

REPUBLIC OF SOUTH AFRICA

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# DEBATES

OF THE

# CONSTITUTIONAL ASSEMBLY



PARLIAMENT  
OF THE REPUBLIC OF SOUTH AFRICA

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29 March to 11 October 1996

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(Vol 3)

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

‡ Debates of 29 March, 23 and 24 April, 6 to 8 May, 17 September and 11 October 1996.

**OFFICE-BEARERS OF THE  
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OF THE REPUBLIC OF SOUTH AFRICA

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PARLIAMENT  
OF THE REPUBLIC OF SOUTH AFRICA



REPUBLIC OF SOUTH AFRICA

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# DEBATES OF THE CONSTITUTIONAL ASSEMBLY

(HANSARD)

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THIRD SESSION—FIRST PARLIAMENT

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

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FRIDAY, 29 MARCH 1996

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## *PROCEEDINGS OF THE CONSTITUTIONAL ASSEMBLY*

Members assembled in the Chamber of the National Assembly at 09:12.

The Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.

### **ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS—see col 27.**

#### **TABLING OF REPORT OF CONSTITUTIONAL COMMITTEE**

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Welcome, once again, to a further meeting of the Constitutional Assembly. We have not held a meeting for quite a while. The first item on our agenda is the tabling

of the Report of the Constitutional Committee, which is included in hon members' documentation. There is no list of speakers for this item. It is merely for noting. We will touch on aspects of this report in our debate but the Deputy Chairperson will also touch on aspects of this report when he addresses us all.

Item 2 on our agenda deals with the motion to suspend the Rules to allow the Bill before us to be passed at one sitting, and I would like to call upon the Deputy Chairperson to address us.

#### **INTRODUCTION OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA THIRD AMENDMENT BILL**

(Draft Resolution)

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson,

thank you very much. Good morning, Senator Ngcuka. Hon colleagues, in terms of section 74(2) of the Constitution of the Republic of South Africa, 1993, this Constitutional Assembly may amend Chapter 5 of the Constitution by a resolution of two thirds of its members. In terms of the Standing Rules, this must be done by way of a Bill.

The draft resolution on the agenda merely seeks to suspend certain provisions of the Standing Rules to enable the necessary Bill to be passed this morning, as agreed to in the management committee. I therefore move the draft resolution as it appears in my name on the Agenda of Proceedings, 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 Third Amendment Bill* [B 31—96] (Constitutional Assembly), 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.

### **CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA THIRD AMENDMENT BILL**

(First Reading)

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: As there is no speakers' list for this item, the Secretary will read the Bill a first time.

Bill read a first time.

### **CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA THIRD AMENDMENT BILL**

(Second Reading)

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, I move:

That the Bill be now read a second time.

I would like, at the outset, to refer to the report placed on the Table and made available to members. Of course, this is not a final report of our business, and, as the process unfolds, we will keep the Constitutional Assembly informed about our developments, the expenditure to date, and the process publication as set out in this preliminary report, before we finally wind up our business.

To return to the amendment, the Constitutional Assembly has been engaged in discharging its duty to adopt a new constitutional text for our country for about two years now. Members will recall that the process envisaged by the Constitutional Assembly was designed to enlist the meaningful participation of all political parties, members of the Constitutional Assembly, significant role-players, stakeholders, and the public at large.

It was to be a process based essentially on co-operative negotiation rather than confrontation, a process which did not drag on indefinitely and which was limited to a period of two years. It would have an important deadlock-breaking mechanism in the shape of the panel of experts which was provided for in terms of section 72 of the Constitution. Finally, it was to be a process which obliged us to go back to the people if all else failed. We are almost at the end of this process, and are about to produce South Africa's first democratic constitution in terms of our transitional arrangements as stipulated in our transitional Constitution.

Chapter 5 of the Constitution envisaged that everything would be agreed to and that the Constitution would be written and approved by 8 May this year, and that the deadlock-breaking mechanism in the shape of the panel of constitutional experts would have played its full part in resolving any substantial disputes if this was necessary. However, the actual course of events was not fully foreseeable.

It was not foreseen, for example, that considerable time would be taken up in the effort to ensure maximum participation at all levels, in the context of an atmosphere of non-confrontation. Despite this, we remain optimistic that all outstanding matters will be resolved before 8 May, and that this Assembly will approve a new constitution by that date.

The management committee, after careful consideration, concluded that however optimistic the scenario might be, it would be irresponsible and adventurous to assume that no difficulty would arise.

We have been advised that if there is any serious disagreement in the final stages of the negotiations, and the constitution cannot be finalised by 8 May, this Assembly will have no opportunity to resolve the disagreement by referring the matter to the panel of constitutional experts. If the constitution is not ready by 8 May, the President must call an election. This had to be remedied.

Chapter 5 was agreed to by negotiators, who sincerely believed that the Assembly would prepare a constitution which would have complied with the Constitutional Principles, and was certain that the Constitutional Court would certify accordingly. There is therefore no express provision for the procedure to be adopted upon the finding by the Constitutional Court that the constitutional text does not comply with the Constitutional Principles. This will now also be remedied.

The effect of the amendments is the following. The proposed amendments produce three important and necessary results. I will deal with each of these separately. Firstly, the amendment to section 73(3) of the Constitution makes it possible for the panel of constitutional experts to be brought in to resolve any deadlock, even if the deadlock were to occur on 8 May this year.

The amendment also means that the President is not obliged to call an election if any serious disagreement arises preventing the finalisation of the constitution before 8 May this year. This amendment, however, has the consequence that the two-year time limit that was originally prescribed now falls away.

The second amendment, the amendments to subsections (4), (5), (6) and (9) of section 73, is intended to address the concern of the management committee that the amendment which has

just been referred to will make the process open-ended and subject to no time limit at all.

These amendments introduce carefully designed time limits and conditions intended to ensure that the process is no longer open-ended. In general these amendments mean that the steps necessary after any referral to the panel must all be taken within a specific period, and that if the Assembly is unable to take any of the decisions required to keep the process on track, a referendum or ultimately an election may follow as a mechanism to break the deadlock. The management committee is convinced that Chapter 5 must always ensure that the momentum is maintained at all times.

Before going on to the third amendment that I want to draw attention to, I would like to refer members to a printing error in clause 33(a)(3). The reference to section 33A(2) should be to section 73A(2).

This provision is made in the proposed new section for the procedure to be adopted if the Constitutional Court finds that the draft constitutional text does not comply with the Constitutional Principles. In this event, the court must refer the text back to the Assembly with reasons for its finding. The Constitutional Assembly must then again negotiate to find a solution within three months—here I refer hon members to section 73A(2)—or one month should circumstances so determine—here I refer hon members to section 73A(3).

It has been considered necessary to preserve maximum flexibility, even at this late stage, to provide for all conceivable eventualities however unlikely these might be. Thus subsection (4) of section 73A makes it possible to engage the deadlock-breaking mechanism as previously envisaged, and even to go to a referendum or an election, as determined in the Constitution.

Finally, the political parties participating in the constitution-making process are determined to ensure the timeous completion of the task at hand. The management committee has twice considered whether the date should be extended and whether the programme of the Assembly should be adjusted. The conclusion reached on each occasion was that the process should not slow down, that the 8 May 1996 deadline remained realistic, and that the programme of the Constitutional Assembly should be prepared accordingly.

As is public knowledge at this stage, a group of negotiators will apply themselves to the task at hand for the first part of next week, and the management committee will once again evaluate the process at that stage and the finalised programme will be made available to members in order to know exactly when the plenary session of the Constitutional Assembly, the Constitutional Committee and the multilaterals will sit and engage in further discussion and negotiation.

The fact that today we bring these amendments with specific time frames must be seen as a clear signal, namely that we have every intention of keeping our noses to the grindstone and giving South Africa the constitution it deserves. We will sustain our activity from now until 8 May 1996.

\*Finally I only want to make two further remarks. These are that there can be no question of success if the Constitutional Principles and the subsequent certification by the Constitutional Court do not take place. The key to the resolution of the process is that the principles should always, irrespective of the resolution mechanism that is applied, be honoured and that the subsequent certification by the court should take place.

The amendments envisage introducing the members of the panel to the playing field and keeping them there, and not forfeiting the opportunity to employ them as a resolution mechanism. The principles concerning the referendum text that has to be adopted by the National Assembly, and those concerning the ensuing election, are nevertheless fixed.

This constitution is popularly referred to as the final constitution. This is because it is easy to say and sounds good. We all know, however, that by "final constitution" we mean the constitution as mandated by the transitional Constitution and the Constitutional Assembly, the required incorporated amendment mechanisms included.

Mr J H DE LANGE: Mr Chairperson, hon members, ladies and gentlemen, I do not have a written speech on this occasion. Let me start off by rising in unconditional support of the amendments being proposed and also particularly the amendment that has been pointed out by Mr Wessels, which appears to be a typographical error in the pink document. I may also point out that the amended Constitution which hon members received this morning in fact does reflect the position correctly.

I want to say that my input is of a very technical nature in the sense that I am going to explain, from the ANC's point of view, why these amend-

ments were necessary and exactly what the amendments are that we have brought about. That will be followed up by my colleague, Deputy Minister Valli Moosa, who will give a political analysis of the amendments.

I think we need to start off by thanking some people, especially our legal advisers, and in particular Adv Zac Yacoob and Adv Gerrit Grové, who have done a sterling job to make sure that we were able, in a very short time, to get these amendments before the Constitutional Assembly.

I want to add that Mr Wessels has covered much of what I wanted to say and I do endorse, broadly speaking, all the points that have been made by him.

Let me now turn to the reasons for the amendments and what they are all about. Hon members will recall that our negotiators at the World Trade Centre were of the view that the negotiating body that existed there was not democratic enough actually to adopt a final constitution for us. We therefore adopted our interim Constitution that we are dealing with today.

It was felt that a particular body the Constitutional Assembly, had to be created in the interim Constitution that would be sovereign and democratically elected and that would be the final body to adopt the first democratic constitution for our country.

To do so, though, they did not want to give an open-ended mandate to the Constitutional Assembly. What they did was to provide sections 71 and 73 of the interim Constitution, which are reflected in hon members' pink books. These clauses in a nutshell basically brought the following situation to bear. The final constitution, the first democratic constitution, had to be passed within a period of two years and also had to be passed with a two-thirds majority.

There was of course also recognition that one would need certain deadlock-breaking mechanisms to bring certainty and finality to that two-year period. Therefore section 73(3) to 73(8) were provided for and I will analyse them briefly later. The effect, though, of the Constitutional Assembly not passing a constitution with a two-thirds majority at the end of the two-year period, which is on 8 May 1996, was that the hon President would have had to dissolve Parliament on 9 May of this year and in fact call a general election. The outcome of this election would have been the formation of a second constituent assembly which would have been composed more or less the same as this one. The only difference

would have been that it would have had one year instead of two years within which to finalise a constitution, and the majority needed to pass that constitution would have been 60% and not two thirds.

Therefore it was felt, because we correctly allowed for broad public participation in the process, that the two-year period had been compacted to some extent. Although I endorse the views of Mr Wessels that we are strongly of the opinion that we will adopt a constitution with a two-thirds majority by 8 May, it is only fools who are prepared to make absolute predictions. We therefore felt that we should not do away with the deadlock-breaking mechanisms that form part of section 73(3) to (8). To this end we therefore felt that we needed to amend the Constitution.

The amendment we brought about in subsection (3) is a simple one. We decided that we would divorce the deadlock-breaking mechanisms in subsections (3) to (8) from the two-year period prescribed in subsections (1) and (2). That would mean that after the two-year period all the deadlock-breaking mechanisms could then kick in, and not before, as the Constitution now states.

However, having made that political decision in the Management Committee, it was felt that because the deadlock-breaking mechanisms in section 73(3) to (8) were totally open-ended, in the sense that there were no time limits applicable in each subsection for the simple reason that everything had to take place within the two-year period, we had to tighten up section 73(3) to (8). Therefore hon members will see in each of subsections (3) to (8), which I am not going to analyse here, there is a time limit built in, mainly 14 days or 30 days.

The effect of this would be that if we did not adopt a constitution on 9 May 1996, we would have to give the panel of technical experts 30 days to come forward with proposals on how to bridge the differences between us. If the panel were able to do so within the 30 days, then the Constitutional Assembly would look at the proposed amendments and could then pass that constitution with a two-thirds majority. I will now explain what would happen if the panel failed to do so.

If that process fails, we will then hold a referendum. The referendum will be brought in the following way. A draft of the constitution passed by a simple majority in the Constitutional Assembly will be put to the whole nation in a referendum, and the question will be: Do you agree with the constitution or not? If 60% of the population

adopts the constitution, then it will become the constitution of the country. If that procedure also fails, ie if 60% of the population do not agree with it, then one moves to the next phase, in which an election will then be called, as I explained earlier.

Therefore we have, in our view, been able to make sure that we still have very tight time frames in order to ensure that everyone knows when this process will be finalised, yet we have provided some flexibility to create maximum opportunity to reach consensus around the broadest number of issues.

Let me also point out to hon members some of the amendments that have been made to subsection 73(9). Because we have now allowed the deadlock-breaking mechanisms to be implemented after the two-year period, section 73(9) does not cater for certain situations as it did prior to the amendments having been made. In particular, it did not cater for what would happen if the requisite majority was not obtained in subsection (3), ie after the panel of experts. Nor did it cater for what would happen if the requisite majority was not obtained to bring about the referendum in terms of subsection (5). Therefore there is an amendment to subsection (9) which states that in those two instances, or if the referendum is not passed by a 60% majority, the election phase will kick in.

Lastly, the amendment in section 73(2) has been dealt with by the hon member Leon Wessels. The only situation that we had to cater for regarding this subsection was that the Constitution did not make provision for any procedure to be followed in the case of non-certification by the court. We have now set out a procedure in terms of which the matter will go outside of the ambit of section 73 and into that of section 73A. If the Constitutional Assembly fails there on two occasions to pass the amended constitutional text, then it will come back within the section 73 ambit, and then all the deadlock-breaking mechanisms kick in.

Firstly, I hope that these few remarks by me make it clear, from the ANC's perspective, why we had to bring about the said amendments, and secondly, particularly what those amendments are.

Mr R P MEYER: Mr Chairperson, first of all, I would like to say that I think the Deputy Chairperson explained the proposal before the Assembly so eloquently and so well that you and all of us can understand the contents of what is before us at the moment.

THE CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I am glad he made it so simple for you to understand, Mr Meyer.

MR R P MEYER: Even a simple mind like mine would understand this. I think it is therefore not important to go into the technical detail. I think that has been dealt with sufficiently, but I would like to address a certain question which I believe this Assembly also has to be informed about so as to ensure that this Assembly also attends to this question. However, before I come to that point, I think it is appropriate to reflect on something else which is not relevant as far as the specific proposal before the Assembly is concerned, but which has, in a certain way, some relevance.

\*This relates to the fact that the member who has been roaming the precincts of Parliament for the longest time will indeed be celebrating 30 years in the service of the Parliament of South Africa tomorrow. That person happens to be Mr Alex van Breda. [Applause.] I think we should congratulate him because he has been able to persevere for so long in his serving of the Parliament of South Africa.

†We hope that he will still serve us for a very long time to come, because even after 30 years he remains very sharp. He was the person who, in the management committee of the Constitutional Assembly, actually spotted this specific provision in section 73 of the Constitution that deals with the 30-day period during which matters have to be referred to a panel of experts for consideration.

It was he who brought to our attention the fact that, unless we attended to this question of amending the Constitution, we might find ourselves in a situation where, within a few days from now, we actually have to complete the new constitution in order to keep ourselves within the parameters of the 30-day provision of referring it to the panel of experts. It was therefore through his sharpness that this matter was brought to our attention. Thereafter, the management committee and the Constitutional Committee were able to attend to the matter, and that led directly to the amendment proposal that is before us. So it shows that, even after 30 years in Parliament, one can still remain very sharp.

The question that I would like to address, and which has certainly crossed the minds of many people over the last couple of weeks, is whether it is necessary to extend the target date for complet-

ing the constitution-making process. The target date was agreed upon in 1993 in terms of the transitional Constitution.

Let me immediately say that from the point of view of the NP we felt that it would be preferable at all stages if we could actually complete the task of discussing and drafting the new constitution.

THE CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! There is quite a lot of noise on the right-wing side of this Assembly. [Interjections.]

AN HON MEMBER: Mr Chairperson, it is Madam Speaker!

THE CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Could we tone it down, please? I believe that Madam Speaker is leading the right-wing party in the noise that it is making. [Laughter.] Please continue, Mr Meyer.

MR R P MEYER: Thank you, Chairperson. Now, I was saying that from our side, from the side of the NP, the view has been all along that we should try to complete our task within the time allocated in terms of the transitional Constitution, because we have had ample opportunity over the last two years to do that through the work of the Constitutional Assembly and the public participation process that was undertaken by the CA right from the start.

Everybody in South Africa, including the members of this Assembly, had the opportunity to apply their minds to how they would like the new constitution of South Africa to look. That, in any case, had to take place within the parameters of the 34 Constitutional Principles. Since that is the case, and since it has often been our experience, even under different circumstances, that people tend to leave matters until the very last moment—just like leaving one's studying until the evening before one's exam—we here also find ourselves in that situation. We feel that it will be better to apply our minds now to finalising the outstanding matters.

In this process, we analysed the situation and came to the conclusion that at that stage there were only a few real outstanding matters that would still require the full-time attention of all the parties concerned to resolve their differences and disputes. After good analysis from our side—and I believe within the structures of the CA, as

well—we came to the conclusion that it was attainable to keep to the target date.

However, with the perspective of ensuring that the necessary attention is applied by all to the matter, we felt that it would be better to find a few days on which all parties would be almost forced to sit together and apply their minds to how they would like to resolve these outstanding issues.

Whether we do it next week, as is planned, or a month later or a year later, that will have to be the process that we go through. In this respect I think it is also important to warn parties, including the specific leaders of the various delegations and the people involved in the direct negotiations on different subjects, that we have to exercise our duty in regard to these matters, not only with a view to fighting political settlements, but in the end to produce the best possible constitution for the country. In this process I think it is important that we should ensure that we take notes, in depth, of all the submissions, all relevant submissions that have been addressed to the Constitutional Assembly by the public, by institutions and individuals and groups of interested people that actually made their submissions over the past months, particularly after the second working draft appeared in November.

I would like to make an appeal, even at this stage, that all of us should assume the responsibility of applying our minds to working through those submissions again, ensuring that in the process we are satisfied that all relevant submissions have been considered and attended to in such a way that we can give a response to those that took the trouble to make the submissions to the Constitutional Assembly. Within that framework, I believe that it is possible to keep ourselves to the target date. There are still a number of weeks left, in fact many hours, and we should apply our minds.

I also think that it is important to note, in this respect, that Parliament as such, under the direction of Madam Speaker and the President of the Senate, actually allowed us, as members of Parliament, the opportunity to do our work as members of the Constitutional Assembly and apply our minds in the way that we should. For that reason I am supporting, on behalf of the NP, the proposals before the Assembly.

Dr C P MULDER: Mr Chairperson, there is an Afrikaans saying which goes as follows, "there is more than one way to kill a cat". That is exactly

what we are doing today. Right from the beginning, there was contention as to the dates that we need to complete the constitution in two years. What we are doing today is basically to create some time and space to complete a process without moving or shifting that specific date. This meeting of today is about the penultimate report on the Constitutional Committee to the Constitutional Assembly, and this specific Bill we are debating at this moment. The report deals with an evaluation of recent developments in the process as well as the Constitutional Committee's recommendations on the procedure for the adoption of the new constitution.

\*Mr Meyer made reference to the fact that it was sharp of Mr Van Breda, who has 30 years' service, to notice that this matter has not yet been dealt with and that it could create a problem. We want to congratulate him on being sharp enough to notice that. While we are concentrating on and evaluating periods, I shall make so bold as to congratulate myself too. I have eight years' service today. For that reason I am only one third as sharp as Mr Van Breda! Some of the colleagues in the NP will probably recall the by-election eight years ago.

OF SOUTH AFRICA  
The present Constitution can be amended in two ways. As far as Chapters 1 to 4, 6 to 15 and the Schedules are concerned, section 62(1) of the present Constitution determines the procedure in terms of which they can be amended. Amendments can be approved in a joint meeting of the National Assembly and the Senate; by a two-thirds majority I presume.

As regards Chapter 5, which deals with the adoption of the new constitutional text, there is a completely new procedure, and section 74(2) in Chapter 5 of the Constitution determines the following:

The other provisions of this Chapter may be amended by the Constitutional Assembly by resolution of the majority of at least two-thirds of all its members.

I do not want to bore the House with the details. I think the provisions that are under discussion here have already been dealt with in depth by the Deputy Chairperson of the assembly, and by other members, who very clearly spelled out the objectives of the Constitution of the Republic of South Africa Third Amendment Bill.

What is in fact important, and this has been indicated in the report, is that on 14 March this year there were still approximately 76 outstanding matters that had to be dealt with in order to complete the new constitution in time. I want to express the hope from our side that all the parties and those who are involved will give their full co-operation and that we will succeed in finding answers and solving those problems in order to finalise the constitution in time, and by doing so produce a constitution that, as the hon the President has said on various occasions, will be a completely inclusive constitution that will be supported by all and considered as their own.

Mr L M GREEN: Mr Chairperson, the ACDP supports this constitutional amendment, because we believe that it is important that deadlock-breaking mechanisms should be firmly in place in the event of the new constitution not being passed within the specified time frame.

