

In the first instance, the provincial system should be developed as an instrument with which to address these very practical, empirical needs. It is not enough to put a fundamental right which decrees equality in the constitution. The mechanisms of provincial and local government must be built in such a way as to make that equality real.

Perhaps the most important point of departure for the theme committee on the relationship

between levels of government should be the unquestionable common loyalty of all participants to this our land and the Republic of South Africa. This is perhaps the strongest force which we have in South Africa.

Take, for example, our dear so-called right-wingers in politics. [Interjections.] I mean this sincerely. I have had friends from those circles tell me that they would rather die than vote for the ANC, but that they would seriously consider voting for President Mandela. What they are actually saying is that the ancient traditional law of the Germanic peoples is still working in them. Their inborn sense of loyalty and fidelity, in this case to the Republic of South Africa, is very real.

What we are seeing in South Africa is almost a national act of homage and allegiance, if I may put it in these words. Even our right-wing friends, in their deepest inner being, are part of this. They are, figuratively speaking, kneeling down before the Republic, with their swords ungirt and their heads uncovered. They are saying to the State, "*Je deveigne votre homme*. [Interjections.] They are saying to the State:

> I become your man from this day forward, of life and limb, and unto you shall be faithful, and bear to you faith for that which I claim to hold of you.

That is not to say that it is an uncritical relationship. However, it is the only basis on which our negotiations here can bear fruit, even if our friends are starting to negotiate the principles of a volkstaat in terms of the interim Constitution. This common loyalty to South Africa is the reference point. There should be no doubt about that.

I also believe that the Constitutional Assembly should, for the purposes of the work of Theme Committee 3, develop interparliamentary activities between the Constitutional Assembly and the provincial legislative authorities. There should not be interaction only between the national executive and the provincial executives. Regular, formal joint sessions between groups of national MPs and Senators of a particular province, say, and members of the provincial legislatures must be considered seriously.

The advantages of such debates are obvious. The Constitutional Assembly would be kept up to date on the empirical situation in the provinces, while the members of the provincial legislative authorities would be kept abreast of the discourse that is developing at national level.

Lastly, may I just add that the Constitutional Assembly would also do well if, in terms of its procedure, it could be possible for provincial Premiers to address these Monday meetings, and to take part in the debates on Mondays. It would keep the Constitutional Assembly in touch with provincial thinking on constitutional development, and the Premiers would obtain a taste of national viewpoints.

Mr Chairperson, have I run out of time yet?

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: No, the hon member still has 20 seconds. He may continue.

Prof D C DU TOIT: I would just like to refer to the problem of finance and fiscal matters. It is clear that theme committee three should at least have a strong subcommittee to consider the central question of fiscal equalisation under the new constitution. It is not only a technically complex matter, but it is also of prime importance for the provincial system and local government. [Time expired.]

THE CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: A question was directed at the hon member earlier. Would he care to listen to that question now?

Prof D C DU TOIT: Certainly, Sir.

*Mr J T ALBERTYN: Mr Chairperson, I should like to know whether the hon member Prof Du Toit regards communism as an objectionable, unacceptable ideology for the people. [Interjections.]

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Let us give the hon member a chance.

*Mr J T ALBERTYN: In other words, does he think such an ideology should be excluded from a future constitution of the country?

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*Prof D C DU TOIT: Mr Chairperson, may I reply in Afrikaans?

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Yes, please answer in Afrikaans.

*Prof D C DU TOIT: Look, I do not think it would be fitting for me to discuss specific ideologies now, because I could present the hon member with a far more detailed analysis of ideologies. If I should simply state that communism is objectionable, nationalism is objectionable or regionalism is objectionable, we would merely be talking to the press. I think we should conduct a far more serious debate on this issue. [Applause.]

Mr P F SMITH: Mr Chairperson, hon members, the IFP is pleased to announce its support for the report of the Constitutional Committee, though we remain concerned that the proposed amendments we have made to the rules to democratise minority participation have not yet been adequately prioritised. We believe that the report lays the foundation upon which we can all build as we work together to draft a new constitution. We look forward to the establishment of the six new theme committees and to our participation in these bodies.

Despite our positive approach, members will notice that the IFP has today tabled its deepest concern on a matter which has a central impact upon the shaping of the future of this country in general terms and more particularly upon the work of this Assembly itself. Here I am of course referring to the issue of international mediation. To say that we are concerned about the failure on the part of the ANC to get international mediation off the ground is a gross understatement. We are in fact outraged. [Interjections.]

An HON MEMBER: Shut up!

Mr P F SMITH: The President of the IFP has made repeated requests to the ANC to resume international mediation. In adding to what my colleagues have said on this matter, let it be clearly understood that South Africa is today facing the fact of history . . .

Dr M G BUTHELEZI: Mr Chairperson, on a point of order: Is it parliamentary for a member to say "shut up" to another member?

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! I have noted that point and would like to advise hon members to give Mr Smith an opportunity to put forward his views. I would like to thank the hon member Dr Buthelezi for raising this point. Will the speaker proceed, and can we please give him a chance to speak.

Mr P F SMITH: Mr Chairperson, will you adjust the time allotted to me accordingly?

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I shall do so. The hon Mr Smith may proceed.

Mr P F SMITH: I will repeat what I said. In adding to what my colleagues have said on this matter, let it be clearly understood that South Africa is today facing the fact of history that the ANC has breached its solemn undertaking to resume international mediation on "all outstanding constitutional issues as soon as possible after the elections", as set out in the language of the agreement reached on 19 April. It is universally acknowledged that this agreement, which enabled the participation of the IFP in the elections, was perhaps one of the most solemn promises ever formally executed in South African history. Yet, as far as the ANC is concerned, this agreement is now null and void.

The IFP wants to inform this Assembly that we do not accept this. We are very concerned about the future of negotiations, even the negotiations within this Assembly itself, when the ruling party breaches an agreement as solemn and as historical as the one I have just mentioned. The purpose of this mediation was to resolve outstanding constitutional issues which led to a deadlock in the negotiations at the World Trade Centre. In this respect, it is perfectly clear that the mediation had to precede the work of the Constitutional Assembly so that our constitution-making here could proceed from the resolution of some of the fundamental issues which came up prior to the sitting of this body. In fact the portion of the terms of reference for

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mediation, which make specific reference to the need to determine the degree of autonomy of the provinces and the entire issue of whether South Africa should be organised in a federation of states or as a unitary state with regional characteristics, as is the case with the current Constitution, was never even questioned by the ANC, let alone the NP.

It is a fact that this Constitutional Assembly has now commenced its work. We have also accepted that its work must go ahead. However, it is equally imperative that we take stock of the process and reach an agreement on how international mediation is to fit into the process of drafting the constitution. [Interjections.]

Members from the other side of the House might laugh, but let me say that those who believe that we are going to accept this breach of promise are wrong. Those who believe that mediation is irrelevant because elections are over, are also wrong. There is a place for this Assembly to do its work, and there is also a place for mediation to make its contribution to the process. There is no going backwards for us. However, in moving forward, as we all hope that we are doing, the IFP wants it to be clearly understood that mediation remains on the agenda. Since mediation has not preceded the work of this Assembly, a place must now be found for mediation to be harmonised with the work of this Assembly.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! We now have the hon member Frene Ginwala, who will deliver her maiden speech. [Applause.]

Dr F N GINWALA: Mr Chairperson, comrades and colleagues, I crave your indulgence as this is the first occasion that I have had the opportunity to speak as a member of Parliament. [Applause.]

As some of you may have noticed, I am more accustomed to playing a different role in this House. In this short debate, it will obviously not be possible to explore the content and the scope of the issues that fall within the theme committees. That has to be an ongoing process, which we will no doubt have to revisit.

Today, I would simply like to emphasise and draw out one or two aspects of some of the principles related to the structures mentioned under Theme Committee 2. One of the principles referred to here, is that of the separation of powers. It is a principle we are required to follow in the new Constitution. However, when we do so, we need to also look at the present system. We find that this system has a very strange mix.

Members of the executive sit in Parliament. Does that make them more accountable?

We are developing a system of standing committees that should monitor executive departments. How then does the presence of the Ministers in the legislature make them accountable, though it might solve the problem of the two capitals?

Parliament elects the President. But would absolute separation not require that we consider whether the President should be directly elected, as in France and in the United States of America?

The Executive President is able to promulgate regulations which have the force of law, and he appoints members of the judiciary. These are some of the examples of a range of other matters that will need to be re-examined, if the principle of separation of powers is to be strictly applied.

Another aspect that is related to this theme committee is that of traditional leaders. Here we need to look at how this is to be dealt with in relation to the fundamental principles that underlie all aspects of our Constitution. It is important that we engage in consultation with the traditional rulers, but also with those whom they will be ruling.

Serious consideration has to be given to how we can reconcile hereditary rulers with concepts of democracy, and with the nonsexism and equality that is a fundamental principle of our Constitution. Rural women, in particular, will need to be consulted and their views taken into account, before any decisions are taken in this regard, as they are the ones who are most directly affected.

Electoral systems will be considered by this theme committee. It is crucial for us to find a

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way of marrying proportional representation with a constituency system that will bring the government closer to the people.

At the core of the consideration of this theme committee will be consideration of both the legislature and the executive in the new constitution, addressing their functions, size and relationships. For example, should we have a bicameral system, and if so, what are the implications? Hon senators will forgive me for raising what might be a delicate point.

Obviously we need an elected House, a popularly elected House, but if there is to be a second House, should it be a House of the provinces? What should be the relationship between the two Houses? Depending on the functions that we have to perform, do we really need a parliament composed of 490 members? How would that fit in with the idea that we need to reduce Government expenditure?

Currently, consideration is being given to how the legislature should function and ways of drawing civil society into the legislative process. We should be alert to developments in that area, as that may help to shape our decisions. This, of course, will cover Constitutional Principle XIV on the participation of minority parties in the legislative process. We need to consider whether structural changes are necessary, as well as changes to the Rules.

The executive also needs to be re-examined. A Government of National Unity is entrenched for five years, but what thereafter? It has been mooted that the concept of a constitutionally enforced coalition be entrenched in the new constitution. We often find that these are the same voices that express concern when MPs speak freely, debate policies and challenge decisions, instead of simply acquiescing in decisions that are made elsewhere. This is not a coincidence, because what we are dealing with here, is not simply an arrangement of the executive, but a totally different conception of democratic government.

I want to warn against enforced coalitions and would urge that we look at the implications of such a process for democracy in our country. It is not through ignorance that other democratic societies have not entrenched coalitions in their constitutions, even though they may need to or choose to form coalition governments quite frequently. Coalitions are sometimes necessary and healthy, but are always voluntary, not constitutionally entrenched. [Interjections.]

They come into being in special circumstances, such as times of war, and even then they are voluntary. More frequently they are formed when the electorate has not made an unambiguous choice and parties need allies in order to govern and implement their policies. Agreement is reached usually between the largest party and others on a programme that can be jointly implemented.

Let us, however, look at a situation where the electorate has unmistakably shown its preference for a particular policy and programme. How does the party that won that support now suddenly turn around and say to the electorate, "Thank you for electing us, but we are sorry, we are not now going to implement what we said we would do in our manifesto. Instead, we will implement only those parts of the programme with which the parties who did not get your support, agree." [Interjections.] Would this not simply be a betrayal of the electorate, a denial of representative government and a mockery of elections?

Secondly, if there is always a coalition after elections, who is going to perform the role of an opposition? Governments in this country have accumulated vast experience on how to prevent opposition and control public debate and thinking. This autocratic past makes it difficult for us to appreciate that an opposition has a vital role to play in democracies, challenging and questioning policies and administrative actions, putting forward alternatives in the debate and providing an understanding of other options and solutions. This needs to occur as much within the political parties and caucuses as in the legislature itself. Both are crucial elements for consolidating democracy and democratic practice.

Our political institutions, including political parties, have been influenced and shaped by colonialism and apartheid, where race, ethnicity and

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opposition to oppression were dominant interests. Cultural, religious and linguistic interests are healthy and legitimate, but they affect only one aspect of a citizen's life and all else cannot be predicated on them.

They cannot become the fundamental building blocks of democracy. Embedding such interests, and formations based on them, would fossilise our democracy, strangle it at birth, rather than let it grow and flourish. Democracy functions best when people group together around common interests to further them. Inherent in such a system is a fluidity, as interests are fulfilled and developed, and as these change, so do our political parties and actors.

Our democratic system must be one that facilitates these processes, not hampers them. A constitutionally enforced coalition will mitigate against democracy. Democracy is not simply about a right to vote, though that must be the starting point. It cannot end there, with South Africans going to cast their vote once every five years.

The vote must have meaning. Citizens must have confidence that their vote will make a difference. Unless we give them a choice that makes a difference, democracy will have form in the new Constitution, but it will have no content. [Applause.]

Dr T G ALANT: Mr Chairperson, it is indeed a privilege to congratulate Dr Ginwala, Speaker of the National Assembly, on her maiden speech. [Applause.]

*I would like to make a few observations on the work of Theme Committee 6 which, as hon members will see, deals with specialised government structures. I was involved in the negotiations on some of the aspects that will now be dealt with by Theme Committee 6, namely general financial matters. I want to say at the outset that we agreed remarkably easily on the principles which were contained in these clauses and that everybody was very positive and keen to improve the text in order to give the country the best possible constitution.

I look forward to being involved in the work of this committee in the same good spirit as before. I look forward to the same positive disposition from all hon members who will be involved in order to prepare an even better text as the constitution for the nation.

The principles contained in these clauses are principles which make the country acceptable in good company worldwide. We in the NP have little we would like to add or omit from these clauses, because what we would have liked to have had in them with regard to good principles, is already there. Therefore we expect that these sections will simply be refined as a result of possible deficiencies that may become apparent during the implementation of the Constitution. We will want to look at how the implementation of the various measures progresses, to see whether there are any possible shortcomings.

I would like to refer, for example, to the Financial and Fiscal Commission of which only two of the commissioners have to be appointed on a full-time basis. A further consideration which weighed heavily for us was that we did not want to create a bureaucracy and that capable people should be appointed. The Government has now seen fit to appoint a person who is highly regarded in the community as chairperson, but who, strictly speaking, does not fulfil the requirements. It is provided in the Constitution that the person, by reason of his or her training, shall have expertise in economics, public finance, public administration, taxation, management or accountancy. It is clear that a person has been chosen who is qualified on the basis of negotiating skills, and so we shall possibly have to reformulate the clause to make it state that the chairperson shall be a person who has proven negotiating skills so that the other seventeen will then be experts in the other areas. [Interjections.]

I would like to refer also to the section that deals with the Commission on the Remuneration of Representatives which must be established by an Act of Parliament. Unfortunately this has not been done yet. The principle that is being introduced here is that no politician should be involved in the determination of his or her own income—not at the first, second or so-called third tier of government.

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Because the local government elections are just around the corner—about a year from now—it is immensely important that this Bill on the appointment of this commission should come before Parliament, because clearly, this commission is going to have a lot of work to do before the elections take place. Naturally it is desirable that people who may be elected to local government level should know what their salaries are going to be before they are elected. My time has expired.

Mr A G EBRAHIM: Mr Chairperson and members of the Constitutional Assembly, we all recognise that we are still in a phase of transition. At present we are governed by an interim Constitution, the principal task of which was to establish this representative Constitutional Assembly.

It will be recalled that the PAC of Azania called for an unfettered Constitutional Assembly in pursuance of democratic principles. It is, however, regrettable that this democratically elected Constitutional Assembly must work within constraints imposed upon it by the Negotiating Forum.

The basic task of this Constitutional Assembly is to write the new democratic constitution. A constitution is not a document simply written for politicians or for lawyers. A constitution is written to give effect to the will of the people and to play a decisive role in ensuring and bettering their lives qualitatively and quantitatively. The best guarantee for longevity of any constitution is its acceptance by the overwhelming majority of the people.

The 1909 constitution of the Union of South Africa was drawn up and ratified by the British parliament, which is often projected as the citadel of democracy. Yet that constitution excluded the vast majority of the people in this country from all executive and legislative organs. However, one may argue that that undemocratic constitution did include some entrenched clauses related to voting. These so-called entrenched clauses, ostensibly aimed at protecting those granted limited franchise, were subsequently removed with impunity, because the principle that governed that constitution was that Parliament was supreme and not the constitution.

The new constitution must establish the new order which we fought for. Our oppressed, exploited and dispossessed people fought for genuine change in this country and not for co-option into the system. What, then, must the new order be? It must include: Common South African citizenship; a sovereign and democratic constitutional state; genuine equality, especially in respect of race and gender; and, needless to emphasise, citizens should not only be granted their inalienable rights, but should be properly protected against any infringement of those rights as well.

The Multiparty Negotiating Process had the task of drawing up an interim constitution which would effectively end minority rule and usher in democracy and majority rule. This necessary step had to be achieved speedily. Consequently we held national and provincial elections without voter registration. This effectively meant that representation could only be on a proportional basis, thereby not making those elected accountable to constituencies. Moreover, apartheid, especially the Group Areas Act, made the demarcation of nonracial constituencies in our country extremely difficult.

Under the new Constitution it will have to be decided whether we maintain the present unsatisfactory electoral system or develop a constituency option which promotes accountability. Our future is highly dependent on the inclusiveness of the process. Inclusivity must be both in form and essence. The tendency we witnessed during the negotiation process was that the forum was inclusive in form, but bilateral in essence. We must guard against this divisive tendency.

Lastly, I wish to refer to the issue of the time frame. As things stand now, we are obliged to follow the stipulated time frames. The maximum life span of the interim Constitution is five years. On the other hand, the Constitutional Assembly is required to produce the new democratic and final constitution within a period of two years. However, our guiding principle must be the drawing up of a constitution that is democratic, protective of the people and enjoys the un-

reserved support of the overwhelming majority of the people of this country. In pursuing our commitment to entrenching democracy in the country so far, the PAC supports the adoption of the report of the Constitutional Assembly.

Ms M SMUTS: Mr Chairperson, I just want to remind hon members that all the important views and interventions will come from the DP. [Interjections.] I say so because a two-thirds vote will be required to pass the constitution and a hypothetical ANC-PAC voting alliance would fall short of two-thirds by exactly the 2% represented by the 10 DP members of the National Assembly and the Senate, as we have pointed out before. Therefore, once one fans out the ANC and PAC Senators sitting here in the middle along the lines of the Assembly benches, the two-thirds line lies there, where Mr Andrew sits. So near and yet so far from the point of view of the members sitting on the right. [Interjections.]

However, voting day is far away, and I express the hope that party lines will blur as members of the Constitutional Assembly apply their individual minds and consciences in the service of our country, as many have done today. If we do not, and simply take up party positions in debate—this is very important—then discussion here is just show business and the negotiations might as well be conducted only in the theme committees.

It is clear from the report that the Constitutional Committee has taken care to acknowledge the primacy of this body, and I hope that the members will exercise this primacy. I also support the recommendations on public participation, but I do have certain concerns. It was our concern at the outset of the Kempton Park stage of negotiations that citizens would not be sufficiently well involved and, unfortunately, I think the fear was justified. Those members of the media who sweated it out under the lights with us week in and week out, in my view, did a good job of tracking the points of dispute and their resolution.

The problem is that a story, especially a daily one, is simply not the same thing as a picture of the constitutional process that tracks the evolution of themes. I therefore welcome the proposals for public participation, including public forums. The recommendation is that appropriate mechanisms be employed for collecting views. At this point, a caveat needs to be recorded.

It is not possible to extrapolate constitutional principles from nonquantifiable public processes. The Women's National Coalition has completed a similar process as part of the drafting of the Women's Charter for Effective Equality, which was recently formally handed to the Chairperson of the Constitutional Assembly.

In the collecting of views it was no surprise that the people's primary need in the case of that research, was for the essentials of life: housing shelter and water. But you cannot on that basis argue that they have asked for justiciable second or third generation rights. It would please us if they had, since ours is perhaps the most radical, but also practicable, proposal on this matter, that citizens ought to be able to take the Government to court to show justifiable, but not justiciable reason, why it has not delivered the essentials. However, one cannot draw such a constitutional conclusion.

Another example: there is no way in which the desire for equality in the workplace on the part of many women can be construed as support for horizontality, as opposed to the verticality which requires legislation for application in the private sector. A good case can be made for either horizontality or verticality. It is therefore these cases, the constitutional matters, that will have to be taken to the public, at which point the question arises whether politicians should take these cases, as provided for, or whether we ought to wheel on the experts. Here we could usefully look at the interactive process conducted by the Law Commission under Mr Justice Pierre Olivier, amongst other precedents.

The question also arises how one measures or quantifies reaction. The collecting of needs and demands has been part and parcel of our politics for a decade or so, but that is partially a political consciousness-raising and campaigning device. Our charter, for example, is at least partially the product of such a campaign, and that is part of

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the reason why it has the status of a political document.

Only a referendum on clearly formulated, crisp constitutional questions could give one a quantifiable public position on constitutional issues. Such a referendum might, in fact, not be a bad idea. However, there is a limit to the number of questions that one could take to the electorate. At the end of the day, the accountability lies here, and for that reason the proposal on the involvement of the media, which is another fruitful idea, also has its limits.

Readership does not equal political support, much as the Federal Party would have liked it to. Members will recall the claims by the author Frances Kendall about the numbers of her books bought and read at the time when she founded the political party. The *Sunday Times* or *Rapport* cannot claim a larger constitutional say than the smaller papers because of their circulation figures, which, after all, have as much or perhaps more to do with other sections of the newspaper, such as the back pages, than with the editorial pages. The views of the media would, therefore, be the views of individuals, except where the media as an institution holds a unified view on a matter like the freedom of information. That underscores my point that it is the individuals here who will have to take the decisions for ratification by the court. [Time expired.]

Mr R P MEYER: Mr Chairperson, I briefly want to address three matters. The one, flowing from the report on the framework and procedures to be followed, deals with the question of the flexibility intended in item 2.3.2 of the report before us. I would like to add my support to what is being envisaged in the report of the Management Committee. I would like to stress the point that I believe that this Constitutional Assembly should conduct its own work in terms of time frames and so forth, so that we can evaluate on an ongoing basis what is being required of us in terms of time frames and inputs, and can also ensure that this body is managing itself properly.

In the same context, I would also like to refer to items 4.3.1 and 4.3.2 of the report, which deal with the question of the management of the theme committees. In terms of item 4.3.2 a theme committee should be managed by a core group, and in my opinion that would be the correct procedure in that regard.

I would, however, also like to refer to the question of the chairpersonship of those theme committees. Maybe we should consider again whether we should not rather allow the core committee or core group of each theme committee to conduct its business, to manage it and also to decide on its chairpersonship. For that reason, I would like to propose that this particular aspect of items 4.3.1 and 4.3.2 be referred back to the Constitutional Committee for further consideration on how it should best be managed.

*The second point which I should like to raise is concerned with participation by the provinces in the constitution-making process.

In item 3.1.4 of the report before us reference is made to the fact that the provinces should be made available in order to help with the introduction of the constitution-making process. I have no fault to find with that. With all due respect, though, I want to say that the task of the provinces must not end there. The provinces themselves will have to play a direct part in the activities and the constitution-making process of this Constitutional Assembly.