It would be unwise of the CA to paint itself into a corner merely because the necessary technical provisions have not been made. What matters to us is that the final product is to be delivered to the people of South Africa by 9 May 1996, as we have promised them. The ACDP therefore calls on this Assembly to recognise that it is important to ensure that the final product reflects the full complement of the collective will and the collective wisdom accumulated during this very important transitional phase. We, therefore, state clearly that everyone, including the outside world, will have far greater respect for this Assembly because of the responsible acknowledgement of all the integrated forces that led to the constitutional process.

We are in a reconciliatory phase of our history where service to our country and to our people should be of paramount importance.

In conclusion, we are looking forward to the three days of intensive debate and intensive negotiations from 1 to 3 April 1996. We call upon the Constitutional Committee and also the negotiators to make sure that the public will be properly informed at the end of that process.

Mrs P DE LILLE: Mr Chairperson, the PAC supports the Constitution of the Republic of South Africa Third Amendment Bill. [Interjections.]

Mr C ACKERMANN: [Inaudible.]

\*Mrs P DE LILLE: Yes, much better than the NP, Mr Ackermann! [Laughter.]

†The PAC hopes that this measure will assist us in delivering a genuine constitution for our country and that it will not sacrifice any principles because of the time factor.

The PAC will attend the three-day retreat to finalise the outstanding issues, but will also appeal to the chairperson, Mr Cyril Ramaphosa, to ensure that the report that will come out of this multilateral meeting will be made available to the public so that we do not have cause to raise any questions about the transparency of the process.

We must further ensure that we continue to consider all public submissions that we have received, as we finalise the constitution. I am just concerned that the constitution-making process will be reduced to the horse-trading that we saw at the World Trade Centre in Kempton Park.

Mr C WEGLIN: Mr Chairperson, I will be brief. The DP will support both the amendment to the Rules and the amendment to the Constitution.

We are all aiming to complete our work by 8 May 1996. It is amazing how, two years ago, it seemed that we had so much time and today we realise how little time we have left.

All I am saying is that we will do our best to try to meet the time schedule. I am afraid that because of the crowding of time, we are likely to be less thorough in the last lap of our work than we would like to be. I hope that the time factor is not going to mean that we have to come back time and time again to amend the constitution because of minor defects and the shortage of time, but we will certainly do our best in this regard.

As far as the Rules are concerned, we are creating our own Rules as we go along because there has never been a situation of a Constitutional Assembly adopting a new constitution. While I think one might be hesitant about supporting the Rules in complete detail, our hesitancy is removed because of the confidence we have in the Chairperson. I believe, in fact, that the way the Rules are going to be applied by the Chair is going to be a very important component of the whole character of the debate that is going to take place over the next three weeks.

We therefore look to the Chairperson, not only to look at the Rules in a formal sense, but to look at the spirit of trying to achieve consensus because,

while one can, in fact, adopt a constitution by a two-thirds majority, we believe it is in the interests of South Africa that we end up with a consensus constitution of which all the people of the country can be proud. We will certainly do our best to try to achieve this by 8 May.

Mr M V MOOSA: Mr Chairperson, I think it is important to make it clear at the outset that these amendments do not constitute a postponement of the date on which it is intended that the constitution should be adopted. I think it is very important for us to understand that. The constitution has to be adopted, at the latest, by 10 am on 9 May 1996. We intend to adopt the constitution on 8 May 1996.

This amendment was necessary because, in the event of our not having adopted it by 9 May 1996, we would not have had the facility of the entire gambit of deadlock-breaking and mediating mechanisms. The President would have had no option but to dissolve Parliament. We now have the option that, in the event of disagreement, a number of steps can be taken in order to secure the agreement of the various parties that are present here.

Some people have, in my view, unnecessarily raised a scare in the papers recently that the constitution which is being drafted at present and in draft form before us, runs a very serious risk of not complying with the Constitutional Principles. Unfortunately, some members of the media, without looking into the details, have themselves created that impression.

Those of us who are involved in the actual drafting need to assure this House that we are leaving no stone unturned to ensure that the Constitutional Principles are complied with. The Constitutional Principles constitute the sacred cow. We have no intention whatsoever of questioning them. We have taken great care to ensure that we are advised by the best constitutional brains in this country as we continue the process.

We are now entering the final phase of the constitution-making process, a phase in which we sort out those few elements of disagreement which still exist between the parties. As Messrs Meyer and Eglin and others have said, all the parties are in a mood to ensure that we emerge with the maximum possible consensus—not only maximum possible consensus among the parties

represented here, but also maximum possible consensus in South African society as a whole.

We would like to believe that the final product will be one which would reflect the views and aspirations of the people of this country, and not only the political representatives in this House. We really think that we are getting there. We have decided to take the unprecedented step of taking the negotiators from all the parties out of town for three days next week, to be together in order to iron out, if possible, every remaining issue so that we do not have major issues pending at the eleventh hour. That will be unsatisfactory from our point of view.

We are pretty confident that this can be achieved. We are also confident that the product which we emerge with will be a product that will be admired, not only by the people of this country, but by the world. It is already being said that the new South African constitution will begin to set a new trend and a new standard as far as world constitutions are concerned. A tremendous amount of creativity has been displayed by those who made submissions, and by the various people involved up to now and the House as a whole. For example, the concept of the council of provinces is a unique South African creation. In my view that will certainly be looked upon with interest throughout the length and breadth of the world.

We have been able to include in the council of provinces the best advantages of second Houses that exist in other countries, and at the same time we have been able to iron out those disadvantages that exist elsewhere. We support this amendment, and I would like to make it clear just for the record that in the ANC caucus we had a detailed discussion on this question some weeks before it appeared before the management committee, and perhaps some weeks before Mr Alex van Breda raised it with the NP. Nonetheless, I would like to congratulate him on his long term of service here.

While we support this amendment, we do not support it because we think there would be a need to invoke the provisions of the amendment. In our view, there will be no need to invoke the provisions. There will be no need to ask the panel of constitutional experts to mediate, there will be no need for a referendum, nor will there be a need to dissolve Parliament at any point in time. We do not think that that will happen. However, it is better to be prepared and better to have the

constitutional provisions in the unlikely eventuality of there being a deadlock.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! What Mr Moosa, Mr Eglin, Mr Meyer and others have said is heart-warming. I think what they have just said goes beyond just saying that there is a mood to achieve consensus. I read that as saying that parties are committed to achieving consensus and we will see that commitment manifested on 8 May when we adopt the constitution.

Debate concluded.

Question agreed to.

Bill read a second time.

### CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA THIRD AMENDMENT BILL

(Third Reading)

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, read together with Standing Rule 73, a majority of at least two thirds of all members of the Constitutional Assembly is required to pass the Third Reading of this Bill.

Accordingly, 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 DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, I move:

That the Bill be now read a third time.

The following members voted in favour of the Question:

AYES—331: Abrahams, L A; Ackermann, C; Alant, T G; Albertyn, J T; Appelgryn, M S; Arendse, J D; Asmal, A K; Badenhorst, M J; Bakker, D M; Balie, A; Baloyi, S F; Bester, B C; Beyers, A S; Bhabha, M; Bhengu, F; Bikitsha, P I; Blaas, A; Bloem, D V; Bogacwi, K A; Booie, M S; Botha, W A; Botha, Y R; Bruwer, A A B; Bunting, B P; Camerer, S M; Carelse, G M E; Carrim, Y I; Chabane, O C; Chait, E J; Chalmers, J; Chauke, P; Chiba, L; Chikane, M M; Chiolô, J; Chuenyane, L D; Coetsee, H J; Coetzee, M P; Copelyn, J A; Cronjé, P C; Cupido, P W; Cwele, S C; Davies,

R H; De Beer, S J; De Klerk, F W; De Lange, J H; De Lille, P; Dexter, P D; Diale, N L; Didiza, A T; Dingani, Z A; Dlamini, C; Dowry, J J; Duna, M W; Du Toit, D C; Ebrahim, A G; Ebrahim, E I; Eglin, C W; Fani, L M; Farisani, T S; Fazzie, E; Fazzie, H M; Fenyane, S L E; Fihla, N B; Foster, J A; Fourie, A; Fredericks, G A; Gandhi, E; Geldenhuys, B L; George, C M; George, M E; Gibson, D H M; Gillwald, C E; Gininda, M S; Ginwala, F N; Gogotya, N J; Golding, M J; Goosen, A D; Gordhan, P J; Govender, D; Govender, P; Green, L M; Groenewald, R H; Gumede, A J; Gumede, D M; Gxowa, N B; Hajajj, F; Hamman, M v S; Hanekom, D A; Hangana, N E; Hani, L; Hofmeyr, W A; Hogan, B A; Janse van Rensburg, A P; Jassat, E E; Jooste, J A; Jordaan, D A; Jordaan, J A; Kasrils, R; Kathrada, A M; Kekana, N N; Kgaue, A Q; Kgoali, J L; Kgotsitsile, B; Khasu, M J; Khobe, O N; Kondlo, N; Koornhof, G W; Koornhof, N J J v R; Lamani, N E; Landers, L T; Lebona, H J P; Lee, T D; Leeuw, S J; Leggoro, M K; Le Roux, J W; Ligege, M G; Lockey, D; Loots, H G; Losabe, L K; Louw, L; Louw, S K; Lubisi, S W; Mabandla, B S; Mabudafnasi, R T; Mabuza, M C; Madikizela, P; Mafolo, M T; Mahlalela, A F; Mahlangu, G L; Mahlangu, J L; Mahlangu, M J; Mahlangu, N J; Maine, M S; Makgothi, H G; Makume, N J; Makwetla, S P; Makwetu, C M; Malan, T J; Malatsi, D M; Malebo, S M; Maloney, L; Mangaliso, Z K; Manuel, T A; Marais, J A; Marais, P G; Maree, J W; Marsh, D W; Marshoff, F B; Mashamba, H J; Mashamba, T G G; Masher, M G; Mashile, N L; Mathebe, P; Matthee, P A; Mavuso, J S A; Mayimele, H W; Mbeki, G A M; Mckenzie, P C; Mdladlana, M M S; Mduyana, S N N; Meshoe, K R; Meyer, R P; Mfebe, M W; Mgidi, J S; Mkhathswa, S; Mkhize, B R; Mlangeni, A; Mngomezulu, G P; Mnguni, Z D; Mnisi, W F; Moatshe, P; Modisenyane, L J; Modise, T R; Moeti, S E; Mohamed, A G; Mohamed, I J; Mohlamonyane, G M; Mokaba, P R; Mokgalong, M R V; Mokitlane, M C; Mokoena, D A; Mokoena, M L; Molewa, B E E; Moloto, C P; Mombing, J H; Mompoti, R S; Mongwaketse, S J; Montsitsi, S D; Moosa, M V; Moosa, M W; Mothoagae, P K; Motshabi, C H; Motsuenyane, S M; Mpahlwa, M B; Mthembu-Nkondo, S D; Mti, L M; Mtintso, T E; Mukhuba, T T; Mulder, C P; Mulder, P W A; Mushwana, G M; Mushwana, M L; Myakayaka-Manzini, Y L; Nair, B; Nash, J H; Ncube, N Z; Ndawonde, D; Ndlovu, M C;

Ndou, J A; Ndou, R S; Ndzanga, R A; Nel, A C; Nel, A H; Netshimbupfe, M A; Ngcuka, B T; Ngwenya, M L; Nhlanhla, J M; Niehaus, C G; Niemann, J J; Njobe, M A A; Nkomo, S A; Nkosi, D M; Nobunga, B J; Nogumla, R Z; Ngwemesha, K W; Ntaopane, T E; Ntsizi, T C; Ntuli, B M; Nwedamutswu, M J; Nxumalo, S D; Nyembe, N D; 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; Phenethi, M M; Phillips, I M; Rabie, J A; Radue, R J; Ramabulana, E V; Ramgobin, M; Ramusi, M C; Ranchod, B G; Rasmeni, S M; Redcliffe, C R; Rhoda, R T; Richards, I; Ripinga, S S; Robertson, M O; Rockman, G; Saaiman, P W; Saloojee, C; Saloojee, R A M; Schoeman, E A; Schoeman, R S; Schreiner, J A; Schutte, D P A; Scott, M I; Sekgobela, P S; Sefse, J; Seperepere, M S; September, R K; Shabangu, S; Shilubana, T P; Shope, N G; Sigcau, S; Sigcawu, A N; Sikakane, M R; Sisulu, L; Sisulu, M V; Sisulu, N A; Sizani, R K; Smit, H A; Smuts, M; Solomon, G; Sonjica, B P; Steenkamp, P J; Stofile, M A; Streicher, D M; Surty, M E; Suttner, R S; Swanepoel, L J; Tambo, A F; Taunyane, D P; Thabethe, E; Thomson, B; Tolo, L J; Tsenoli, S L; Tshabalala, M E; Tsheole, N M; Tshivhase, M P K; Tshivhase, T J; Tshwete, S V; Turok, B; Turok, M E; Tyobeka, V M; Vadi, I; Van Breda, A; Van den Heever, R P Z; Van der Merwe, S; Van der Merwe, A S; Van der Walt, B J; Van Deventer, F J; Van Heerden, F J; Van Niekerk, A E; Van Schalkwyk, M C J; Van Wyk, A; Van Zyl, I D; Vilakazi, B H; Vilakazi, M I; Viljoen, C L; Viljoen, V; Watson, A; Waugh, J C N; Welgemoed, P J; Wessels, L; Wiley, M G E; Williams, A; Williams, A J; Wyngaard, C A; Xingwana, L M; Yengeni, T S; Zitha, D A; Zondo, P; Zuma, N C D.

Question agreed to in accordance with section 74(2) of the Constitution.

Bill read a third time.

## SUSPENSION AND SUBSTITUTION OF STANDING RULES

(Draft Resolution)

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, I move:

That the provisions of Standing Rules 78 up to and including 102 be suspended and substituted by the following:

## First Reading Stage

### Notice of First Reading

**78A.** (1) The member in charge of the bill shall place the bill on the Order Paper for First Reading.

(2) The First Reading may be set down for the day on which the bill is laid upon the Table, provided members are supplied with copies of the bill before the First Reading is moved.

### No amendment allowed

**79A.** No amendment shall be allowed to the motion for the First Reading of the bill.

### Introduction of bill

**80A.** The member in charge of the bill, after moving that the bill be read a first time, may deliver his or her introductory speech on the bill.

### Statements on behalf of parties

**81A.** (1) After the introductory speech one member of each political party in the Constitutional Assembly may make a statement on the bill on behalf of his or her party.

(2) A period of debate, as determined by the presiding officer, may follow statements on the bill in terms of Subrule (1).

### Bill read a first time

**82A.** When statements on the bill have been made on behalf of all political parties in the Constitutional Assembly who wish to be heard, and after the period of debate referred to in Subrule 81A(2), the presiding officer shall order the bill to be read a first time, without the question being put.

## Committee Stage

### Referral of bill to Constitutional Committee

**83A.** After the bill has been read a first time, it stands referred to the Constitutional Committee for consideration of amendments.

### Amendments for consideration by Constitutional Committee

**84A.** (1) Proposed amendments to the clauses or other provisions of the bill may be submitted for consideration by the Constitutional Committee.

(2) An amendment which is out of order for any reason shall not be considered by the Constitutional Committee, and the Chairperson's decision on any question as to whether an amendment is or is not out of order, shall be final.

(3) An amendment must be in writing, signed by the proposer, and must be delivered to the Secretary not later than 12:00 on the day preceding the first day set aside for consideration of the bill by the Constitutional Committee.

(4) An amendment which has not been submitted as provided under Subrule (3) may not be referred to the Constitutional Committee except by or by leave of the Chairperson.

#### *Amendment of bill and preparation of report*

**85A.** The Constitutional Committee shall effect such amendments to the bill as it sees fit after due consideration of the proposed amendments submitted and found to be in order in terms of Standing Rule 84A, and shall prepare a report.

#### **Second Reading Stage**

##### *Notice of Second Reading*

**86A.** After the conclusion of the Committee Stage of the bill, the member in charge of the bill shall place the bill or, as the circumstances may require, the bill as amended, on the Order Paper for Second Reading, the bill to be accompanied by the report referred to in Standing Rule 85A.

##### *Printing of amended bill*

**87A.** (1) If the bill is amended in terms of Standing Rule 85A, the Secretary shall cause the bill as so amended to be printed and copies to be supplied to members.

(2) The Second Reading of the bill shall not commence before Subrule (1) has been complied with.

##### *No amendment allowed*

**88A.** No amendments shall be allowed to the motion for the Second Reading of the bill.

##### *Recording of number of members in favour of bill*

**89A.** In determining the question on the Second Reading, the number of members in favour of the question shall be recorded, whether a division is called for or not, and the number of senators who vote or are in favour of the

question shall in any event be recorded separately.

##### *Bill passed in accordance with section 73(2)*

##### *Lodging of bill with Constitutional Court*

**90A.** If the bill is passed in accordance with section 73(2) of the Constitution at the Second Reading, two fair copies thereof shall be certified accordingly by the Secretary and lodged with the Constitutional Court with a view to the certification of the text in terms of section 71(2) of the Constitution.

##### *Tabling of amended text submitted*

**91A.** If the bill was not passed at the Second Reading in accordance with subsection (2) of section 73 of the Constitution and an amended text is submitted by the panel of constitutional experts in accordance with subsection (4) of that section, the Chairperson shall lay such text upon the Table.

##### *Amended text passed in accordance with section 73(2)*

**92A.** If passed in accordance with section 73(2) of the Constitution at the Second Reading, the bill embodying the amended text shall be further dealt with in accordance with Rules 90A and 91A.

The interim Constitution did not lay down a process or a structure whereby the new constitution had to be written. The Constitutional Assembly devoted most of 1994 to doing that. Therefore, the Standing Rules of the Constitutional Assembly were drafted in something of a vacuum. Accordingly, the Rules for passing the final text were, quite naturally, based on parliamentary procedure. Nevertheless, this is not a case of Parliament receiving a Bill and considering it for the first time.

The Constitutional Assembly is, of course, not Parliament. It has been dealing with this text since its inception two years ago. Accordingly, it is logical that a different procedure should be adopted. We would like to have our own distinct procedures adopted for this to develop our own home-grown constitution. The discretion of the Chairperson as envisaged in some of the Rules and, I believe, his management style in harmony with the management committee, will ensure that the interests of all parties are at all times maintained.

At First Reading, each party has an opportunity to make a statement on the Bill, after which a debate will be conducted on the various chapters. The Bill is then referred to the committee stage, to the Constitutional Committee, which will consider the Bill together with any amendments submitted to it. The Constitutional Committee will then submit a final text with any amendments it has approved together with the report for adoption at the Third Reading.

\*I am most grateful for the carnival atmosphere prevailing here before we enter the final phase of negotiation. It augurs well. I am convinced we will overcome all stumbling blocks next week.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! I do not have a set list of speakers for this item. However, I would like to allow those who wish to address us, to do so. The first one is Mr Van Breda. [Interjections.]

Mr A VAN Breda: Mr Chairperson, going through the amended Rules, I just want to place on record that we are grateful for the extended period for amendments, as in Rule 84A(3). Just to get your confirmation of it, Sir, I take it that in practice that will mean that parties will have at least three days after the final draft becomes available to register amendments.

On the second page of the amended Rules I refer to Rule 84A(4), where certain powers are given to the Chairperson in connection with amendments. I recall that we reached an understanding at the last meeting of the management committee that the Chairperson would, notwithstanding this Rule, keep the management committee involved to assist him in his decisions. I want to place this on record to allay fears that might arise that the Chairperson is bestowed with dictatorial powers.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Thank you, Mr Van Breda. I think hon members will all join me in giving Mr Van Breda a wonderful round of applause. Tomorrow he will have served 30 years in this Place. [Applause.] Most of us were not here when you started, Mr Van Breda, but we are rather pleased that you welcomed us when we came. Mr Van Breda is . . . [Interjections.] Please, let me say something to hon members. Mr Van Breda was one of the leading officials, of Parliament that I met when we first came here during the negotiation process, perhaps to come to check

Parliament out to see whether we wanted the new Parliament to meet here or to meet elsewhere.

When we arrived, Mr Van Breda made sure that we were well received. He made sure that Parliament was properly cleaned. I am not suggesting that it was not clean before we came. [Interjections.] He made it very presentable to us.

The choice we had was whether the new Parliament, that is all of us, should meet here or should meet elsewhere, possibly even in Bloemfontein or in Pretoria. But he welcomed us so well that a decision was taken that we should meet here. I found him to be very witty and constructive at all times, and I congratulate him on his long service. What is good about your service now, Mr Van Breda, is that you are now serving in a new Parliament which is democratic, which is non-racial and which is broadly accepted. [Applause.]

Mr A M OMAR: Mr Chairperson, whilst I want to congratulate the hon member, you said something which I thought needed a bit of clarity. You said that he, the hon member Mr Van Breda, had started off when we were not here. I was wondering whether you could clarify, firstly, who the "we" refers to . . . [Laughter] . . . and secondly, why we were not here. [Laughter.]

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Omar, this is the one time I have not used the royal "we". [Laughter.] I meant people who are on the right-hand side of the House . . . [Laughter] . . . were not here.

Mr R P MEYER: You were not even born by then.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I had been born 30 years ago, Mr Meyer.

Thank you very much Mr Omar. Once again, Mr Van Breda, we are really pleased to have you amongst us, and grateful for the service you have rendered, particularly in the past two years.

Is there anyone who would like to address us on the Rules?

Mr J H DE LANGE: Mr Chairperson, I rise on behalf of the ANC in unconditional support of the amended Rules being proposed. [Applause.]

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: There being no further speakers on this matter, the question before us is the motion on the Agenda, Item 6, under the name of the Deputy Chairperson.

Debate concluded.

Question agreed to.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Before we conclude, as you would have heard, members of the Constitutional Committee will be proceeding to a bosberaad from Monday to Wednesday. Those members who will be proceeding to the bosberaad in Arniston are requested to see the administration section to finalise the travel arrangements. The departure is on Monday at 10 o'clock. Members' documentation, and information leaflets are all obtainable from the administration.

The meeting adjourned at 10:18.

## ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

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### 1. INTRODUCTION

This penultimate Report by the Constitutional Committee to the Constitutional Assembly deals with an evaluation of progress recently undertaken by the Management Committee. It outlines also the Constitutional

Committee's recommendations on the procedure for adoption of the new constitution, which is set to commence in approximately three weeks time.

### 2. BACKGROUND

- 2.1 The last report by the Constitutional Committee to the Constitutional Assembly on 25 August 1995, consisted largely of draft formulations from Theme Committees.
- 2.2 Theme Committees completed their work and tabled final reports to the Constitutional Committee in September 1995. An important milestone was also reached in September 1995 with the production of the first rough legal draft of the new Constitution in the form of the Working Draft, 1st Edition.
- 2.3 This draft went through further refinement, resulting in the 2nd Edition of the Working Draft in October 1995.
- 2.4 This 2nd Edition consisted of a "plain language" version of the first draft of the new Constitution. It was the product of a legal task team convened by the Administration, who re-organised and redrafted the legal text with the assistance of plain language experts. The aim was to make the document as simplified and as accessible to the broader public as possible.
- 2.5 The Constitutional Committee continued to meet after recess, in October and November 1995 to consider and approve of the publication of the Refined Working Draft for public comment.

- 2.6 A further edition, the 3rd Edition of the Working Draft, was produced in December 1995, which served as the basis of discussion when the CA resumed its business in the new year.

### 3. EVALUATION

- 3.1 When the Constitutional Assembly resumed work in January 1996, the Management Committee agreed to conduct an evaluation of progress by mid-February, in order to ensure the CA meets the May 1996 deadline.
- 3.2 The Management Committee conducted this evaluation on the 15th and 19th February and concluded that substantial progress had been made in resolving the outstanding issues.

3.3 It was agreed that it is both possible and desirable to adopt the new Constitution by 8 May 1996.

3.4 It was noted that the Constitutional Assembly had not received any indication yet whether the Inkatha Freedom Party would return to the process. The CA continued to appeal to the IFP to return to the process.

3.5 The Management Committee will continue to appraise the situation both to ensure that the deadline is met and that issues are accorded the necessary "thoroughness" in this final phase of constitution-making. The 4th April has been identified as a date for a further assessment of progress.

3.6 The confirmation of 8 May 1996 as the deadline for adoption will go a long way in giving certainty to the South African public on the constitutional order. It would also boost the image of South Africa in the international arena if the country proved it was able to meet its own deadlines for finalising the new Constitution.

#### 4. **OUTSTANDING ISSUES**

4.1 As at 14 March, there were approximately 76 issues that remain outstanding before the new Constitution is completed.

4.2 The Management Committee noted however that the number of issues on which parties have fundamental differences, are few in number. The majority of issues concerned questions of formulation, rather than fundamental differences. A schedule of issues requiring attention as at 14 March is attached hereto as Annexure One.

#### 5. **SCHEDULE**

In order to deal with these outstanding issues and complete its work by 9 May 1996, the following broad phases of work are envisaged in this final period:

\* In the first week of April, the Constitutional Committee will conduct the final round of negotiations, either in normal session or in a private lekgothla/bosberaad or multi-lateral:

\* Political debates would need to be substantially completed by 4 April, to allow the Technical Refinement Team to prepare the final draft during the recess period from 5 to 12 April 1996:

\* The final draft will be available by 15 April 1996 for discussion in the Constitutional Committee from 15 to 19 April 1996;

\* The process of adoption by the Constitutional Assembly will commence on 22 April 1996, culminating in the final adoption on 8 May 1996.

#### 6. **PROPOSED AMENDMENT OF CONSTITUTION**

6.1 During its latest evaluation, the Management Committee considered it necessary to plan for two possible scenarios.

6.2 The first possible scenario is the need to make allowance for the CA to refer to the Independent Panel of Constitutional Experts as a deadlock-breaking mechanism in terms of s73(3) of the Constitution.

6.3 The second scenario for which contingency plans are needed is the possibility of non-certification of the Constitution by the Constitutional Court and the need to reconvene the CA to rectify the defects.

6.4 The proposed amendment attached hereto agreed to by the Management Committee, would allow the CA to refer to the Panel in terms of s73(3) after 8 May 1996, should the need arise. See Annexure Two.

6.5 The proposed amendment also provides that the CA will reconvene to rectify the defects, in case of non-certification by the Constitutional Court.

#### 7. **PUBLIC PARTICIPATION**

##### 7.1 **PUBLICATION OF WORKING DRAFT**

7.1.1 The final phase of public participation in the constitution-making process kicked off with the publication of the Working Draft of the new Constitution on 22 November 1995.

7.1.2 Over 5 million copies (5 024 000) of the Working Draft in all 11 official languages were printed and distributed by various means. In November and December, 2 848 756 were inserted into newspapers throughout the country.

7.1.3 A further 100 500 were distributed via the CA's Constitutional Education Programme offices in each of the nine provinces. Approximately 94 700 were distributed in kiosks in major centres

through country. The CA offices in Cape Town distributed another 70 000. And, finally 1 822 000 copies were distributed directly to the public in a "knock-and-drop" operation on major routes throughout the country in early January 1996.

7.1.4 Other media activities since the publication of the Working Draft, have included the publication of the CA's official newsletter, Constitutional Talk, which now has approximately 55 000 subscribers. A further 100 000 copies are circulated directly to members of the public.

7.1.5 The C.A.'s popular weekly television talk-show, also called Constitutional Talk, resumed on 18 February 1996 and will run through until 12 May 1996. The C.A. has also obtained weekly radio programmes on eight radio stations, including Radio Xhosa, Lebowa, Metro, Sesotho Stereo, Tsonga, Venda, Zulu and Setswana Stereo. These started in February and will run through to the end of May 1996.

## 7.2 SUBMISSIONS

7.2.1 The CA set 20 February 1996 as the deadline for submissions by the public on the Working Draft. From the time of publication of the Working Draft on 22 November 1995, the CA had received 1 438 submissions from the public. A further 245 523 petitions were received.

7.2.2 The overwhelming number of submissions covered issues relating to the Chapter on the Bill of Rights. A detailed breakdown of the distribution of issues raised in submissions, per Chapter of the Working Draft, is contained the 4th Edition of the Working Draft. Many submissions raise more than one issue. Hence, the total number of issues raised in this table is greater than the total number of submissions.

7.2.3 Petitions covered a wide range of subjects, including the death penalty, right to own firearms, equality clause and sexual orientation, christianity and the state, property rights, animal rights, Rastafarian rights and abortion.

7.2.4 Most submissions received emanated from private individuals. Of the 1 438 received, 238 were from organisations and the remainder from individuals.

7.2.5 In general, submissions in this phase have been much more focussed than those received in the first phase. The identification of outstanding issues and various options in the Working Draft, clearly assisted in ensuring that public comments are directed at specific provisions. In many instances, submissions included alternate constitutional formulations.

7.2.6 The 4th Edition of the Working Draft, produced on 20 February 1996, incorporates specific references to public submissions, clause by clause, to ensure proper discussion of these submissions as the finalisation of the new Constitution draws closer.

## 7.3 CONSTITUTIONAL EDUCATION PROGRAMME

7.3.1 In the period from 15 January to 20 February, the Constitutional Assembly's Constitutional Education Programme (CEP) organised a total of 329 workshops throughout the country, attended by about 52 717 people.

7.3.2 The CEP embarked on an intensive workshop programme on the Working Draft on 15 January 1996. These workshops, organised in close consultation with organisations of civil society and community-based organisations in specific localities, were conducted by the Constitutional Assembly's 18 provincial co-ordinators. Their major focus was on constitutional education. However, they also informed and encouraged the public to make submissions to the Constitutional Assembly.

7.3.3 One of the primary objectives of the programme, was to return to civil society structures who had been contacted before the publication of the Working Draft. This has been achieved. Additional organisations and structures have also been contacted.

7.3.4 Members of the CA were sent programmes giving details of workshops to be held in provinces, as well as information about the workshop programme. This was done to invite CA members to attend workshops in their constituencies. A

7.3.5 A simple language summary of the Working Draft was produced in all eleven

official languages, and provided together with the tabloid version of the Working Draft, to people attending workshops.

#### **7.4 CONSULTATION**

During the period since the CA resumed its work in January 1996, a number of important consultations have taken place with stakeholders and sectors. These consultations have been organised on an ad hoc basis as part of the process of resolving some of the outstanding issues. They have not formed part of a structured programme of face-to-face consultation, as with national sector hearings in earlier phases of the process.

##### **7.4.1 COURTS AND ADMINISTRATION OF JUSTICE**

7.4.1.1 On 1 February 1996, a consultation took place between an ad hoc subcommittee and representatives of the legal profession on outstanding issues in the Chapter on Courts and the Administration of Justice. The meeting was attended by representatives of the Association of Law Societies, Black Lawyers Association, General Council of the Bar, Hoexter Commission, Lawyers for Human Rights, Legal Resources Centre, National Association of Democratic Lawyers, University of the Western Cape Community Law Centre, University of Cape Town Law Faculty and the University of Stellenbosch Law Faculty.

7.4.1.2 Judges who attended included the President of the Constitutional Court, Judge Arthur Chaskalson; Judge I Mohamed, Deputy President of the Constitutional Court and Judge of the Constitutional Court, L Ackerman, Chief Justice W Corbett and Justice J Friedman of the Western Cape.

##### **7.4.2 GENERAL FINANCIAL MATTERS**

Consultation with the Auditor General, Mr H Kluever, and his legal advisers and the Chairperson of the Finance and Fiscal Commission, Mr M Morobe, also took place in February to resolve various outstanding financial matters.

##### **7.4.3 LOCAL GOVERNMENT**

On 27 February, a delegation from the Major Urban Areas Association, led by Mr David Dlali, addressed the Sub-Committee on their submission on Local Government.

##### **7.4.4 SELF-DETERMINATION**

On the same day a delegation from the Volkstaat Council, led by Prof Johan Wingaard, also addressed the Sub-Committee on their submission on self-determination.

##### **7.4.5 INITIATIVES BY CIVIL SOCIETY**

7.4.5.1 Civil society has also taken the initiative, during this same period, organising conferences and discussions on various constitutional issues. Politicians and representatives of the CA have attended some of these events organised by a range of bodies, including the Human Rights Committee, Black Sash and South African Council of Churches.

7.4.5.2 We have also seen intensified lobbying of political parties by civil society structures, as debate intensified on issues such as the property clause, freedom of expression, economic activity and the right to strike and lock-out.

##### **7.4.6 PROVINCIAL GOVERNMENTS**

7.4.6.1 An important consultation took place with Premiers and members of provincial legislatures and executive committees on Friday 22 March 1996.

7.4.6.2 Delegations from eight provinces attended the consultation. The Province of Kwa-Zulu-Natal tendered their apologies and did not attend.

7.4.6.3 Those who attended included Premiers Tokyo Sexwale of Gauteng Province, Raymond Mhlaba of Eastern Cape Province, Ngoako Ramathodi of Northern Province, Mathews Phosa of Mpumalanga, Hernus Kriel of Western Cape Province. The delegations from North West Province and Free State Province were led by the premier's adviser, Martin Mabiletse and MEC Papi Kganare, respectively.

7.4.6.4 Important issues were raised at this meeting, including matters relating to legislative and executive competencies of provinces, finances and security services.

## **8. PROCESS OF ADOPTION**

### **8.1 CONSTITUTIONAL REQUIREMENTS**

8.1.1 Section 73(1) of the Constitution requires the Constitutional Assembly to pass the final text within two years as from the date of the first sitting of the National Assembly. The first sitting took place on 9 May 1994. Therefore the final date of adoption must be no later than 8 May 1996.

8.1.2 Section 73(2) requires a majority of two-thirds of all members of the Constitutional Assembly to pass the final text, provided that all provisions relating to boundaries, powers and functions of provinces shall also require a two thirds majority of the Senate. Procedurally therefore there should be two sets of votes cast on the final text.

### **8.2 REQUIREMENTS OF CA RULES**

8.2.1 The Rules of the Constitutional Assembly lay out an elaborate procedure for adoption, consisting of four stages. This includes the stipulation that not more than one stage may be held on any one particular day. It also includes a particularly lengthy third stage during which each clause is separately considered. This stage of legislation, which is called the Committee of the Whole House in the Westminster system, has been replaced since 1987 in Parliament by the referral of the bill to a committee.

8.2.2 Since the process of constitution-making has taken place thus far in committee, and considering the time that would be required for adoption if the strict letter of the Rules were to be followed, a streamlined procedure for adoption has been considered and recommended to the Constitutional Assembly.

### **8.3 PROPOSED PROCEDURE FOR PASSING OF NEW CONSTITUTIONAL TEXT**

#### **8.3.1 QUORUM**

A quorum of 164 members is required during debate. A simple majority for all decisions, with the exception of decisions

taken during the Third and final Stage, when a majority of at least two-thirds of all the members of the CA is required.

#### **8.3.2 LANGUAGES**

The CA will attempt to have the final text available in all 11 official languages by 15 April 1996. However, for practical purposes in terms of the adoption procedure dealt with in this section, it is recommended that the proposed amendments and Order Papers be dealt with in English only. Members speaking during the debate however will have translation available in all 11 languages and will be encouraged to use all languages.

#### **8.3.3 RECOMMENDED PROCEDURE**

The procedure for adoption agreed to by the Management Committee is attached hereto. See Annexure Three. A time-table for the period from 22 April to 8 May 1996 will be provided under separate cover.

## **9. PROCESS OF CERTIFICATION**

9.1 The Constitution states in Section 71 that the new text will not be of any force or effect unless it is certified by the Constitutional Court to be in compliance with the Constitutional Principles.

9.2 Discussions have taken place with the President of the Constitutional Court to clarify the procedure for certification. No time is prescribed by the Constitution for certification to take place. The Constitution does however prescribe a two-year period for the adoption of the Constitution.

9.3 It follows that as long as the Constitution is passed in accordance with the provisions of Chapter 5 within the period prescribed by section 73, the consideration by the Court of the provisions of the Constitution can take place later.

9.4 The Chairperson of the Constitutional Assembly will need to submit the constitutional text adopted by the Constitutional Assembly to the Constitutional Court, together with a certificate which should include a statement specifying that the provisions of the text were passed by the requisite majority.

9.5 He will also need to inform the Constitutional Court whether any of the political

parties represented in the Constitutional Assembly wish to present oral argument to the Court, pursuant to the provisions of the Court.

- 9.6 The text submitted to the Court, must be accompanied by a request to the effect that, if the Constitutional Court certifies the text, one of the copies bearing the Court's certificate should be returned to the Secretary for presentation to the President for assent.
- 9.7 The Constitutional Court has indicated in writing to the Constitutional Assembly, that it may be possible to convene a special session of the Court during June to deal with certification. However, this decision can only be taken by the Court when the Constitution is in fact submitted to the Court for certification.
- 9.8 There are a number of logistical issues the Management Committee has still to deal with regarding the certification process. These include the format of documentation to the Constitutional Court and the appointment of Counsel.
- 10. PROCESS OF PUBLICATION**
- 10.1 The work of the Constitutional Assembly would not be complete without the publication of the new Constitution.
- 10.2 The new Constitution will be published in all 11 official languages after certification.
- 10.3 The Administration is considering proposals for its publication in various formats, to ensure it reaches a broad section of the public. This includes the production and distribution of various other resources on the new Constitution.

## **II. FINANCES**

### **11.1 EXPENDITURE TO DATE**

The expenditure to date of the Constitutional Assembly in the current financial year, from 1 April 1995-19 March 1996, is as follows:

Personnel	R11 309 331
Administrative Expenses	R20 838 605
Stores	R 2 313 335
Equipment	R 1 016 336
Professional Services	R12 087 445
TOTAL	R47 565 052
BUDGET	<u>R59 423 636</u>
FUNDS AVAILABLE	R11 858 584

### **11.2 FINANCIAL REPORT FOR 1995/96 FINANCIAL YEAR**

The Financial Report of the Constitutional Assembly for 1995/96 will be submitted with the final Report to the CA in April 1996.

### **11.3 BUDGET FOR 1996/97 BUDGET YEAR**

The Management Committee instructed the Chairpersons and Administration to draft a Budget for the 1996/97 financial year. This Budget, which will cover the work of the CA from April 1996 through to adoption and certification until the final shutdown of the Administration after certification and publication, has been prepared and is being considered by Parliament.

# SURVEY OF ISSUES REQUIRING ATTENTION

AS AT 14 MARCH 1996

Section	Section Title	Deadline	Decision Required	Technical Refinement
1	<i>Preamble</i>		Submissions	
2	<i>Anthem</i>		Anthem	
3	<i>Language</i>		NP formulations	
<b>CHAPTER 2: BILL OF RIGHTS</b>				
4	<i>Equality</i>			Reformulate and provide options
5	<i>Life</i>	Death penalty		
6	<i>Freedom and Security of Person</i>		i. "Bodily/physical integrity" ii. "Decisions concerning their body"	
7	<i>Privacy</i>			Panel memo
8	<i>Freedom of Expression</i>		Harm test	Reformulate 15(3)
9	<i>Assembly, Demonstration and Petition</i>		"[Picket]"	
10	<i>Freedom of Movement and Residence</i>		"Everyone"	

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Section	Section Title	Deadline	Decision Required	Technical Refinement
11 21	<i>Freedom of Occupation</i>		i. "[Trade]" ii. Permanent residents	
12 22	<i>Labour Relations</i>	i. Right to strike ii. Right to lock-out iii. Union administration		
13 23	<i>Environment</i>		NP proposal	
14 24	<i>Property</i>		Various matters	
15 25(3)(4)	<i>Housing</i>		i. "[Arbitrarily]" ii. "[parental] care"	Panel memo
16 27	<i>Children</i>			
17 28	<i>Education</i>	Whole Section		
18 31	<i>Access to Information</i>			Reformulation
19 32	<i>Just Administrative Action</i>			Reformulation
20 34(4)	<i>Arrested, Detained and Accused Persons</i>		Exclusion of evidence	
21 35(1)(a)	<i>Limitations</i>			Panel memo
22 36	<i>State of Emergency</i>			i. Panel memo ii. Reformulation
23 38	<i>Application</i>		"i. Appropriate/ applicable" ii. Juristic persons	

Section	Section Title	Deadline	Decision Required	Technical Refinement
CHAPTER 3 - NATIONAL ASSEMBLY				
24	41	<i>Composition and Election</i>	Electoral system	
25	46(4)	<i>Elections and Duration of National Assembly</i>		Reformulation
26	52	<i>BBs</i>		Finalise after 2nd House
27	53	<i>Constitutional Amendment</i>	Exempt clauses	
28	54A	<i>Application by Members to Constitutional Court</i>	Whole section	
CHAPTER 4 - NATIONAL COUNCIL OF PROVINCES [AGREED TO USE DRAFT 5 MARCH AS BASIS FOR DISCUSSION]				
29	1.	<i>Concept</i>	i. Name ii. In definition of Parliament?	Tech Advisors' opinion
30	2.	<i>Composition</i>	i. Appointment ii. Referral after mediation iii. Majorities	
31	3.	<i>Participation in National Legislative Process</i>	30 day cooling off period	
32	4.	<i>Financial Bills</i>	FFC and provincial allocations	
33	7.	<i>Voting in the Council</i>	"Mandate"	
34	8.	<i>Powers to Summon Ministers</i>	Ministers' rights	

Section	Section Title	Deadline	Decision Required	Technical Refinement
35	9. Appointment		Appointment of Constitutional Court judges etc.	
36	11. General		Whole section	
<b>CHAPTER 5 - NATIONAL EXECUTIVE</b>				
37	78(1)(l) Powers and Functions of President		Appointment of ambassadors	
38	85 Multiparty participation in executive		NP Proposals	
39	93 Snap elections		Legislative terms	
40	93(4) Votes of No Confidence		Appointment of new President	Reformulation
<b>CHAPTER 6 - COURTS AND ADMINISTRATION OF JUSTICE</b>				
41	99A Inherent Power		Outstanding	
42	100 Appointment of Judges	Options		
43	101(3) Acting Judges		Appointment	
44	105 Attorney General	Structure		
<b>CHAPTER 7 - STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY</b>				
45	109(4) Human Rights Commission		Deletion of (4)	
46	111 Auditor General		"Holding office in a political party"	
47	113(1)(c) Electoral Commission			Reformulate 113(1)(c)

Section	Section Title	Deadline	Decision Required	Technical Refinement
48	115 <i>General Provisions Appointments</i>		Composition of committee	
49	116 <i>Removal from Office</i>		Composition of committee	
50	<i>Independent Broadcasting Authority</i>			Formulations
51	<i>Cultural Commission(s)</i>		Volkstaat and NP proposals	
52	<i>Environmental Commission</i>		NP proposal	
<b>CHAPTER 8 - PROVINCES</b>				
53	[Co-operative governance]		NP proposal	
54	148-53 <i>Provincial Financial and Fiscal Matters</i>			Reformulate
55	154 <i>Provincial Constitutions</i>		Homogeneity	
<b>CHAPTER 9 - PROVINCIAL COMPETENCIES</b>				
56	1 <i>National and Provincial Legislative Authority: Legislative Authority of the Republic</i>			Reformulation
57	2 <i>Legislative Authority of Provinces</i>		Framework legislation	Reformulation
58	3 <i>Conflicts between National and Provincial Legislation</i>		Overrides	Reformulation
59	5 <i>Conflicts That Cannot Be Resolved</i>		Measuring provincial capacities	
60	6 <i>Subsidiarity</i>		Outstanding	

Section	Section Title	Deadline	Decision Required	Technical Refinement
61	7 <i>Asymmetry</i>		Outstanding	
62	8 <i>Justifiability</i>		Outstanding	
63	<i>National and Legislative Executive Competencies</i>		Outstanding	
CHAPTER 10 - LOCAL GOVERNMENT				
64	163-168 <i>Local Government</i>		Outstanding	
CHAPTER 11 - TRADITIONAL AUTHORITIES				
65	169-173 <i>Traditional Authorities</i>		Outstanding	
CHAPTER 12 - PUBLIC ADMINISTRATION				
66	171(1) <i>Public Administration</i>			i. Panel memo ii. Reformulation
67	173(3) <i>Public Service</i>			Reformulation
CHAPTER 13 - SECURITY SERVICE				
68	182 <i>Control of Police Service</i>		Outstanding	
CHAPTER 14 - FINANCE				
69	188(2)(c) <i>Treasury Control</i>			Finalise after 2nd House
70	192(1)(d) <i>Remuneration of Persons Holding Public Office</i>			Finalise after Traditional Authorities
71	193(2)(d), and (f), and (3)(h) <i>Allocations from National Revenue:</i>			Finalise after Local Government

	Section	Section Title	Deadlock	Decision Required	Technical Refinement
72	196	<i>Appointment of Members</i>			Panel memo
<b>CHAPTER 15 - GENERAL PROVISIONS</b>					
73	201-203	<i>International Agreements</i>		Party submissions	
74	<i>Self Determination</i>			Concept of Volkstaat	
75	<i>Schedules</i>			Outstanding	
76	<i>Transitional Arrangements</i>			Consider on ongoing basis	TRT to consider on ongoing basis
	Total		5	5.4	2.5

PARLIAMENT  
OF THE REPUBLIC OF SOUTH AFRICA

18CA

## ANNEXURE TWO

### THIRD PROPOSED AMENDMENT TO INTERIM CONSTITUTION

**[Note:** Words in bold brackets denote deletion and words underlined denote insertion. This document must be read together with the document of the same heading submitted to the meeting of the Management Committee of the 26 March 1996.]