I therefore agree with hon members who made statements in this regard. I think Prof Du Toit was one of those who said that we must, for example, invite the Premiers to come and participate. However, we can go further and specifically determine the functioning of the commissions which are to be appointed in such a way that the provincial legislatures may take part in the activities of those commissions. If we do not succeed in thoroughly involving the provinces in these activities, we are going to lose them as important participatory components in a future constitutional dispensation.

†The third and last point that I would like to make refers to the question that was raised by more than one speaker in connection with international mediation. I have listened carefully to

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the points which were raised by hon speakers and I would like to confirm that I have noted correspondence between Mr Buthelezi and Mr De Klerk in terms of which the NP indicated that it was quite willing and would favour discussions on the subject of international mediation. Mr De Klerk also indicated a team from the side of the NP to conduct discussions with the IFP in this regard.

I would not like to elaborate on this issue now, because I think this subject should be taken further at a leadership level. For that reason the issue can be resolved through direct interaction between the leaders, Mr Mandela, Mr Buthelezi and Mr De Klerk. I believe this is how the problem should be addressed.

Prof E S MCHUNU: Mr Chairperson and hon members of the Constitutional Assembly, the privilege of participating in the process of creating a *pactum unionis*, embodying the original terms of governance of a settled society, ordinarily comes to a person only once. There appears to be a *concursus animorum* amongst those gathered in this Chamber who intend to create a permanent democratic state.

The historic forces of our history impel us irresistibly to that conclusion, for if we do not create a democratically based state, the consequences that Mr B J Vorster conceded were "too ghastly to contemplate", might yet come to pass and our country may yet be reduced to a desolate wasteland. Traditionally the functions of government have been conceived as being to create, maintain and protect internal peace and stability within the body politic as well as to forge external relations with other countries for the same purpose.

Internally the means of creating and maintaining peace has been the application of the doctrine of *trias politica*, which sought to define the structures of government and to stratify the powers thereof accordingly to avoid jurisdictional competition as well as to peg the parameters of authority of each organ of government in favour of the subject. However, the physical and cultural conditions of our world have changed so much in the past hundred years or so that traditional structures, which were developed to effectuate *trias politica* have proved structurally inadequate, because the needs that have arisen cannot be embodied in such structures. Therefore, we have seen the upsurge of structures which are additional to the traditional structures.

It is suggested that our Constitution must be alive to these needs. In a divided society such as ours, an independent electoral authority must be embodied in the constitution. Its purpose must be to ensure, in a structured and peaceful way, that no permanent majorities or minorities exist as a result of tinkering with the democratic process by influencing the expression of will by our people.

This electoral authority must develop and continually refine the processes and procedures of choosing a government so that the principle of winner today, loser tomorrow, remains firmly implanted in the consciousness of the government of the day, in its political opponents and above all, in the mass of our people.

The independent authority must at all times ensure that our people are adequately and continuously informed that the government is theirs and that it is their right and responsibility to remove governments from power if they are not satisfied with their performance.

The creation of such an independent authority must be entrenched in the constitution and must not be subject to the whims of transient majorities.

It does not require repeating that the State requires great amounts of money in order to finance the activities which it engages in on behalf of the citizen.

The manner in which funds are raised, spent and managed, is a matter of crucial importance to the citizen who pays the taxes. These processes must be free of political influence.

The economic life of our country must not be left to the mercy of the majority for the time being. The Auditor-General, the Reserve Bank and the Finance and Fiscal Commission must, therefore, be provided for in the constitution, but provision must be made for these institutions

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to reflect the totality of our society and not the sectional interests of a mandarin financial cadre.

The interplay of political forces in any society must of necessity result in changes in interests and allegiance which sometimes causes the overnight disappearance of majorities, and a consequent loss of power. This is the accepted result of a democratic verdict. However, there are certain sectors and interest groups in our society which have historically been underprotected by and underrepresented in the government.

The general perception is that even in a democratic society, the historical imbalances which have caused such underprotection and underrepresentation, will continue and may, in fact, be exacerbated in the future. To guard against such an eventuality, independent legal structures must be entrenched in the constitution to ensure that never again in our society will the weak suffer because the government does not care enough to protect them.

It is in this context that it is suggested that the Public Protector, the Human Rights Commission, and especially, the Gender Commission must be provided for and established. Even more importantly, they must be given teeth in order to bite, otherwise they will be useless.

Land is the subject of great debate in our country. No one can justifiably regard himself as a true citizen of a country unless and until he or she has an equal right together with others to own a piece of land.

The interplay of interests when it comes to this explosive topic makes a rational resolution of all claims to land an impossibility. This raises the spectre of political trade-offs, the consequent bedevilment of the situation and the consequent slide into lawlessness.

It is clear that our courts will not be able to resolve the situation because the modalities of a professional court do not permit the resolution of controversies on grounds that include political considerations.

Since the continued peace of our country depends largely upon the resolution of the question of entitlement to land, it follows that the entrenchment of a land commission must be an important aspect of the constitution. Its powers and functions must, of necessity, be intensely debated so that the greatest possible measure of agreement is achieved.

In a certain way, I wish to react to a few comments which have been made in this Constitutional Assembly today.

We are the supreme lawmaking body in terms of the Constitution, Act 200 of 1993. We cannot allow our functions and our authority to be hijacked. It is on that basis that I would disagree with Mr Wessels on the question of theme committees making decisions. It is my view that the theme committees can only make representations and recommendations to the Constitutional Assembly, and it is the Constitutional Assembly that must make the final decision. The responsibility is ours.

As far as the plural nature of our society and the political imperatives caused by that are concerned, it is true that our society is diverse. There are great diversities in our society, but there are great similarities too. It is our view that one must be careful not to Balkanise our country by overemphasising local differences. One should inculcate unity by emphasising similarities that exist in our society. The debate on provincialism or federalism should not be permitted to bedevil and threaten the process of constitution-making.

It is true that all of us would like to feel that we are able to determine our fate. However, one should be careful not to use the imperative of self-determination as an instrument of secession. The territorial integrity of our country must, I submit, be maintained. We plead that all the parties represented in this House should realise and recognise the dangers of secession and partition.

As for the language issue, we are of the view that the question of language should not even be on the political agenda, because it has long been conceded. All 11 languages of our country are equal. There is no call for any language or any speaker of whatever language to feel threatened.

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As far as the question of consensus is concerned, it is correct that we are agreed that we should have consensus on the great questions of the day. [Time expired.]

Debate concluded.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! We have received notice of an amendment and Mr Van Breda will proceed to put it forward.

Mr A VAN BREDA: Mr Chairperson, before a resolution is put as indicated by the Deputy Chairperson in his introduction of the report, I was instructed through a unanimous decision of the Management Committee to move an amendment.

I therefore move as an amendment to the motion before the Assembly:

> That the following words be inserted after the word "adopted":
>
> ,subject to the following words being inserted in paragraph 4.3.1 of the report, after "Constitutional Assembly members,":
>
> or such smaller number as may be determined by the Constitutional Committee,

If accepted, paragraph 4.3.1 will read as follows:

> Theme committees will be made up of thirty Constitutional Assembly members, or such smaller number as may be determined by the Constitutional Committee, in accordance with the provisions of Rule 23 of the Standing Rules.

The effect of the amendment is that there will be greater flexibility in making up the theme committees, of which there will be six. Apart from other structures of the Constitutional Assembly, there are today approximately 40 select committees in the National Assembly and the Senate. Parliament has never in its history dealt with so many major committees. It will therefore become statistically impossible to convene all these theme committees with 30 members apiece on a regular basis if their meetings coincide with those of other committees.

Theme committees will have to meet more frequently in future. It is vital that there should be continuity in all the committees and that members should not be absent because they are required for other committee meetings.

*In addition, because of the admission of the press, pressure is being exerted on these venues which are just big enough to accommodate these committees. By the way, the north offers no alternative in this connection. There is hardly room for the Lion Cup there—in fact, the Currie Cup will have to come back to the Cape.

†Although there will be a possible reduction in numbers in the committees, all members of the Constitutional Assembly who wish to be involved in the constitutional process will be involved through the substructures of the Constitutional Assembly and through the Assembly itself.

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Amendment put and agreed to.

Draft resolution, as amended, adopted, *viz*: That the report of the Constitutional Committee tabled on 2 September 1994 be adopted, subject to the following words being inserted in paragraph 4.3.1 of the report, after "Constitutional Assembly members,":

> or such smaller number as may be determined by the Constitutional Committee,

The meeting adjourned at 16:56.

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

COMMITTEE REPORTS:

REPORT OF CONSTITUTIONAL COMMITTEE: CONSTITUTIONAL ASSEMBLY

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PART 1—STRUCTURES OF THE CONSTITUTIONAL ASSEMBLY

1 CONSTITUTIONAL COMMITTEE

1.1 Subsequent to the last sitting of the Constitutional Assembly, the Constitutional Committee has met on three occasions: 12 September, 17 October and 24 October, 1994.

1.2 The Constitutional Committee, in implementing the Resolution[1] of the last sitting of the Constitutional Assembly, supervised the establishment of the six Theme Committees. Each Theme Committee was guided by a briefing document and assisted with the development of a work plan.

1.3 The Constitutional Committee, in consultation with the presiding officers of the National Assembly and Senate, developed a work programme.

2 MANAGEMENT COMMITTEE

2.1 Subsequent to the last sitting of the Constitutional Assembly, the Management Committee has met on Mondays and Thursdays during session.

2.2 The Management Committee has at its various sittings met to consider and review matters relating to process.

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[1] CA Resolution of 5 September 1994.

3 THEME COMMITTEES

3.1 Introduction

3.1.1 Since the last meeting of the Constitutional Assembly, all six Theme Committees were successfully convened on 19 September 1994 and met for the second time on 24 October 1994.

3.1.2 The Theme Committees are made up of 30 members each and have from amongst their members appointed Core Groups, consisting of up to eight members of the Committee in question, to manage and co-ordinate their work programmes.

3.1.3 Three Chairpersons have in turn been appointed from each Core Group to chair meetings of Theme Committees on a rotational basis. It has been agreed that these positions shall not be remunerable.

3.2 Briefing Document

3.2.1 The Constitutional Committee has adopted a *Briefing Document for Theme Committees*. This document is intended to guide Theme Committees in their work by outlining the scope of their responsibility and their relationship with other structures of the Constitutional Assembly.

3.2.2 In terms of the document, the Constitutional Assembly confirms its right to debate in detail, oversee and direct the drafting of, and adopt the new constitutional text.

3.3 Role of Theme Committees

3.3.1 Further to the Constitutional Assembly Resolution[2] of 5 September 1994 which provides for the role, functions and structure of reports of Theme Committees, it has been agreed that:

(a) Drafting should be directed by the Constitutional Assembly.

(b) The Constitutional Committee should be responsible for the co-ordination of all Constitutional Assembly work, including drafting.

(c) Theme Committees are not negotiating fora. Their primary task should be to receive submissions and process them into reports for consideration by the Constitutional Committee.

(d) By resolution of the Constitutional Assembly, these reports should therefore include details of non-contentious issues, contentious issues and suggested approaches.

3.3.2 Flexibility should be an important feature of the work programmes of Theme Committees. In view of possible overlaps, Theme Committees are not barred from dealing with an issue that another Theme Committee may be considering.

3.3.3 Theme Committee work programmes should be guided by the integrated nature of the constitution-making process as well as the time constraints.

3.4 Relationship with other structures of the Constitutional Assembly

3.4.1 Constitutional Committee

(a) Theme Committees will compile reports for consideration and approval by the Constitutional Committee.

(b) The Constitutional Committee may, after deliberating on a Theme Committee report, refer the report to the Constitutional Assembly.

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[2] See Constitutional Assembly Resolutions, pages 7 and 9.

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3.4.2 Management Committee

The Management Committee is responsible for the following functions:

(a) dealing with process matters;

(b) implementing tasks of the Constitutional Committee;

(c) overseeing administration; and

(d) monitoring the media and public participation programme.

3.4.3 Administration

The Administration will be responsible for the following:

(a) Provision of secretariat services to the Theme Committees, including the facilitation of technical assistance.

(b) Provision of general daily co-ordination.

(c) Provision of research, legal services and information.

(d) Facilitation and management of media and community liaison programmes.

3.4.4 Technical Committees

(a) Theme Committees shall nominate experts for appointment by the Constitutional Committee.

(b) The functions of Technical Committees as set out in Rule 44 include the supervision of the drafting process; however, the Constitutional Committee is reviewing this Rule.

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3.5 Work Programme

3.5.1 The Constitutional Committee has adopted a work programme for the Constitutional Assembly (see Part 3) in terms of which Theme Committees are expected to complete the major part of their work by 30 June 1995.

3.5.2 The date of 30 June 1995 represents a target date for submission of final reports from Theme Committees to the Constitutional Committee and should not detract from the ongoing and creative interaction between Theme Committees and the Constitutional Committee. In the period from January to 30 June 1995, Theme Committees will be submitting reports to the Constitutional Committee on an ongoing basis for its consideration and evaluation. The Constitutional Committee, in turn, will be reporting to the Assembly on a regular basis and issuing instructions for drafting of sections of the new constitutional text after discussion and decision by the Assembly.

3.5.3 The target date of 30 June 1995 will be evaluated on an ongoing basis with reference to the progress of Theme Committees.

3.5.4 This process of evaluation will also assist in determining the role of Theme Committees after 30 June 1995.

3.6 Way Forward

3.6.1 Theme Committees are currently preparing work plans for submission to the Administration by 15 November 1994. These will be finalised by the Management Committee before the end of 1994 to allow Theme Committees to commence discussion on substantive issues from January 1995.

3.6.2 These work plans will require constant evaluation. The nature of the discussion on substantive issues will in itself necessitate adaptation of the work plans from time to time.

3.6.3 The need for flexibility will have to be carefully balanced against the severe time constraints imposed by the Constitution for the completion of the process as a whole. Chairpersons and Core Groups of Theme Committees have an important role to play in ensuring that a proper balance is struck between these two considerations and that the work of Theme Committees is effectively managed.

4 INDEPENDENT PANEL OF EXPERTS

4.1 Introduction

4.1.1 The initial closing date for the submission of nominations for the Independent Panel of Constitutional Experts (hereinafter called "the Panel"), expired on 31 August 1994. The extension of that closing date was held in abeyance, pending the appointment of judges to the Constitutional Court.

4.1.2 The Constitutional Committee meeting of 24 October 1994 agreed to the appointment of a subcommittee to develop a short list of candidates for appointment to the panel.

4.1.3 The subcommittee shall be made up of ten members of the Constitutional Assembly, nominated by political parties and represented as follows: three ANC members, two NP members and one member from each of the other parties represented in the Constitutional Assembly.

4.1.4 The Constitutional Committee also agreed on the terms of reference of the subcommittee.

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4.2 Terms of Reference of Subcommittee

Report of the subcommittee

The subcommittee shall be directed to:

(a) draw up a short list of nominees,

(b) make recommendations to the Constitutional Committee, relating to a process to be followed, with regard to the need for transparency and ensuring broad acceptability to political parties and the public of the short-listed nominees; and

(c) submit its report, for consideration by the Constitutional Committee, by 5 November 1994.

4.3 Criteria for the selection of the Panel

(a) The requirements contained in Section 72(2) of the Constitution must be included in the terms of reference. The section provides that the Panel shall be made up of five persons complying with the following requirements:

(i) South African citizens;

(ii) Recognised constitutional experts;

(iii) Not members of Parliament or any other legislature; and

(iv) Not holding office in any political party.

(b) The subcommittee should also consider the representativeness of the Panel.

4.4 Appointment

(a) The subcommittee should also consider the terms of reference of the Panel, in particular precedence of Constitutional Assembly work over any other responsibilities of members of the Panel.

(b) In terms of Section 72(3) of the Constitution, a majority of at least two-thirds of the members of the Constitutional Assembly shall be required for the appointment of the panel.

(c) In the event of the two-thirds majority not being achieved, each party holding at least 40 seats in the Constitutional Assembly shall be entitled to nominate an expert who complies with the requirements in Section 72(2). A panel made up of such nominees shall then be appointed in terms of the Constitution.

5 TECHNICAL COMMITTEES

The Management Committee meeting of 24 October 1994 recommended that Theme Committees should nominate technical experts for appointment by the Constitutional Committee to Technical Committees. It further recommended the provision of guidelines to Theme Committees. These recommendations were approved by the Constitutional Committee. The following guidelines were approved.

5.1 Appointment

5.1.1 Technical Committees should consist of up to three members.

5.1.2 Each Theme Committee should consider the nature of the technical expertise it requires and accordingly nominate such experts by 15 November 1994.

5.1.3 Based on a proposal to be put to the Constitutional Committee by the Management Committee, the Constitutional Committee should, from among the nominated experts, appoint up to three Technical Committee members for each Theme Committee.

5.1.4 Each Theme Committee may recommend the full-time or part-time appointment of its nominees for specified periods. Such recommendation to be based on its work programme and the nature of each nominee's expertise.

5.2 Remuneration

The Management Committee should make recommendations for the remuneration of Technical Committee members.

PART 2—PROCESS

6 Submissions

6.1 On 11 September, 1994 the Management Committee issued a public invitation to all interested parties and individuals to make submissions with regard to the process of constitution-making. This invitation was also extended to the parties represented in the Constitutional Assembly.

6.2 In response to the advertisement, nine political parties, nine organisations and five individuals made submissions. Parties in the Constitutional Assembly filed submissions.[3]

6.3 On the basis of the submissions received and the discussions in all structures of the Constitutional Assembly, a report was developed detailing a work programme and a strategic overview of public participation. This programme was approved by the Constitutional Committee. *(See below.)*

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[3] A separate index of submissions will be compiled and tabled.

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PART 3—WORK PROGRAMME

7 INTRODUCTION

The development of the work programme has had to be preceded by a broad agreement of the various phases that the process of finally arriving at a new constitutional text will go through.

8 PHASES

The process of drafting may be defined in six phases. These are:—

Phase I— *(a)* evaluating and analysing the full extent of each Theme Committee's tasks;

(b) receiving and processing submissions;

(c) producing reports for consideration and evaluation by the Constitutional Committee.

Phase II— The Technical Committees shall, at the direction of the Constitutional Assembly and the Constitutional Committee, translate these political positions into draft legal texts for the constitution.

Phase III— The draft is then referred to the Constitutional Court to provide an opinion, in terms of Sec 71(4) of the Constitution, that it is in compliance with the Constitutional Principles listed in Schedule 4 of the Constitution.

Phase IV— The text approved by the Constitutional Committee should then be placed before the public for further discussion and debate.

Phase V— The constitutional text is now ready for debate in the plenary session of the Constitutional Assembly.

Phase VI— Once adopted, certification by the Constitutional Court should then be sought.

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9 PROJECTION OF TIME FRAMES

Phase	Task	Deadline
1	Theme Committee analysis and evaluation	15 Nov '94
	Theme Committee completion of reports. These reports considered and evaluated by the Constitutional Committee and Constitutional Assembly on an ongoing basis.	30 June '95
2	Completion of approval of reports by the Constitutional Committee and Assembly and text drafted.	14 July '95
3	Referral to the Constitutional Court.	Ongoing
4	Full text placed before public for scrutiny.	31 Oct '95
5	Full text debated and adopted by the Constitutional Assembly.	May '96
6	Certification is sought from the Constitutional Court.	

PART 4—PUBLIC PARTICIPATION

10 INTRODUCTION

10.1 The Constitutional Committee, on 24 October 1994, adopted a document entitled "Public Participation — A Strategic Overview" which set out the broad framework within which the media and community facilitation programmes will take place.

10.2 The process of public participation involves the development of media and community liaison strategies. Such strategies should be based on the resolutions of the Constitutional Assembly.

11 OBJECTIVES

11.1 The ultimate objective is to draft and adopt a credible and enduring constitution which will enjoy the support and allegiance of all South Africans.

11.2 The new constitution should represent the aspirations of all our people.

11.3 This process should serve to unite the country's people and produce a constitution which will become the cornerstone of the future South Africa. It should be people-driven and transparent.

11.4 The new constitution must be the product of an integration of ideas of all role players. In this regard, there should be maximum public participation.

11.5 There should be an effective strategy for media and community liaison.

11.6 The media and public participation strategies should aim at facilitating the required "dialogue" and channels of communication between the broader public and their elected representatives.

11.7 The programmes of the Constitutional Assembly should be "non-party political". Strict monitoring should ensure that the programmes promote the Constitutional Assembly and the interests of the country as a whole.

12 PROCESS

12.1 The media and public participation strategies must be placed within the context of the overall process of drafting the new constitution.

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12.2 Whilst these processes may at one level appear distinct and separate, in practice they are interlinked and will overlap with one another.

12.3 This is especially true of community liaison and media involvement. On one level it makes sense to think of these as two distinct processes as this will focus our attention on what is required to be effective in these two fields. At another level, however, it must be kept in mind that both public participation and media involvement will be a constant thread running throughout the process as a whole.

13 CONTEXT

13.1 The process of constitution-making takes place in the context of the first democratically elected government in the country.

13.2 It is therefore understandable that the attention of the public is focused on their immediate needs. The programmes of the Government and the Reconstruction and Development Programme in particular, are uppermost in the minds of most South Africans.

13.3 The approach of the Management Committee should be to avoid detracting from the important issues of government that the public and media are presently seized with. However, we should seek to ensure that the programmes of government and those of the Constitutional Assembly complement, rather than contradict, one another.

13.4 The attention of the public is also caught up with the coming local government elections in 1995. The exact date of these elections will obviously impact on the programme of the Constitutional Assembly.

13.5 The implications of the time-frames stipulated in the Constitution for the finalisation of the new constitutional text by May 1996 are another factor we need to take into account in our strategic planning.

13.6 One of the implications of all the above is that the process has to be carefully and effectively managed.

13.7 Historical and geographical factors also make it necessary that effective and creative mechanisms be sought to reach rural communities in particular.

14 MEDIA

14.1 Objectives

The major objectives of a media strategy for the Constitutional Assembly should be to:

- Inform;
- Educate;
- Stimulate public interest; and
- Create a forum for public participation.

14.2 Key Message and Process of Message Determination

14.2.1 The process of message determination is central to any media strategy.

14.2.2 The most important message of our media campaign would be to let people know that an important process is unfolding which affects their lives and those of future generations; that every South African has a unique opportunity to take part in the drafting of a new constitution.

14.3 Mechanisms

There are two important considerations which should guide our approach to finding the most suitable mechanisms to implement a media strategy:

(a) The need to make optimum use of existing channels of mass communication and hence the need for effective media liaison;

(b) The need to supplement this with the production of our own media in the form of a brochure, regular bulletins, posters, leaflets, cassettes and videos; and

(c) The need to reach disadvantaged rural communities in particular.

14.3.1 Media Liaison

(a) The transparency of the process is already a step in the right direction. The presence of media in all meetings of the Constitutional Assembly and its structures creates a dynamic link with the broader public.

(b) The coverage provided by the mass media must form the basis of our approach.

(c) For this to be effective, however, our media liaison approach must ensure that the debates and issues that emanate from Theme Committees and other structures of the Constitutional Assembly are contextualised.