#### Constitutional Principles and certification

71. (1) A new constitutional text shall -
- (a) comply with the Constitutional Principles contained in Schedule 4; and
  - (b) be passed by the Constitutional Assembly in accordance with this Chapter.
- (2) The new constitutional text passed by the Constitutional Assembly, or any provision thereof, shall not be of any force and effect unless the Constitutional Court has certified that all the provisions of such text comply with the Constitutional Principles referred to in subsection 1(a).
- (3) A decision of the Constitutional Court in terms of subsection (2) certifying that the provisions of the new constitutional text comply with the Constitutional Principles, shall be final and binding, and no court of law shall have jurisdiction to enquire into or pronounce upon the validity of such text or any provision thereof.
- (4) During the course of the proceedings of the Constitutional Assembly any proposed draft of the constitutional text before the Constitutional Assembly, or any part or provision of such text, shall be referred to the Constitutional Court by the Chairperson if petitioned to do so by at least one fifth of all the members of the Constitutional Assembly, in order to obtain an opinion from the Court as to whether such proposed text, or part or provision thereof, would, if passed by the Constitutional Assembly, comply with the Constitutional Principles.

#### Adoption of new constitutional text

73. (1) The Constitutional Assembly shall pass the new constitutional text within two years as from the date of the first sitting of the National Assembly under this Constitution.
- (2) For the passing of the new constitutional text by the Constitutional Assembly, a majority of at least two-thirds of all members of the

Constitutional Assembly shall be required: Provided that provisions of such text relating to the boundaries, powers and functions of provinces shall not be considered passed by the Constitutional Assembly unless approved also by a majority of two-thirds of all the members of the Senate.

- (3) If the Constitutional Assembly fails to pass a proposed draft of the new constitutional text in accordance with [subsection (2)], subsections (1) and (2), but such draft is supported by a majority of all its members, such proposed draft shall be referred by the Chairperson to the Panel of Constitutional Experts referred to in section 72(2) for its advice, to be given within 30 days of such referral, on amendments to the proposed draft, within the framework of the Constitutional Principles, which might secure the support required in terms of subsection (2).
- (4) An amended draft text unanimously recommended by the Panel of Constitutional Experts and submitted to the Constitutional Assembly within the said period of 30 days shall be considered by the Constitutional Assembly and be voted on within 14 days of the date on which it was submitted to the Constitutional Assembly, and may be passed in terms of subsection (2). [and if passed in accordance with subsection (2), it shall become the Constitution of the Republic of South Africa].
- (5) Should the Panel of Constitutional Experts fail to submit within the said period of 30 days to the Constitutional Assembly an amended draft text which is unanimously recommended by the Panel, or should such an amended draft text not be passed by the Constitutional Assembly in accordance with subsection (2), any proposed draft text before the Constitutional Assembly may be approved by it by resolution of a majority of its members for the purposes of subsection (6), within 14 days of the date of submission of the amended Draft Text by the Panel [of Constitutional Experts] or, if no amended draft text is submitted by the Panel [of Constitutional Experts] within 44 days after the date of referral to the Panel [of Constitutional Experts] in terms of subsection (3).
- (6) A text approved under subsection (5) shall, after it has been certified by the Constitutional Court in terms of section 71(2), be referred by the President, for a decision by the electorate by way of a national referendum, which shall be called within 14 days after certification by the Constitutional Court, and which shall be held within 90 days of the date on which the National referendum is called.
- (7) The question put before the electorate in the referendum shall be the

acceptance or rejection of the text approved under subsection (5).

- (8) The text presented to the electorate in the referendum shall, if approved by a majority of at least 60 per cent of the votes cast in the referendum and subject to subsection (13), become the Constitution of the Republic of South Africa.
- (9) If the text, or any amended text taking into account the reasons of the Constitutional Court, is not supported or approved in terms of subsection (3) or (5), or is not approved in the Referendum, in accordance with subsection (8), [or if a new constitutional text is not passed in terms of this Chapter within the period of two years referred to in subsection (1),] the President shall dissolve Parliament by proclamation in the *Gazette* within 14 days of the date of the referendum, [or the expiry of the said period] or after the date on which the relevant text was not supported or approved in terms of subsection (3) or (5) whereupon an election contemplated in section 39(1)(a) shall be held.
- (10) The Constitutional Assembly as constituted after such an election, shall pass the new constitutional text within a period of one year as from the date of its first sitting after such election.
- (11) For the passing of the new constitutional text referred to in subsection (10) by the Constitutional Assembly, a majority of at least 60 percent of all the members of the Constitutional Assembly shall be required: Provided that provisions of such text relating to the boundaries, powers and functions of provinces shall not be considered passed by the Constitutional Assembly unless approved also by a majority of at least 60 percent of all the members of the Senate.
- (12) The provisions of subsections (3) to (9) of this section and the other sections of this Chapter shall apply *mutatis mutandis* in respect of the Constitutional Assembly referred to in subsection (10) of this section.
- (13) A new constitutional text adopted in terms of this Chapter shall be assented to by the President and shall upon its promulgation be the Constitution of the Republic of South Africa.

#### Procedure in the event of non-certification

- 73A (1) If the Constitutional Court finds that a draft of the new constitutional text passed by the Constitutional Assembly in terms of section 73(2) or approved by it in accordance with section 73(5) does not comply with the Constitutional Principles, the Constitutional Court shall refer the draft text back to the Constitutional Assembly together with the

reasons for its finding.

- (2) The Constitutional Assembly shall within three months of the date of referral pass an amended text in accordance with section 73(2) or approve an amended text in accordance with section 73(5), as the case may be, taking into account the reasons of the Constitutional Court.
- (3) The amended text shall be referred to the Constitutional Court for certification in terms of section 71, whereupon the provisions of subsections (1) and (2) again apply, except that the period of three months mentioned in 73(2) is reduced to a period of one month.
- (4) If, in the case of a draft text where section 73(2) applies, the Constitutional Assembly fails to amend the draft text in accordance with section 73(2) within the period prescribed in subsection (2) of this section, the provisions of section 73(3) to (9) shall apply *mutatis mutandis*.



PARLIAMENT  
OF THE REPUBLIC OF SOUTH AFRICA

## ANNEXURE THREE

### DRAFT RESOLUTION AMENDING THE STANDING RULES: CONSTITUTIONAL ASSEMBLY FRIDAY 29 MARCH 1996

That the provisions of Standing Rules 78 up to and including 102 be suspended and substituted by the following:

#### *First Reading Stage*

##### *Notice of First Reading*

**78A.**(1) The member in charge of the bill shall place the bill on the Order Paper for First Reading.

(2) The First Reading may be set down for the day on which the bill is laid upon the Table, provided members are supplied with copies of the bill before the First Reading is moved.

##### *No amendment allowed*

**79A.**No amendment shall be allowed to the motion for the First Reading of the bill.

##### *Introduction of bill*

**80A.**The member in charge of the bill, after moving that the bill be read a first time, may deliver his or her introductory speech on the bill.

##### *Statements on behalf of parties*

**81A.**(1) After the introductory speech one member of each political party in the Constitutional Assembly may make a statement on the bill on behalf of his or her party.

(2) A period of debate, as determined by the presiding officer, may follow statements on the bill in terms of Subrule (1).

##### *Bill read a first time*

**82A.**When statements on the bill have been made on behalf of all political parties in the Constitutional Assembly who wish to be heard, and after the period of debate referred to in Subrule 81A(2), the presiding officer shall order the bill to be read a first time, without the question being put.

#### *Committee Stage*

##### *Referral of bill to Constitutional Committee*

**83A.**After the bill has been read a first time, it stands referred to the Constitutional Committee for consideration of amendments.

##### *Amendments for consideration by Constitutional Committee*

**84A.**(1) Proposed amendments to the clauses or other provisions of the bill may be submitted for consideration by the Constitutional Committee.

(2) An amendment which is out of order for any reason shall not be considered by the Constitutional Committee, and the Chairperson's decision on any question as to whether an amendment is or is not out of order, shall be final.

(3) An amendment must be in writing, signed by the proposer, and must be delivered to the Secretary not later than 12:00 on the day preceding the first day set aside for consideration of the bill by the Constitutional Committee.

(4) An amendment which has not been submitted as provided under Subrule (3) may not be referred to the Constitutional Committee except by or by leave of the Chairperson.

*Amendment of bill and preparation of report*

**85A.** The Constitutional Committee shall effect such amendments to the bill as it sees fit after due consideration of the proposed amendments submitted and found to be in order in terms of Standing Rule 84A, and shall prepare a report.

*Second Reading Stage*

*Notice of Second Reading*

**86A.** After the conclusion of the Committee Stage of the bill, the member in charge of the bill shall place the bill or, as the circumstances may require, the bill as amended, on the Order Paper for Second Reading, the bill to be accompanied by the report referred to in Standing Rule 85A.

*Printing of amended bill*

**87A.(1)** If the bill is amended in terms of Standing Rule 85A, the Secretary shall cause the bill as so amended to be printed and copies to be supplied to members.

(2) The Second Reading of the bill shall not commence before Subrule (1) has been complied with.

*No amendment allowed*

**88A.** No amendments shall be allowed to the motion for the Second Reading of the bill.

*Recording of number of members in favour of bill*

**89A.** In determining the question on the Second Reading, the number of members in favour of the question shall be recorded, whether a division is called for or not, and the number of senators who vote or are in favour of the question shall in any event be recorded separately.

*Bill passed in accordance with section 73(2)*

*Lodging of bill with Constitutional Court*

**90A.** If the bill is passed in accordance with section 73(2) of the Constitution at the Second Reading, two fair copies thereof shall be certified accordingly by the Secretary and lodged with the Constitutional Court with a view to the certification of the text in terms of section 71(2) of the Constitution.

*Tabling of amended text submitted*

**91A.** If the bill was not passed at the Second Reading in accordance with subsection (2) of section 73 of the Constitution and an amended text is submitted by the panel of constitutional experts in accordance with subsection (4) of that section, the Chairperson shall lay such text upon the Table.

*Amended text passed in accordance with section 73(2)*

**92A.** If passed in accordance with section 73(2) of the Constitution at the Second Reading, the bill embodying the amended text shall be further dealt with in accordance with Rules 90A and 91A.

**PROCEEDINGS OF THE  
CONSTITUTIONAL ASSEMBLY**

Members assembled in the Chamber of the National Assembly at 12:30.

The Deputy Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.

**WELCOMING OF PRESIDENT MASIRE  
OF BOTSWANA**

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! President Masire, it is my privilege to ask our colleague, Ms Baleka Kgosisile, to welcome you in our midst today.

Ms B KGOSITSILE: Mr Chairperson, Deputy Presidents Mbeki and De Klerk, hon comrades, colleagues and guests in the gallery, when I was asked yesterday to welcome and introduce President Masire, my mind could not but go on a long journey into the past—a past that had days full of laughter, song, dance and poetry, but also days full of bomb blasts, blood and tears of sorrow. I remember the days when many of us in this very House were refugees in Botswana, in the years when the people of this country roamed the world in search of freedom. It was a past which was captured by the poet who said:

All truths wait in all things —  
They neither hasten their own delivery  
Nor resist it.

Botswana's ties with South Africa are not only a matter of good neighbourly relations. They are also not only a question of formalities and diplomatic obligations. They lie as deep as the soil in which many of South Africa's freedom fighters still lie within the boundaries of Botswana. Our friendship was made indelible and sealed by the blood of Botswana's own people, who suffered the consequences of hosting a chapter of South African history which had to be written outside of its own borders.

President Masire, you have arrived at a time when we are putting the past under a microscope through the Truth and Reconciliation Commission. We are confident that only if we see our past for exactly what it was, only if we come to terms

with the evil within us, will we be able to build a better future for our country. Some of the stories which will be told concern things which happened in your country. We trust that in characteristic helpful brotherliness, you will walk this painful mile with us, if necessary.

Please tell the women of Botswana that they are much loved and respected in South Africa. [Applause.] I talk of the ones who bore the brunt of our migratory labour system over the years, the ones whom the mineworkers always went back to for revitalisation and replenishing of everything they needed in order to come back to the depths of our own South African earth to dig out the wealth that developed part of our country.

It is not accidental that I have said the things that I have, before actually saying who President Masire is. It is because, without the people of Botswana, and therefore Botswana as a country, there would have been no President Masire. Without the history that I have only alluded to in my remarks, there would have been no relationship between the two countries, and therefore no visit by the President of Botswana.

Sir Ketumile Masire is the present leader of the ruling Botswana Democratic Party. He succeeded President Khama. Until Sir Seretse Khama's death, Mr Masire was vice-president and a close associate of President Khama. He was a founder member of the Botswana Democratic Party in 1962, and its first secretary-general.

Sir Ketumile was born on 23 July 1925 and attended primary school in Khanye, Botswana. He then received a secondary education at Tiger Kloof in the Republic of South Africa and proceeded to study law. As a former journalist and reporter, he was director of the *African Echo*.

President Masire is a popular and respected figure with a reputation as an able administrator. As a long-serving Minister of Finance and Development Planning, he played a pivotal role in the country's economic development. President Masire is widely respected as an able statesman and leader of one of Africa's democratic successes. His achievements led to honorary doctorates in philosophy, law and literature. For his effective drought-management policy in the years from 1980 to 1986, he was co-winner of the 1989 Africa Prize for Leadership for the Sustainable

End of Hunger. In December 1991 he was awarded the Knight Grand Cross of the Most Distinguished Order of St Michael and St George by Queen Elizabeth II. As chairman of the SADC, President Masire has excelled in his continued efforts to bring prosperity to the whole of the Southern African region. As a member of the troika, he has played a pivotal role in assisting Lesotho in the democratisation process. He is currently involved in a similar effort in Swaziland.

Away from politics, Sir Ketumile's first love remains cattle ranching. When he leaves State House for a holiday, he takes his wife, Lady Olebile, to their farm in Ghanzi—a dry, thorn-bush region on Botswana's border with Namibia. They have three sons and three daughters.

In welcoming him to a free South Africa, I wish our two peoples more journeys together towards prosperity, and end with the words of Walt Whitman who said:

Of the progress of the souls of men and women  
 along  
 the grand roads of the universe, all other  
 progress  
 is the needed emblem and sustenance  
 Forever alive, forever forward,  
 Stately, solemn . . .  
 Desperate, proud . . .  
 They go! They go! I know that they go, but I  
 know not where they go  
 But I know that they go towards the best—  
 toward  
 something great.

[Applause.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: President Masire, we would like you to address us. [Applause.]

#### ADDRESS BY SIR KETUMILE QUETT MASIRE, PRESIDENT OF BOTSWANA

Sir KETUMILE Q MASIRE: Mr Chairman, Deputy President Mbeki, distinguished members of the Assembly, I thank you. It is a great honour for me personally, as it is for my country and people, to be accorded this opportunity to address this esteemed and august body, the Constitutional Assembly of the Republic of South Africa.

On my first state visit to this beautiful country, let me take this opportunity to congratulate, through the Chairperson, all the members of this Assem-

bly on their election as the country's first lawmakers in a free, nonracial and democratic South Africa. In the same vein, I once more extend my heartfelt congratulations to the entire people of South Africa who elected this Assembly under the most difficult and trying circumstances. The Government and the people of Botswana extend their very best wishes to hon members as they embark on the last steps towards the finalisation of the Constitution.

I would like to thank the hon member most sincerely for the kind remarks that she has made about my country and my people, and about me personally. I am truly grateful for the precious time that hon members have spared to enable me to be here this afternoon.

Allow me, on behalf of the people of Botswana, to convey to the leadership and the people of this great country our good wishes for the future. The people of Botswana regard the freedom of South Africa as their own. We congratulate South Africans on eliminating apartheid and on the demonstrated commitment to, and commendable efforts in, building a democratic society.

We in Botswana recall, with great fondness, the honour bestowed upon us as a nation by the visit of His Excellency, President Mandela, towards the end of last year. This visit was indeed a practical indication of the good and harmonious relations that exist between our peoples.

South Africa and Botswana do not only share a common border, but also have strong cultural and historical connections. We have lived together in this part of Africa for centuries. We share a common history, and our two countries are made up of the same people who have moved back and forth for centuries. Indeed, many Batswana can trace the origins of their ancestors back to South Africa.

Prior to my country's independence, the capital of the then Bechuanaland Protectorate was based in this country, in Mafikeng. Quite a few of the people in the leadership of my country went to institutions of education here in South Africa such as Tiger Kloof and Fort Hare. The mutual interaction between our peoples remained evident even during the dark era of apartheid. Botswana supported the liberation struggle as best it could.

Many South Africans identified with the national aspirations of my people and helped in building present-day Botswana. During this period, which

was characterised by destabilisation activities on the part of apartheid South Africa, our people paid heavily for their convictions, but they were never discouraged.

With that era past, we now look forward to the future with hope and a determination to ensure that the aspirations of our peoples are fully realised. Even though the objective of democracy and freedom has been attained, it remains incumbent upon the leadership of our countries to rid their people of illiteracy, disease, hunger and poverty. The onus is upon us to create conditions conducive to development and the improvement of our people's wellbeing.

Political freedom is not an end in itself. It marks the beginning of a never-ending process. Unlike many African countries, South Africa is perhaps both lucky and unlucky. It is lucky in that it has an economic infrastructure and economic muscle that can match that of any Second World country. It is unlucky in that the majority of its people have remained at a Third World level, unaffected by the country's visible wealth and development. The Bantustan policy ensured that they remained poor in the midst of plenty. This is a recipe for further conflict. Political freedom has, however, raised hopes of immediate ascendancy from Third World to Second World status. However, there will be capacity constraints. The effects of many decades of neglect cannot be wiped out instantly.

However, we admire the efforts that South Africans have been making to address these structural imbalances. In particular, the conception of the Reconstruction and Development Programme was a masterpiece of creativity, thinking and imagination. We congratulate the leadership of South Africa in this Assembly for the fitting response to the challenges that lie ahead.

The Third World countries have been struggling for decades to lift their people from the dungeons of poverty. In many cases some nations have become poorer, while others have simply stagnated, and only a handful have made modest progress. The reasons for the lack of success are many. Some are of our own making, eg civil strife, mismanagement, dictatorships, greed and wrong policies. In a few cases the overthrow of elected governments by men from the barracks has contributed its fair share to reversing progress. The more subtle obstacle to economic advancement is the prevailing international economic order.

Third World countries have found all their efforts coming to naught, even when commendable efforts have been made. Every gain they make is eroded, sometimes slowly, sometimes rapidly, by various economic factors which cancel each advance as it is made. In the words of the hon Michael Mandley:

They feel themselves to have taken an escalator marked "up". After a while, however, they will begin to wonder, suspended between confusion and consternation, why they still seem to be in the same place as before. Sometimes they discover, to their horror, that they have not reached the floor of their hopes above, but some lower floor, the existence of which they did not suspect. What they probably will not know is that the escalator which is marked "up" is, in fact, an inner, smaller part of a larger escalator which is unmarked, but actually going down. This larger escalator is the economic system which imperialism put in place. This is the escalator which is driven by engines concealed from the eyes of the ordinary man, engines such as the terms of trade, the nature of the multinational corporations, the workings of international financial systems, the real price of the transfer of technology—all obscured, if not hidden from view.

South Africa has a unique opportunity to advance faster than the rest of us in that it is both a Third World and an industrially developed country with a strong economy. It has a better capacity to distinguish between the real "up" escalator and a "down" escalator. It is less dependent than the rest of us. It is our belief, however, that inasmuch as South Africa's tortured past adversely affected our economies, her democratic and peaceful economic advancement will have a salutary effect on the economies of her neighbours, assuming that the neighbours have put their houses in order.

Botswana admires the commitment leadership of South Africa has demonstrated to the process of reconciliation. Your great nation has confounded both friend and foe alike in its determination and commitment to build a new and democratic order in the face of immense difficulties. Bringing together people who have been separated by centuries of racism, ethnicity and hatred is no mean feat. We applaud the leadership of this nation for engaging in national dialogue with a broad spectrum of society.

This is essential as the Government of National Unity grapples with the task of building a nation out of people with deep scars from the conflict that existed in the country for decades.

Many have lost their loved ones, others have been cruelly maimed and provide glaring examples of the brutality of that sad past. It is to be regretted that even with this deplorable legacy of past violence, some pockets of violence or flash points still remain. Having successfully emerged from violence that was fuelled by the now defeated forces of racism, the people of South Africa should now vow that they shall never again be torn apart by violence. In a country where the ballot is no longer the preserve of the few, there is no longer any reason to resort to bullets. [Applause.]

Competing beliefs must be tested against one another through the competition of ideas, through the process of argument, debate and criticism. Elections are an orderly and peaceful alternative to shooting and shouting or fighting it out between partisans of conflicting solutions.

What distinguishes human beings from other living things is the capacity for reason. We live a fully human life when we live the life of reason. I wish hon members well in this difficult task of nation-building.

Mr Chairperson, although the road ahead is long and arduous, the world has confidence in the magnanimity of your people. Having demonstrated the ability and determination to triumph against all odds, there should be no problem which is insurmountable to your people. The international community, including ourselves, is fully behind your efforts to reverse the daunting legacy of apartheid. All countries in the region have had to deal with racism, even though it was of a lesser magnitude. Human prejudices take long to die, therefore we are all comrades in arms against persistent prejudices manifested by racism. [Applause.]

The new world order places a heavy responsibility on all of us as members of the international community to promote and maintain peace, democracy and the development of our societies. Despite the challenges South Africa faces, it will be expected to continue to play a meaningful role in the affairs of what is now commonly known as a global village.

Of immediate interest are problems facing Africa. Africa is currently dogged by many conflicts in Liberia, Somalia, Rwanda and Burundi, to mention just a few. These conflicts remain a major source of concern to the continent. We in the region have had more than our fair share of these conflicts. It is our hope that the only conflict still remaining in this part of Africa, which is the situation in Angola, will soon be resolved. In this regard we are in the process of considering proposals for a permanent regional organ for politics, defence and security.

On the socioeconomic front there is no doubt that the achievements the continent may have made in the democratisation process cannot be sustained without similar progress in socioeconomic development. This is why efforts are being made by countries on the African continent to work together towards economic integration and development. Our region, Southern Africa, has been in the forefront of these efforts for over a decade. The governments of Southern Africa have always endeavoured to seek out areas of mutual interest through bilateral co-operation and regional organisations such as the Frontline States and the SADC.

It was out of experiences in regional co-operation that, through the mechanism of one of the Frontline States, the SADC, then known as the Southern African Development Co-ordination Conference, was conceived to lead the region towards balanced and equitable integration. We seek to redress the imbalances and inequalities amongst the countries of the region through regional co-operation.

The present extent of economic dependence on South Africa by many of her sister member states of the SADC is both undesirable and unsustainable. It remains the ultimate goal of the SADC to replace such dependence with a healthier relationship of interdependence and mutual benefit among all members of the SADC, as well as between Southern Africa and other regions of Africa and the world.

Such a relationship will be possible only when we in Southern Africa are able fully to co-ordinate and harmonise our policies and action programmes in areas such as transport and communications, energy, tourism, trade and investment. The SADC has developed a concrete programme of action to guide our co-operation in various economic, social and political sectors.

Our major success so far has been putting in place a network of telecommunications, roads, railways and air links that has made the countries of the region much more accessible to one another.

In the energy sector, countries with excess power are sharing it with their neighbours through an SADC programme, interconnecting electricity grids of member states through the Southern African power pool.

At present, the most urgent task of the SADC is to put in place and implement protocols which shall clearly define areas which have priority for integration in specific sectors.

Among the protocols that are already at the top of the list are the facilitation of trade and investment, and shared water cost systems.

Let me assure this House that countries of this region view the entry of South Africa into the SADC family with genuine enthusiasm and sober realism. While we are confident that South Africa's membership will give a major boost to the ongoing efforts to achieve collective self-reliance through regional co-operation and integration, we also acknowledge the tremendous internal challenges that deserve South Africa's urgent attention.

Botswana and South Africa enjoy the most cordial of relations. These relations have been further strengthened by the common values the two countries share. It is now the time to intensify our relations in concrete terms. We will have to open up more to each other so that the old acquaintanceships and friendships are maintained and strengthened, and new ones are encouraged and established. We will have to redouble our efforts in enhancing cultural ties that have united our people for centuries.

I am pleased that great efforts are already in place to strengthen the bonds that exist between our countries and peoples. In addition to a full diplomatic mission, Botswana has also established two consulates-general in South Africa. We have also witnessed increased integration between ourselves by way of many visits that have taken place between Botswana and South African Ministers and officials, including delegations from provincial governments, aimed at expanding areas of co-operation between our two countries. Indeed, the prospects for bilateral co-operation have never been brighter.

In this regard we look forward to your successful conclusion of the renegotiation of the Customs Union Agreement. It is our hope that the new agreement will provide a solid framework for the mutual expansion of trade and cross-border investment opportunities. The one-sided 1969 agreement must be replaced by a balanced regime consistent with the ideals of the present. We all agree that the 1969 agreement is no longer sustainable, as it subordinated sovereign states and trading partners to the whims of another sovereign partner.

There has always been economic co-operation between our countries. A number of South African companies are doing business in Botswana, and some of them are in partnership with my government, thus contributing to the development of my country and my people.

The environment prevailing now between the two countries should facilitate greater co-operation in this area. With our very attractive—and let me assure hon members, very attractive—and generous investment incentives, we expect that more South African companies will be interested in investing in our country. We believe that such investments will be for our mutual benefit.

Botswana appreciates the fraternal warmth which the people of South Africa have extended to us. We shall take these memories back home and share them with the nation, only too eager to reciprocate this warmth. I have taken note of the contribution that our people are acknowledged to have made to the economic development of this country. You need fear no evil of us asking for reparation. [Laughter.]

Allow me, Mr Chairperson, to wish you and this august Assembly, and through you the people of South Africa, the very best success in your nation-building endeavours. You have opened a road which is broad enough to show the bright future ahead of you. Having started right, you cannot go wrong. Once more, I thank you for the honour and privilege of addressing this honourable Constitutional Assembly. I thank you. [Applause.]

HON MEMBERS: Pula! [Rain!]

Sir KETUMILE Q MASIRE: Nala! [Happiness!]

Mr C W EGLIN: Mr Chairperson, President Masire, Deputy President Mbeki and other members of the Constitutional Assembly, it is certainly

a pleasure and a privilege for me to say a few words of thanks on behalf of those of us who heard this address today. President Masire came to us as a head of state. He came to us as a neighbour, but he addressed us as a friend—that friendship radiated through whatever he had to say to us—who had shared our agony of the past and, I think, shares our triumphs of today. We found his speech constructive, generous and warm. However, it was not just a string of clichés. It was challenging in pointing to some of the problems that we face in the Southern African region, and it was thought-provoking in pointing to the tasks that lie ahead.

However, coming through all of this was the fact that the future of the countries of the Southern African region, Botswana and South Africa in particular, are interlocked. Like it or not—and actually, we like it—we are dependent on one another, not just for our future and for our security, but for the wellbeing of all of our people. So the commitment is to tackle our problems together. We might have many international commitments, but the priority commitment is to the people of the Southern African region.

I had the privilege some 29 years ago, as I think the President would recall, to address the first congress of the Botswana Democratic Party after the independence of Botswana. It was, I think, in the Easter of 1967, in the town hall of Gaborone. The president then was Sir Seretse Khama, and President Masire doubled up as vice-president, secretary-general and general fix-it-and-do-all for the Botswana Democratic Party. He did everything! [Laughter.]

I can still remember Sir Seretse Khama saying to me on that occasion: "You know, Botswana may not be as powerful as our neighbour, South Africa, we may not be as wealthy as our neighbour, South Africa, and we may not be as developed as our neighbour, South Africa, but we are determined to demonstrate to that powerful neighbour, South Africa, how people in Africa can live together with dignity and can live together in harmony without having to endure the policy of apartheid." And so Botswana has succeeded over the three decades of its independence in allowing its people to live with dignity and to live in harmony. But more than that, under the wise leadership of Sir Seretse Khama, and now President Masire, Botswana has enjoyed political stability, it has enjoyed representative democracy and it has

achieved phenomenal economic growth and a truly better life for its people.

Indeed, the Botswanan economy has grown so strong that today the pula has outstripped the rand on the foreign exchange markets of the world. So, we say to the President, thank you for coming as the head of your state. Thank you for coming and speaking to us as a friend.

Thank you for what you and your people did for the people of South Africa in the dark days of apartheid. Thank you for the contribution that you are making to the Southern African region, firstly as a leader of the frontline states, and now as a prominent member of SADC.

In saying our thanks to you, we also convey our best wishes to you and your people on your road ahead. Pula! [Rain!] [Applause.]

Business suspended at 13:15 and resumed at 14:30.

## NEW MEMBERS

(Announcement)

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! The vacancies in the National Assembly owing to the resignation of Messrs Piliso, Mokitlane and Mayekiso have been filled in terms of section 44(2) of the Constitution by the nomination of Mrs Bam, Ms Twala and Mr Oliphant respectively, with effect from 15 April 1996. The members were sworn in on 15 April in a private ceremony.

May I, on behalf of the Constitutional Assembly, welcome these members in the Assembly. [Applause.]

## CHANGES TO TEXT OF CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA BILL

(Announcement)

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! The Constitution of the Republic of South Africa Bill, 1996, was finally completed at 08:00 on Monday, 22 April, and, as a result of time pressures, it contains a number of imperfections. The TRT, the Technical Refinement Team, apologises profusely for this and advises that the following additional documents are in the process of being prepared.

Firstly, a table of errata, which will address typographical errors and similar errors, will be distributed this afternoon.

Secondly, a list of recommended technical refinements will be distributed in the next day or two. These technical refinements will comprise grammatical changes or formulations which the TRT believes would more elegantly express the intention of the Bill.

Thirdly, a list of outstanding issues, which will focus on matters where the TRT believes there is a lacuna in the constitution or matters which were indicated in the Minutes to be outstanding, will be distributed.

We appreciate the indulgence of the members of the Constitutional Assembly in the interests of producing a perfect constitutional text.

## CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA BILL

(First Reading debate)

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, in introducing this Bill, I would like to touch on four issues. The first will be just a very brief account of the historical context against which we have had to draft this constitution, but I shall leave the interpretation of that history to those who will follow me in speaking and those who might want to write about this process. Secondly, I shall touch on the process, and then look at the Bill itself and also at some of the outstanding issues.

All of us who are gathered here were given a historic mandate nearly two years ago, when South Africans went to the polls for the first time to elect a democratic Parliament. That mandate was to draft and adopt the final constitution for South Africa in accordance with agreed Constitutional Principles. Today we are finalising the process of delivering on our mandate.

Our country has arrived at yet another crucial stage of the process of transition from an unequal, undemocratic, racist and sexist society. The step we are about to take is perhaps the single most significant movement forward. It is possible to understand the true significance of the adoption of South Africa's first democratic constitution only in the context of our history.

This constitution before hon members is a product of the struggle by the majority of South African

people for a nonracial, nonsexist and democratic society which has spanned several centuries. In the process many people died, many were maimed, many were jailed and scores were driven into exile. Tales about what happened during those years or part of those years are now unfolding before the nation through the Truth and Reconciliation Commission and the various trials that are being conducted. Horror stories are indeed being told. They are stories about how we have arrived where we are today.

It is therefore appropriate to take the opportunity to pay tribute to those who have led the struggle over the years, to those who have died during this struggle and to the families of those who have suffered incalculable bereavement—to all the heroes who have made this possible and who cannot now be forgotten. [Applause.]

The constitution we will adopt should really be dedicated to all those who died and suffered. Perhaps when we set up a museum on the constitution, there should be a constitutional scroll on which we should record the names of those who paid the ultimate price to get us where we are today.

In remembering the difficult, dangerous and arduous route we have traversed on the path to drafting a new constitution, I can do no better than to recall the words of Oliver Reginald Tambo, speaking in exile in Lusaka, when he typified the struggle for democracy as follows:

The South African constitution excludes Blacks. They are outside the constitution. There is nothing they can do about the decisions, the policies of the South African regime. This is not a civil rights struggle at all. If we were a part of the constitution, if we were citizens like any other, then of course there would be rights to fight for, as there are rights to fight for in the United States. But in South Africa the position is different. Our struggle is basically, essentially, fundamentally a national liberation struggle.

In this museum I would like to add the name of Oliver Tambo on the constitutional scroll, if ever we have one. [Applause.] These are profound words, pronounced at the height of the struggle against apartheid and undemocratic rule.

The first ever constitutional arrangement for this country emerged in 1909 in the House of Commons in London. This was in another country. Col

Seeley, the then Under-secretary of State for Colonial Affairs, when introducing the South Africa Bill in the House of Commons, said:

The Bill proposes then to set up one Parliament for the whole of South Africa. It proposes to amalgamate South Africa in a Union closer than the Union of Australia, closer even than the Union of Canada, and no doubt, this is wise from the nature of the case.

He went on:

There are particular reasons in South Africa why the closest form of Union should be desirable. The very fact of there being a vast native population numbering between four to five million souls . . .

We are now over 35 million—

. . . who have to be governed to the greatest effect by the White races there, makes it essential that one single form of government with strength and with power and sympathy should pursue one common policy with regard to all native races.

As the House of Commons was debating the Bill, a constitutional convention was being held in South Africa. The characteristics of the convention were that the participants in the process were representatives of the Afrikaans-speaking and English-speaking White population of our country.

Black people were completely excluded. The process was exclusive rather than inclusive in that the majority of South Africa's people had no say whatsoever. The needs, aspirations and desires of the majority were irrelevant. The need for consultation with and participation of the majority did not even begin to arise.

It is not surprising that the decision of the House of Commons and the convention produced a constitution and a regime which was not only unacceptable to the majority of its citizens, but which caused untold hardship and misery to millions of people who could not identify with the constitution and could therefore not regard it as their own.

Over the decades since 1910 repeated calls were made for an inclusive convention by which an acceptable, credible constitution could be developed for South Africa, but all these fell on deaf ears, leading to an intensification of suffering, the imprisonment of thousands, the deaths of hun-

dreds and the perpetuation of injustice and exploitation under the guise of the need to preserve law and order.

By the late eighties, and as a direct result of the refusal of the South African people to endure oppression any longer, the South African government found itself in a political and socioeconomic crisis which made effective governance in this country impossible. This then led to constitutional negotiations, commencing with the talks that our President was holding, whilst in prison, with the representatives of the apartheid government.

There followed, from the beginning of 1990, a period of negotiation between the representatives of the then government and the ANC, aimed at hammering out an approach which would be acceptable to all and which could form a basis from which greater democracy and peace could result. This resulted in the adoption by Codesa of a Declaration of Intent, a solemn pact committed broadly towards the achievement of nonracialism, nonsexism and democracy. All parties committed themselves to this Declaration of Intent.

Briefly, it covered the following. All parties committed themselves to bringing about an undivided South Africa with one nation sharing a common citizenship, patriotism and loyalty; to working to heal the divisions of the past; to striving to improve the quality of life of our people; to creating a climate conducive to peaceful constitutional change; to setting in motion the process of drafting, drawing up and establishing a constitution which will ensure, amongst other things, that South Africa will be a united, democratic, nonracial, nonsexist state; that the Constitution will be the supreme law; that there will be a multiparty democracy; that there will be separation of powers; that the diversity of languages, cultures and religions of all South Africans shall be acknowledged; and that all shall enjoy universally accepted human rights.

This declaration was accepted by all parties at Codesa. The Codesa process gave rise to the Multiparty Negotiating Process, which produced the interim Constitution. On 17 December 1993 the Constitution of the Republic of South Africa Bill, No 200 of 1993, was tabled in this assembly room by the Minister of Constitutional Development at the time, Mr Roelf Meyer.

Apart from the members of the unrepresentative apartheid Parliament who were meeting in this

room, there were other people in the assembly, but they were sitting up there in the gallery. Joe Slovo, Mac Maharaj, Pravin Gordhan, Zam Titus and others were in the gallery to ensure that the apartheid Parliament passed the interim Constitution. In addressing Parliament, Roelf Meyer said (Hansard, 17 December 1993, col 15295):

This is an exceptional day . . . if there was ever legislation that I wanted to support, then it is this Bill before Parliament.

[Applause.] I do hope that, as each party rises to speak on this Bill, it will, in one way or another, reiterate the sentiments that were expressed when the interim Constitution was first tabled in Parliament by Roelf Meyer.

The interim Constitution created the Constitutional Assembly, charging it with the historic task of carefully and sensitively negotiating and developing a constitution which would be acceptable to all—a constitution which would reflect the needs and aspirations of all our people, a constitution which would provide a new threshold in our struggle for democracy, and a constitution which would begin to consolidate the process of transforming our country.

I have no doubt that this Assembly will achieve all of this by 8 May 1996. It is to this purpose that we unhesitatingly and completely commit ourselves. We have indeed come a long way since 1909. It is not appropriate to describe the entire process, of which all members know the detail. I think it will suffice to place on record some of the more important characteristics of the process.

The criticism of the negotiators at Codesa and at Kempton Park was that they were not the true representatives of the people. We overcame that by providing in the interim Constitution that a constitutional assembly should be elected to draft a constitution. We are that Assembly, duly elected to execute this historic task. This constitution has not been prepared by a few reputable experts huddled up in a smoke-filled room, divining the needs, desires and aspirations of our people and constitutionalising them with technical precision.

All the members of the Assembly have had the opportunity to participate meaningfully in the process of drafting this constitution, firstly, as members of the Constitutional Assembly; secondly, as members of our various caucuses, in which the constitution has been discussed extensively; thirdly, by virtue of the membership of

some of the members of the Constitutional Assembly of the theme committees which were established; and, fourthly, by being members of the Constitutional Committee.

In the end this constitution is also a product of this Assembly, but this is not all. Participation in this process by interested parties, role-players, experts and, above all, the people of our country, has been facilitated, witnessed and encouraged. In order to bring the views of the South African public directly into the process, we launched what we can today call one of the country's biggest exercises in participatory democracy in the form of the public participation programme.

Over two million people responded to the call by the Constitutional Assembly to participate in the constitution-making process. People participated by attending meetings arranged by the Constitutional Assembly. They participated by writing letters, by making submissions and even by making phone calls to the Constitutional Assembly. We even had an international component of participation through the Internet, with a number of sectors, including the Pentagon and the CIA, also participating, not by making inputs, but by gleaming what we were doing on an ongoing basis. We have made all efforts to respond to every submission.

Our media campaign played an important role in ensuring that our people were also involved in constitution-making. A recent survey indicated that the Constitutional Assembly had succeeded in reaching 73% of all adult South Africans. This represents 18,5 million adults in this country. They were reached by the media of the Constitutional Assembly, were aware of what we were doing and participated in one way or another.

Members of the theme committees have left no stone unturned in informing themselves in the process of constitution-making. Numerous and intense workshops and national and international conferences have been held. These have served an immeasurable purpose. Members of the theme committees visited a number of countries to study various constitutions. I take this opportunity to thank all those who have taken the time and trouble to participate in the process, and give the assurance that each of them has made some impact and has contributed to the shape and the texture of the document which I have the honour of presenting here today.

Care was taken to ensure that the Assembly achieved all the benefits resulting from the employment of the technical experts, the panel of constitutional experts and our law advisers, while at the same time ensuring that the constitution-making process was firmly in the hands of the members of this Assembly. We had some 43 technical experts, seven members of the panel of constitutional experts and law advisers, all of whom played an invaluable role and impressed us with their impartiality and lack of bias. The proceedings of all the committees of the Constitutional Assembly have been transparent. All meetings were held in public.

To Deputy President Mbeki, Deputy President De Klerk and all leaders of the political parties, I am able to say that the spirit which was demonstrated by members of their political parties in the various committees of the Constitutional Assembly was the spirit of give-and-take. This had its origins in the negotiations which preceded the deliberations of this Assembly.

Each party was aware that the process of negotiation required compromise and that no constitution could satisfy all the needs of each and every participant and each and every party. In the end, all parties, in my view, emerge as winners in this document. There is no party that can claim that it has lost as we finalise the constitution.