(d) This will include:

- regular press conferences, interviews and briefings; and
- ongoing media liaison, ensuring prompt and comprehensive responses to media queries.

(e) As envisaged in the Constitutional Assembly resolution itself, however, ways will be sought to involve the media more directly in the process by means of:

- ensuring live television and radio coverage of debates in the Constitutional Assembly;

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- organising radio talk-shows and television debates with public participation;
- producing newspaper supplements and leader articles and discussing means whereby newspapers and magazines can function as forums for discussion on constitutional issues.

14.3.2 Media Production

The Administration would not be able to rely entirely upon existing channels of communication. These would need to be supplemented by production of our own media in the form of:

- an introductory brochure for the Constitutional Assembly;
- a regular bulletin;
- occasional posters, leaflets, cassettes and videos;
- an advertising campaign in both the print and electronic media and utilisation of outdoor advertising on billboards;
- use of other medium such as electronic bulletin boards, and thereby gaining immediate access to both the national and international community.

14.4 Resources

14.4.1 An amount of approximately R20 million should be catered for in the Constitutional Assembly budget for 1995/96.

14.4.2 We would also seek to utilise the resources of the South African Communication Services and other government agencies and departments, where applicable.

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14.4.3 Maximum use of existing channels of mass communication would represent a further cost-saving.

14.4.4 The services of a professional advertising and public relations agency would need to be contracted in view of time constraints and the human resources required to implement an effective media campaign.

14.5 Time Frames

14.5.1 It is not possible to give detailed time frames for the process as a whole. This will follow when the campaign plan itself is drawn up.

14.5.2 However, it is envisaged that the campaign would need to be launched early in 1995. This means tenders for advertising and public relations agencies would need to go out immediately and be finalised before the end of November 1994.

14.5.3 The first phase of the campaign would, in broad terms, seek to introduce the Constitutional Assembly and its work to the public and sensitise them to the importance of the process as a whole.

14.6 Evaluation

Evaluation would need to take place on a regular basis to ensure that the strategy is responsive and adaptable.

14.7 Management

(a) The process would be managed on a daily basis by the Directorate and the Media Section of the Administration in particular. Regular reports to the Management Committee would enable this Committee to play its own managing role in the process. Particular aspects of the programme, as outlined above — for example the

production of the brochure and advertising campaign — would be contracted out to professional agencies. The work of these agencies would be managed by the Directorate, in conjunction with the Management Committee.

(b) Some parties have indicated an interest in the Management Committee establishing a special subcommittee to monitor the media and community liaison programme on an ongoing basis to ensure that all parties are involved in the process of message determination, thus preventing any party bias in the programme as a whole.

15 COMMUNITY LIAISON

15.1 Objectives

The objective of the community liaison strategy is to facilitate interface or dialogue between the South African people and their elected representatives by consulting the population at various levels and at various stages of the process of constitution-making.

15.2 Mechanisms

15.2.1 Forums

(a) Theme Committees would be the primary forum for interfacing with the public and it would be important for Theme Committees to establish stable channels of communication between themselves and the affected interest groups, noting of course that there will be a great deal of overlap between Theme Committees in this regard.

(b) It would be useful to divide the public into two categories, namely "affected interests" and "general public". Hence the proposal for two kinds of forums as outlined below.

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15.2.2 Sector Forums

(a) Forums for all major sectors will be arranged, in conjunction with sector representatives. Members of the Constitutional Assembly will be requested to participate in the various forums. The forums will be extensively publicised and groundwork will be done in the sectors beforehand to ensure optimum results.

(b) Special programmes will be established to ensure the participation of disadvantaged sections of the population and rural communities in particular.

15.2.3 Area Forums

These forums will be addressed by members of the Constitutional Assembly and be open to the broader public in specific locations. They will be held throughout the country and will also be extensively publicised. These forums will be used for a short period of time when a first draft of the new constitutional text is available to "take to the people" before the final debate takes place in the Constitutional Assembly itself.

15.2.4 Political Party Programmes

Political parties both in and outside the Constitutional Assembly have a vital role to play in the process of ensuring maximum public participation in the process of constitution-making. Parties will be urged to ensure that their programmes are used to engage the public and their supporters on constitutional issues. The Administration will liaise with parties to obtain information on such programmes and to facilitate where required.

15.2.5 Government Programmes

(a) Mention has already been made of the important programmes of the Government of National Unity. Urgent consultation will have to take place at national

and provincial level to ensure, amongst other things, that government programmes and those of the Constitutional Assembly complement one another. This is particularly so in the case of the local government elections due to take place late in 1995.

(b) The President, Deputy Presidents and Provincial Premiers and Ministers will be urged to ensure that all their speeches contain a "lot" about the importance of the constitution-making process.

15.2.6 Public Information Facility

(a) A public information facility should be established to provide a readily accessible information service to the public. The languages used should ensure accessibility of information.

15.2.7 Provincial Information Offices

Information offices should be established in all provinces in conjunction with Parliament, the South African Communications Service and Provincial Governments to provide the public with street-level access to information about the constitution-making process and to assist in co-ordination of the public forums programme.

15.3 Resources

15.3.1 The resources of SACS will be used.

15.3.2 Some non-governmental organisations at national and international level have funds allocated for constitutional programmes and these could be pooled into the Constitutional Assembly programme.

15.3.3 The resources of the Department of Justice for facilitating programmes on the constitution should also be utilised.

15.3.4 Resources from the private sector will include video conferencing facilities, negotiated concessions from the media, and private sector funding for various aspects of the community liaison programme.

15.3.5 In addition to the above-mentioned resources an amount of approximately R24 million should be catered for in the Constitutional Assembly budget for 1995/96.

15.4 Evaluation

Mechanisms for regular evaluation should be built into all the programmes for community liaison to ensure responsiveness and adaptability.

15.5 Management

The process would be managed on a daily basis by the Directorate and by the Community Liaison section of the Administration in particular. Some aspects of the programme would be contracted out to professional agencies, for example the toll-free line. The work of these agencies would be managed by the Administration in conjunction with the Management Committee. Regular reports to the Management Committee by the Directorate on all aspects of work would enable this committee to fulfil its own managing role in the process.

PART 5 — RULES

16 It has been recognised that with the establishment of Theme Committees and the planning for the appointment of experts it would also be necessary to amend various Rules. The Constitutional Committee has made various recommendations which will be discussed in a meeting of

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the Rules Committee shortly. These amendments would be reported to the next meeting of the Constitutional Assembly.

PART 6 — ADMINISTRATION

17 PREMISES

The Administration is currently housed in premises at 4 Church Square. These offices are inadequate for the needs of the Administration and the Independent Panel of Constitutional Experts. New premises are being investigated in close proximity to the parliamentary complex and it is expected that the Administration will operate from these from January 1995.

18 STAFFING

Since the last meeting of the Constitutional Assembly, the Directorate has proceeded to appoint staff to the various departments of the Administration. To date a total of 30 staff members have been appointed. It is expected that this number will increase once the public participation programmes are under way in 1995. An organogram of the structure of the Administration is attached at the end of the report.

19 SALARY STRUCTURE

The Chairpersons are finalising an equitable salary structure for the Administration in conjunction with the Directorate on the instructions of the Management Committee. A report will be submitted to the next meeting of the Assembly.

20 FINANCES

20.1 Accounting Officer

In terms of discussions between the Speaker of the National Assembly and the Minister of Finance, it has been agreed that monies will be provided to the Constitutional Assembly by way of a separate programme for the Constitutional Assembly within the parliamentary budget allocation. It has been agreed that the Secretary to Parliament, as Accounting Officer for Parliament, will also be Accounting Officer for the Constitutional Assembly.

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20.2 1994/95 Budget

The Constitutional Committee has agreed to request the sum of R25 million for the Constitutional Assembly for the remainder of the current financial year. A detailed breakdown of this amount is being prepared for consideration by the Management Committee and Constitutional Committee.

20.3 1995/96 Budget

The Constitutional Committee has agree to request the sum of R69 million for the next financial year. The budget breakdown is currently being worked on by the Administration and the Finance Section of Parliament and will be rediscussed by both the Management Committee and the Constitutional Committee.

20.4 Expenditure to date

The expenditure to date is in the sum of R774 034 as at 25 October 1994.
This comprises expenditure on the following:

Salaries	R239 059
Administration	R139 294
Stores	R 13 748
Equipment	R369 244
Professional Costs	R369 244
Total	**R774 034**

PROCEEDINGS OF THE CONSTITUTIONAL ASSEMBLY

Members assembled in the Chamber of the National Assembly at 14:17.

The Deputy Chairperson requested members to observe a moment of silence for prayer or meditation.

ESTABLISHMENT OF TECHNICAL COMMITTEES

(Draft Resolution)

*The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: It is my privilege to occupy the chairman's seat this afternoon. I should like to extend a warm welcome to everyone and trust that everyone will enjoy the proceedings. We have all been called upon to perform an historical task. I believe everyone is doing so gladly.

†I want to draw members' attention to the first motion on the Agenda, as printed in the name of the Chairperson of the Constitutional Assembly. In putting that motion, I want to explain it briefly to members.

In terms of Standing Rule 43 a Technical Committee may be appointed by or under resolution of the Constitutional Assembly. The resolution printed on the Agenda enables the Constitutional Committee, as arranged, to appoint such Technical Committees.

I should like to draw attention to an error in the Afrikaans version of the Agenda. The words "Dat die Grondwetlike Vergadering gemagtig word" should read "Dat die Grondwetlike Komitee gemagtig word". I therefore move accordingly:

That the Constitutional Committee be authorised—

(a) to establish technical committees;

(b) to appoint their members; and

(c) subject to Standing Rule 44, to determine the functions and terms of reference of such committees.

Agreed to.

ADOPTION OF REPORT OF CONSTITUTIONAL COMMITTEE

(Draft Resolution)

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I now move the motion as printed on the Agenda:

That the report of the Constitutional Committee tabled on Friday, 28 October 1994, be adopted.

I have the privilege of calling the Chairperson of the Constitutional Assembly, Mr Cyril Ramaphosa, to present the report.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, I thank you for the opportunity to present this report. I shall try to do so very briefly.

Eight weeks have elapsed since the Constitutional Assembly last met. During this period quite a lot of work has been done in giving full meaning to the resolutions adopted by the Constitutional Assembly. Six months have effectively elapsed, leaving us 18 months of our allotted time to complete our task of writing a new constitutional text. However, the time that we have spent has been time well spent in terms of agreeing on the modalities of writing the constitution and also setting out clear procedures. We have done so with clarity of purpose, and I am happy to report that consensus has been reached on the various issues this Constitutional Assembly mandated a number of committees to deal with.

The committees of the Constitutional Assembly have been involved in strategic planning and have developed necessary procedures and various programmes and have identified phases that we will need to go through to achieve the end result we have been charged to achieve.

The modalities of an important undertaking such as writing a constitution should be seen as an important cornerstone of the entire process. As their histories show, similar undertakings in many other countries have been dogged by failure, long and costly delays, as well as a number of disputes.

I am happy to report that we have been rather fortunate in that we have not had disputes or

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long delays in terms of agreeing on the modalities of how we will proceed to write this constitution. I believe this bodes well for the entire process of constitution-making. By reaching full consensus on the modalities, we have already begun to lay solid building blocks for the drafting of an enduring constitution that will enjoy the support of all South Africans.

The Constitutional Committee, a structure of the Constitutional Assembly, acting on the mandate given to it by this Assembly, has met a few times and has been supervising the work of all other committees. This committee meets every Monday and its members have demonstrated great skill and ability with regard to the various matters that they have to deal with.

The Management Committee, made up of representatives from all parties represented in the Constitutional Assembly, has been processing a whole number of issues facing the CA on a weekly basis.

It is important that one should name the people who are on the Management Committee, as they are involved in the rather difficult task of managing the work of the CA. They are Mr Moosa, Mr Eglin, Mrs Mabandla, Mr Meyer, Mr Meshoe, Gen Viljoen, Mr Chabane, Mr Sizani, Mr Felgate and Mr Alex van Breda. The six Theme Committees have all been established as decided by the CA. The committees are made up of 30 members each, drawn from members of the CA. Their work will be managed and co-ordinated by core groups that were appointed from amongst their members. The committees themselves will be chaired by three chairpersons on a rotational basis.

The Constitutional Committee decided that these positions of chairing should not be remunerated. It also had to determine the role of the Theme Committees and in so doing, was guided by the decisions of the Constitutional Assembly which will debate all issues on the Constitution in detail, and which will oversee and direct the drafting and adoption of the new constitutional text. Within this context, the Constitutional Committee agreed that the role of the Theme Committees should be firstly to receive submissions from the public and from various organisations and process these into reports for consideration by the Constitutional Committee.

Secondly, when the reports are submitted for consideration they should identify noncontentious issues, contentious issues and suggested approaches. Thirdly, they should discuss all matters in their committees and should not seek to be negotiating forums. They should also be flexible in their work in view of possible overlaps. In other words, they should not be prevented from dealing with issues that another Theme Committee or, indeed, other Theme Committees may be dealing with.

We also had to look at the relationship between the various structures of the CA, and having come up with various committees and other administrative structures, it was important that the relationship between all these committees should be properly defined so as to avoid confusion. In line with the decisions of the CA, the various structures will relate as follows: The CA itself is the body which debates, oversees, directs and decides on all matters relating to constitution-making. The Constitutional Committee will be responsible for the co-ordination of the work of the CA, including that of processing reports from other committees for presentation to this body.

The Management Committee will deal with matters of process. It will also implement decisions of the Constitutional Committee, oversee the administration and monitor various other programmes. Theme Committees will debate issues and compile reports for presentation to the Constitutional Committee. The Administration will facilitate the work of all the structures of the CA by providing secretarial services and by backing up the work of all its structures.

The Independent Panel of Experts, another structure, will advise the CA and execute its tasks as set out in the Constitution. The tasks of the Technical Committees shall be as set out in Rule 44, including the drafting of the text as directed by the Constitutional Assembly.

This brings me to the question of the appointment of an Independent Panel of Experts, a matter we have to attend to. As we all know, the Constitution provides that the Constitutional Assembly shall appoint a panel of independent experts. In dealing with this matter, the Constitutional Committee has agreed that a subcommittee should be set up to process the

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nominations we have received. Thus far we have received 146 nominations.

The terms of reference that have been agreed to by the Constitutional Committee are that the subcommittee we have set up should draw up a short list of these nominees. Secondly, it should make recommendations to the Constitutional Committee relating to the process that we will need to follow with regard to transparency and how to ensure the broad acceptability of the nominees. It should also submit its report to the Constitutional Committee, and do so hopefully before Parliament adjourns, so that the Constitutional Assembly itself can decide on the list of nominees on the short list.

It has further been agreed to that we should apply the criteria set out in the Constitution which are that the experts should be South African citizens, that they must be recognised constitutional experts, that they should not be members of any legislature, neither this Parliament nor any of the provincial legislatures, and that they must not hold office in any political party. In addition, the Constitutional Committee has agreed that representativeness should be one of the considerations to take into account.

We have to appoint Technical Committees to enhance the work that we, as the Constitutional Assembly, are doing. The Constitutional Committee has agreed that Theme Committees should nominate technical experts who will assist them in their work. The appointment of these experts will be finalised by the Constitutional Committee. It has further been agreed that the Technical Committees should consist of up to three members, that each Theme Committee should consider the nature of the technical expertise that it will need, and that each Theme Committee should recommend whether the experts should function on a full-time or part-time basis. In the end, these experts should be appointed by the Constitutional Committee.

In developing this strategic plan, we had to come up with a work programme for the Constitutional Assembly and had to examine time frames within which the Constitutional Assembly is supposed to complete its mandate. A work programme has thus been determined which sets out a number of phases in the constitution-making process.

In the first phase the Theme Committees will be dedicated to the task of analysing and evaluating the various subthemes that they have to cover, and they should be able to complete their reports within the first phase of this broad, projected time frame. These reports should then be evaluated and considered by the Constitutional Committee. In other words, the Theme Committees will be expected to submit reports on an ongoing basis to the Constitutional Committee, and these reports should be forwarded to the Constitutional Assembly on an ongoing basis.

We hope and trust that these Theme Committees will be able to complete the work of submitting reports by 30 June 1995. The second phase is the completion of approval of reports by the Constitutional Committee and Assembly to have a text drafted. The target date for that is 14 July 1995.

Then there is a phase which will overlap all the other phases, namely the phase of referral to the Constitutional Court which will take place on an ongoing basis as the Assembly decides to refer certain aspects of the Constitution to the Constitutional Court. We are hoping that the full text will be placed before the public for scrutiny by 31 October 1995. As we can see, this gives us exactly a year before we have to submit a full text for public debate and scrutiny.

The fifth phase is the one in which the full text will be debated and adopted by the Constitutional Assembly. That should be in May 1996. Certification of the Constitution would then be sought from the Constitutional Court after we have debated and adopted the same.

In terms of the decision that was taken by the Constitutional Court at its previous meeting with regard to how best we can have the public participating in the whole process of constitution-making, the Constitutional Committee, the Management Committee and the other committees have had to look at the various strategies that can be developed to give this decision full meaning. The strategies that have been developed really arise from the submissions that were presented by the political parties represented here, as well as other organisations outside the Constitutional Assembly.

We have had to look at the objectives of this whole public participation process, and the key ones are that the Constitutional Assembly should draft and adopt a credible and enduring constitution which will enjoy the support of all

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South Africans; that the constitution should represent the aspirations of all our people; further, that the process of constitution-making should unite South Africans; and that the constitution should also be a product of the integration of various ideas of role-players. In doing this we have had to look at the strategy of engaging our people in the whole process of constitution-making which is combined with a strategy for media and community liaison.

We have had to look at the context within which this entire process of writing a new constitution is taking place, and we accept that we are writing a constitution during a period in which we are undergoing a transition. As a result we find that the attention of the South African public is not focused on constitution-making, but rather on other immediate issues such as the implementation of the RDP and a whole range of other matters.

We have had to look, however, at how best we can ensure that the programmes of the Constitutional Assembly as well as those of the Government, including various other matters that are being dealt with, complement rather than contradict one another. In doing so, we have evolved a strategy on media and community participation as well.

Regarding the media, our main objective is to ensure that we inform the South African public about this process that is unfolding; that we educate our people about the importance of constitution-making; and that we stimulate the public's interest and create forums for public participation.

In order to ensure that this happens, we have to create a clear message which we could put before the country so as to ensure that our people as a whole regard this process as being important, as a process that affects their immediate lives and the lives of future generations.

The mechanisms that we will use to achieve these objectives will be varied. Some of these will be the utilisation of the media, TV and radio programmes on an ongoing basis, regular press conferences and press briefings, and producing printed material that will enable us to disseminate information to our people.

We will also seek to embark on advertising campaigns that will give information to people and make it understandable. The resources that we are going to use are quite substantial. An estimated budget of R20 million to put this into effect has already been approved by the Constitutional Committee. The details thereof are being worked out. This strategy will be under constant evaluation by the Constitutional Committee and the Management Committee.

We had to find ways and means of how to interact with the committees, and in so doing we had to identify mechanisms that will ensure that we achieve this objective. The Theme Committees are going to be our primary vehicles for interfacing with the public through people's forums that we can hold throughout the country. These will be divided into area forums as well as sector forums. We believe that we can also use the programmes of various political parties in achieving this objective.

Government programmes at the national and the provincial levels will also play an important role in complementing the work of the CA. As it is now, quite a few provincial governments have already indicated a clear desire to be directly involved in the constitution-making process. This is not provided for in the Constitution. However, this is a matter which we believe will need to be examined by this body in terms of seeing how best we can ensure that all role-players in South Africa are involved in the constitution-making process.

There is also a need for the Constitutional Assembly, in executing its mandate, to interact with a whole number of other institutions. Some of these institutions are the Constitutional Court, the Commission for Provincial Governments, the Volkstaat Council, and the Council of Traditional Leaders, both at national and provincial level. We have already established contact with some of these institutions and we will be holding formal meetings with them in future.

Lastly, a brief report on the Administration. Since the last meeting of the CA, we have proceeded to appoint staff for the work of the CA. To date, 30 people have been appointed. They have already displayed commitment and dedication to their work. Many of these people were drawn from a number of areas and organisations. Their willingness to come and work for the CA shows their dedication and loyalty to the important project of drafting the constitution.

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Professionalism has been a constant feature of their work. They have a daunting task that lies ahead of them, and will need our support. The efficiency they display is largely characterised by a high level of team work. In this regard, one needs to thank the Directorate which is made up of Mr Ebrahim, Ms Zondo and Ms Sparg who, in my view, have been doing an excellent job in making sure that the work of the CA proceeds. [Applause.]

As far as finance is concerned, we have estimated that the entire budget of the constitution-making process will be approximately R94 million. Details of how this amount will be spent will be finalised by the Constitutional Committee. We shall also take into account the belt-tightening measures as announced by Deputy President Thabo Mbeki the other day. We shall make sure that the Constitutional Assembly steps in tune with what the Government is doing with regard to State expenditure.

In conclusion, we present this report for discussion and debate in the hope that it will be approved. In our view, the work that has been done so far lays a firm basis for the constitution-making process to take off in earnest. We have reached full consensus on certain issues, therefore I believe that the work done so far lays the foundation for another South African miracle. We hope that we can start in earnest at the beginning of next year when the Theme Committees will start executing their tasks. [Applause.]

Mr M V MOOSA: Mr Chairperson . . . [Interjections.]

Mr P W COETZER: Comrade!

Mr M V MOOSA: Comrade Chairperson . . . [Laughter] . . . at the previous meeting of the Constitutional Assembly, which was held on 15 August, we agreed on the setting up of proper machinery for the drafting of the final constitution. Allow me to commend and thank members of the different committees of the Constitutional Assembly for the valuable work done and the commitment shown. I would like to thank the Administration of the Constitutional Assembly in particular and congratulate all its staff appointees.

Since the previous meeting of the Constitutional Assembly we spent time on ensuring that we arrive at a common understanding of the constitution-making process. We also had to ensure that we have the same understanding of the need to ensure that the people of South Africa participate in the process. The report before us does not deal with substantive constitutional issues, but reflects the time well spent by all the players on how the Constitutional Assembly will need to function in a way that will allow more interaction amongst its members as well as the setting up of structures that will broaden and deepen participation in the constitution-making process.

One cannot have a goal in mind without a plan. This report embodies our programme of action for the constitution-making process. We spent most of the time amongst ourselves, debating and deliberating on what route to take in delivering the final text of the final constitution to the millions of South Africans in a way that will portray the realities of our country.

As members read this report, they will be able to appreciate why it took us this long to understand and shape a process that is appealing and acceptable to all parties represented in the Constitutional Assembly. For me, this is an important fact that we cannot afford to lose sight of. If the process is faulty, the work to be done will not be proper. I believe that those of us who were part of the negotiations at the World Trade Centre will agree that it is not only important to understand where one wants to go, but also how one wants to get there.

The negotiating and drafting of the interim Constitution over the past few years have left us with a few important lessons. A good constitution-making process is vital, since an incorrect and faulty process could make it impossible to achieve one's objective. The Constitutional Assembly is required to adopt the final constitution by no later than May 1995. We therefore need a process which will ensure that this target is met adequately and without being accused of haste at the expense of rigour.