The Constitutional Committee recognised that a constitution for the South African people had to be accessible to all the people of our country. The language used in the constitution was therefore a matter of fundamental significance. The constitution should not be unduly complicated, nor should it be written in a language which few people, apart from lawyers, would understand. Simplicity, clarity, precision and consistency were to be achieved at all costs. We hope that we have succeeded in this.

This was put to the test, once again, just 40 minutes before this meeting when I was approached by an IFP MP who said that he was impressed with the style of the language in the constitution and proceeded to make suggestions on how we could improve on the language in the constitution. He expressed the hope, as he departed, that we would take the suggestions and the proposal that he was making very seriously. How I wish that others from the IFP were here, sitting together with us to enrich this process.

Negotiations have been conducted principally in the Constitutional Committee and its subcommittee. We have tried in these committees to facilitate discussion, to deepen understanding, to avoid confrontation, to always search for common ground. We listened to all the views from parties, considered these views very seriously and constantly tried to find ways of moving forward. Views of political parties were not accepted or rejected because of where they came from. Negotiating fora regarded all these views as important information contributing to the emergence of a constitution acceptable to all. The process can be described as having been nonconfrontational and inclusive. Participants in the CA were given every opportunity to expand on or to qualify their views because it was only through such measures that accommodation could result.

The Constitutional Assembly was also careful to ensure that the administration of the Assembly functioned effectively and efficiently, and was structured so as to give the assurance that no party would be favoured or prejudiced by the nature of the process itself. The staff of the administration deserve our praise and our applause for the excellent work that they did for the Constitutional Assembly. [Applause.]

Very briefly, I now wish to just touch on the Bill, particularly on the essential features of the document. Our country is now a constitutional state, a country in which the Constitution, and not Parliament, is supreme; a country in which our courts are the guardians of the Constitution, having the responsibility to safeguard, interpret and enforce the Constitution. Effectively, the courts have the power to ensure that this Constitution is not abused by any government and that our people will never be abused under this Constitution. Our people have suffered enough, they have been abused enough, they have been subject to immoral and improper exercise of governmental power. Our society has been deeply divided as a result. We have risen to our historic duty to ensure that this constitution will serve as a healing balm but, moreover, will also guarantee that what has happened in the past will never happen again.

The Bill of Rights, as contained in Chapter 2 of the Bill, is intended not only to curtail governmental power, but to ensure a society in which our people enjoy fundamental human rights. This chapter makes a serious commitment to the socioeconomic rights of our people in the sure

knowledge that customary, civil and political rights are not sufficient in today's society. Equality is guaranteed to all; so is the commitment to redress the imbalances and injustice resulting from past discrimination.

The Bill ensures appropriate access to information and just administrative action. It represents the synthesis of the product of intensive and zealous research into international human rights law and practice on the one hand, and the realities, the needs, the aspirations and opinions of our society on the other. We are satisfied that all universally accepted human rights have been effectively encompassed.

The courts of our country are to be impartial and independent as described in Chapter 8 of the Bill. Judges are generally to be appointed by a mechanism which will involve the effective participation of the Judicial Service Commission. The Constitutional Court will remain the highest court in all constitutional matters, but the Supreme Court of Appeal has now been accorded constitutional jurisdiction. We have tried to make provision for a speedy, effective, accessible, impartial and independent judicial system.

The constitution-makers felt that the supremacy of the constitution, the Bill of Rights and the independent courts were not enough to safeguard and deepen democracy. Accordingly, Chapter 9 of the Bill provides for a number of independent State institutions aimed at supporting democracy. The Public Protector will monitor and take steps to remedy governmental abuse or corruption. The Human Rights Commission and the Commission for Gender Equality will deepen and establish a formidable human rights culture and ensure gender equality, respectively. The Electoral Commission is aimed at preventing the manipulation of elections, while the Auditor-General will monitor State finances.

The agreement on the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities is perhaps the most significant agreement in the constitutional negotiations. That agreement could well be the glue we all need to cement us into a true "rainbow nation", rich in diversity and united by one South African nationhood.

Chapters 3, 4, 5 and 6 may be taken together for convenience. They are intended to establish democratic and representative government, to

ensure the separation of powers and the appropriate checks and balances between and in relation to the executive and the legislature.

We have tried to achieve a correct balance by the way in which powers have been allocated to the provinces and to the national Government respectively, so as to ensure that neither has unduly excessive powers in relation to the other and that the requirements of national unity and the legitimate provincial integrity are realised.

The overarching chapter is Chapter 3, which lays down the principles of co-operative government and creates the obligations for government at all levels to respect and co-operate with each other.

The National Council of Provinces deserves special mention. It is an imaginative innovation into the South African constitutional order, intended as it is to more adequately effect the balance of power between the provinces and the nation. The council enables the provinces to have an effective say in that legislation which falls within the purview of the provincial legislative authority. In these matters, each province will vote as a delegation, regardless of the differing views within the province itself.

The participation of special delegates in the deliberations of the council makes it possible for members of the provincial executive to make an appropriate contribution when necessary, which we have not had up to now.

Chapter 7 deals with the question of local government. Chapters 10 and 11 deal with public administration and security services respectively. Chapter 12 recognises traditional leaders and protects their authority within the limits of legislation. Chapter 13 makes provision for equitable financial arrangements.

Some work still needs to be done as far as the Bill of Rights is concerned. We need to come to some agreement about the right to lock out and the precise ambit of the right to education. The general agreement concerning the right to property requires, in my view, the dotting of the i's and the crossing of the t's, and then we will have reached agreement.

Furthermore, the parties must talk purposefully about the process by which the persons who will compose the independent institutions in Chapter 9 are going to be appointed, about whether and how the Office of the Attorney-General should be

constitutionalised, and about the way in which certain judges are to be appointed. The issue of language is being attended to with the sensitivity it deserves, and resolution is not far off.

There are, of course, a number of smaller issues which I will not mention here. However, these are no less important if the Constitutional Assembly is to do the work entrusted to it properly. The desire of our people is that the constitution adopted by this Assembly must be a perfect document, technically and in every other way. Everyone involved in this process has a duty to continue to make suggestions and contributions during this debate and during the proceedings of the Constitutional Committee in the coming days. All this should be done in an attempt to get as close as we possibly can to perfection. It is in this spirit that I present this Bill to the Constitutional Assembly.

In conclusion, this Bill signifies the potential of transparent negotiation within the framework of effective public participation. It represents a critical balance between the power of the nation and that of the provinces. This Bill has the makings of the type of constitution we have yearned for as South Africans. This Bill also represents what Justice Mahomed called "the mirror of the national soul".

When we adopt this Bill with the amendments that we will have proposed, it will essentially be the birth certificate of the South African nation. To get this birth certificate, we do not need to go to the House of Commons in London. We can do it ourselves, and I trust that we will do so this afternoon. [Applause.]

Mr T M MBEKI: Mr Chairperson and Deputy Chairperson of the Constitutional Assembly, hon members, I would like to start by thanking the Chairperson of the Constitutional Assembly for the manner in which he has kicked off this discussion. He has contextualised where we are and where we come from. I think he has given proper direction as to what needs to happen in the next few days.

We start on the last leg of the historic process of adopting the first constitution for South Africa to be drafted by democratically elected representatives of all our people.

Thus we open yet another noble chapter in the history of our country as we advance away from anguish and despair, division and conflict, to-

wards a society founded on hope, peace and a better life for all our citizens. The First Reading of the Constitution of the Republic of South Africa Bill, 1996—some prefer to call it the final constitution—marks an important turning point in the life of both this generation and other generations yet to be born. However, we still have to overcome the last few hurdles which stand in the way of completing the drafting process, as the Chairperson of the Constitutional Assembly has just indicated.

For our part, as the ANC we reiterate our firm commitment to ensuring that we observe 8 May as the day on which all of us shall gather here as the constituent assembly to adopt the new constitution. That constitution will not be an ANC constitution or the product of the genius or dictation of any single party. It is a South African constitution, a genuine home-made product. As our chairperson has just pointed out, apart from the inputs of our respective parties, millions of our citizens from all walks of life have contributed to this document.

Never before in the life of this country have so many people, organisations and institutions participated in the drafting of a common document. The point that this is the first constitution in our history to be drafted, debated, redrafted and, in the end, adopted in a democratic manner, cannot be overemphasised. The progress we have made also constitutes a magnificent tribute to you, the elected representatives of our people, in that, coming as you do from multiple backgrounds, you have been able to find common solutions to what have seemed to be even the most intractable problems.

It is therefore all the more regrettable that one political party that was elected to the Constitutional Assembly is not with us today. Whatever the reasons for this, in the end it is a poor visionary who would choose to withdraw from so historic a process of creation, from so unprecedented a moment of setting the permanent foundation of a new nation. We have reached this critical point after many decades of unrelenting struggle and enormous sacrifice, not only within this country, but also in the region of Southern Africa and beyond.

Some of the chilling truths about the evil that was done by human beings against other human beings, to defend and maintain a system that was itself a crime against humanity, are currently

being told in the hearings conducted by the Truth and Reconciliation Commission. It was most appropriate that Sir Ketumile Quett Masire, President of the Republic of Botswana, should have visited and spoken to us on this particular and special day, when it needs to be said that we owe this liberty we enjoy both to ourselves and to the efforts of all humanity.

Our common yearning for a new constitutional dispensation is soon to be realised. This gives further meaning to what we have established already, that the immense sacrifices of so many people for freedom were not in vain. On 8 May, let us all, without exception, be the joyful creators of a new constitutional order. Let us continue with our seriousness of purpose, our energy and drive, to transform South Africa into a nonracial, non-sexist, democratic, peaceful and prosperous country.

Indeed, this new constitution will, without doubt, contribute towards restoring the pride, the dignity and the humanity of all our people. The vision contained in the Freedom Charter adopted by the ANC 40 years ago—which proudly affirms that South Africa belongs to all who live in it, Black and White—will find realisation in the constitutional order we have joined to establish. Even as it drafted the Harare Declaration in 1989, with our country still in the grip of a continuing conflict, the ANC was convinced that a negotiated settlement of that conflict was both possible and necessary. We visualised a settlement that would entrench the right of all our people freely to choose without hindrance their representatives and their government. In terms of this constitution we are now reaching the point where majority rule will prevail.

Emerging as we do from centuries of colonial domination, of racial oppression and arbitrary rule, it is noteworthy that the constitution we are about to adopt itself establishes the constitution as “the supreme law of the Republic”, to quote from the preamble—the protector of our nation from tyranny.

The draft Bill of Rights incorporates key socio-economic rights as an expression of our commitment to the socioeconomic transformation of our country. This addresses the naked reality that millions of our people still languish in dire poverty, that millions are still without access to electricity, to clean water, to basic nutrition, to adequate shelter and to health care. The constitu-

tion enjoins us to strive and strive again to improve the quality of life of these millions. At the same time we all have the obligation to ensure that the new constitution does not protect the privileges of a minority, however rich and powerful they may be, at the expense of the majority.

There can be no human dignity in poverty, in joblessness and in homelessness. There can be no lasting peace and stability in a society which perpetuates a great divide between a privileged few and a wretched majority. There can be no just society where gender discrimination remains the order of the day. Equally there can be no rainbow nation if the collective rights of one community are attained at the expense of another. However, we have also proceeded from the position that such collective rights both exist and should be protected. As the Freedom Charter puts it: “All national groups shall have equal rights.” Consistent with that objective we are very pleased that agreement has been reached on the establishment of the important Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

Given the nature of this occasion and recognising that we come from different political and ideological persuasions, it is necessary that we affirm our common commitment to the principles enshrined in the founding provisions. As members know, these include the following:

The Republic of South Africa is one sovereign democratic state founded on the following values:

- (a) A commitment to promote and protect human dignity, to achieve equality and to advance human rights and freedoms.
- (b) A commitment to promote non-racialism and non-sexism.
- (c) Supremacy of the constitution.
- (d) Universal adult suffrage, a common voters' roll, regular elections, and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

The new constitution is another peg in the negotiated transition process begun in 1990, but we have not yet completed that process. Local government elections are still to be held in KwaZulu-Natal and parts of the Western Cape, and these must be conducted under conditions

conducive to a free and fair result. Candidates should either be elected or defeated, but not maimed or killed. People should be able to exercise their right to vote without fear of retribution.

Whatever else it may not be, in the perception of any one of us, the constitution which we will adopt will be truly democratic, deserving of support and acceptance by all those who call themselves democrats. We can say, without fear of contradiction, that it will be welcomed with the greatest enthusiasm by the overwhelming majority of our people. It will be the product of compromises that all of us have had to make. No single political party is expected to be happy with all its provisions. However, we are convinced that it does not contain any blemish so gross that any democrat among us would find it necessary, according to his or her conscience, to vote against it.

The ANC itself is unhappy with the draft formulations of a number of clauses. Moreover, it preferred not to have a property clause. We nevertheless negotiated in a spirit of give-and-take, and are confident that we can resolve all the other outstanding issues in that same spirit.

On 8 May the eyes of our people, as well as those of the international community, will be focused on this Assembly. All humanity remains united in wishing us well, feeling certain that we will continue to live up to its expectations and successfully complete the task given to us in April 1994. We dare not and will not disappoint those expectations.

Let us all do what remains to be done so that with the adoption of the new constitution, our people can enjoy the fruit of their creation, the fundamental law which seeks to protect life and liberty and to provide the setting in which each and all can attain prosperity and happiness. Now is the time. [Applause.]

\*Mr F W DE KLERK: Mr Chairperson, the Deputy Chairperson of the Constitutional Assembly, my colleague Deputy President Mbeki and hon members of this Assembly, today's debate is in a certain sense the beginning of an end and the beginning of a new beginning. It is the end of an interim transitional phase which started as long ago as 2 February 1990, and culminated in an interim constitutional system with certain rules and measures.

It is also the beginning of a nonracial multiparty democracy which in future will be based on fixed rules and an extensive value system, entrenched in a new constitution. The finalisation of that constitution and of the Bill of Rights places a tremendous responsibility on all our shoulders. What we are going to agree on between now and 8 May—if we succeed in reaching an agreement—is going to be decisive for the future of our country and all its people. Failure in our attempts to reach adequate consensus can likewise have extremely negative consequences.

The challenge facing us is therefore twofold. It is, firstly, to ensure that we do not fail and that we leave no stone unturned in our attempts to eliminate the remaining differences. A constitution which has been agreed upon remains the first prize. The second challenge is to produce a good, fair and well-considered constitution and Bill of Rights which can place our country and all its people on the road to victory and which can lay a lasting foundation for reconciliation and peace.

The NP still accepts these challenges. That is why our participation in this debate and in the last phase of negotiation will take place in the spirit and with this attitude; in the spirit that we must do everything in our power to see whether we can produce a constitution which has been agreed upon and in the spirit that that constitution must meet the needs and the aspirations of all our people in our new, nonracial society.

Before I come to the Bill itself, first of all I want to say something about the process thus far. All of us could probably express criticism of specific aspects of the process. However, today is not the time for that. In the long run one's overall impression is that everyone who participated—negotiators, advisers and officials—worked very hard. To them we address a warm word of appreciation. On behalf of the NP I address sincere thanks to all of them for their dedication and sacrifices. In particular I want to thank the Chairperson, Mr Ramaphosa, and the Deputy Chairperson, Mr Wessels, as well as the NP's negotiators and advisers under the able leadership of Mr Roelf Meyer. Their task was and is frequently a thankless one. Today it is appropriate also to distribute bouquets. Thanks to everyone's hard work today we have a Bill in front of us, although it is one which still requires important refining.

†Speakers from this side of the House will deal with the more important outstanding issues, shortcomings—as we perceive them—and even omissions, in some detail.

Consequently I will focus on only three important issues in broad terms. They refer to some important economic, cultural and judicial aspects of the Bill. This list is not complete and the fact that I do not refer to some of the other issues should not be interpreted to mean that these three are the only unresolved issues at stake.

Let me, therefore, start with the economy. Among the list of important issues on which full consensus has not been reached are the clauses dealing with property and the rights of trade unions and employers. I know that every effort is being made to reach consensus on these aspects. It is, I believe, fundamentally important that these efforts should succeed. Nobody should underestimate the negative consequences if we do not succeed. Much more than the preferences of political parties and their allies is at stake when we deal with this issue.

There is total consensus in the Government of National Unity that we must achieve dynamic and sustained economic growth. We have set targets. We have said that what we need is a growth rate in the vicinity of 6% per annum, in real terms, over a period of decades. There is consensus in the Government of National Unity that we can only achieve such dynamic and sustained economic growth if we succeed in establishing strong investor confidence, if we create an investor-friendly climate to which investors react with investment, as a result of which new factories are built, new mines are opened and new agricultural schemes are undertaken. We must accept and realise that what is finally contained in the constitution in respect of property and labour law will have a profound effect on such confidence and on the investment patterns of the next years and the next decades.

I have no doubt in my mind that the present difficulties which we are experiencing in our economy, the pressure on the rand and many other things can also be related strongly to the present constitutional uncertainty in respect of these issues. If we do not get it right, sufficient investment will simply not materialise, and without that we will never break the back of our unemployment problem. Without that we cannot win the war against poverty.

I turn to culture and education. Great strides have been taken in this field. The consensus on a cultural commission from which cultural councils can flow, constitutes an important step forward. In a country with eleven official languages, a fact which reflects our acknowledgement of the complexity of our cultural diversity, we simply have to devise a recipe for peaceful cultural coexistence.

I congratulate all those who had a hand in forging consensus on this sensitive issue, and record my special acknowledgement of the constructive role which my party played in this. We regard the consensus which was reached as an important expression of Constitutional Principles XII and XXXIV.

However, this in itself is not sufficient. The fears and aspirations of our various cultural communities, and even their very existence, are also inextricably linked to how we deal with language rights and education in our Bill of Rights. Once again I will refrain from going into detail, and concentrate on what I believe our common objective should be.

In the case of the economy, I have highlighted investor confidence. In the case of language and education, I believe the crucial factor lies in the creation of security and space for all our cultural groupings. This must be done in a manner which will effectively prevent the misuse of cultural identity as a smoke screen for continued racial discrimination or as a smoke screen for the maintenance of privilege.

\*We must all realise that language and education are two spheres which have the ability to cause our country to fall back into tension and conflict. South Africa's entire history proves this. Every attempt in our history to manipulate language and education for political objectives led to mobilisation, disruption and frequently violence.

†The 1976 riots had as their root cause the language issue in education. Earlier in our history the way in which the British conquerors tried to force a language out of contention had consequences which later contributed towards much of the grief which we have had in this country. [Interjections.]

\*If our new constitution were to create the impression that there is again going to be political manipulation of education and language, then we will unleash a dangerous language struggle and again turn education into a battlefield. The mem-

bers of this Assembly have all received a statement in which they have been warned about this risk. The case for education which has a linguistic, cultural and religious foundation is based on internationally recognised educational principles. It has nothing to do with politics. It finds expression in countries such as Belgium, Canada, India and Kazakstan.

I could give a very long list of countries, nations and peoples that have found a recipe to meet the multicultural educational needs of their divergent language communities in a meaningful way. In a multilingual and multicultural country this is essential if one wants to prevent tension and conflict. In any case I ask the members to take another look at Principle XXXIV and some of the other principles, in which they will find a clear foundation for such an approach.

I am utterly convinced that we will fail this country and all its people if we do not find a formula to establish a language and education model which passes three tests. Those tests are the following. Firstly, all our languages must come into their own and there may not be discrimination against any of them. Secondly, for those who want it and where it is implementable in practice, culturally linked and religion-based mother-tongue education with State support must be made possible. [Interjections.] Thirdly, all forms of racial discrimination in education must be effectively prevented. Only if we succeed in that will we succeed in our overall objective of nation-building and provision.

†Lastly I want to speak about the judicial system. The independence of our judiciary and other key institutions in the judicial process must be placed beyond any doubt. The fact that we have become and will remain a constitutional state—a *rechtsstaat*—makes this independence all the more important. We dare not bring the integrity of our judicial process under a cloud of suspicion in any way. I therefore implore all our negotiators to find ways and means of overcoming the remaining differences in this regard. Only if we establish a judicial system which cannot be politically manipulated, can we claim that we are indeed a country which respects the law, a country in which the rule of law reigns supreme. The people of South Africa must be convinced and must be brought to believe that our judicial system can and will protect their rights in a fair and even-handed way.

\*There are also other matters which must be ironed out. I am, however, convinced that we have the ability to overcome the remaining differences. For that reason I want to close with a plea. Let us refrain from recalcitrance and aggression. Let us join hands in a last attempt to solve the remaining sensitive issues in a spirit of statesmanship. South Africa now asks of us, not petty politics, but wisdom and mutual understanding. Now is not the time, as some people are unfortunately doing, to try to make the headlines; now is the time to aim for the goal line and score a winning try for South Africa and all its people. [Applause.]

Gen C L VILJOEN: Mr Chairperson, two years ago we embarked upon the road of drafting the final constitution. At the time, we started the process by all the parties submitting working papers on the spirit and their vision of the constitution. Among other things the FF said the following in its submission:

The constitution must therefore command the respect of all South African citizens. It is an effort to obtain once and for all legitimacy of government. Due regard must therefore be given to all opinions, and the search for consensus must be painstaking. The constitution must win the hearts and minds of our people.

It must unite and not bring discord. It therefore will reflect the crisis in which this country finds itself and indicate the hope we have of transcending the conflicts of the past and moving into a new future. Constitutions are more than academic formulations of legal principles that relate to the functioning of state. They grow from the agony of human suffering and from the determination of the creative human mind.