The proposed process provides a clear framework within which the target date can be met comfortably. Therefore we see no need to review the target date.

One of the reasons for the lack of progress in Codesa was that, apart from the fact that at that time the SA government and the NP were not ready and willing to enter into a settlement, we also had the problem of having set up too many

I would like to respond to them with just one example to tell them why they are wrong. It has do with the discriminatory taxing of married women. Are they aware that all taxpayers with an income level of under R10 000 per annum are married women? No other people pay tax at this income level. Some 57 000 married women pay some R26 million in taxes . . . [Time expired.]

Mr W S FELGATE: Mr Chairperson, hon members, the IFP today is going to support the motion approving of the report of the Constitutional Committee to the Constitutional Assembly. A lot of sound thinking is embodied in that report, and our appreciation must be expressed for the way in which parties are coming together to produce a workable way of going forward.

Having said that, I immediately want to make the point that approval of the process as a whole does not mean that there are no serious defects in it which need to be attended to. This House needs to face the reality that, in dealing with issues with regard to which there are differences of opinion, only those who hold the opinion can adequately argue the merits of that opinion. Here I am referring to minority reports and minority Bills.

The idea of a minority group being entitled to present its own views and its own report to this House has not found favour with the Constitutional Committee and the other committees. We will pursue this matter and I think that we will find that however attractive the constitution-making machinery now appears to be, we will find that when we begin tabling reports in January, it is going to be quite difficult to finalise those reports and to present them to this House. I do not know why there is this resistance to a minority report being tabled, and being tabled by the group that is concerned.

In a debate on the issue, it has been agreed that reports to the Constitutional Assembly from the Constitutional Committee, and from the Theme Committees to the Constitutional Committee, will state, in detail, the positions both where there has been general agreement and where agreement has not been reached. However, in a live debate on the national issues that are involved in constitution-making, there still remains no substitute for the right of a minority group to address this Assembly on a minority report, or even to promote a minority Bill in order to take it through all the processes.

One of the issues that are involved is that of the technical backup and the technical competence of a minority report. One cannot rely on a second party to perform that function for one. In accepting the report, we would also like to point out that as we move forward with the organisation of the work of the Theme Committees and with matters related to our work agenda, we will again be faced with the issue of either complying with the text of the present Constitution or disregarding it.

The IFP requests that this Constitutional Assembly gives a clear direction to the Constitutional Committee and to the Theme Committees to comply with the Constitution, especially section 161(1) which stipulates that the Constitution-making process shall, as a matter of priority, attend to:

> . . . the development of a system of provincial government and shall receive the priority attention of the Constitutional Assembly . . .

This means that the work of the Constitutional Committee and the Theme Committees must proceed from a preliminary determination of a form of state, that is whether South Africa shall be organised as a Unitary, National/Regional/Provincial/Federal or Confederal State. In fact, no Theme Committee should proceed with its work until and unless this preliminary issue is resolved. To perform their work, both the Theme Committees 1 and 4 will need to know whether provinces have residual powers or not.

Theme Committee 2, which is looking at the form of government and the role of the Senate, will necessarily reflect the chosen form of state. The work of Theme Committee 5 will be shaped by a decision on whether there should be a single judiciary or more than one.

The following simple questions need to be answered: Will provinces have residual powers? Which powers of Parliament are not immediately and necessarily reflected in the Government line function? As a matter of principle, will the powers and functions of government be assigned to the provinces or are only those powers which cannot be adequately and properly exercised at provincial level going to be devolved to the national level of government on the basis of the principle of subsidiarity?

One furthermore needs to ask: Will the provinces be provided with an area of entrenched

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constitutional autonomy which the Central Government may not destroy or change at will? Will the provinces have final decision-making power in the area of constitutionally recognised autonomy or will the Central Government have the power to overrule them or otherwise subjugate provincial policy making? Subject to the needs for equalisation grants, will provinces have sufficient financial fiscal autonomy to support their functions and powers without depending on the discretion and control of the Central Government? [Time expired.]

Mrs B S MABANDLA: Mr Chairperson, in the past six months the members of this Assembly, under the leadership of the Chairperson, Mr Cyril Ramaphosa, and the Deputy Chairperson, have defined the process for writing a new constitution for South Africa. The key tenets of this process are public participation and transparency. The ultimate objective is to draft a constitution which all South Africans will be proud of, that is a constitution which will enjoy the allegiance and support of all South Africans as it is stated in the objectives of the report that we have before us. Accordingly, Theme Committees have been established to provide a consultative forum for elected members, that is the members of this Assembly, to engage the public.

It is expected that interest groups in the NGO sector will make submissions to the Theme Committees and that the public at large will also make submissions. However, we all know that marginalised groups, that is ordinary people, often do not have access to such forums. The task of Theme Committees should therefore be to strive to reach even the most marginal of our society—ordinary people in the true sense of the word.

The envisaged fora for public consultations should be set up in a manner that facilitates participation of our people. For example, if the views of rural people are sought, efforts must be made that not only the rural elite, such as farmers, teachers, doctors and chiefs are the only people heard, but that even farm workers, women and the very poor are heard. In addition, fora should be set up at places and at times convenient for the majority of the target groups. I have already identified the target groups.

So as to encourage maximum public participation we need to define appropriate mechanisms to reach out to as many South Africans as possible. We have agreed to use all of our mass communication channels. We need to design a communication package that will enable our people to understand the issues at stake. This will result, of course, in a qualitative input from our people. I have identified radio as one of the important mediums of mass communication.

One of the issues that could be seen as part of the communication package is the use of languages. It is imperative that we ensure that discussions over the radio are held in the languages of our people. These are the 11 languages of the Constitution. That is just the starting point.

It has been agreed that the task of the CC will be to process reports from the Theme Committees, whilst the CA is recognised as the main constitution-making body. It is further envisaged that some form of negotiation will take place at the level of the CC. We should, however, recognise the fact that the CA is supreme in the constitution-making process. Accordingly, at the CC level, there should be no undue delay in discussions of constitutional issues.

I must say that the possibility does exist that we may be bogged down at that level because there might be a strong assumption that the CC is the important channel of negotiations. I think here I am putting the emphasis on the supremacy of the CA. One does recognise or anticipate that the debates in the committee will naturally be robust and this is as it should be, however, real value to whatever issues dealt with at this level will only be finally determined in the CA.

So far discussions in both the CC and the Management Committee have been business-like, with no controversy. Indeed, pursuant to the objective of enabling the maximum participation of all elected persons, all parties are proportionally represented in the CA structures. That is a very important factor to note. Therefore, all parties will be able to present their views through these structures.

I should like to turn my attention to the expertise that we shall require in terms of the work programme of the CA. It has been agreed that Theme Committees will have access to technical expertise. Theme Committees should ensure that the people they suggest will be able to provide the necessary professional services required.

It is also important to note that the technical experts are not to be part of the political pro-

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cess. In other words, they will not be part and parcel of the Theme Committees. They will not take political decisions. They will just be there to provide us with professional services and to facilitate matters. The panel of constitutional experts is important. There is no doubt that South Africa has some of the best constitutional experts in Africa. I am confident that the panel that will finally be chosen, will be made up of the best that South Africa can offer.

Finally, I would like to urge this august meeting to adopt the whole report. I think it is important to bring to hon members' attention the budget for 1995 and 1996 included in the report. The Constitutional Committee has agreed to the request of R69 million for the work of the Constitutional Assembly. I urge the Constitutional Assembly to endorse this budget as it is a reasonable amount of money for the constitution-making process.

*Dr C P MULDER: Mr Chairperson, this debate deals with the draft resolution that the report of the Constitutional Committee, which was tabled on Friday, 28 October, be adopted. It is a sizeable report consisting of 26 pages divided into six sections.

It was necessary to postpone the sitting of the Constitutional Assembly, which was to have taken place last week to today, because at that stage the report in question was not yet completed, ready and processed by all the bodies concerned. We are convinced that the postponement of the sitting of the Constitutional Assembly to today was the correct approach. When the business of the Constitutional Assembly commenced, it was felt that the Constitutional Assembly should convene and sit very regularly. This is the correct procedure, but then this presupposes that meaningful reports will be submitted to the Constitutional Assembly at the first opportunity. It was sensible, in view of the fact that it was not ready yet last week, to postpone the sitting to today, otherwise the time of our hon members would not have been used gainfully.

Concerning the report itself, the Theme Committees were in the meantime established and they have already started to function. I would like to confine myself to two aspects of the Theme Committees, namely, point 3.3.1 (c) and (d) of the report which stipulates the following:

(c) Theme Committees are not negotiating fora. Their primary task should be to receive submissions and to process them into reports for consideration by the Constitutional Committee.

(d) By resolution of the Constitutional Assembly, these reports should therefore include details of non-contentious issues, contentious issues and suggested approaches.

If the Theme Committees are not fora for negotiation, the question which crops up immediately is whether Theme Committees should simply be seen as post boxes whose role is to receive inputs from the public or experts and to refer these to the Constitutional Committee. If the task of the Theme Committees is to evaluate and to consider these submissions they receive and to prepare reports on them, the question arises whether such actions are not already of a negotiating nature.

In point 3.6 of the report a way forward is mentioned and time-tables are set out, and in point 3.6.1 certain dates, among others, are being stipulated:

. . . to allow Theme Committees to commence discussion on substantive issues from January 1995.

This indicates very clearly to me that one has to go back and find out whether Theme Committees are simply post boxes or whether they are going to play another role.

Next I want to confine myself to the work program and the time-tables as they are set out in the report. The hon member, Mr Valli Moosa, also made a reference to that when he said "there is no need to alter the deadline".

Mr Chairperson, it struck me when the hon member Mr Moosa addressed you that he referred to you as "Comrade Chairperson". It can mean one of two things—either the hon member Mr Moosa knows something I do not know when he addresses you as "Comrade Chair" or we shall, on a lighter note, refer to the hon member as "Oom Valli Moosa" if he can refer to you as "Comrade Chair". [Laughter.] Considering the fact that he is still too young to be called an "Oom", we should perhaps address him from now on as "Neef" Valli Moosa. [Laughter.]

Section 73(1) of the Constitution stipulates the following with respect to time-tables:

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> The Constitutional Assembly shall pass the new constitutional text within two years from the date of the first sitting of the National Assembly under this Constitution.

This provision is also probably also the underlying reason for provision 3.6.3 in the report which we are debating today, which says the following with respect to the way forward. I quote:

> The need for flexibility will have to be carefully balanced against the severe time constraints imposed by the Constitution for the completion of the process as a whole.

At this stage there are only 18 months left in which to complete the process. Unlike the situation in the past, the hon members who were elected on the 27 April have two roles to fulfil. In the first place they have been elected as elected representatives of Parliament to govern the country as the Legislative Authority together with the Executive Authority, but in the second place they have been charged with the specific task of drawing up a new constitution as members of the Constitutional Assembly. What makes this even more difficult is the fact that these two processes must run concurrently.

The Order Papers which appear these days contain page after page of committees which are sitting at this time. There are pages full of these meetings that are being arranged. To tell the truth, the committee meetings which take place are overlapping. Parliamentary committees are sitting on days which are set aside for the business of the Constitutional Assembly, and meetings of the Constitutional Assembly sit on days which are set aside for the business of Parliament, because these two processes are taking place at the same time.

Last week it happened on more than one occasion that Parliament did not have a quorum to proceed with its business, which creates a very bad impression outside and was reported in the media. The reason for this is the huge workload which is placed on the shoulders of the members who are involved in all the committees. The general public does not necessarily understand why this is the case, because all that was reported to them was that there was no quorum. This creates the impression that the hon members are not discharging their obligations.

For that reason I want to know why the whole constitutional process for the writing of the final constitution must be completed within two years, of which only 18 months now remain. Why is this the case? I would like to ask the members who are still going to participate in the debate and who were involved when this arrangement was reached at the World Trade Centre to please takes us into their confidence and tell us why it is so necessary.

To keep to the period of two years has the following disadvantages. In the first place it has the effect of the constitution having to be drawn up under tremendous pressure, which is at present being experienced by all the members involved. In the second place, by completing the constitution now, we are not going to reap any benefit from the practical experience which will be derived from the implementation of the present Constitution, to enable us to see in practice what works and what does not, and also what we can and what we cannot use.

In the third place, if we want to complete the process within the next 18 months, we must bear in mind that this process is going to take place during a politically contentious period in which elections for third-tier government will be taking place. The Chairperson of the Constitutional Assembly indicated today that the full text would be submitted to us a year from today. That is precisely the time when the third-tier government elections are planned to take place. This will have the implication of our having to try, during a time of political tension, to complete this important document amidst all the other pressure.

The Chairperson also said the following today concerning the general public:

> As a result we find that the attention of the South African public is not focused on constitution-making, but rather on other immediate issues such as the implementation of the RDP and a whole range of other matters.

We must take this into consideration as well. For this reason, I want to know whether it makes any sense to keep to that deadline. The fact is that for the next five years the country is going to be governed in terms of the present transitional Constitution.

Sections 72(2) and 72(3) deals with the panel of five constitutional experts. The report also indicates the criteria which should be satisfied. It is

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important that provision 4.3(b) be included. It reads as follows:

The subcommittee . . .

Which was appointed to deal with this—

. . . should also consider the representativeness of the Panel.

I think that this is an embodiment or an expression of the provision in section 72(3) of the Constitution which indicates that the appointment of the Panel of Experts must be passed by a two-thirds majority of Parliament. I think that the underlying objective was to demonstrate that it should not be a unilateral action on the part of some group or other, but that the greatest measure of co-operation and consensus possible should be found when this panel is appointed. I want to request the subcommittee specially to bear the various standpoints on this matter in mind.

In conclusion, Part 4 of the report deals with the whole question of public participation. Not only are the general objectives with respect to public participation spelt out, but it also indicated that these apply in respect of the whole new constitutional dispensation and constitution which we have to draw up here. According to Part 4 of the report, the essence of this requirement is the following:

11.1 The ultimate objective is to draft and adopt a credible and enduring constitution which will enjoy the support and allegiance of all South Africans.

11.2 The new constitution should represent the aspirations of all our people.

I foresee that this report will be adopted unanimously today, precisely because this report was drawn up with this underlying premise. All the parties have been consulted, all of them were able to make inputs and in the discussions everyone could discuss and agree on a report which is acceptable to all of us.

In view of this the FF will support the adoption of this report.

Mr C W EGLIN: Mr Chairperson, at the outset the DP would like to thank the Directorate and its staff for their contribution to the report before us today. It is not easy to start a new organisation from scratch, and while there may have been settling-in and administrative problems, I believe that a combination of dedication and teamwork have overcome these problems and that the staff needs to be congratulated on assisting the Management Committee and the Constitutional Committee in having put this report before us.

The DP will endorse this proposal before us. In the few minutes that I have, I just want to touch on a few small items. We believe that this report outlines a process which could ensure that the new constitution will truly be the property of all the people of South Africa, and that is the intention. However, this is an outlined process. We hope that we are going to have the good sense and the flexibility to adjust that process as we go along where, in fact, it may be necessary to do so.

Two points have been raised, among them the question of the inputs from a wide range of people and political parties who are going to make inputs. A concern has been expressed, in particular by Mr Felgate and to a lesser degree by Dr Mulder, that the Theme Committees may launder this information and, in the end, the Constitutional Assembly will not get a full range of views from which to make up its mind and make its decision.

From our point of view, the final decisive decision-making body is this Constitutional Assembly. In order to make up its mind, it must have access to a full range of views which have been expressed. The document before us does not allow Theme Committee to launder or to truncate those reports. Indeed, it states that the reports should include details of noncontentious issues, contentious issues and suggested approaches.

I am assuming, therefore, that the range of views have to be carried through to the Constitutional Committee, where the first round of negotiations takes place, and then it should come to the Constitutional Assembly. However, there may be people who might want to use the Theme Committees as negotiating forums and prevent minority or divergent views from getting to the Constitutional Assembly. Those of us in the DP who serve on the Theme Committees are going to do our best to see that this does not happen.

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What is also going to be important is for the members of the Constitutional Assembly to have access to the full documentation, and discussions, that have taken place. To make this possible Management should set up a complete library of all the inputs that come in from a variety of sources, with a proper running index so that members of the Constitutional Assembly can put their fingers on and get direct access to inputs which may have been made from a range of political parties.

The second issue is that of time. I do not want to dwell on it at great length, but I think there is going to have to be one area of flexibility. The process makes provision for the Theme Committees getting in all the information by the end of June 1995, with concurrent discussion with the Constitutional Committee and the Constitutional Assembly, and then for a constitution to be drafted 14 days after the end of June.

I know there will be some concurrent discussion between the Constitutional Committee, the Constitutional Assembly and the Theme Committees. Nevertheless, I suggest that a longer period is going to be required from the time the information is gathered in until the negotiations have taken place and a draft constitution is going to be introduced. Therefore I say the date of 14 July 1995 is far too ambitious.

On the overall attitude towards the time factor, let me make it quite clear that we in the DP would like to see the next constitution drawn up as soon as possible, taking into account that it has to be done in a proper and orderly way. We believe that we should try to meet the dates if this is possible.

It is important to get this process going, because constitution-making, in a sense, is disruptive. It creates an element of uncertainty. It intrudes on the governmental process. Provincial structures will not know where they stand, nor will the Central Government. The Public Service will be uneasy while a new constitution is being drawn up. Therefore the concept of drawing up this constitution in an early, practical and sensible way is a good one.

On the other hand, we do not believe that we should make the wrong decisions merely because of a rigid timetable. If in fact it appears that that timetable is too rigid, if it appears that we are being forced to make shotgun decisions when we should be considering an issue in greater maturity, we believe we should make an adjustment to that timetable. Right at the moment, however, we believe we should proceed with all due dispatch and we should try to get in that information by 30 June next year, as this particular process suggests. [Time expired.]

*Mr L J SWANEPOEL: Mr Chairperson and the House, I just want to air a few thoughts on one aspect of the report that is before us, namely: Way Forward.

If we compare the task that lay before us in Kempton Park with the task before this Assembly, we have a reasonably easy task. In Kempton Park there were 26 political parties which had to negotiate, as opposed to only seven parties here. In Kempton Park the negotiators were relative strangers to one another. Kempton Park started from nothing, and we have quite a lot of work that has already been disposed of.

If Kempton Park could produce a negotiated constitution within a reasonable period of time, this Constitutional Assembly can do the same if we have the will to do so. While the report demonstrates that the procedural matters have been ironed out, what is now required is the will to carry out what is before us.

This Assembly also has the advantage that 34 Constitutional Principles lie before us, ready for implementation as it were. As has been said, they have been cast in iron. They are the result of negotiation and therefore there is no need for the contents to be debated again, by way of repetition. In fact, I want to state that by participating in the election all these political parties that did so in effect ratified the 34 principles, and that any further debate will create a negative step.

In addition to that we have this Assembly comprising of elected members who can act faithfully with authority and with confidence in this process. It is my appeal therefore that we undertake the task that is before us with the necessary will and with great conviction.

If the will is there, the next question is, Where do we start? Which one of the Constitutional Principles will be used first as a cornerstone of the new building which must be built? There will be those who may want to start with provincial government; others with majority rule; and others with possible volkstaats, and I am referring to this in the plural sense. According to me there

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is only one point of departure, and that is the "one sovereign state" as qualified by minority rights, provinces and possible volkstaats. That is where the debate must begin.

May I ask that we have the will, in the favourable position in which we find ourselves, to start straight away with the task that lies before us, and to carry on with it. We support the report and appeal to everyone to have the will to implement that report.

Mr C M MAKWETU: Mr Deputy Chairperson, hon members, ladies and gentlemen, the PAC was attracted to the transitional process by the opportunity of participating in the drafting of a democratic constitution of our country by an elected body. To us, the process of writing a new constitution to replace the interim one is, therefore, a priority that should be accorded its rightful place in our parliamentary system.

This report gives us the first serious indication that such a process is now under way. PAC representatives have participated in all the structures and the processes that have made this report possible. The process has been, up to now, transparent and inclusive. Consequently, the PAC has no qualms about associating itself with the key proposals contained in this document.

My task here is to make few remarks and to re-emphasise some of the points we regard as being of fundamental importance.

It has been said that the present post-election process is characterised by the principles of transparency, inclusivity and public participation. These principles are of paramount importance and should be observed as much as possible. Being part of a transparent and inclusive process, does make one accept decisions which may even be unpalatable. Nevertheless, the PAC feels that participation of all stakeholders in the key structures of the Constitutional Assembly, such as the Constitutional Committee, the Management Committee and the Theme Committees is imperative. The constitution-making process must therefore strive to accommodate smaller parties when meetings are arranged, and the issue of alternatives for all structures must be accepted.

Meaningful participation involves, *inter alia*, reasonable time to prepare one's case and resources for the technical back-up of one's arguments. Unfortunately, this process does not provide research assistance. This makes the case of smaller parties much more precarious. The PAC would therefore welcome the limited assistance offered by various institutions, including the Department for Provincial Affairs and Constitutional Development.

In addition, we would be grateful if the panel of constitutional experts and the technical experts of the Theme Committees can be broadly representative so as to include persons who can provide technical arguments for some of the positions held by smaller parties.

It is clear that the time frame of two years set by the interim Constitution for the completion of the writing of a new constitution may be too limited. We do accept it as a target we must strive to achieve, but we plead that this should not be at the expense of writing a proper and legitimate democratic constitution. Our legislative programme, the next local government elections, the need for public participation and the requirements of drafting this new constitution, make it difficult to see how we can do all this within this limited time frame. We should try hard, but we must allow some flexibility, too.

The PAC calls on the leaders of the National Assembly, the Senate and Constitutional Assembly to try to negotiate a clear programme and timetable for 1995. As things stand now, Select Committee meetings clash with Theme Committee meetings, while the National Assembly clashes with the core group and Senate meetings. This cannot go on. We need a more streamlined programme.

Parties need reasonable time to prepare and consult before making submissions to the process. Sometimes representatives go to meetings and are told that they have to make submissions by the following day. Equally, documentation is rarely circulated on time. Representatives often attend meetings and discuss serious matters before their caucuses have discussed them. Caucus meetings, reasonable time for submissions and the parliamentary workload should be taken into account in setting time frames and programmes.

The PAC welcomes the document entitled "Public Participation—A Strategic Overview". The constitution-making process should be inclusive both inside and outside Parliament. The PAC had misgivings about the interim

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Constitution precisely because it was a deal concluded by elites without the involvement of the masses of our people. Many of the crucial aspects of that document were concluded in secret deals. This document gives us the hope that things will be different now.

Involving the public in the constitution-making process is important for the creation of a legitimate and an enduring constitution. However, it should also be said that public participation can be time-consuming and a costly affair. I see that the estimated budget is R20 million. It should, therefore, be well structured and properly managed.

This exercise will only be worthwhile if it does not end up being another forum for academics, rich people, persons living in urban areas and elites only. The constitution-making process should earnestly endeavour to hear the views of the ordinary person in the street and those who live in the remotest rural areas of our country. Those people should feel part of this process and, at the end of the day, they should be able to claim this constitution as their own. If that happens, this R20 million would be money well spent.