Genuine constitutionalism is a commitment to limitations on ordinary (also majoritarian) political power; it revolves around a political process, one that overlaps with democracy in seeking to balance State power and individual and collective rights; it draws on particular cultural and historical contexts from which it emanates; and it resides in public consciousness.

The FF saw the spirit and the vision of the constitution as including freedom for all, with no arbitrary domination by any political party; the limitation of State power over individuals and over citizens in collective contexts; conflict resolution and the pursuit of a lasting peace; promot-

ing respect for all components of the pluralistic South African society; eliciting the loyalty of all the citizens of our country; the importance of stability, development and progress towards a conflict-free society; ensuring conditions and opportunities for the full development of the potential of the creative minds of all citizens; ensuring a system of equitable justice for all in our society.

We as a party have been disadvantaged by the small number of elected representatives that we had to distribute between the many facets of this constitution-making task. It left each and every one of us with a quite impossible workload. We are nevertheless proud to have been able to represent the people from whom we have a mandate for this purpose. Yet, it is a pity that because of this we often had to work according to priorities.

We would certainly have been in a stronger position had so many of our people not decided to withdraw because they lacked faith in the new system and felt that the system was being forced upon them by their political adversaries in the NP on the basis of libertarianism.

It is well known that the FF withdrew from the destructive policies of withdrawal and conflict, in favour of participation, and that we did so on the strength of the accord on Afrikaner self-determination that we signed days before the election.

This was the basis on which we participated in this effort of constitution-making. While many of our fellow Afrikaners believed that they were doomed to be totally disempowered, we embarked on participation in terms of a different approach, that of community self-determination within a pluralistic society. This was the priority we chose. We searched for the correct solution for coexistence.

\*As a party representing the Afrikaner, we have never been opposed to an inclusive democracy. What we were opposed to, was the basis upon which particularly the NP and the ANC did this, namely according to a stereotyped Anglo-Saxon model of one man, one vote in an undifferentiated manner.

It is a fact that in such an undifferentiated system the Afrikaner would be disempowered in such a way that he could not only make little or no contribution at any of the levels of government, but would also have to leave the destiny of his

community in the hands of others. Any elementary arithmetic can show this.

The FF also cannot agree with naive craftiness like power-sharing. To us this looked like paternalism, which would have been a disparagement of the ANC leadership. And it actually did not take long before it became clear that one could be too clever by half.

Luckily for the Afrikaner community the FF, in an honest and frank process of negotiations with the ANC leadership, brokered an alternative in which we can demand, without being power-crazy, the right as a community to negotiate structures that will guarantee our identity and community, and which will also give us freedom and the self-respect to make a contribution, as a minority, to the future of this country. And I do not want to speak on the ANC's behalf, but I think they understood this, even if it was difficult for them in the light of the expectations and attitudes of their own following.

†I said that self-determination was the basis of participation on our part. Please note that I have not said that self-determination was the condition for participation. We did not participate in order to get self-determination. We participated because we believed that the reasonable ideal we shared with so many minorities all over the world could not be refused in the long run.

Of course, we realised that we had to explain the ideal. For too many the ideal was too close to the underlying philosophy of apartheid. That, we realised, was the burden we carried from the legacy of the past, and that may be the reason why our friends in the NP did not even consider this alternative seriously.

From our perspective, though we attended to a priority, the whole of the constitution is important because we are part of the whole of the South African people. But because of our perspective of community self-determination, it was particularly important for us to get this perspective accepted. The statement by the ANC delegation last Thursday, following months of bilateral negotiations with us, that the ANC had achieved a major movement towards the acceptance of a legitimate form of collective rights, was of crucial significance to us.

The recognition and the legitimacy of genuine, distinct, collective interests within the whole of the South African society are of paramount

importance to us. Since the interim Constitution has what is called a "sunset clause", referring to the Government of National Unity, I would like to suggest that this development deserves the term "sunrise clause". The ANC fell back on their Freedom Charter.

In all seriousness, to us this has been one element that we found lacking in the draft constitution. We have found it too Western, too individualistic and too libertarian. From African soil, Claude Ake suggested:

Africa is still a communal society, and it is this communalism which defines the people's perception of self-interest, their freedom and their location in the social whole.

He also said:

Democracy has to be recreated in the context of the given realities and in political arrangements which fit the cultural context, but without sacrificing its . . . inherent principles.

Prof Heyns of the Centre for Human Rights at the University of Pretoria recently published an occasional paper in which he said: "Where is the voice of Africa in our Constitution?"

With respect to my liberal friends in the DP and their fellow travellers in the NP, I want to suggest that we need to pay heed to this question very carefully. At times I have been concerned that we are creating a pot plant of imported species in this new constitution. My concerns relate to the need of our people to identify with the new constitution.

The Afrikaners we represent have a particular affinity with the people of Africa in this respect. We respect the individual and we recognise the rights of each individual, but we are strongly community-orientated and bound together by a collective consciousness. We do not find this a burden; it is our culture and our way of life. I think we share this with Africa.

In this respect we want to emphasise a further point, and we have been mandated to speak on behalf of the Afrikaners. If we do so, we do not, in any way, suggest that this is for the Afrikaners only. The principle of collective rights can only be accepted if it is universal and if the principle of equality of communities is respected. This is why I have emphasised the notion of communality which we share with many traditional Africans. Today we are enthusiastic in believing that the

spin-offs of our efforts will benefit all our fellow-Africans who still attach value to communal ties.

I do not want to let my imagination go wild, but let me suggest to this House that the legitimate principle of self-determination, in our context, if applied judiciously and with due regard to the complex nature of our diverse society, can be seen as an internal form of a federal dispensation that will not be divisive, but wholesome. Is it not also possible that such a concept could be applied, at this late stage, as a solution to the big problem of KwaZulu-Natal?

\*On behalf of my party, I wish to express our serious concern about the fact that our IFP colleagues are not participating in the process. The constitution which has now been negotiated is surely not perfect. We are all inexperienced. It is a constitution that had to be negotiated very swiftly and in an unsure political climate, especially in the past few months. This was not beneficial to calm and sober reflection. Actually the lack of trust, as a result of a divided past, is still strong, too.

We must now already take cognisance that the first review of the constitution will probably become necessary after the 1999 elections. I say this, *inter alia* because the most recent writings on internal self-determination, especially those by Casese, are an indication of new thinking and rules of the game, because this has become necessary since self-determination as a concept has been used to avoid conflict in a sovereign, yet heterogeneous, state. Here lies, for us as Afrikaners, the solution to our aspiration towards our own region, with regional autonomy in addition to cultural self-determination. This remains our ideal. I repeat, this remains our ideal. The solution for other groups may also lie here. I am thinking of the IFP and of what they represent. In this regard we will certainly form part of the new world-view.

The FF wishes to point out a number of urgent matters which have not been addressed satisfactorily. I mention them merely because within the next few days they will have to receive attention. Firstly there is the formulation of the right to self-determination and the concept of collective rights in the Bill of Rights. I have just received my copy of the formulations and I am in no position to comment on them right now.

In the second place the clause on education should be reviewed and brought into line with the accepted concept of collective rights and self-determination. This is a very serious matter to my supporters me and—a non-negotiable principle. However, I was glad to hear Minister Kader Asmal say in the Constitutional Committee that here we have a basis for the solution to this difficult problem. So I believe that there is a solution and that we will find it, one way or another, based on the new-found direction of the recognition of certain collective groups.

†This party holds the view that the right to life starts at conception.

\*The property clause, as it is worded at present, is still a cause for concern to us. It is a fact that, together with many other religiously orientated South Africans of various faiths, we are disappointed that only at the end of the preamble to our constitution does it give recognition to God Almighty. We believe in God, and many a prayer has been said from our ranks for this constitution-making process and has already been answered. The human idolisation which now prevails in the preamble neither belongs there nor does it fit in. We believe that this constitution should not only be advantageous to people, but also to the Kingdom of God. Therefore the compromise arrived at between the big parties makes us unhappy.

Finally, I want to say something about the widely discussed process of nation-building. Nation-building is successful if the primary loyalties of everybody can be won over for the State. That which was attained in the recent weeks of negotiations creates a basis for the important task which President Mandela emphasised in his New Patriotism speech. The South African nation consists of individuals, cultural groups and peoples. The recognition of this fact now makes a growing loyalty toward the sum total very possible. This will stand out in history as one of the most important legacies of the tough process of negotiations that took place between us, as representatives of the Afrikaner, and the negotiating team with whom we have exchanged ideas in the past two years in order to solve this difficult problem.

Today I want to make bold to refer to the very first session of negotiations that we had on 12 August 1993 with Mr Mandela, when he said that it was his ideal to reach a solution for the Afrikaner and

the Black people of Africa, because we were all Africans who had to make this land our own. I think we are on the way to reach it. [Applause.]

Mr C W EGLIN: Mr Chairperson, at the outset let me explain that I am standing in for the leader of the DP who is busy campaigning in KwaZulu-Natal. [Interjections.] But I want to promise those members who were looking forward to hearing Tony Leon speak that he will be back tomorrow and will take part in the debate then. [Interjections.]

As we all know, we are coming to the end of what has been a lengthy process. We can argue about when it started. Perhaps the first occasion was when members of 19 parties and organisations got together at Kempton Park four and a half years ago to start investigating the process of drawing up first an interim constitution. It is four years since Codesa 2 broke down, although it does not seem like it. It seems like only yesterday, but nevertheless it was four years ago. It is two years since we started on the task of drawing up a new democratic constitution for South Africa.

I must say a few words about this process. It started with public participation *in extenso*, the analysis and the collating work done by the six theme committees, the drafting, the redrafting and yet more redrafting in tandem with discussions of the Constitutional Committee and the subcommittees of the Constitutional Committee, and then, towards the end, multilateral and bilateral discussions.

During this period the process has undergone certain changes of character from time to time, from tremendous transparency and inclusiveness at the early stages to a certain amount of opaqueness and exclusiveness with regard to the party-political bilaterals in recent weeks. As the process has taken place, its character has changed.

The DP made it quite clear that it believed that it was a pity that the latter stages of the process had had to be rushed. Some will say that this was inevitable. The reality is that it was rushed. Of course, target dates have been important in order to avoid procrastination and to prevent difficult decisions from merely being postponed. However, meeting a target date should not negate well-considered and thorough work on constitution-making.

I just want to give two illustrations of what I believe to be undue rushing. Interaction with the

premiers and the MECs of the nine provinces was due to take place over a period of a week to allow for significant input by individual premiers and MECs. In the end there was a collective briefing of all the premiers and MECs over two and a half hours on a Friday afternoon.

The chapter on local government was for various reasons postponed again and again, and the final draft before hon members, containing a number of new concepts, was only presented to the multiparty negotiators at 03:00 last Friday morning. As a consequence the final draft has not yet been networked with many of the local government institutions and organisations that made inputs at an earlier stage. I hope that, if there are defects or shortcomings because of the time pressures, we will use the coming two weeks to see that we end up with a more perfect document.

Having said this, an enormous amount of work has been done by members of the Constitutional Assembly, and in particular by those people who serve the Constitutional Assembly and its work. We would like to pay tribute, as others have done, to the directorate and the staff for the work done over the past two years, and to the various categories of technical and legal advisers who have worked day and night to try to get our documentation in order, as well as to the many individuals and organisations from around the country and indeed around the world who have contributed to this process by their specific inputs. We want to pay tribute to all those people who have assisted.

We are in the final stages of proceedings to produce a constitution which I believe will have a uniquely South African character. I hope in the end it is going to reflect the mood, needs and realities of our rainbow nation as it emerges from a long era of colonialism and apartheid into the fullness of a world community living at the end of the 20th century.

The Bill before us does not fit into any classic mould. It is neither classically federal, nor is it classically unitarian. It contains important elements of both. It is not classically presidential and it is not classically parliamentary. It contains important elements of both. It is not classically liberal, just as it is not classically conservative. It contains important elements of both. It does not make for the total separation of powers, and yet it does not make for the excessive concentration of powers. While we have learnt from other people

and their inputs, I believe we are designing a constitution that is unique, peculiar and special to the needs of our South African nation.

Already the Bill contains certain dominant features. A fundamental feature is the supremacy of the constitution, and with that the predominance of the rule of law. Other dominant features are the structuring of government with three distinct and yet interdependent spheres of government—this represents a unique form of structure; the protection through a Bill of Rights and other mechanisms of the fundamental rights of our people; and the recognition of the diversity of language, culture and religion amidst the oneness of our South African nation.

Finally, when one looks at this constitution, I believe it is going to be one that is truly democratic in character, not just by making provision for free and fair elections on a five-year basis—that is the easiest part—but by making provision for representivity, public participation, transparency and accountability at all levels of government.

The DP has made it clear that we believe that we should strive to fashion the constitution based on consensus and broad agreement, and that the constitution should belong to the nation and not to any political party, that it should be owned by our people and not just by one section of our people.

This approach of inclusivity is important because the constitution will become the supreme law and, as such, should enjoy the respect of all the people of this country. This constitution should become a source of unity and not a cause of division. It has to provide a basis for stability, not just in the present climate, but in the many years to come.

The DP will continue, during these few concluding days of this constitutional process, to try to improve the text before us, to see that it truly meets the needs of our people. We will do so by debate and discussion, both here and in the Constitutional Committee. We will do so by moving certain amendments to the text that is before us.

Of the most important spheres in which these amendments will be moved, the first is to ensure that the Bill of Rights is more effective in protecting the fundamental rights of our citizens. Others will deal with these matters in detail. The second is to ensure that the process and the functions of local government are placed on a

more secure footing than they are in the Bill before us. The third is to ensure that the conflict-breaking mechanism relating to provincial powers is brought more into line with Constitutional Principle XVIII(2), which states:

The powers and functions of the provinces defined in the Constitution . . . shall not be substantially less than or substantially inferior to those provided for in this Constitution.

The fourth is to ensure that the administration of justice is put beyond the reach of any political party. The last is to ensure that by introducing a constituency component in the election of members of Parliament, the accountability of public representatives and the democratic participation of the public is enhanced. We look forward to participating in the debates that are going to take place over the next few days.

In conclusion, I believe that all of us, whatever our differences are on important matters of detail, want to have democracy and want to see it succeed and sustained in our new South Africa. The new democratic constitution will be an important instrument in guiding and strengthening the democratic process.

I believe there are two issues we will have to face as a nation if we want democracy to be sustained into the future. Firstly, we have to nurture in the hearts and minds of our people a culture of democracy that matches the rules of democracy which are contained in the constitution. No democratic constitution is going to be sustained amidst a sea of undemocratic intolerance within the society.

Secondly—and this I would like my friend Gen Viljoen to listen to very carefully—our nation is rich in cultural diversity and much is going to depend on how we manage that diversity, not only here but around the world. How does one manage the element of the richness of cultural diversity?

I want to state bluntly that properly managed, cultural diversity could be the glue that welds our communities together. Badly managed, it could be the gunpowder that blows our nation apart.

We believe that with this we are on the right track—it is a sensitive and difficult issue—but the management of cultural diversity is critical to the future of democracy in this country. Whether democracy fails or succeeds, and whether it prevails in the future, is going to depend on an

extent on our constitution. But it will also depend on the will and the character of the leaders of South Africa.

Mr P DE LILLE: Mr Chairperson, Deputy Presidents Mbeki and De Klerk, generally speaking, the new constitution does represent a marked improvement on the interim Constitution. However, there are both procedural and substantive aspects about which the PAC is not happy.

With regard to the procedural aspects, the new constitution has been drafted by elected representatives and therefore it is legitimate. Furthermore, public consultation has been opened to various groups, organisations and individuals in our society. However, the PAC is very disturbed by the fact that it is still mainly organised urban-based groups that utilise these opportunities. It is still the White liberal groups that seem to make the most inputs. What is conspicuous by its absence is the voice of the African intellectuals. We are confident that the process would have been enriched by their concerted, consistent and visible contributions.

The process is now drawing to a close and while the draft constitution has many commendable features, it still largely represents a classical Western liberal constitutional order and value system. No serious attempt has been made to accommodate the African experience, which is the largest experience in our society and in Africa as a whole.

The PAC advocated the drafting of a South African constitution by an elected, unfettered constituent assembly. Unfortunately the present Constitutional Assembly is fettered by 34 principles which are unamendable. In addition, its final product is subject to certification by the Constitutional Court. The PAC has reservations about the process, because this might limit creativity and result in a constitution that may reflect unbalanced power relations between the disadvantaged masses and the existing privileged groups. We will develop this point later.

In addition, it is difficult to assess the new constitution adequately, as negotiations are continuing and amendments are still to be made to the final draft.

With regard to substantive issues, the preamble contains the following words:

Believe that South Africa belongs to all who live in it . . .

The PAC, with due respect to the Freedom Charter, believes that South Africa belongs only to South African citizens, and not to just anybody who lives here. [Interjections.]

The PAC welcomes the abandonment of enforced coalition in the executive. We have always stood for majority rule and voluntary coalition in government.

With regard to the provinces, the PAC regrets the fact that the Constitutional Principles have emasculated the Constitutional Assembly by depriving it of the power to review the boundaries of the nine provinces. These provinces were imposed by the World Trade Centre process without consulting the people and without accommodating possible land claims, and were based largely on ethnicity and political convenience. These issues were clearly stated in the minority report of Anne Bernstein, a member of the Demarcation Committee at the World Trade Centre. Her report was suppressed.

The PAC had hoped that a democratically elected body would open the question of nine provinces and their boundaries to national debate and review. We are told that the Constitutional Principles forbid this. The PAC calls for the review of the provinces with a view to ascertaining whether we need nine or fewer provinces, or whether boundaries need adjustment or not. We suggest that the criteria should include, *inter alia*, the need to bring government closer to the people and to accommodate the question of possible land claims.

This country cannot afford ethnic border wars such as the interim Constitution has already created. We should ensure that we have provinces which are economically viable, avoid demarcating provinces on ethnic or tribal lines, take into account the history of our country and its people, create internal boundaries that are soft so as to ensure freedom of movement for people, goods and services, and ensure administrative efficiency and effectiveness. Provinces must have the right constitutional powers to ensure their effectiveness.

The PAC is satisfied that the powers listed in Schedule 4 of the draft constitution are sufficient for the provinces. We support the revised roles of the police and local government. In addition, the

national override should be maintained in order to ensure uniformity of standards, a common South African citizenship and one nationhood.

We are opposed to those who are calling for taxing powers for provinces. We must not forget that provincialism is still at a developmental stage. Provinces must be assisted to develop the capacity to exercise their existing powers before more powers can be given to them. Certainly, local government should be developed in order to be a separate tier of government to a greater degree.

The PAC supports the concept of a justifiable, enforceable Bill of Rights. It must be a Bill of Rights that will protect the rights of individual citizens, while allowing the State to provide for the wellbeing of all members of society, without any unfair discrimination and within reasonable environmental constraints.

We are pleased about the fact that our Bill of Rights has defined human rights as meaning not only political rights, but also social, economic and environmental rights. The Human Rights Commission has been given, among other things, the task of requesting the Government to provide information about its attempts to realise the socioeconomic rights of the citizens.

Regarding the property clause, the PAC has opposed the inclusion of such a clause. Our position is influenced by the national land question in South Africa. The PAC's view is that our constitution must enshrine the principle that land belongs to the nation and cannot be owned by individuals. Under that broad principle, the following subprinciples must also be constitutionally enshrined.

Firstly, the State must redistribute land so as to correct the anomaly that 87% of the land is in the hands of 15% of the population. In this regard it may expropriate land in the public interest with compensation for improvements on the land being guaranteed and also regulated by legislation. Secondly, there should be the right of access to land, especially of those who have been disadvantaged by dispossession and apartheid. Thirdly, individuals or groups should have the right to seek restitution for land which they lost either through conquest or discriminatory laws from 1652 onwards. Detailed mechanisms should be incorporated in the legislation. The reform of the land tenure system through legislation to provide for a

leasehold system will ensure inheritance and some security for a bona fide land user or occupier while ownership remains with the nation.

The PAC cannot support the property clause in the constitution which will entrench the same colonial property relations as entrenched in the interim Constitution.

Another concern we have about the new constitution concerns the shabby treatment of African traditional institutions, law and authority. The two or so paragraphs in the new draft are insufficient. We also think that they do not meet the requirements of Constitutional Principle XIII. We proposed that traditional leaders should be accommodated in the new National Council of Provinces, or that the interim Constitution's provisions with regard to the Council of Traditional Leaders, the Houses of Traditional Leaders in the provinces and the *ex officio* status in local government should be retained. African experience has shown that this institution is very resilient and will survive any arbitrary attempt to abolish it. Time and people alone will determine its relevance in the future.

The issue of African customary law and the Bill of Rights needs to be handled in a sensitive manner. The approach must allow for evolution, dialogue, education, interaction and final integration. African customary law and human rights are not mutually exclusive. Some of the rights were influenced in their formative stages by different cultural practices and value systems. Constructive dialogue is necessary to resolve the differences.

Regarding the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the PAC is of the view that the word "protection" should be deleted. Section 181(1)(c) is wide open for interpretation and suggests the protection of group rights, while the constitution makes adequate provision for the protection of individual rights.

Further, the protection of communal land has not been addressed in the new property clause. There is a possibility that communal land may be expropriated by the State and sold to private persons.

The PAC is disappointed that our constitution does not expressly outlaw the death penalty. We feel that this is not a matter that should be left to the courts. The death penalty is a barbaric, cruel

and inhuman practice, and has no place in a democratic society.