The PAC calls on this Constitutional Assembly to instruct the Constitutional Committee to establish mechanisms which will ensure that public views, once received, are taken into account in the drafting of the new constitution. This should not be another expensive public relations exercise. Public views should be properly processed and should not be suppressed. It is also very important that this process is not used to promote certain personalities or for party-political gain. It should be for the use of the Constitutional Assembly and for producing a good constitution for the country. The Management Committee should closely monitor this process.

Finally, it seems to us that all the key structures of the constitution-making process are almost in place. We have a big task ahead of us and we should get on with it. Sometime in 1995 we should have a chance to evaluate what has been achieved, so that we can see how we can improve. It would also be helpful if we can get an opinion on the constitutional implications of the constitutional principles as soon as possible. We believe that this will assist parties in making submissions and will facilitate the smooth functioning of the entire process.

Mr A FOURIE: Mr Chairperson, after the enthusiasm expressed by the Chairperson of this august Constitutional Assembly, Mr Cyril Ramaphosa, that all is going well, I am reluctant to argue my case. Yet, somebody should raise the dilemma of ordinary members of Parliament and senators who are obviously expected to enter this process with the same measure of enthusiasm.

The previous speaker has just pleaded for a more streamlined process and for parties to have more time in which to prepare. Dr Corné Mulder raised the whole issue of the time frame, an issue which I addressed a week ago. I do not think that now is the time to decide on the time frame and the extension thereof. However, two issues are very important when addressing the needs and problems of members of Parliament.

Firstly, I would like to plead for the synchronisation of the parliamentary process on the one hand and for the activities of the Constitutional Assembly on the other. Secondly, I would like to plead that the Chairperson of this august Assembly and the Speaker should at least get together and discuss the needs of members of Parliament.

You will, therefore, pardon me if I express the concern that the whole process of constitution-making can very easily become an unbearable frustration. Our transitional Constitution determines that the final constitution must be written in two years' time, six months of which has already elapsed, as we have heard today.

I want to make so bold as to say that it is just not possible for ordinary members of Parliament, with virtually no facilities at our disposal, to fulfil the dual role of legislator and constitution-maker. It is just not possible if we are expected to do justice to our job. We are elected to this Assembly, and are expected to be present, and to participate in the process when the Houses are in session. We are all members of one or more select or joint committees. Above all, I believe we have been elected to represent our constituents, and to attend to their needs, problems and interests.

Over and above that, as members of Parliament we are also members of this constitution-making body. Some of us serve on the Management Committee and/or the Constitutional Committee and/or one of the six Theme Committees and/or one of the six core groups. What is worse,

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there is no proper co-ordination in order to devise a properly scheduled roster of the numerous meetings that we have to attend. Duplication of meetings is becoming unbearable for the ordinary member of Parliament.

Before we say what Sidney Harris once said—referring to a consultant, he said an expert was called in when nobody wanted to take the blame for what was going wrong—I plead with the Chairperson and the Speaker to earnestly and seriously look into the position of members of Parliament.

They should get the commission whose task it is to look into facilities of members of Parliament off the ground, and to sit down and plan properly. We have now learned what our difficulties are in setting the process in motion. When we return in January, let us do so ready and able to work within a properly scheduled programme.

Rev K R MESHOE: Mr Chairperson, ladies and gentlemen, the ACDP wishes to support the report of the Constitutional Committee, and to commend the Administration for their splendid work. We would like to see a constitution that embraces the wishes and aspirations of the majority of South Africans.

We therefore endorse the call to have the process of writing this constitution, which will be the supreme law of the land, as inclusive and transparent as possible. The ACDP believes that the constitution should reflect the moral values of the majority of our people, who adhere to Christian norms and values. Many of these norms and values are also adhered to by other religious minorities.

South Africans need a constitution that will protect all law-abiding citizens from those who have no regard for the law, or for the value of human life. It is sad to see how our legal system fails to deal effectively with those who have no regard for the law.

For example, the *City Press* of 30 October 1994 reports that a teacher was fined only R3 500 and given a two-year suspended sentence for having sex with four schoolgirls under the age of 16! Another example is the Amy Biehl murder case, where the youths responsible were each given only an 18-year sentence.

We also want to argue against a culture in terms of which the right to sue becomes a tool of expediency. This is a culture which is pervasive in the USA, and which creates a very individualistic and mechanical vice in which the citizens of a country are deprived of their God-given human value, and the right to serve and care for their fellow human beings.

I wish to refer to the case of Michelle Friedman, which was published in yesterday's *Sunday Times*, in which the mother wanted to infringe her unborn child's God-given right to life. In this case the mother was given the go-ahead to sue her doctor for the so-called wrongful birth of her physically handicapped child. If the mother wins this case, the rights of all unborn, handicapped children will be threatened.

A society that justifies the killing of unborn, handicapped children will soon justify the killing of handicapped children who have already been born! The ACDP wants a constitution that will protect the rights of all born and unborn children. We hope to put this matter straight in Theme Committee 4 on Fundamental Rights.

We further endorse the need, firstly, to involve the communities to assist us in formulating the final constitution, secondly, to make available a referendum procedure or alternative structures whereby our communities can voice their preferences on issues like the death sentence, abortion rights and education rights and, thirdly, we see the need for a federal system to be evolved whereby each province will be encouraged to submit its own constitutional proposals, in line with the broad principles enshrined in the interim Constitution. A date should be set for the submission of these proposals to the Constitutional Committee.

In conclusion, our party envisages that the Constitution will provide our society with respect for God, as well as the opportunity whereby all will be given a chance to contribute to the economic well-being of our society. Our society will be provided with a respect for diverse cultures and languages and protection from violence.

We further want to make the submission that the time frame for the final submission of the Constitution should be made flexible. Before the final constitution is accepted by the Constitutional Assembly, it should be made available to society at large for perusal and critique, in order to ensure that it is legitimised and embraced by all South Africans as their own product.

Prof E S MCHUNU: Mr Chairperson, it is true that in the frenzy of constitutional negotiation and the euphoria of electioneering we did not quite grasp the ambit of the organisational effort that the process of constitution-making would require. Consequently, our negotiators wrote into the interim Constitution terms which have put an almost unbelievable strain on this Constitutional Assembly.

Almost six months down the line we find that we are still bogged down in the modalities of process. We have not yet even begun the serious business of drawing up a democratic constitution. However, notwithstanding the narrow time frames that have been written into the Constitution, I submit that it is our duty to write our constitution and to submit it to our people within the time limits laid down by the Constitution. We must do so, because we undertook to do so when we stood for election and were elected.

Our country is a divided one. Political tension is a way of life in this divided society. I suggest that in the near future there will never be a time in which we will not be so divided. In our country there can never be an ideal time to create a constitution. Therefore, it is my view that we might as well do it now, within the time limits laid down by the Constitution.

Even though we are pressed for time, many of us who have had no experience of democratic institutionalisation have learnt valuable lessons from this experience. We have learnt the lesson that process and procedure constitute the greater portion of substance. Without correct procedure, the substance is flawed and the final product may be illegitimate and therefore will not obtain the support of the body politic. Worse still, the final product may be invalid because of noncompliance with prior procedural and substantive norms.

We have, therefore, learnt the lesson that all legislators learn sooner or later, which is that it is not enough simply to have democratic power. The ballot box does not confer power per se. Power flows from both the ballot box and the structural relations, which themselves constitute and, in fact, appoint the ballot box as the residue of power. In short, we have learnt that there is a reality beyond the ballot box.

Perhaps it is in this context that one must address the issue of minority reports. Minority reports mean that the minority has not reconciled itself to the principle of democratic majoritarianism. It amounts to political grand-standing or divisive factionalism. Hence the need to create an institutional structure to underpin the necessary process of negotiation, which must inevitably accompany the creation of the new constitution.

In an attempt to create the institutional structure, it has been unavoidable to create a bureaucracy for, whether one wants to accept it or not, the Constitutional Committee, the Management Committee, the Theme Committees, the Core Groups, the Independent Panel of Experts and the Technical Committees all constitute a bureaucracy whose function is to serve the CA and to enable it to carry out its main function of writing this country's permanent constitution. It is a challenge that we must accept not to let this bureaucracy develop a life of its own, thus frustrating the very motive if its existence—that is to make constitution-making a reality.

The process of creating modalities, slow and painstaking as it has been, has now been largely completed. The efforts of our negotiators regarding the process are embodied in the report of the Constitutional Committee dated 28 April 1994. Let us now adopt the report as our modus operandi, and then knuckle down to the nitty-gritty of creating our constitution. As has been said here, let us get on with it and let us create our constitution. [Applause.]

*Mr R P MEYER: Mr Chairman, it is a pleasure to speak after the hon senator. For my part I would like to congratulate the Chairman and Deputy Chairman of the Constitutional Assembly on this report which they submitted to this House this morning. It is a well-prepared piece of work which testifies to the amount of preparation which has already been done by the various bodies of the Constitutional Assembly during the past few weeks. As participants we can truly be proud of what has already been achieved. Therefore I want to congratulate the Chairman of the Constitutional Assembly and those who support him.

†This afternoon I would like to address the subject of transparency. A constitution can, in the final instance, not be kept in place by the courts or any other institution.

Constitutional guarantees are valid only in so far as they meet the approval of the majority of the

constituency. That is the requirement of legitimacy. Public participation in the constitutional process is therefore of paramount importance. The proposed strategy by the CA for public participation in the constitutional process therefore makes overall, laudable sense.

More comprehensive public participation than in the case of the previous constitutional process, should now be possible. Effective liaison with the media will, in my view, be the cornerstone of this strategy. It is equally important that elected representatives and the political parties which they represent, do their own bit to make the strategy effective. This should therefore be less of a publicity campaign with paid promotion and liaison projects and more of a two-directional communication programme—a dialogue between representatives and their constituencies.

The constitutional debate will primarily be a political one, and the management thereof should therefore be the responsibility of the political representatives. The proposed community liaison strategy is an excellent idea, but should, in my view, be evaluated, especially regarding effectiveness and cost. It should be kept in mind that the fora envisaged will have to be addressed by a multiparty delegation from the CA at all instances.

That will have an impact on the cost factor and productivity of the work of the Constitutional Assembly. The Chairperson of the Constitutional Assembly, especially, carries a public responsibility on our behalf in this regard. I would suggest that he be allowed to evaluate the situation on an ongoing basis to keep the expenditure of public funds within reasonable limits in this regard. I am saying this especially after the statements by Executive Deputy President Mbeki this weekend regarding the attempts of the Government to keep within the financial limits of the country.

In the same spirit, I want to refer to the use of outside agencies or professional publicity. The emphasis should be on the effective and comprehensive utilisation of the news media, including the co-ordination of messages.

Of course, this can and should be supported by a low-key publicity and publication campaign. However, all these viewpoints are also, to a degree, expressed in the report, but one major concern is the idea of our own medium. Nothing can ruin a budget as quickly and as effectively as the production of our own brochures, pamphlets, posters and video and audio recordings. The effect of brochures, especially, is questionable and video recordings are usually obsolete before they leave the production house.

Regular communication through the public media must remain the first priority and this channel should be used in both directions, namely, from the Constitutional Assembly to the public and from the public to the Constitutional Assembly, which would like to communicate with it on a regular basis.

Next, I would like to emphasise the need for interaction with the Premiers and with the provincial governments. Not only have the Premiers a vested interest as far as the future of provincial government is concerned, but they are also practitioners who can provide the Constitutional Assembly with valuable information regarding their experiences in the government and administration of the country at the second tier. I therefore welcome the indication by the hon Chairperson of the Constitutional Assembly that regular communication with the Premiers will be conducted.

*Finally, I think that it is extremely important that the Constitutional Assembly display a spirit of adaptability during this process and in follow-up procedures relating to the structures which it is submitting and considering here. This was also a characteristic during the previous constitution-making process. As problems arose, adaptability was displayed in overcoming those problems and trying to find solutions. I suspect that problems will arise again in the structure and system which has now been created. It might seem as if the composition or extent of the six Theme Committees is conducive to cumbersomeness, which will require adaptations.

I therefore appeal for adaptability to be displayed by the Constitutional Assembly in the execution of its important task.

Mr L P H M MTSHALI: Mr Chairperson, hon members, in the first instance, I would like to say that the constitution-making process is an important venture. Such a process should be all inclusive and representative of all shades of opinion in the country. It should accommodate minority views as well as those of the majority.

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I wish to follow up a point raised by Mr Felgate which related to the structuring of the work of the Theme Committees. I also wish to stress the notion that hon members should not underestimate the importance of defining the process and the agenda of these Theme Committees, which will have an immediate bearing on the outcome of our constitution.

We believe that the primary task of our Theme Committees should be to identify issues and explore all constitutional alternatives related to each issue. We cannot debate the drafting of a new constitution unless all alternatives are fully explored. If we structure the work of the Theme Committees on the basis of identification of issues and development of alternatives, we have a working model which will also give us guidance in the work which the Theme Committees will need to perform in respect of the various proposals they will be receiving.

In fact, each Theme Committee will be receiving a plethora of proposals and submissions from political parties, vested interests and the general public of South Africa. We will not be able to benefit from all these inputs unless we have a model which allows us to classify these inputs and relate them to the various alternatives which are before us.

The development of a model on the basis of issues and alternatives would also provide for the empowerment of the members of the Theme Committees. I feel that it would be a great loss for our constitution-making process if the Theme Committees were at the mercy of the Secretariat, the Directorate and technical experts. We must empower the Theme Committees with the capability of working with the experts to understand the issues and explore alternatives, otherwise all the work will be done by the technical experts who, in conjunction with the Secretariat and the Directorate, will be processing the many proposals to the Theme Committees.

The Constitutional Committee has made an important decision which we as a Constitutional Assembly are asked to endorse today. It has been decided that Theme Committees shall not act as negotiation fora, but that they should be conduits of information and proposals. We need to understand clearly how this process will work to avoid that that which is good turns into a possibility for manipulating the constitution-drafting process.

At a certain point it will be necessary to verify what type of consensus is gathered around each given proposal and submission. This consensus-setting stage should not be unduly anticipated, in other words, we should not seek agreement on any issue before we have had the benefit of fully exploring and understanding all possible alternatives related to such issues and having consulted the general public on such alternatives. It would be a mistake if the work of the Theme Committees is handed over to the Constitutional Committee which may proceed to eliminate valuable proposals and alternatives which do have merit, thereby preventing the Constitutional Assembly from evaluating them. [Time expired.]

Prof D C DU TOIT: Mr Chairperson, if I may alter the words in a poem of Middleton for the occasion, it may be said that: "Who so loves constitutions, dies either mad or poor". Now, seeing that the gravy train has just been stopped by the President, we can at least be sure that we shall be able to thank him that we shall not be mad after these two hectic years—we shall be poor!

I want to support the motion on the establishment of the Technical Committees and the appointment of their members. It is said that the executive of a country has one decided advantage above the members of a legislature, and that is personnel and budgets—budgets for more staff. When a legislature has to develop a constitution, this disadvantage comes to the fore all the more. These technical appointments should be carried through, in the words of Shakespeare, "like putting a girdle round about the earth in forty minutes". We need these technical experts in double-quick time, because, let us face it, the task of the Theme Committees is a daunting one. They have to ride in the whirlwind and they must direct the storm.

Take, for example, the work of Theme Committee 3. At present, provincial government and local government are in a whirlwind of developmental activity. A storm is raging outside the revered walls of this institution.

What is really happening? When one enacts a constitution it is always followed by tremendous ground shifts of sociopolitical transformation at all levels. This is what the interim Constitution of 1993 did. It made a fundamental change in the structure of State with regard to provincial government. Structures endowed with substantive

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political and legal powers were put up and got going. Once one has created such a factual situation, one cannot just indulge in a facile process of getting rid of it again. The new constitution will have to facilitate a process for the evolvement or unfolding of provincial government which is more in accordance with the views and interests of the elected majority of the citizens of this country.

The point which I want to make is that constitutions have consequences. The creation of the new provincial system in the interim Constitution will recalcitrate against any possible new governmental management system for years to come. The Theme Committee will operate in a frame of what could be called isochronism, a contemporaneous factual context which would make it all the more difficult.

This consideration has a lesson in it, namely that such an exercise as we are going into now can never be purely scientific. We cannot just have a few brilliant constitutional lawyers telling us how a pure-as-gospel federal system should look like, or how to draft an intricate purée of a not-so-federal system, or how to keep the countenance of an unadulterated nonfederal system in a constitution.

The main considerations will have to remain the sociopolitical considerations. This means that we will have to be eminently practical about the task. We should be concerned with utility, adequacy, and applicability. That is a political question. What I mean is that people should get their money's worth from the structures of the State. People do not want structures that milk the ram and fish in the air. They want results.

An HON MEMBER: A fish in the what?

Prof D C DU TOIT: Fish in the air. They do not want structures that milk the ram or fish in the air. They want results and delivery, and none of the swagger, the pomposity or grand doings and grand sayings of small men who built little empires in towns or provinces should constrain us in this task. This may be the last time to get this right, However, we need the Technical Committees. We should not be mistaken. We should be wary. Experts in these types of situations have real power. They establish first perspectives and frameworks of thought often enough. Once established, such a perspective is difficult to change.

This is, however, the task of the Theme Committee members to guard against being influenced to an excessive degree by first impressions created by technical experts, by their options and the preferences which they induce. The answer will lie to some extent in the use of subgroups in which members of the Theme Committees can work together with experts in sectoral areas. Common frameworks develop more easily in this type of context. What is needed is the technique or phenomenon of what is called cluster development around specific issues. That is why the idea of the Theme Committees was such a good one. [Time expired.]

Mr A S BEYERS: Mr Chairperson, in the three minutes at my disposal, I want to deal with what may appear to be a side issue, but what is nevertheless a very important one, namely paragraph 15.2.4 of the Constitutional Committee report under the heading "Political Party Programmes". This paragraph falls under the chapter dealing with Community Liaison. It reads as follows:

> Political parties both in and outside the Constitutional Assembly have a vital role to play in the process of ensuring maximum public participation in the process of constitution-making. Parties will be urged to ensure that their programmes are used to engage the public and their supporters on constitutional issues. The Administration will liaise with parties to obtain information on such programmes and to facilitate where required.

We support the statement that political parties have a vital role to play to ensure public participation in the process. But the last sentence of the paragraph, without any doubt, opens the way for the possible abuse of the Administration of the Constitutional Assembly to organise party-political meetings or rallies.

The suggestion that the Administration should liaise with political parties to obtain information on their programmes and to facilitate where required, may even be interpreted that State funds from the budget of the CA may be used to support political parties, or for that matter, one political party to advertise and arrange political rallies under the disguise that those rallies are official functions in the constitution-making process.

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I am of the opinion that we should look at another formulation of the need to reconcile party-political events with the constitution-making process, and to draw clear lines between party-political events and official occasions. If we do not treat this issue with circumspection, it may become an unnecessary point of dispute and it may even reflect badly on the Chairman in his dual capacity of both Chairman of the Constitutional Assembly and the Director-General of a specific political party. I would not like to suggest for a single moment that the Chairman is evil-minded, but I also know that some members of the majority party will struggle to resist a temptation of this nature.

Therefore, in conclusion, I want to suggest to the Constitutional Committee that in this regard, as it was done with the inclusion of paragraph 14(7)(b) to achieve multiparty monitoring of the media campaign, a multiparty committee be established to monitor the involvement of the Administration in party-political events, and, secondly, to come up with another formulation on this issue.

Ms B KGOSITSILE: Mr Chairperson, on the matter which has been raised by Mr Beyers, I can only say that while appreciating his concerns, I wonder whether they stem from first-hand experience.

I would like to congratulate the Directorate of the Constitutional Assembly on work well done, and I would also like to support the adoption of the report of the Constitutional Assembly as given by the Chairperson.

In the few minutes at my disposal, I would like to deal with just a few points which have been raised by the speakers who came before me. The first of which is the issue of minority reports which was raised by Mr Felgate. In addition to what has been said already by our colleague, Prof Mchunu, I think what worries me is that an impression is being created here that structures of the Constitutional Assembly have not left room for minority views to be heard from level to level or forum to forum after the views of whatever political parties would have been defeated at the first meeting. I think we need to correct that, because that is not true. In actual fact, it has been agreed that minority views can be raised right through the structures, levels and forums of the constitution-making process by the parties that had raised them initially. Therefore, there is no issue about the views being heard right up to the Constitutional Assembly, and I would just like to emphasise that.

I think we need to differentiate between a process in which political parties have to convince one another of whatever views they are negotiating about or debating on, and a situation in which there are those who are, in fact, engaging in efforts to try and use the forums or the opportunities which we are given by structures or forums such as this Assembly to impress the public, and a situation in which we are being used or in which there is an effort to use these structures to give status to whatever views, which they in fact do not deserve, precisely because they failed to convince other parties at the very first sitting. We are saying that we are not stopping anybody. Views can always be raised right through from the Constitutional Committee up to the Constitutional Assembly, but if those views do not merit support they will always fail. Let us therefore not try and engage in arm-twisting exercises here about that issue.

The next issue which I would like to raise, is about the question which was asked as to why we need to be preoccupied with adopting the Constitution in two years' time. I think we need to remind ourselves here, as leaders and elected representatives of the people of our country, that when we were at the negotiations, we were talking about electing democratically representative people to come and write a new constitution for South Africa on the basis of which we will be able to move into a democratic future.

As we went on with the negotiations we came up with the Constitution itself, or the document which is now the interim Constitution. However, according to the ANC it should not have been a Constitution. It should have been a Transition to Democracy Act to facilitate the interim period, not for long-term purposes. However, the point about the interim Constitution is that it is not the type of document in terms of which we can go on governing the country. We need, therefore, as a matter of urgency, to develop a new constitution which will address the crucial needs of the majority of the people of this country and bring about change.

We therefore must be concerned about the time frames as stipulated in the interim Constitution. We should address the problems of the country, and a new constitution should be thorough and

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allow us the opportunity to address problems in the long term and in a fundamental way.

The question of keeping to the 18 months or whatever we are left with, is crucial for us. We appreciate the concerns and the time constraints, especially as regards participation of the public, so we should keep within the time frames, in order to empower ourselves to move to the future speedily.

The next issue I would like to raise was raised by Mrs Camerer, namely the structures that fall under Sub-Theme Group 4 of Theme Committee 6. We must remember that we are dealing with an interim Constitution and that the structures that are set up and the legislation we are dealing with are supposed to take us through this transition period. The structures or legislation that we have already agreed on are meant to deal with the period of the the Government of National Unity.

We cannot necessarily say that this is conclusive and an answer to the long-term programme that we have to create a nonsexist, nonracial, democratic and united South Africa. Although we have looked at the structures, the Constitutional Assembly has the right to engage in a thorough exercise to learn from the experiences we and the international community have had, and then come up with new structures in the new constitution. [Time expired.]

Mr D P A SCHUTTE: Mr Chairperson, I would like to deal with one aspect only, and that is how this process can deal with matters relating to traditional leaders, traditional authorities and customary law.

As matters stand at this stage, three Theme Committees have been mandated to deal with this matter. I refer to the mandate of Theme Committee 2, which deals with the structure of Government. Paragraph 2.10 mandates this Theme Committee to deal with "traditional leaders". Theme Committee 5 deals with the judiciary and legal systems and is mandated in paragraph 5.2 to deal with "the institution, status and role of traditional leadership and indigenous law". In paragraph 5.4 this Theme Committee is mandated to deal with "traditional authorities". Theme Committee 6, which is mandated to deal with specialised structures of government, is mandated in paragraph 6.7 to deal with "traditional authorities".

It is clear that there is a substantial overlap between these three Theme Committees as far as this matter is concerned. I believe that these matters are intertwined. A decision on one of the matters, will of necessity also influence a decision on another matter.

Because of these considerations, a meeting was called of the representatives of Core Committees 2, 5 and 6 to discuss this matter and to see whether a decision could be reached to take this matter forward. This meeting has proposed two ways of dealing with this matter. In the first instance it proposed that various interpretations be placed on the mandates referred to.

It proposed, as far as Theme Committee 2 is concerned, that paragraph 2.10 be interpreted to refer to the representation of traditional leaders in structures other than traditional structures. As far as paragraph 5.2 and 5.4 are concerned, it proposed that that be limited to traditional law and tribal or customary courts. As far as paragraph 6.7 is concerned, it proposed that that deal with the representation of tribal leadership in tribal structures.

The second proposal is that a joint committee be set up, consisting of representatives of all three these Theme Committees, and that this committee should be established, firstly, to take evidence on all these matters together and also to co-ordinate decisions as far as these matters are concerned. I believe that this is a reasonable and workable solution, and I hope that it will find favour with the Constitutional Committee. [Time expired.]

Mr C W EGLIN: Mr Chairperson, in the further few moments available to me I wish to return to a particular subject. I hope I can have the attention of the Chairperson of the Constitutional Assembly for a few moments.

I want to reiterate that the DP believes that we should try to meet the time schedule if possible. We think we should carry on until 30 June of next year, getting in any information we can. Equally, however, we want to point out the very serious problems there are going to be in meeting that time schedule, and if in the end we have to adjust it, we should do that rather than make the wrong decisions because of a shortage of time.

If it were a brand new constitution, I think we could have drawn it up in two years. It is not,

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though. We are actually drawing up a constitution in the context of a Constitution which has just been put in place and which cannot be wished away just at the stroke of a pen. It has become a practical reality of an existing situation. One of the problems is going to be that many of the elements of this Constitution will not yet have had time to be tested to see whether they should be scrapped, whether they should be modified, or whether they should be kept.

The provincial system will not yet really be effectively in place in the course of the next year or two. Local authorities will not be in place. The Financial and Fiscal Commission will be in place, but it will not have been able to test its efficacy or otherwise. The Bill of Fundamental Rights will have hardly yet been adjudicated upon, and it will be very difficult to see whether the Bill of Rights meets our needs or not. In fact, the Constitutional Court itself is only going to consider its first judgement in February of next year, and it will not yet have had time to develop a new ambience, a new feeling, as to whether it is adequate or not.

Thus one has the practical problem of how one should test the existing structures before they have had time either to prove or disprove themselves in order to decide what to scrap and what not to scrap.

The second point is, to what extent should the present Constitution serve as any kind of draft or terms of reference. Some would say we should not look at it at all. The fact is, it is no longer merely a draft, it is a reality. It talks in here about a President. In fact, it is President Mandela who is the President, and he is a reality. Therefore many of the things in this Constitution are a practical reality today. We in the DP say, that we should not follow this Constitution slavishly. Quite clearly we should not.

Equally, however, it is valuable resource material. It is a source of information; in a sense, it is a source of reconciliation; and it is a source of negotiation which has resulted in certain consequences and certain structures. By all means, let us re-examine those structures, but let us not reinvent the wheel when, in fact, reinventing the wheel is not necessary.

This Constitution provides an illustration of how those 34 Constitutional Principles could be put into effect. One might vary it if one wishes, but it provides an illustration. It also reflects a broad area of agreement. Some people felt left out of the agreement that was reached at Kempton Park, but I believe that the election of 27 April, as far as the public was concerned, expanded that area of agreement in respect of the Constitution. While there are still issues on which we are divided, and issues which we must still re-examine, the broad basis, we believe, has been set by the Constitution and the Constitutional Principles.

Let us therefore scrap the interim provisions of this Constitution and the transitional mechanisms because they are interim. Let us look, for instance, at the provincial systems which this Constitution admits are not yet final. It specifically says that there is a Constitutional Commission to help finalise the provincial process. Let us look at all these things, but let us also realise that there are certain substantial things which, while we re-examine them, we must not scrap just for the sake of scrapping. A precedent is going to be set in this country, whether we like it or not, but I believe the relationship between the President and the Cabinet is not going to be significantly changed.

I believe that there is going to be a bicameral legislature. Are we going to vote to scrap the Senate? I do not believe we are going to do so and therefore that is not the issue we should be debating, but rather the details of how it is put together. There are going to be provinces. They are going to have legislatures and executives. There is also going to be a Constitutional Court and ordinary courts. All these things are already there. I am not saying that we must adopt them as they are. For Heaven's sake, however, let us not start from scratch and try to reinvent a whole new constitution. We believe the time frame can be met with a degree of flexibility, and if we build on what is worthwhile in the past and change that which is not worthwhile.

It is my view, oddly enough, that while this Constitution might not have started with full legitimacy, with the general election and under the leadership of President Mandela, the present Constitution has received a very high degree of legitimacy both inside and outside South Africa. Let us improve on it, but let us not scrap it for the sake of scrapping. [Time expired.]

Mr R J RADUE: Mr Deputy Chairperson, it is with pleasure that we in the NP support the adoption of this report. The report is compre-

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hensive and time does not permit one to go into great detail. A few practical considerations, however, do deserve attention.

Firstly, it is vital to ensure that the Constitutional Assembly does its work competently and thoroughly. In this regard, the advice of the panel of five experts will be crucial. It is essential that these experts become involved as early as possible in the whole process. It is therefore important that the subcommittee mentioned in paragraph 4.1.2 of this report should commence and complete its work in the time allotted. They do not have much time because the date set for completion of their work is 5 November 1994.

Once appointed, the panel of experts could be asked to analyse the various law reports, the numerous articles by academic writers which have already been published on constitutional matters and fundamental human rights in South Africa, and even the decisions of the new Constitutional Court may come before them. The panel could make some basic submissions in this regard to the Technical Committees, and this might be a useful preparatory step before we go to the public at large.

Secondly, under the provisions of the 1993 Constitution the CA has been obliged to adopt a programme of work and time frames. These are set out in the report. The Constitutional Committee will have to ensure co-ordinated effort between the various Theme Committees, the panel and the CA in order to succeed. It is perhaps too early now to speculate on whether we will complete the huge task that lies ahead in time. We will have to monitor progress on every front regularly. If we begin to fall behind in our programme or our time frames, we will have to examine alternative options.

Finally, it is essential that the Theme Committees crystallise their work programmes and procedures urgently. It should be emphasised that the tasks of the Theme Committees are not to draft the constitution. That is the work of the CA and the CC. The Theme Committees must receive submissions and process them into reports for consideration by the CC. They only have the duty to compile reports in their various fields on those things which are common cause and on which there is agreement, namely "non-contentious matters", secondly on contentious issues in respect of which there are differences, and thirdly, suggested approaches to solve those differences.

With these three practical suggestions, we support the report.

Dr R RABINOWITZ: Mr Chairperson and hon members, I wish to address myself solely to the matter of public participation.

The central objective of promoting public participation can be divided into four main objectives. The first is to inform the public and to keep people abreast of the procedures here in the Constitutional Assembly. The second objective is to stimulate public interest so that the people realise that they can make a meaningful contribution to the process. The third is to educate the public so that, initially, the debate should centre on issues rather than on politics. The fourth objective is to create a forum for public participation and for liaison between ourselves and the public.

I would like to discuss in particular educating the public and liaising with the public by way of entering into debates and obtaining feedback from the public in such a way as to influence our constitution drafting.

We believe that this should take place at several levels. Firstly, the general public should be involved. We should aim at reaching two levels in this group, namely the less-educated people who are ignorant of constitutional affairs and, secondly, those who have some familiarity with the central issues. The third level is that of affected interest groups, such as labourers, sports groups, educationists, religious groups, business, etc.

In this process it will be important to realise that the public was left behind at Kempton Park and that most South Africans are new to the constitutional debate. For example, most people have a superficial understanding of the concept of a unitary state versus a federal state, of the consequences of a free market as opposed to a socialist economy, of the meanings of pluralism and self-determination or of cultural and regional differences and the way in which they should impact on our future constitution.

Consultation could be used as a means of manipulating public perceptions. This can be avoided only by carefully structuring the process by which the public participates. If our attempts to liaise with the public are genuine, and we do not want to use the forum merely as a platform from which to promote certain points of view, we

recommend adhering to the following principle. The liaison should be structured around issues. Each Theme Committee has identified issues around which it will construct its reports. Those same issues should become the focus around which the public debates are structured. Hence, the forum should be organised around examining certain issues and their alternatives from the point of view of all the implications and consequences thereof.

In many instances we should put questions to our participants to stimulate and direct the debate, such as whether we want a horizontal or vertical application of the bill of rights; whether we want an electoral system based on proportional representation or constituencies or a combination of both; and whether we want taxes raised at central level only, or at central and provincial levels.

We also feel that in order to avoid confrontation before we enter into debate, there should be participation by all parties in the media effort. We should, at all costs, counter the tendency of any one group, no matter in which party, to monopolise the media effort. This applies to the secretariat as well, which to date has done an exemplary task.

The ANC itself has many contrasting views on the interim Constitution. Therefore, the process should be structured so that all our viewpoints receive airing. To this end we support the idea of appointing a subcommittee to act in conjunction with the Management Committee as a media liaison committee, which will monitor all media efforts of the secretariat.

We also support the idea that members of the Theme Committees should participate in the process of drafting reports and the documents through which these reports are communicated to the public. [Time expired.]

Dr E G PAHAD: Mr Chairperson, of course this is not the first time in the history of our country that a constitution will be drafted. However, it is the first time that we have the opportunity of drafting a truly South African constitution. Up to now constitutions have been drafted by minority parties, and the majority of the people have been reduced to being mere objects of history.

It is precisely in the context of drafting a truly South African constitution that the notion and concept of the Theme Committees is such an important element.

I think it needs to be noted that the Theme Committees are there, not primarily to serve the parties that are already in Parliament—these have their opportunities in the meetings of the Theme Committees themselves, the Constitutional Committee, and the Constitutional Assembly—but rather to give an opportunity to all those organisations, be they business, trade unions, political parties, civic organisations, and so on, who are outside the parliamentary process, to make their point of view known.

Therefore, the Theme Committees become very critical in enabling us to get as wide a variety of views as possible. In doing so, we cannot start from a position that assumes that there is only one trade union, business, or civic organisation point of view.

There are different trade union movements. It would be wrong to say that because Cosatu is the largest one in the country, its point of view should be regarded as the view of the majority, and if, for example, Fedsal makes its viewpoint known, this should then be regarded as a view of the minority. That would be wrong.

Similarly, it would be wrong if, in the business sector, when Nafcoc makes its point of view known, we regarded that as the majority view, and if, for example, the Afrikaanse Handelsinstituut made its viewpoint known, we regarded it as a view of the minority. That would be wrong.

All these bodies are of equal weight, and have the same status with regard to the Theme Committees. Therefore, the approach is not one of a majority or a minority view. It cannot be. We are saying that there are a variety of options, all of which have the same weight and status.

I would like to tell Mr Felgate that this continuous harping on majority and minority reports does the IFP a disservice. What could very easily happen is that if one is stuck with these perceptions, one could end up saying that if something is a majority point of view, no interest should be taken in a point of view of the minority. This would be wrong.

We should start off by saying that all views have equal weight, and that even Mr Felgate's view has equal weight if it is expressed properly! [Laughter.] Therefore, everybody's view will be treated alike. We would then take the views to

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the Theme Committees, whose task would be to process it. This should be done in such a way that nobody's view is left aside. We should ensure that everybody's viewpoint is carried forward.

In this way we will be able to go with five or ten options on a particular viewpoint, rather than a single option which says that the majority of the members of the trade union movement, or the business sector, supports a particular point of view. In the end this will make it much better for us to weigh up the different options that are available to us in terms of the drafting of the new constitution.

Secondly, there is the question of flexibility. [Interjections.] If Mr Walter Felgate joined the real world we might find him useful sometimes! The Theme Committees are designed to enable us to have a flexible, as opposed to a rigid, approach to this process. To some extent, even the negotiations of Kempton Park took place within a rigid framework.

The Theme Committees give us greater flexibility. It is within this flexibility that we must allow for the greatest diversity of viewpoints possible.

Let me say a few words on public participation. If we did not ensure that the disempowered are empowered to participate in this process, we would have failed. The disempowered are the people in the rural areas, for example. They are the rural women, the illiterate people, and so on.

We have to devise ways and means in order to ensure that all of these people are able to participate as fully as they wish in this process. Otherwise those groups—basically the middle-class groups—that are already well organised, with lawyers on whom to call or friends who are academics or even professors, will be the only ones that are able to make a meaningful input.

In terms of this public participation it is therefore our responsibility to ensure that we go out to the people and that we do not sit in some room, waiting and hoping for someone to get onto his horse-and-cart to come to our offices with information. We will have to go to the rural areas in order to find out what the people there think.

Lastly, I want to say something about time frames. Let us not decide on these now. We have a time frame which has been put to us by the Constitution and it is our responsibility to do our best in fulfilling the responsibilities imposed on us by that Constitution.

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! We now come to an innovation in the Constitutional Assembly's debate. We call it "Open Time", and I believe copies of a document describing its procedures and system have been distributed to all hon members.

Briefly, a time has been allocated to each party—7½ minutes to the ANC, 3 minutes to the NP, 1½ minutes to the IFP and 1 minute each to the other parties. I do not have a speakers' list in front of me. In fact, I have no speakers' list at all. This time may be used by parties either as a series of short inputs or as a single contribution.

The Chair will, at its discretion, call upon the parties to speak. In other words, I do not have an order for participation in this debate. However, I would like hon members, who may use the microphones nearest to them, to mention their names and the party on whose behalf they are speaking so that the Secretariat may make calculations and ensure that we give all parties the opportunity to speak in terms of the time made available to them.

Furthermore, we therefore have 16 minutes in full set aside for party participation, and 14 minutes for responses to that participation. This may be done by way of short interactions after each member has made a contribution, or by a longer response at the end.

I am in the fortunate position today that, sitting in the Chair, I can also call on Mr Ramaphosa to participate from that microphone. However, may I warn members of the Management Committee that I can also call on their assistance.

We therefore have 30 minutes of "Open Time", starting right now. Is there anybody willing to take the floor? [Interjections.]

Mrs B S MABANDLA: Mr Chairperson, I want to use a minute in order to react to the input made by Dr Rabinowitz.

I would like to caution against any attempt at social engineering or manipulating participation by the public. When we call for public partici-

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pation, I think we must make sure that we are soliciting genuine inputs by ordinary people. These must be inputs made by ordinary people. Ordinary people know nothing about verticality and horizontality, just like many of the members who are sitting here. [Applause.]

Mr M M Z DYANI: Mr Chairperson, I would like to know what mechanisms have been devised to ensure that public views which have been collected are actually used in the constitution-drafting process. Seeing that we will be spending about R20 million on this, it becomes imperative that these views be utilised.

Secondly, I would like to know why alternates are not allowed for the Management Committee. We believe that allowing such alternates would be very helpful to smaller parties. If it is because the Rules do not provide for it, the PAC suggests that these Rules be amended.

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Thank you very much. Mr Ramaphosa, I shall ask you to respond to the first question at the end of the debate. Perhaps you would also like to respond to the second one; otherwise I have earmarked a member of the Management Committee to answer it. [Interjections.] In fact, I am considering Mr Van Breda to respond. [Interjections.] [Laughter.] Any other points? [Interjections.] [Laughter.] I know who is standing up and I know who is standing next to the microphone, but I would like each member to announce himself and to say on whose behalf he will be speaking.

Mr P F SMITH: I am Peter Smith of the IFP. Mr Chairperson, allow me to remind the Assembly of the provisions of section 161 of the Constitution, which says that it is a priority of this Assembly to deal with the development of a system of provincial government.

This provision is both a common-sense one and one that is politically necessary. I think that part of the reason why it is politically necessary—I do not want to be the bad penny here by continuously coming up with the same issue, but this point requires frequent mention since members of this Assembly have very short memories—is that the ANC, the NP and the IFP have all agreed that a mechanism to prioritise this, in terms of the injunction that we are called upon to fulfil, is in fact international mediation. We are adamant that this mediation should go ahead as promised.

Furthermore, we believe that this can be finalised during the next recess so that when we come back at the end of January and commence our work, all the work of the CA and its structures can be adequately focused within agreed-upon parameters.

The IFP wants the work of the CA to succeed, but we are saying to the ANC and the NP that if they believe that they can sacrifice principle for expediency, this CA is heading for trouble. An agreement was reached on 19 April. It is a solemn agreement which many people here signed, and is it really too much for us to ask . . . [Time expired.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Felgate, can I ask you to respond to the question regarding alternates on the Management Committee at the end of the debate, please?

Mrs G N M PANDOR: Mr Chairperson, I would like to pose two very brief questions which I hope the Chairperson will respond to. The first relates to a query regarding what is being done by the Management Committee to ensure that members of the public are aware that they have rights. I am not sure of the degree to which there is awareness of this.

Secondly, in relation to Rule 44 on Technical Committees, the Chairperson indicated broad acceptance of this rule, and yet earlier documents from the Management Committee suggest a redrafting in terms of the exact function of Technical Committees. Could we have some clarity as to the role of Technical Committees?

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Thank you very much. If there is no further participation from the floor, that concludes this section of Open Time. I will first ask Mr Felgate to respond to the question about alternates on the Management Committee and then ask the Chairperson to give his answer.

Mr W S FELGATE: This issue of representation on the Management Committee is one of great importance to members of smaller parties who have neither the time nor the members to attend all meetings. They cannot always attend a particular meeting.

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There are two sets of considerations which must be borne in mind in this matter. Firstly, the Management Committee is dealing with process. It is not dealing with decision-making or policy issues. It is a process Management Committee and, as such, a hands-on approach and day-to-day knowledge of ongoing events are important. It is counterproductive to chop and change the membership of such a committee. That is not persuasive, nor is it fixed in concrete, but it is a reality and it is colouring thinking on the matter.

Secondly, one cannot be a member of the Managing Committee unless one is a member of the Constitutional Committee. Members from smaller parties of the Constitutional Committee can only choose from among their members on the same Constitutional Committee to replace them as alternatives to the Management Committee. That is what the Rules state at the moment.

We believe that the approach should be adopted that any due notice which is given to the Management Committee of a member's relatively longer absence from the committee, should be considered by the Management Committee and put to the Constitutional Committee. We also believe that all members are free to attend any Management Committee meeting and any member can, therefore, keep abreast of events and inform any other person who cannot make a particular meeting on the Management Committee.

Therefore, functionally, it is not necessary to change and parties do not lose anything because party issues are not at stake, as it is process management that we are involved in.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, the first question asked by a member of the PAC is what mechanisms we would set in place to deal with the various inputs and submissions that will be made by the public. We did indicate that, in the main, it is the Theme Committees which are going to be the vehicle for ensuring that public participation achieves the objectives which we have identified.

We have 30 members on each Theme Committee. Multiplied by the 16 committees and adding the staff which we are going to employ and have already employed to back up these Theme Committees, we will have quite a number of people who are going to be seized with the task of ensuring that the inputs, submissions—and may I say not only of political parties but also those of individuals and organisations—are dealt with and analysed properly to present well-considered reports.

The Theme Committees will also be required not only to receive those submissions, but to listen to those submissions. They will be required, through the programme we have set in place of holding forums, both sector and area forums, to go out and listen to what people have to say and to interact with the public. We would like to believe that all that information is not just going to be washed down the drain, but that it will be dealt with by the Theme Committee members who will, at a technical level and at a secretarial level, also be assisted by staff.

The technical experts, whom we are going to engage, are also going to play an important role in this whole process. They will be paid, and I might add that it will quite a bit of money, which will all add up to ensuring that not a shred of paper, an idea or whatever is presented goes to waste, is shelved or left unconsidered. Therefore, I can confidently say that all the inputs will be given serious consideration. To serve as guarantee, we are also be able to say that those inputs will also be available to members of this Assembly.

It was Mr Eglin who referred to an index type of system according to which an index of the documents of the CA can be drawn up indicating what submissions have been received from what political party, and so forth. No doubt there will be mountains and mountains of documents, but we shall keep an index. To this end, we have employed librarians who will be able to ensure that the information is easily accessible, not only to us here as members of the CA, but to whomsoever wishes to gain access to that information.

The ANC asks what we have done to ensure that the public know about their rights with regard to their participation in this whole process. In the report we have indicated clearly that our media strategy is going to be aimed at achieving a number of objectives. One of them would be to ensure that the public do interact with this process.

We shall use a number of mechanisms, or ways of doing so. Some of those are to give information in a way that will be properly understood

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by the ordinary person in the street. An education process is going to have to start as the process gains momentum. In fact, the staff has already put forward quite a number of ideas on how this can take place. That education process is going to be aimed at ensuring that the public out there know what their rights are, and that they know how they can plug into this process, how they can participate and how they can contribute.

The report also indicates that we hope to use quite a number of information offices situated in provincial governments, closer to where the people are. We are also hoping to ensure that some publication or other—taking into account what Mr R P Meyer said—will be made available to people about the daily workings of the Constitutional Assembly. We are confident that, starting with letting people know what their rights are, we shall be able to ensure that people do act on their rights and participate from an informed point of view.

With regard to Rule 44, I want to say the following. Rule 44, as it stands, does set out the functions of the technical experts. It describes it in a way that will make sure that technical experts do not, in the end, take over the entire process of drafting. They will, in the main, be working under the direction of this body through the Constitutional Committee as well as the Theme Committees that they are dedicated to. So the drafting process—much as it is said here that it will be supervised by the technical experts or the Technical Committees—is essentially going to be supervised by the Constitutional Assembly.

It is envisaged that the Theme Committees, having discussed matters and having processed submissions, will be able to submit reports to the Constitutional Committee. The Constitutional Committee, having given consideration to those reports, will report to this Constitutional Assembly. The directive will then ensue that drafting should commence on a particular aspect of the constitution.

The technical experts will then be able to commence with the drafting. We must recall that the technical experts that are provided for by Rule 44 will, in the main, be working with the Theme Committees and with the Constitutional Committee. They will also receive directives from here. Over and above that, we shall also have the panel of independent experts who will be giving advice on an ongoing basis.

Therefore, the task of Technical Committees should not be seen as very rigid, but at the same time it should not be seen as a task which they can just execute on their own without any reference from the constitutional structures of the CA.

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Debate concluded.

Motion agreed to.

The meeting adjourned at 17:05.

ANNOUNCEMENTS,TABLINGS AND COMMITTEE REPORTS

ANNOUNCEMENTS:

The Chairperson of the Constitutional Assembly:

The following submissions on the constitution making process have been received to date:

1. From Political Parties

African National Congress.....A.1.5/35
Democratic Party.....A.1.5/32
Federal Party.....E.2 /30
Freedom Front.....A.1.5/33
Minority Front.....A.1.5/39
National Party.....A.1.5/36
Pan Africanist Congress.....A.1.5/34

2. From Associations and other interest groups

Abortion Rights Action Group.....A.6.4.9/15
Bethrapha Rehabilitation Centre....A.6.4.9/13
Boere Vryheidsbeweging.....A.6.6.9/31
Conference of Editors.....A.6.4.9/16
Enjindini Residential Association...A.6.4.9/37
Home Economic Association.....A.6.4.9/15
Human Rights for Africa.....A.6.4.9/38
Institute for Democracy in SA.....E.2 /06
Law Society of Transvaal, The.....A.4.4/01
Mt Fletcher Development Forum.....A.1.5/40
Muslim Personal Law Board of SA...A.1.5/41
Peace,Prosperity and Democracy.....E.2 / 10
Red Cross Society, The SA.....A.6.6.9/03
Sached Trust.....A.6.1.9/08
Senior Bulletin.....E.3 / 02
Siraatul Haq Trust.....E.3 / 07
SA Council for the Aged.....A.1.5/42
SA Landowners Association.....A.1.6.4.9/43
Sunday Times.....A.6.4.9/16
United Methodist Church.....E.2 / 04
World Peace Foundation.....E.2 / 09

3. Statutory Organisations

Commission on Provincial Government.....A.1.5/17
Council for the Environment.....A.6.6.9/45
Human Sciences Research.....A.1.5 /46
SA Communication Service.....E.3 / 12
University of Bophuthatswana.....E.1.4.4/47
University of Cape Town.....E.1.4.4/48
University of the North.....E.1.4.4/49
University of the O.F.S.....E.1.4.4/50
University of the Western Cape.....E.1.4.4/51
Vista University.....E.1.4.4/52

4. Private Sector

Laauwen and Associates.....B.5 / 53
Mashabela,Burrows and Company....E.2 / 54
SA Chamber of Business.....A.1.5/05

5. Members of the Public

Aboobaker, AS.....A.6.5.9/23
Bosman, D.....A.1.5/55
Bouch, G.....A.6.4.9/56
Dullay, PR.....A.6.4.9/28
Kapitan, K.....A.1.5./57
Lange, AH.....A.1.5/27
Lidchi, D.....E.3 / 18
Maharaj, S.....E.2 /26
Matseke, V.....A.1.5/22
Mohanlall, A.....A.6.2.9/19
Mohapi, DTH & Motale, A.....A.1.5/25
Murray, H.....A.1.5/58
Prozesky, MH.....A.1.5/24
Reyneke, R.....A.1.5/59
Sindane, TJ.....A.6.4.9/21
Spangernberg, DF.....E.2 /20
Swemmer, C.....A.6.6.9/29
Tshabalala, PL.....A.1.5/60
Vally, M.....A.1.5/61

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PROCEEDINGS OF THE CONSTITUTIONAL ASSEMBLY

Members assembled in the Chamber of the National Assembly at 14:17.

The Chairperson requested members to observe a moment of silence for prayers or meditation.

AUTHORISATION FOR CONSTITUTIONAL COMMITTEE TO EXERCISE POWERS RELATING TO COMMISSIONS

(Draft Resolution)

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, the next sitting of the Constitutional Assembly will take place late in January next year. This motion will make it possible to appoint commissions for the intervening period, should it prove to be necessary, subject to ratification by the Constitutional Assembly.

I move the draft resolution printed in my name on the Order Paper, as follows:

> That the Constitutional Assembly authorises the Constitutional Committee to exercise the powers relating to commissions vested in it under Standing Rules 36 to 42, subject to ratification by the Constitutional Assembly.

Agreed to.

CONSIDERATION OF CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA SIXTH AMENDMENT BILL

(Draft Resolution)

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, in terms of section 72(3), this Constitutional Assembly may amend Chapter 5 of the Constitution by resolution of two-thirds of its members. In terms of the Standing Rules, this must be done by way of a Bill.

Since agreement amongst parties has been reached, namely that the number of members of the Panel of Constitutional Experts will be increased from five to seven, the draft resolution in my name seeks to suspend certain provisions of the Standing Rules to enable the necessary Bill to be passed expeditiously this afternoon. I therefore move the draft resolution as it appears on the Agenda under my name, as follows:

> That notwithstanding the provisions of Standing Rules 54, 60, 63, 65, 66, 67, 68, 70, and 71 to the contrary, in the consideration of the Constitution of the Republic of South Africa Sixth Amendment Bill by the Constitutional Assembly—
>
> (a) the bill may be introduced by a member of the Constitutional Assembly;
>
> (b) the member in charge of the bill may introduce the bill by submitting it, together with a memorandum on its objects, to the Chairperson before or at the same time as the motion that the bill be read a first time is delivered to the Secretary;
>
> (c) notice of a motion proposing a stage of the bill is not required; and
>
> (d) the bill shall not be referred to a select committee.

Agreed to.

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CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA SIXTH AMENDMENT BILL

(First Reading)

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson I move:

> That the Bill be now read a first time.

Agreed to.

Bill read a first time.

Second Reading

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, I move:

> That the Bill be now read a second time.

The Constitution of the Republic of South Africa Sixth Amendment Bill is aimed at amending section 72(2) of the Constitution of the Republic of South Africa of 1993. Section 72(2) provides for the appointment of an independent panel of five South African citizens who are recognised constitutional experts, who are not members of Parliament or any other legislature and who do not hold office in any political party, to advise the Constitutional Assembly or its Chairperson on matters pertaining to the drafting of a final constitution. It is proposed in the Bill to increase the number of experts in the panel from five to seven in order to make wider provision for considerations of representativeness in the selection of the panel.

Mrs B S MABANDLA: Mr Chairperson, the ANC supports the amending Bill. We recognise the fact that the amendment is meant to enable the achievement of representativeness in the Panel of Experts.

We are also satisfied that the following persons, who are proposed for the panel, namely Professor Erasmus, Professor Kruger, Professor Murray, Advocate Sedibe-Ncholo, Advocate Semenya, Professor Van der Westhuizen and Advocate Yacoob, are competent and will meet the requirements of the CA process.

*Dr C P MULDER: Mr Chairperson, the present Constitution, Act 200 of 1993, consists of 15 chapters and 7 Schedules. Whenever a constitution comes into existence, the question that always arises is: How is such a constitution amended? Chapter 5 of the present Constitution is unique in that it is concerned with the adoption of the new Constitution and, please note, not with the adoption of a final constitution, because there is no such thing, since subsequent amendments are always being effected. Consequently, in the present Constitution, provision is made in two ways to amend the present Constitution.

As far as Chapters 1 to 4 and 6 to 15, as well as the Schedules are concerned, section 62(1) of the present Constitution lays down the procedure in terms of which it may be amended, as follows:

> . . . a Bill amending this constitution shall, for its passing by Parliament, be required to be adopted at a joint sitting of the National Assembly and the Senate by a majority of at least two-thirds of the total number of members of both Houses.

As far as other provisions in the Constitution are concerned, they do not apply to the Constitutional Assembly, but they do apply to a joint sitting of the two Houses of Parliament. That is what we will be doing in practice later today when we come to the Constitution Fifth Amendment Bill.

With regard to Chapter 5, which deals with the adoption of the new Constitution, there is a completely different procedure to follow. Section 74(2), which forms part of Chapter 5, provides as follows:

> The other provisions of this Chapter may be amended by the Constitutional Assembly . . .

This is the meeting that is taking place now—

> . . . by resolution of a majority of at least two-thirds of all its members.

This Constitutional Assembly which is referred to in section 74(2), determines how it happens here, which is different from section 62(1), which refers to a joint sitting.

That brings me to the Bill itself, namely the Constitution of the Republic of South Africa Sixth Amendment Bill, which is intended to enlarge the Panel of Constitutional Experts from five to seven. This has become necessary as a result of the stipulations of section 72(3) which seeks to obtain unanimity and consensus, and therefore the contents of the legislation is very simple and merely provides that the panel shall be enlarged from five to seven, and the FF will therefore support it.

Mr C W EGLIN: Mr Chairperson, the DP does not believe that we should change constitutions either easily or lightly. We should, at all times, follow the procedure laid down in the Constitution. We have looked at this particular clause and we believe that, taking all the circumstances into account, it was entirely appropriate that we change the Constitution to this extent.

What really took place was that the committee which was appointed to make recommendations on the appointment of a panel and the Constitutional Committee which followed it up, had the option of following the letter of the law, which law stated that this body of five experts could be appointed by a simple two-thirds majority. It could have created a situation in

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which a two-thirds majority of this Constitutional Assembly could have nominated a panel of five.

In the wisdom of the selection committee, the Management Committee and of a Constitutional Council, it was decided not to have a decision by a simple two-thirds majority, but whenever a matter like this arose, to see whether it would achieve consensus. In order to arrive at consensus and at a panel that not only met the formal requirements of the law, but met the requirements of the Constitutional Council that this body should also be representative, it has become necessary to increase the numbers of this body from five to seven. Not only to avoid having a showdown in this House by means of a formal vote, and allowing people to feel that they were elected on the basis of support from one party or another, but in order to get unanimity, it is essential that this amendment goes through.

In these circumstances, and because we have confidence in the recommendations that have come from the Constitutional Council as far as the seven persons are concerned, the DP will support this amendment to the Constitution.

Mrs P DE LILLE: Mr Chairperson, the PAC wants to support the Constitution of the Republic of South Africa Sixth Amendment Bill. We are satisfied that the amendment meets the requirement of race and gender, although we feel that the balances are convenient to certain parties only.

Mr W S FELGATE: Mr Chairperson and colleagues, the IFP is pleased to be able to support this amending Bill. It sets in position a structure required by the Constitution, and the IFP is satisfied that the persons to be appointed are the persons who will fulfil the requirements of their offices.

We are pleased that the matter could be resolved and we want to record our pleasure at the way in which which there was interparty co-operation in the developments which led to this meeting today.

*Mr S J DE BEER: Mr Chairperson, the NP would like to give its whole-hearted support to this measure. I also associate myself very cordially with Mr Felgate's remarks about the co-operation in the subcommittee which was responsible for dealing with this matter. It was very clear to the committee from the start that we were dealing here with a matter which was of very great significance, that this Panel of Experts had a very important role to play in the constitution-making process and that it was therefore of the utmost importance to try as far as possible to arrive at a consensus on the composition of such a panel.

For my part I would like to say that there was really the most cordial co-operation on this committee. It was negotiation in the true sense of the word, which took place in a spirit of give and take. I think the committee has succeeded in its aim, namely to reach a consensus and by so doing to appoint a panel which will, as far as possible, be acceptable from the outset to all who are going to take part in the process.

In the process more than 150 nominations were dealt with. I personally think the committee deserves a compliment for managing to arrive at the consensus on the names of seven experts who comply in all respects with the requirements which were laid down. It is a good start to the process. If we could work as well together in future as we have done on the committee, it seems to me we have a good chance of drawing up a very good constitution for our country and its people.

Mr L M GREEN: Mr Chairperson and hon members, when 20 million South Africans went to the polls to elect a new government on 27 April, the world marvelled at the miracle that it was possible for so many political parties with so many political differences to be able to hammer out an interim Constitution that was agreed upon by all parties.

In the same spirit the ACDP wishes to support the sixth amendment to the Constitution. We realise that we need a greater miracle to draw up a new constitution. If it takes seven experts instead of five to do so, the House has our full support.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! The Deputy Chairperson informs me that, in view of the sentiments that have been expressed here, he does not wish to speak any further on this matter.

Debate concluded.

Question agreed to.

Bill read a second time.

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Third Reading

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, I move:

That the Bill be now read a third time.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! I wish to remind hon members that, in terms of section 74(2) of the Constitution of 1993 and Standing Rule 73, a majority of at least two-thirds of all members of this Constitutional Assembly is required to pass the Third Reading of this Bill.

If a division is not demanded, I shall direct that the names of the members who are in favour of the question be recorded. This will be done by way of the electronic voting system.

The following members voted in favour of the Question:

AYES: 342: Abraham, M; Ackermann, C; Alant, T G; Albertyn, J T; Ally, A; Andrew, K M; Appelgryn, M S; Badenhorst, M J; Balie, A; Baloyi, S F; Bhabha, M; Bhengu, F; Bhengu, G B; Bikitsha, P I; Biyela, B P; Blaas, A; Bloem, D V; Bogacwi, K A; Booi, M S; Botha, W A; Botha, Y R; Breytenbach, W N; Cassim, M F; Chabane, O C; Chalmers, J; Chauke, P; Chiba, L; Chikane, M M; Chiolé, J; Chiwayo, L L L; Chuenyane, L D; Coetzee, M P; Coetzer, P W; Coleman, M; Copelyn, J A; Cronjé, P C; Cupido, P W; Cwele, S C; Dalling, D J; Davhana, M K D; Davies, R H; De Beer, S J; De Lange, J H; De Lille, P; De Ville, J R; De Villiers, D J; Diale, N L; Dingani, Z A; Dlamini, B O; Dlamini, C; Doidge, G Q; Dowry, J J; Du Toit, D C; Duna, M W; Ebrahim, A G; Ebrahim, E I; Eglin, C W; Ellis, M J; Fani, L M; Fankomo, F C; Farisani, T S; Fazzie, E; Fazzie, H M; Felgate, W S; Fenyane, S L E; Ferreira, E T; Fihla, N B; Foster, J A; Fourie, A; Gamndana, T; Gandhi, E; Gcabashe, S J; Geldenhuys, B L; George, C M; George, M E; Gibson, D H M; Gininda, M S; Ginwala, F N; Golding, M J; Goniwe, T M; Gordhan, P J; Govender, D; Govender, P; Green, L M; Grobbelaar, P W; Groenewald, P H; Groenewald, R H; Grové, S P; Gumede, A J; Gxowa, N B; Hajaig, F; Hangana, N E; Hlengwa, M W; Hofmeyr, W A; Hogan, B A; Holomisa, B H; Jacobsz, F P; Jana, D P; Jassat, E E; Jooste, J A; Jordaan, J A; Kathrada, A M; Kekana, N N; Kgauwe, G J; Kgoali, J L; Kgositsile, B; Khasu, M J; Khobe, O N; Khoza, T S; King, T J; Kondlo, N; Koornhof, G W; Koornhof, NJJvR; Kota, Z A; Kuzwayo, N E K; Lamani, N E; Landers, L T; Le Roux, J W; Lebona, H J P; Leeuw, S J; Lockey, D; Losabe, L K; Louw, L; Louw, S K; Love, J Y; Lubidla, E N; Lubisi, S W; Mabandla, B S; Mabude, N; Mabuza, L; Mabuza, M C; Macozoma, S J; Madikizela, P; Maduna, P M; Mafolo, M T; Mahlalela, A F; Mahlangu, G L; Mahlangu, J L; Mahlangu, M J; Mahlangu, N J; Mahlangu, S J; Maine, M S; Majola, N T; Makgothi, H G; Makhanya, D W; Makwetla, S P; Makwetu, C M; Malan, T J; Malebo, S M; Malumise, M M; Mandela, N W; Mapisa-Nqakula, N N; Marais, A; Marais, P G; Maree, J W; Mars, I; Marsh, D W; Marshoff, F B; Masango, N E; Maseko, T M J; Masher, M G; Mashimbye, J N; Mathebe, P; Mayekiso, J M; Mayimele, H W; Mbeki, G A M; Mbuyazi, L R; Mchunu, E S; Mdladlana, M M S; Mdutyana, S N N; Mentz, J H W; Meshoe, K R; Metele, A T; Meyer, R P; Mfayela, S B; Mfebe, M W; Mgidi, J S; Mkhatshwa, S; Mkhwanazi, T R; Mkwayi, Z W; Mlangeni, A; Mngomezulu, G P; Mnguni, L L A; Mnguni, Z D; Mnisi, W F; Moatshe, P; Modisenyane, L J; Mogale, M P E; Mohale, M E; Mohamed, M; Mohlamonyane, G M; Mokitlane, M C; Mokoena, D A; Mokoena, M L; Molewa, B G; Moloto, C P; Momberg, J H; Mompati, R S; Mongwaketse, S J; Moorcroft, E K; Moosa, M V; Moosa, M W; Mothoagae, P K; Motshabi, C H; Mpahlwa, M B; Msimang, M M T B; Mthembu, J M; Mukhuba, T T; Mulder, C P; Mushwana, G M; Mushwana, M L; Mutsila, I; Myakayaka-Manzini, Y L; Myburgh, G B; Naidoo, A G V; Naidoo, E N I; Nair, B; Nash, J H; Ncube, N Z; Ndawonde, D; Ndlovu, M C; Ndlovu, V B; Ndzanga, R A; Nel, A C; Nel, A H; Netshimbupfe, M A; Ngwenya, M L; Nhleko, N P; Niehaus, C G; Niemann, J J; Njobe, M A A; Nkadimeng, J K; Nkomo, S A; Nkondo, S D; Nobunga, B J; Nogumla, R Z; Nqwemesha, K W; Ntaopane, T E; Ntsizi, T C; Nwedamutswu, M J; Nxumalo, S D; Nyembe, N D; Odendaal, W A; Olifant, D A A; Oliphant, G G; Oosthuizen, G C; Padiachey, D K; Pahad, E G; Pandor, G N M; Peires, J B; Peters, E D; Phakathi, N E; Phenethi, M M; Phillips, I M; Phohlela, S; Piliso, M M; Powell, P;

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Pretorius, I J; Rabie, J A; Rabinowitz, R; Radebe, J T; Radue, R J; Rajoo, K; Ramaremisa, N G; Ramgobin, M; Ramusi, M C; Ranchod, B G; Rasmeni, S M; Redcliffe, C R; Rhoda, R T; Richards, I; Ripinga, S S; Routledge, N C; Saloojee, C; Saloojee, R A M; Schoeman, E A; Schreiner, J A; Scott, M I; Seaton, S A; Sekgobela, P S; Selfe, J; Seperepere, M S; September, R K; Serote, M W; Sethema, B E E; Shilubana, T P; Shope, N G; Shope, N R; Sifora, T V; Sikakane, M R; Singh, H K; Singh, N; Sisulu, M V; Sisulu, N A; Skosane, B M; Slabbert, J H; Smit, H A; Smith, P F; Sonjica, B P; Sosibo, J E; Steenkamp, P J; Streicher, D M; Sulliman, M A; Surty, M E; Swanepoel, L J; Taunyane, D P; Thabethe, E; Tinto, C F; Tolo, L J; Tshabalala, M E; Tsheole, N M; Tshivhase, M P K; Turok, M E; Tyobeka, V M; Vadi, I; Van Breda, A; Van den Heever, R P Z; Van der Merwe, J H; Van Deventer, F J; Van Eck, J; Van Heerden, F J; Van Niekerk, A E; Van Wyk, A; Van Zyl, I D; Vilakazi, J N; Vilakazi, M I; Viljoen, C L; Viljoen, V; Vos, S C; Watson, A; Werth, C H; Wessels, L; Wiley, M G E; Williams, A; Williams, A J; Wyngaard, C A; Xingwana, L M; Yengeni, T S; Zitha, D A; Zondi, K M; Zulu, M I; Zuma, N C D.

Question agreed to in accordance with section 74(2) of the Constitution.

Bill read a third time.

APPOINTMENT OF INDEPENDENT PANEL OF CONSTITUTIONAL EXPERTS

(Draft Resolution)

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, I move the draft resolution printed in my name on the Agenda, as follows:

That the following persons be appointed in terms of section 72(2) of the Constitution of the Republic of South Africa, 1993, to form the Independent Panel of Constitutional Experts envisaged in that section: Prof M G Erasmus; Prof J Kruger; Prof C Murray; Adv M P Sedibe-Ncholo; Adv I Semenya; Prof J Van der Westhuizen; Adv Z Yacoob.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! I wish to remind hon members that, in terms of section 72(3) of the Constitution, 1993, a majority of at least two-thirds of all members of the Constitutional Assembly is required for the appointment of the Independent Panel of Constitutional Experts. The names of these experts have been read out. If a division is not demanded I shall direct that the names of the members who are in favour of the question be recorded. This will be done by means of the electronic voting system.

The following members voted in favour of the Question:

AYES: 339: Abraham, M; Ackermann, C; Alant, T G; Albertyn, J T; Ally, A; Andrew, K M; Appelgryn, M S; Badenhorst, M J; Balie, A; Baloyi, S F; Bhabha, M; Bhengu, F; Bhengu, G B; Bikitsha, P I; Biyela, B P; Blaas, A; Bloem, D V; Bogacwi, K A; Booi, M S; Botha, W A; Botha, Y R; Breytenbach, W N; Carelse, G M E; Cassim, M F; Chabane, O C; Chalmers, J; Chauke, P; Chiba, L; Chikane, M M; Chiolé, J; Chiwayo, L L L; Chuenyane, L D; Coetzee, M P; Coetzer, P W; Coleman, M; Copelyn, J A; Cronjé, P C; Cupido, P W; Cwele, S C; Dalling, D J; Davhana, M K D; Davies, R H; De Beer, S J; De Lange, J H; De Villiers, D J; Dexter, P D; Diale, N L; Dingani, Z A; Dlamini, B O; Dlamini, C; Doidge, G Q; Dowry, J J; Du Toit, D C; Duna, M W; Dyani, M M Z; Eglin, C W; Ellis, M J; Fani, L M; Fankomo, F C; Farisani, T S; Fazzie, E; Fazzie, H M; Felgate, W S; Fenyane, S L E; Ferreira, E T; Fihla, N B; Foster, J A; Fourie, A; Gamndana, T; Gandhi, E; Gasa, X F; Gcabashe, S J; Geldenhuys, B L; George, C M; George, M E; Gibson, D H M; Gininda, M S; Gogotya, N J; Golding, M J; Goniwe, T M; Gordhan, P J; Govender, D; Govender, P; Grobbelaar, P W; Groenewald, P H; Groenewald, R H; Grové, S P; Gumede, A J; Gumede, D M; Gxowa, N B; Hajaig, F; Hangana, N E; Hlengwa, M W; Hofmeyr, W A; Hogan, B A; Holomisa, B H; Jana, D P; Jassat, E E; Jooste, J A; Jordaan, J A; Kathrada, A M; Kekana, N N; Kgauwe, G J; Kgoali, J L; Kgositsile, B; Khasu, M J; Khobe, O N; Khoza, T S; King, T J; Kondlo, N; Koornhof, G W; Koornhof, NJJvR; Kota, Z A; Kuzwayo, N E K; Lamani, N E; Landers, L T; Le Roux, J W; Lebona, H J P; Leeuw, S J; Ligege, M G; Lockey, D; Losabe, L K; Louw, L; Louw, S K; Love, J Y; Lubidla, E N; Lubisi, S W; Mabandla, B S; Mabudafhasi, R T; Mabude, N; Mabuza, L;

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Mabuza, M C; Macozoma, S J; Madikizela, P; Maduna, P M; Mafolo, M T; Mahlalela, A F; Mahlangu, G L; Mahlangu, J L; Mahlangu, M J; Mahlangu, N J; Mahlangu, S J; Maine, M S; Majola, N T; Makana, S S; Makgothi, H G; Makhanya, D W; Makwetla, S P; Makwetu, C M; Malan, T J; Malebo, S M; Malumise, M M; Mandela, N W; Marais, A; Marais, P G; Maree, J W; Mars, I; Marsh, D W; Marshoff, F B; Masango, N E; Maseko, T M J; Mashamba, H J; Masher, M G; Mashimbye, J N; Mathebe, P; Mayekiso, J M; Mayimele, H W; Mbeki, G A M; Mbongwe, R R; Mboweni, T T; Mchunu, E S; Mdladlana, M M S; Mdutyana, S N N; Mentz, J H W; Metele, A T; Meyer, R P; Mfayela, S B; Mfebe, M W; Mgidi, J S; Mkhatshwa, S; Mkhwanazi, T R; Mkwayi, Z W; Mlangeni, A; Mngomezulu, G P; Mnguni, L L A; Mnguni, Z D; Mnisi, W F; Moatshe, P; Modisenyane, L J; Mogale, M P E; Mohale, M E; Mohamed, M; Mohlamonyane, G M; Mokitlane, M C; Mokoena, D A; Mokoena, M L; Molewa, B G; Moloto, C P; Momberg, J H; Mompati, R S; Mongwaketse, S J; Montsitsi, S D; Moorcroft, E K; Moosa, M V; Moosa, M W; Mothoagae, P K; Motshabi, C H; Mpahlwa, M B; Msimang, M M T B; Mukhuba, T T; Mushwana, G M; Mushwana, M L; Mutsila, I; Myakayaka-Manzini, Y L; Myburgh, G B; Naidoo, A G V; Naidoo, E N I; Nair, B; Nash, J H; Ncube, N Z; Ndawonde, D; Ndlovu, M C; Ndlovu, V B; Nel, A C; Nel, A H; Netshimbupfe, M A; Ngubane, H; Ngwenya, M L; Nhleko, N P; Niemann, J J; Njobe, M A A; Nkadimeng, J K; Nkomo, S A; Nkondo, S D; Nobunga, B J; Nogumla, R Z; Nqwemesha, K W; Ntaopane, T E; Ntsizi, T C; Nwedamutswu, M J; Nxumalo, S D; Nyembe, N D; Odendaal, W A; Olifant, D A A; Oliphant, G G; Oosthuizen, G C; Padiachey, D K; Pahad, E G; Pandor, G N M; Peires, J B; Peters, E D; Phakathi, N E; Phenethi, M M; Phillips, I M; Phohlela, S; Piliso, M M; Powell, P; Pretorius, I J; Rabie, J A; Rabinowitz, R; Radebe, J T; Radue, R J; Rajoo, K; Ramaremisa, N G; Ramgobin, M; Ramusi, M C; Ranchod, B G; Rasmeni, S M; Redcliffe, C R; Rhoda, R T; Richards, I; Ripinga, S S; Routledge, N C; Saloojee, R A M; Schoeman, E A; Schreiner, J A; Scott, M I; Seaton, S A; Sekgobela, P S; Selfe, J; Seperepere, M S; September, R K; Serote, M W; Sethema, B E E; Shabangu, S; Shilubana, T P; Shope, N G; Shope, N R; Sifora, T V; Sikakane, M R; Singh, H K; Singh, N; Sisulu, M V; Sisulu, N A; Skosane, B M; Slabbert, J H; Smit, H A; Smith, P F; Sonjica, B P; Sosibo, J E; Steenkamp, P J; Streicher, D M; Sulliman, M A; Surty, M E; Swanepoel, L J; Taunyane, D P; Thabethe, E; Tinto, C F; Tolo, L J; Tshabalala, M E; Tsheole, N M; Tshivhase, M P K; Turok, M E; Tyobeka, V M; Vadi, I; Van Breda, A; Van den Heever, R P Z; Van der Merwe, J H; Van Deventer, F J; Van Eck, J; Van Heerden, F J; Van Niekerk, A E; Van Wyk, A; Van Zyl, I D; Vilakazi, M I; Viljoen, C L; Viljoen, V; Vos, S C; Watson, A; Werth, C H; Wessels, L; Williams, A; Williams, A J; Wyngaard, C A; Xingwana, L M; Yengeni, T S; Zitha, D A; Zondi, K M; Zuma, N C D.

Question agreed to in accordance with section 72(3) of the Constitution.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! I have the pleasure of announcing that 339 members are in favour of the appointment of this panel. The appointment is accordingly agreed to in terms of section 72(3) of the Constitution. The names of the panel having been read, it is not necessary to read them out again.

We are pleased that we have, by full consensus, succeeded in executing the task set out in the Constitution of appointing these constitutional experts who are going to assist us with the task of drafting the new constitutional text. We will congratulate them in due course and wish them well in the important task they have taken onto their shoulders.

ADOPTION OF REPORT OF CONSTITUTIONAL COMMITTEE

(Draft Resolution)

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, I move:

> That the report of the Constitutional Committee tabled on 11 November 1994, be adopted.

For the sake of brevity I will not reiterate what is stated in the report. I would merely like to refer members of this Assembly, in particular, to paragraph one of Annexure 3 as well as paragraph eight relating to the budget for the Constitutional Assembly.

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Mr M V MOOSA: Mr Chairperson, at this stage I would like to thank the Secretariat and the Administration of the Constitutional Assembly for the wonderful work they have done in producing a detailed report, reports which we have thus far received at all meetings of the CA. I urge them to keep up the good work in this regard.

The report also refers to the details of all the members of the Panel of Constitutional Experts who have been appointed, and because I only have a few minutes, I would like to concentrate my speech on this matter.

It has been rather significant that the Constitutional Committee, and today the Constitutional Assembly, has succeeded in appointing the Panel of Constitutional Experts unanimously. It was our view, as the ANC, that we should do everything in our power to have that first option exercised. There are, of course, other options in the Constitution. Had we not been able to get the unanimous co-operation of all the parties, we would then have had to resort to Section 72(3) in terms of which the panel would be appointed by a majority of two thirds.

If we failed to appoint a panel with a two-thirds majority, then the Constitution would have allowed each party with more than 40 members in the House each to appoint one person. Had we taken that option, a number of parties, namely, the FF, PAC, the DP and the ACDP would have had no say whatsoever in appointing this panel. We decided not to take that route in line with the spirit which we are adopting in the Constitutional Assembly.

The Constitution provides that this panel is appointed to advise the Constitutional Assembly or its Chairperson on any matters pertaining to its functions or any other any matter on which the Constitutional Assembly seeks its advice, but it makes specific reference to the functions of the Constitutional Assembly.

In section 73 the Constitution sets out what could be the most important role of the panel. That comes into play when this House fails to adopt the new Constitution by a two-thirds majority. The panel then intervenes to mediate between the parties.

If there is a constitution that has the support of an ordinary majority, the panel will take that constitution and suggest certain changes in order to secure a two-thirds majority. That is a mediation role and of course it does not have the final say. The CA decides at the end of the day.

If the recommendations of the panel are not accepted by this House, that could precipitate what could be a major political crisis for the Government of National Unity, because then we automatically go into the process of holding a referendum in terms of which the final decision on the Constitution can be settled. If the outcome of the referendum is not decisive, then within a period of two years as from the implementation of this constitution, the President of the Republic will be obliged to dissolve Parliament and to call for further elections within three months.

One can see the serious implications that can result in the event of this panel failing in an important task of mediation, and therefore we are happy that we have succeeded in appointing this panel in a completely unanimous manner. It bodes well for the entire constitution-making process.

*Mr C ACKERMANN: Mr Chairperson, the report before the Constitutional Assembly is a further step in the writing of our final constitution.

Although the question of the Panel of Independent Experts is predominant in the report, I want to confine myself briefly to the first part of the report which deals with the structures of this Assembly. In this respect one can say quite unequivocally that there has been a positive spirit of co-operation between the various parties up to now, in spite of the fact that we represent a wide spectrum of ideas. This was to a large extent made possible by a hardworking and efficient administrative support team which more than played its part.

It is also amazing to see the progress made by the Theme Committees in their preparatory work. Progress has also been made on the question of overlapping between the spheres of operation of the various Theme Committees by identifying the overlapping areas and allocating them to specific Theme Committees.

One is also impressed by the various work programmes of the Theme Committees. These work programmes not only make provision for time schedules, but also make recommendations on the technical experts who may be needed on the committees.

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Considering the extent of consultation which should take place, the Theme Committees have identified various role-players and organisations with whom discussions will be conducted during the course of the first half of next year. This is in itself a substantial assignment and members will have to brace themselves for exceptionally long hours of patient listening to inputs. One would like to express the wish in this regard that the Administration of this Assembly should do their best to ensure that this evidence be heard jointly. This will eliminate many frustrations and lead to a better utilisation of time.

Other aspects for which provision has been made, is the identification by Theme Committees of constitutional matters to which they should pay attention, as well as the matters which should receive priority. Already an instruction has been issued to have a commission investigate our entire electoral system.

The NP in the Senate gladly supports the tabled report.

Mr P F SMITH: Mr Chairperson and colleagues, the main substantive issue in this report really is only the Panel of Constitutional Experts, and I think, for our part, we have adequately covered it. Therefore I would rather use this opportunity to address another issue, namely the spirit of constitution-writing as we understand it.

It cannot be denied that the formal process as set out in the Constitutional Assembly Report that we agreed to on 28 October is inclusive. This bodes very well for the process as we move forward. We have a Government of National Unity. I do not think all parties are necessarily very comfortable with it, but we are all doing the best we can. One of the responsibilities of each party in the Government of National Unity is to make a positive input, and we adhere to the notion of collective responsibility.

I think it is commonly understood that Cabinet decisions must operate also on the basis of decision-making including all three parties. If we do not adopt a position of compromise and give and take, the whole concept of a government of national unity is effectively an empty shell, a meaningless concept.

We really have to adopt a similar approach when we deal with the issue of how we operate in the Constitutional Assembly. As I have said, at the formal level the process certainly appears to make adequate provision for inclusivity and for the inputs of all the parties to be represented here and indeed in the country as a whole. I think we must therefore be very conscious of any possible dangers or anything that detracts from this.

Fortunately, although it appeared last week and even this week, as if the drafting of the work programmes of one or two of the Theme Committees had perhaps been less than ideal, I believe this has now been resolved, and there is satisfaction across the board with those reports.

There are going to be many Theme Committee reports, and they are not intended to reflect the result of negotiations by parties within the Theme Committees. In fact, negotiations are expressly forbidden. Therefore there is absolutely no reason whatsoever why there should be any difficulty in Theme Committee reports representing all the parties in those Theme Committees.

I believe it goes without saying that if we are talking of writing this constitution together, there must be total Theme Committee ownership of Theme Committee reports. We do not want to get into the position of Theme Committees being viewed by some parties as rubber-stamping certain parties' positions. After all, it was precisely because the Theme Committees were intended to reflect all contentious and noncontentious views that the option of minority reports was denied.

If we look ahead, another possible danger lies in the terms of reference given to commissions appointed to report to the Theme Committees in certain specialised areas. As a party we do not welcome a multiplicity of commissions, but as regards those that are appointed, we do not believe that they should be mandated to produce a simple set of recommendations in the manner that commissions normally do. Instead, they should investigate and report to us on a full range of options, giving the pros and cons of each, without being seen to be adopting a particular position.

I believe that their role should be to give the Theme Committees technical and specialised insight into the options available, and to do so in as neutral a manner as possible. They should not be in the business of precluding proper consideration of available alternatives, and they should not be in the business of narrowing the options

to this Constitutional Assembly. It therefore goes without saying that the commissioners should be acceptable to all parties.

I might add that the problem with inclusivity could also be a major concern to smaller parties if the Theme Committees started forming numerous subcommittees to cover areas which could just as well be covered by the Theme Committees as a whole.

It is sometimes unavoidable, but I believe that the Theme Committees should structure their operations to be as accommodating as possible to the smaller parties.

The problem is made even worse if members of Theme Committees are also expected to serve on the commissions. Each of us here has a very heavy workload and should avoid subdividing our tasks to such an extent that only the majority party benefits from the process. I do not believe that these issues should be glossed over if we are serious about the way in which we are expected to produce a constitution together.

This problem will probably get worse as we move forward, particularly if the timetable is used to circumvent the inclusivity that we all ostensibly seek. The IFP wishes to have the constitution drafted within the constitutionally prescribed time. However, it is quite feasible that we shall be facing a looming bottleneck situation sometime next year as far as both the timeous production of Theme Committee reports and their subsequent processing by the Constitutional Committee and the Constitutional Assembly are concerned. We hope that this will not occur, but if it does, it is vital that constraints on timetables are not used as an excuse to rush through decisions without due regard to the principle of inclusivity and without genuinely trying to seek consensus. We should rather amend the timetable than resort to this.

We have heard numerous statements of good intent from the majority party. Despite the possible problems I have just alluded to, we have no grounds to seriously doubt its bona fides within the constitutional process at this stage. However, the true test lies ahead. All this talk of unity is possibly just a papering-over of the cracks.

If we accept the process at face value, we are accepting that the politics of constitution-drafting is somehow different from ordinary power politics. Let us hope that this is the case due to the moderating influence of the Government of National Unity and public commitment to inclusivity of everyone here, and that the new constitution we come up with will truly enjoy legitimacy across the length and breadth of our land.

Mr C W EGLIN: Mr Chairperson, in a sense this report brings down the curtain on one part of the activity of the Constitutional Assembly, because it puts into place the last two pieces of what I call the jigsaw puzzle of our constitutional process. The report puts into place the Independent Panel of Experts and it makes specific provision for the Constitutional Committee to get on with the task of appointing commissions.

We hope that the spirit of goodwill and bonhomie which has permeated the discussions of the process, will also permeate discussions on the contents of the new constitution as we proceed next year.

I would like to endorse the view which was expressed by my colleague from the IFP that there had not been any further detailed debate on what is meant by a commission. It is a form of structure mentioned in the Rules and in this document.

We would hope that the mandate of the commissions would be an open, broad and generous as the mandate of the Theme Committees. The commissions should not be used to steer the work of the Constitutional Assembly in any direction. However, it should give the Constitutional Assembly the opportunity of examining the expertise and various alternatives that could be laid before it.

We endorse this amendment. We hope that the spirit which has gone before in setting up the various structures for this Constitutional Assembly's work, is going to permeate the discussions which are going to commence in earnest next year. We support the resolution before the Assembly.

Prof D C DU TOIT: Mr Chairperson, in the context of the relationship of the Theme Committees with the technical experts and commissions which are about to be set up, Mr Eglin has mentioned that they should be broad and as generous as possible.

This reminds me of an expression once used by a French Prime Minister, who was somewhat

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suspicious of military experts. He said that war was far too serious a matter to be carried out by generals and admirals. We could also say on behalf of the Theme Committees that the new constitution is too serious a matter to be finished off by constitutional lawyers only.

Theme Committees, as subcommittees of the Constitutional Committee, are political committees. They are not experts as they are supposed to be. Their task is to bring an independent mind to the questions put before them. They must be convinced by the experts that the experts are right.

On the other hand, the committees must settle disputes between the experts in the light of common sense—political common sense. In other words, the task of these Theme Committees, and eventually of the Constitutional Committee, to which they report, is to have a broad vision in order to grasp the implications of the recommendation of experts. They must not fail to see the consequences of what experts propose.

A Theme Committee of the Constitutional Committee would become dangerous to itself when it fails to see the consequences to the process of government as a whole in the new constitution as a result of proposals made by technical experts for the new constitution. They must decide which are the best of the technical alternatives and the impact of these in the light of public opinion and their political experience.

Mr R P MEYER: Mr Chairperson, I would also like to refer briefly to the Panel of Experts that this report deals with, and like my hon colleague, Deputy Minister Moosa, I would like to point out that, in terms of the Constitution, there are two main functions designated in the Constitution to this panel.

Firstly, in terms of section 72(2), they have to advise the Constitutional Assembly or the Chairperson on matters pertaining to the functions of the Constitutional Assembly, and secondly, in terms of section 73(3), they can advise or be asked for advice on amendments of the proposed draft within the framework of the constitutional principles, which might secure the support required in terms of subsection (2), when there is a lack of such approval of the constitution. I am referring to this because I believe that it is quite clear from the text of the Constitution that the intention is for this panel to fulfil an important task.

*I also think the composition of the panel is such that they are indeed equipped to fulfil this important and momentous task.

Mr Chairperson, what is important now, in my opinion, is that you are going to negotiate with the panel, in the interests and on the instruction of the Constitutional Assembly, about the specific nature and terms of reference of this panel in the execution of its task, as determined in the Constitution. The question which immediately arises, is whether this panel is going to function on a full-time basis, because that will determine, amongst other things, the nature of their remuneration. Moreover, it will determine the nature of their availability.

†It is going to be very important—and from my perspective, I would urge that this point be seriously considered—that this panel should be available on a full-time basis for the sake of the Constitutional Assembly in terms of what is foreseen in section 72(2), namely to advise the Constitutional Assembly or the hon the Chairperson, on an ongoing basis, on matters pertaining to the functions of the Constitutional Assembly.

They can only effectively do so, to my mind, if they are available on an ongoing or full-time basis. I would therefore urge the hon the Chairperson to consider this and to take it further in consultation with this panel in order to ensure that we have a clear understanding of the availability and functions of this panel on an ongoing basis for the term of their office.

From our past experience in the negotiation process, it has also become clear that in the end we will need some technical experts for the actual drafting in many respects. It is true that the politicians will mainly give direction, but when it comes to the formulation and the drafting of the constitution, technical experts will certainly be required to assist in that regard. This panel will be in the best position to take care of that responsibility, under the direction of the hon the Chairperson, the Constitutional Assembly and its structures. It is for that reason that I urge the hon Chairperson to engage in a process of consultation with this panel in order to determine exactly what their terms of reference should be.

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Mrs P DE LILLE: Mr Chairperson, the PAC wishes to congratulate the members and staff of the Constitutional Assembly on the progress made so far.

I want to say a few words on the Independent Panel of Experts, seeing that they will play a vital role in the whole process of constitution-making. It is, therefore, important that they must not only be seen to be independent, but must also act independently. We do not wish to see any of them sleeping, wining or dining with any of the political parties. [Interjections.]

The PAC pledges its support to the Panel of Experts and wishes them every success on the road ahead.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Thank you, Mrs De Lille, we will pass on the message to them that they should not wine and dine.

*Dr C P MULDER: Mr Chairperson, we are dealing with the report of the Constitutional Committee to the Constitutional Assembly. Other colleagues of the Constitutional Assembly have already called attention to the contents of the report. The report deals basically with the activities of the various structures of the Constitutional Assembly, namely the meeting of the Constitutional Committee, but more specifically, it deals with the activities of the subcommittee which dealt with the selection of the Panel of Experts.

I want to sound a word of warning to the hon members not to lose sight of the reason why we were elected, namely to write a constitution as elected representatives, and hand that responsibility over to the Panel of Experts. We should guard against this jealously in order to ensure that the Panel of Experts confine themselves to their task, namely to advise, and that they do not take over our activities.

The FF gladly supports the report.

Mrs G N M PANDOR: Mr Chairperson, we welcome the report by the Constitutional Committee, particularly because the processes of the committee and the report itself continue to reflect those principles within which we believe the Assembly must work. They are the principles of transparency, accountability, inclusiveness and efficiency.

I would like, in the brief time that I have, to note some of the proposals that arise from the report. We note that the committee, in keeping with the mandate of transparency, is going to allow for wide-ranging proposals on a media strategy. It is our hope that we will begin to see greater media activity on Constitutional Assembly processes, because the public continues to be mystified about our work in the constitution-making process.

As far as Theme Committees are concerned, we are happy to note that the work of the Theme Committees is proceeding well and that work programmes have begun to emerge. We need to caution that Theme Committees, and the Assembly, must be very cautious about continally proposing the creation of structures. The proposals regarding commissions are worrying in this regard. We believe that the purpose and function of commissions need to be clearly stated and arrived at before we agree to establish them. We must recall that every structure we set up costs this Government money.

On the question of a Panel of Experts, agreement on the panel is welcomed. We also welcome the representative nature of the panel. We believe that we should always ensure that the structures, staff and other players within the constitution-making process reflect consistently the full fabric of our society. We believe, perhaps, that this Assembly should move towards adopting a motion that it must strive to ensure always that its structures are fully representative. In this way we will be keeping to the mandate that has been set out for us.

We also believe that it is important for members of the Assembly to recognise and accept that Theme Committees are negotiating forums. That is not their role. There clearly are those who believe that Theme Committees are where final decisions on various constitutional matters will be made. This is not our understanding of the role of Theme Committees. Perhaps we need further deliberation on this point.

We hope that the unity we exemplify when we work in the Assembly is a true unity, and not the "papering of cracks" that was referred to earlier. It would be most disturbing if our role was that of a mere plasterer, rather than a true builder of the nation.

Debate concluded.

Question agreed to.

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PROVISION FOR OPEN TIME

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! We do have a provision for open time in terms of the Rules which we adopted. I am aware of the fact that we have a tight programme this afternoon. The Joint Sitting is supposed to commence soon. However, we felt that we should allow for open time. This innovative idea will allow members of the Constitutional Assembly to raise questions or make statements that are relevant to the work of the Constitutional Assembly. I will now allow a few minutes for that.

When we originally decided on this provision for open time, it was felt that we should not create the perception that the Constitutional Assembly is a rubber-stamping mechanism in constitution-making. It is possible that some members or, indeed, the public may see it as a rubber-stamping mechanism, because discussions and agreements take place and are arrived at at the Constitutional Committee level. The Constitutional Assembly then receives and adopts reports.

However, as the process gathers more momentum and as we begin to deal with substantive matters, it is hoped that vigorous debate will take place in the Constitutional Assembly itself.

The open time was agreed to in order to allow any member to address the Assembly. We would like to provide this open time just for that reason, so that those members who might have ideas on how the assembly should function and who might want to put forward questions or ideas will be accorded that opportunity outside the strict way of listing the names of speakers. Many issues were raised this afternoon and, indeed, there may be other questions. We would like to accord members that opportunity, but we would like to limit it to a short session.

Are there any members who would like to take this opportunity to address the Constitutional Assembly? I see none. Before we adjourn, I have to remind hon members that immediately hereafter there will be a Joint Sitting of Parliament, which will be followed by sittings of the Senate, as well as of Extended Public Committees of the National Assembly in the venues that have already been announced.

I need to record that this is the last meeting of the CA before Parliament goes into recess and before Christmas. We will commence in the new year on 23 January, whereafter the Constitutional Assembly will be working at a much faster pace, with the Theme Committees doing their work and this Assembly meeting on a more regular basis. We hope that, when the new year commences, the work of constitution-making will commence in earnest on the substantive issues and that all of us will engage one another in the debate.

I would like to take this opportunity to wish all hon members a happy Christmas, as well as a happy New Year. The Constitutional Assembly's work will continue even during the period when we are resting. I would like to thank everyone for the work we have done so far. [Applause.]

The meeting adjourned at 15:24.

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