Regarding labour relations, we reject the constitutionalisation of the employers' right to lock out. The right to lock out is not the opposite of the right to strike. These are totally different issues. Anyway, the right to lock out is sufficiently covered under property rights.

Finally, we would like to address the thorny issue of crime and the Bill of Rights.

A strong view has now developed that individual rights must be watered down to fight the escalation in crime, especially violent crime. We have seen serious attempts being made to water down clauses relating to access to information, administrative justice and the right of accused persons to bail, and the weakening of the limitation clause. This is very disturbing.

It is not that we are not concerned about the high rate of crime. It is because we are convinced that the Bill of Rights also protects those persons who have committed offences. Furthermore, we see the purpose of our criminal justice system not merely as being that of hunting down offenders, catching them and teaching them a lesson, one that would be suitable even for political offenders. Rather, we see our criminal justice system as part and parcel of the creation of a human rights culture and the restoration of human dignity.

The approach to crime must, indeed, ensure that offenders are hunted down, apprehended and appropriately punished. This requires a legitimate, representative, well-trained and well-paid police force. It is true that our laws must assist in the fight against crime. Our laws must send a clear message to potential offenders that they cannot commit offences and then expect five-star treatment. However, this must be done within a human rights context.

In addition, it is imperative for the entire community to be involved in the fight against crime. But more importantly, in our view, it is crucial for society to deal with the socioeconomic causes of crime such as unemployment, poverty, illiteracy, lack of housing, lack of social security and apartheid inequalities. We do not accept that there are people who are inherently evil, or who are born criminals. Society must, in this regard, take its own share of responsibility.

Looking at the entire Constitution, the PAC is concerned at the spectre of overgovernance. There are too many commissions mushrooming all over. Organs of State at national and provincial level will demand a sizeable percentage of the resources of the State. This is a great cause for concern.

We do have the makings of a good constitution which may create a fair social order, a constitutional State and a working system of government. However, we feel strongly that if the serious flaws we have highlighted are not addressed, this will definitely upset the delicate balance. The PAC will have to think very hard about whether it can be party to a settlement that is tipped in favour of the status quo. During the next two weeks the PAC will make further submissions on the issues I have referred to above.

Rev K R MESHOG: Mr Chairperson, I want to start my introduction to this debate by saying that the explanatory memorandum to the Constitution of the Republic of South Africa Bill makes a mockery of the claims that this document represents the collective wisdom of the South African people, and has been arrived at by general agreement.

The truth is that on many outstanding issues on which there was no agreement, only two parties made decisions on our behalf. For example, the preamble that is before us today was not decided upon by all parties. The Constitutional Assembly's executive director, responding to my question on Thursday 18 April after the management committee meeting, assured me that his office would inform me when this issue was to be discussed. However, he unfortunately did not keep his word.

Where is the inclusivity and transparency in this? How can we be expected to say that the final constitution is credible and legitimate when we were deliberately sidelined and excluded from the process on issues that are fundamental to us? We find the preamble in this Bill totally unacceptable. We believe in honouring God before man. We are not impressed by the words "God protect our people" which appear towards the end of the preamble. They are meant to pacify Christians who want the Almighty God to be honoured as the Creator in our constitution. This is a cheap dummy that we will not buy. How can people undermine and . . . [Interjections.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Can I just say that I have made a note here, thanking all the leaders for keeping to the time allocated to them. I was also going to thank all members for the level of interjections. I think we have set a pretty high standard in that regard. I ask members to give Rev Meshoe the opportunity he deserves.

Rev K R MESHOG: Mr Chairperson, I have lost three minutes. How can people who undermine and defy God Almighty by constitutionalising sinful lifestyles like homosexuality that God calls an abomination, turn around and say, "God bless our rebellion"? This is like a thief asking for God's blessing while he steals, or a rapist asking for God's protection during the rape. This is ridiculous. Yes, God wants to bless South Africa, but He will not bless defiance, rebellion and sin; instead, He will judge them. Both the ANC and the NP have betrayed the confidence of many Christians outside.

Thousands of ordinary Christians and citizens made submissions to the Constitutional Assembly about the preamble, in the hope that they would be considered. Now it appears that those concerns and submissions have been swept under the carpet. How can only two people from two political parties, namely Dr Boy Geldenhuys of the NP and Dr Blade Nzimande of the ANC, make a decision against millions of South Africans who voiced their desire by requesting the inclusion of "in humble submission to Almighty God" as the introduction to our preamble?

This was done early in the morning in a committee consisting of two people, and we were not informed about that when the promise was made. This terminology has been widely accepted in the wider religious community as being the minimum acceptable reverence to the allegiance that this country and its people owe to their Creator, yet the ANC, the communists and the NP rejected it. The end notes on public submissions state that the Constitutional Assembly received 3075 petitions calling for the acknowledgement of Almighty God in the preamble.

Not only did about 20 000 people personally petition the Constitutional Assembly on 30 May 1995 to acknowledge Almighty God in the constitution, but over 230 000 people signed a document entitled "Christianity and Religious Freedom", which stated in point 3, and I quote:

We require that those who will formulate the new laws of the land acknowledge the Triune God in the constitution of our country.

This is the most popularly supported religious document in the country, yet it has not even received a mention. What are all the millions of Christian citizens of South Africa to think when their most deeply held convictions are scorned by some elected representatives who purport to represent them? How can they respect the Constitutional Assembly, which does not even have the honesty to acknowledge the clearest memorandums supported by the largest crowds and personal presentations to them? Now, I want the NP to know that the ACDP and other committed Christians are very disappointed by their apathetic attitude. They ignored the pleas from the Christian community so as to satisfy the wishes of the communists. Their action is nothing short of selling the soul of South Africa to communism. We call on the NP to come to their senses and make a principled stand that will assure their supporters outside this Parliament that they believe in Christian principles.

My warning to the NP is that if they do not insist on honouring our Almighty God at the beginning of our preamble, then they have no future. The NP must remember the covenant their forefathers made with the Almighty God in the past and then please go and read 2 Chronicles 19:1 and 2.

The ACDP refuses to accept section 2 that attempts to subject God's laws to man-made laws. That which God has spoken in His Word was spoken before the Constitutional Assembly existed, and God's Word remains valid regardless of this CA's defiance of Him. Our position on the supremacy of the constitution was clearly stated in our submission to the CA's Theme Committee 1.

Section 11 is incomplete. The sentence should read: "Everyone has the right to life from the moment of conception to natural death." In a country based on true democracy every person must be presumed innocent until proven guilty by a court of law. Why then does section 9(5) disregard this basic presumption of innocence? People who claim that they were unfairly discriminated against on the grounds listed in section 9(3) must prove their claims instead of putting pressure on the accused to try to justify discrimination or deny that it took place.

The right to religious observance at State or State-aided institutions should be observed under rules made by parental authorities representative of the composition of the student bodies at such institutions, and not under rules made by other public authorities, as proposed in section 15(2)(a). We urge the CA to make the necessary amendments.

We also call on the State not to interfere with the use of school facilities as long as no law is broken and the parents, teachers and student associations are happy with the current state of affairs.

It is sad to note that South Africa today has the highest divorce rate in the world. The present Government has no plans to prevent the disintegration of marriages or to promote healthy family life. The ACDP believes in the promotion of family values that will help to build and restore the confidence that is needed to build a prosperous and godly nation.

Section 22, which refers to the right to choose a trade, occupation or profession, must be supported, as long as it excludes prostitution. Prostitution should not be covered by any constitutional clause as a trade, because it is an evil that destroys families. The ACDP and all South Africans who have the foundation of integrity and moral values will oppose all attempts to give prostitution constitutional protection. [Interjections.]

In order to build our nation, we must first build our homes and marriages. Stable families will result in a stable nation. If the Government does not know how to do it, then the ACDP is willing to help, because we know how. [Interjections.]

The march on Parliament by the Christian Voice last year highlighted a number of concerns in the Christian community. [Interjections.] Fortunately, we will take the message. No problem. They were, unfortunately, ignored by the CA in the finalisation of the constitution. The Chairperson of the CA personally received the memorandum of the Christian Voice and assured them that their written concerns would be carefully considered, but that has not been done. [Interjections.]

Regarding section 23, which deals with labour relations, the ACDP supports the balancing of the right to strike with the right to lock-out. We believe that the detail of labour relations will be best dealt with in legislation and not in the constitution.

The last amendment I want to propose relates to section 29(2), regarding the right to establish and maintain private educational institutions. The phrase "at their own expense" should be deleted. The ACDP endorses the proposal that a voucher formula be introduced into our educational system. This would meet a wide range of educational needs as well as lead to greater efficiency and higher standards. An equal sum in the form of a voucher for parents for every child in a particular phase of schooling must be made available by the Government. Every child in preprimary, senior primary, senior secondary, etc, would then be credited equally. This is the basic help that people who want to establish and maintain private educational institutions, should receive. They should also derive benefit from the taxes they pay, like everyone else. The phrase "at their own expense" stifles initiative and must therefore be deleted.

We trust that our contribution will be considered favourably and the requests in the form of submissions and memorandums from the public will be incorporated as we make amendments to the constitution.

Ms B KGOSITSILE: Mr Chairperson, I am fortunate that there are those who will deal on my behalf with the likes of the Rev Meshoe and others who spoke before me and who need to be responded to.

I should like to deal with three points. Firstly I shall deal with how the draft provisions in the Bill satisfy the Constitutional Principles. Secondly I will focus on Chapter 1, on the issue of the language clause. Thirdly I will touch on the question: "What is in it for women?"

Section 1 deals with the sovereignty of the Republic of South Africa and the values on which our State was founded. Section 2 is about the supremacy of the constitution. These provisions are also contained in the preamble.

I will not repeat points extensively dealt with by the Deputy President, except to add that if one looks at the sections I have mentioned, one will find that they comply with Constitutional Principles I, III, IV and VIII, which raise the same issues of sovereignty, prohibition of all forms of discrimination, supremacy of the constitution and the important issue of multiparty democracy.

With these few words on Chapter 1, I would like to illustrate that the new constitution has been

written with careful consideration of the Constitutional Principles. I shall go on to point out that in my view, apart from Constitutional Principle XXXIV, which provides for self-determination, the most contentious one, the one which poses a continuing challenge to us all, is Constitutional Principle XIII, which provides for the institution of traditional leadership.

Chapter 12 of the Bill before us is an expression of the content of that principle. The debates on this chapter have been most interesting. Representatives of traditional leaders complain that the chapter is too short and that this is an indication that there might be a conspiracy that seeks to ensure the complete disappearance of the institution of traditional leadership.

On the other hand, rural women, in particular, have raised serious concerns that the chapter, as it is, has the danger of leaving them in positions and conditions of perpetual subjugation, away from electric lights and the glare of the rest of the world. Then there are those who charge that we should have omitted this contradictory constitutional principle right from the outset.

It is not my intention to apportion blame or to judge who is right or wrong in this matter. I do not think that it is a matter of right and wrong. In fact, what seems to present itself as contradiction is the reality of our society.

These are the competing interests of those whose voices negotiated this constitution. What remains is for us to tackle this reality on the ground. We need to talk to one another in our villages and communities. We must break down the barriers that have made us an intolerant people. We all have to live in this one country. We all have the same rights in this constitution, and we must enjoy them in a manner that does not hinder others from enjoying them.

The next issue that I want to deal with is the very emotive and emotional issue of language. As the Chairperson of the Constitutional Assembly said, we are about to resolve this matter. The ANC supports a draft formulation which seeks to address problems that have been raised on the present formulation in the Bill. We will submit the draft formulation to the administration.

Ngifisa ukukhuluma ngendaba yezilimi zethu. Okokuqala, thina bantu bakwaKhongolose (ANC) sizofaka isicelo sokuthi i-Preamble [Ibika] laphaya ekugcineni kwayo, lapho sithi

khona “Nkosi Sikelela iAfrika”, “*Morena boloka sechaba sa heso*” ngezilimi ezechukene, kukhona izilimi esizikhohliwe lapho okufanele nazo sisho ngazo ukuthi “iNkosi mayisisikelele”. Lokhu sikushisvo wukuthi ku-Section 6, woMthethosisekelo sithi izwe lethu laseMzansi Afrika linezilimi eziyishumi nanye okuyizona ezikhulunywa yiningi labantu, ngakho-ke nombuso ekuxhumaneni kwawo nabantu uzosebenzisa zona. NaloMthethosisekelo nawo kufanele siwuhumushele kuzo zonke lezi ezinye izilimi.

Okwesibili engifuna ukukusho mayelana naleliphuzu lezilimi wukuthi kufanele sikhumbula lapho siphuma khona. Umlando wethu ngaphansi kohulumeni bengcindezelo iminyaka ngeminyaka, owokuthi abantu abansundu babephoqekile ukuthi bakhulume izilimi zabamhlophe, kodwa abamhlophe bona bengaphoqwe yilutho ukuthi nabo bafunde izilimi abazithola zikhulunywa lapha ngabantu abansundu. Bekuthi uma ufuna umsebenzi, kokuningi ungawutholi ngoba ungasazi iSingingi neSibhunu. ISingingi nesiBhunu ziyizilimi njengezinye izilimi. Akusho ukuthi awuhlakaniphile, noma awukwazi ukusebenza uma ungasikhulumi iSingingi noma iSibhunu. [Ihlonbe.]

Esikwenzayo njengamanje wukuthi uMthethosisekelo uzosinika ilungelo lokuthi siziqhenye ngezilimi zethu. Uma siziqhenya ngezilimu zethu, kusho ukuthi sizophakamisa izinga lokuzihlonipha nokuhloniphana. Abamhlophe balelizwe mabaqale ukufunda nokukhuluma izilimi ezikhulunywa ngabantu bakithi ezindaweni abahlala kuzona. [Inhlokomo.]

Okusihluphayo wukuthi siyaye sizwe umsindo omkhulu oqhamuka ngakulabo abakhuluma iSibhunu. Iqiniso wukuthi kuze kube yinamhlanje, isikhathi esiningi iSingingi neSibhunu yizona zilimi ekubhalwa ngazo noma ekukhulunywa ngazo ngisho nalapha ePhalamente, kodwa kukhalwa ngokuthi kuzocikelwa phansi mhlawumbe kuchitheke negazi una izinga leSibhunu lehlisiwe. Thina siyaxakeka nje ukuthi kanti uhlelo lwentando yeningi lusho ukuthini. Asifuni thina ukuthi izinga leSibhunu lehle, esikushoyo wukuthi makuqale manje ukhlonishwa nokuthuthukiswa kwezilimi ezikhulunywa yiningi labantu bakithi. Lokhu kuzokwenza ukuthi sibahloniphe labaya bantu bakithi abahlala ezindaweni zasemakhaya

ezisemaphandleni. Siyaludinga ulwazi nokuhlakanipha kwabo ezintweni esizenzayo emizamweni yethu yokuthuthukisa izwe lethu. (*Translation of Zulu paragraphs follows.*)

[I would like to say something about our languages. Firstly, we, as the ANC, would like to make a request that at the end of the Preamble, where we say “Nkosi sikelel’ iAfrika”, “*Morena boloka sechaba sa heso*” in different languages, the languages which we have forgotten to put in there, which could also be used for saying “God Bless Africa” should be included. We are saying this because in terms of section 6 of the constitution, South Africa has 11 languages commonly used by the communities, and the Government should use all 11 languages to communicate with everybody. This constitution should also be translated into all these other languages.

Secondly, I want to state that these languages remind us of our past. Our history, for many years during the apartheid era, showed that Black people were forced to speak the languages of Whites, whereas Whites were not forced to learn the languages they found to be spoken here. One could not get a job if one could not speak Afrikaans and English. Afrikaans and English are languages just like any other. It does not mean that if you cannot speak Afrikaans or English you are stupid. [Applause.]

What we are doing now is to let the constitution make us proud of our languages. If we are proud of our languages, it means we will respect ourselves and each other. White people should start learning languages that are spoken by the people in their areas. [Interjections.]

What worries us is that we always hear a noise from the people who speak Afrikaans. The fact is that to this day Afrikaans and English are the most used languages, even here in Parliament, and yet you hear people saying there will be bloodshed if Afrikaans is downgraded. We are surprised then about the meaning of democracy. We are not saying Afrikaans should be downgraded. We say attempts should be made now to show respect for and to develop other languages that are spoken by the majority of people. This will make us respect those people who are staying in rural areas. We do need their expertise in doing things that will develop our country.]

Lastly, what is in it for women? I wish to refer here to clauses 9(2) and (3) in particular, under the

section on equality in the Bill of Rights. In particular, clause 9(2) paves the way for possible affirmative action through "measures designed to protect or advance persons, or categories of persons, who are disadvantaged by unfair discrimination."

Then there is clause 183 which provides for the Commission on Gender Equality. It is heartening to know that the National Assembly finally passed legislation spelling out more powers than are contained in the constitution for this particular commission. We hope that the Senate will soon pass the Bill, so as not to hold up the important work of this constitutional institution, created to ensure that democracy becomes a reality for all our people, including women.

\*Mr P G MARAIS: Mr Chairperson, the document before us is a kind of guide, or rather, a guideline for the road ahead. Our past was one of division, alienation and mistrust. Our future must be characterised by reconciliation, co-operation and trust. The first step towards this has been taken. Signs of understanding and reconciliation are fortunately visible. Much must, however, still be done in this regard.

The character and spirit of our new constitution must therefore also serve to promote the important process of national reconciliation as speedily as possible. The question now is how successful this legislation is in achieving this goal. I am of the opinion that it could be said that it has been successful to a certain extent. Ultimately judgement can only be passed when certain unfinished matters have been finalised.

In this respect I refer especially to the specification with regard to official languages, namely clause 6 and clause 29, that deal with education. These are issues that have been dealt with by my leader, but their importance cannot be overemphasised. The specifications with regard to these two matters as they appear in the text do not represent the agreements between the parties gathered here. Much has been said, argued and documents have been exchanged about both of them, but all in vain thus far. I am pleased to be able to testify that the talks took place in a spirit of goodwill, with solutions being sought and this process is still ongoing. This gives hope, not only for the achievement of immediate goals, but also for future co-operation.

Be that as it may, if we as negotiators from all parties are not successful in cutting the knot with regard to these two thorny issues then we are running a real risk that national reconciliation will remain beyond our reach. I would now like to say more about each of the matters and link them up with the provisions of the interim Constitution and our experiences since its implementation.

Section 3 of the interim Constitution gave expression to the principle of multilingualism by acknowledging the 11 South African languages as official. That was a milestone. Agreements have already been reached that this would be applicable in the future.

It is clear that because all those languages were not equally developed in the past, provision needs to be made to create circumstances for their development and advancement. Too little has, however, been done about this. This is a fact that has led to disillusionment and frustration for many. The mistrust that has resulted is retarding the present negotiations. The developmental aspect must receive energetic attention in the future.

If our point of departure is that the process of the promotion of multilingualism should have no losers, it should be determined that the rights and status that languages held before 27 April 1994 should not be lessened. That determination has flagrantly been ignored in many cases. There was indeed one great loser in the process and that was Afrikaans. I am not going into all the details today. Besides, it would not be relevant in serving the purpose of the debate. The fact of the matter is, however, that the users of Afrikaans, people from all population communities, are presently experiencing serious feelings of alienation and degradation. Emotions are running high. Not an occasion on which Afrikaners meet goes by without this being the topic of lively discussion.

The handling of Afrikaans by State institutions and others is a stumbling block in the way of national reconciliation. The NP is striving to ensure that the new language provisions put an end to the unacceptable and harmful practices that prejudice languages. If we proceed as we are doing now, we will move in the direction of a monolingual official communication, mostly by way of English.

This would exclude large numbers of South Africans from conducting effective interaction with their authorities and eventually they will also

be disempowered economically. Examples of such negative consequences of a shift to monolingualism are evident elsewhere on our continent, amongst others Zambia. The new constitution must end such a tendency. To sum up, the NP is committed to the promotion of multilingualism, the maintenance of vested rights and the status of languages and the advancement and development of those languages that lagged behind.

I also want to refer briefly to education. This is probably the most delicate social activity, more so in a country with a multiplicity of languages, cultures and religions. The situation becomes almost unmanageable when there are also great backlogs in the provision of education for certain communities. These elements are generally present to all of us. Extreme caution is advised when dealing with this situation. Our record in this regard, also in the recent past, is nothing to be proud of.

Considering the multitude of sensitivities that are inherent in our population diversity, the negotiators of the interim Constitution included a provision, section 32(c), that foresees the possibility of educational institutions based on communal language, culture or religion. Although, according to the negotiators involved, it was not intended to be applicable to private institutions only, different teaching authorities interpreted it as such. Those interpretations have recently been supported on the grounds of the interpretation of the whole constitution by the Constitutional Court.

Great uncertainty, confusion and disillusionment were caused within the ranks of certain communities, specifically because of the political action to which I have referred. I am speaking about communities with a long tradition of public education as an extension of parental home teaching.

†A serious effort should be made to accommodate the educational needs of such communities in the new constitution. In this regard I am not talking about people who intend using language, culture and religion as a smoke screen behind which racial discrimination can be practised. We firmly reject any form of racial discrimination in educational institutions. In terms of the Bill of Rights, it would in any case be unconstitutional to try to discriminate on the basis of race.

It may now be asked what it is that we want. The answer is straightforward: We want what the hon the President, Mr Mandela, said we would get. I quote from one of his speeches, a speech that he made earlier this year:

Any community which wants to retain its schools, its own language, its cultural background, its religion, is free to do so. All that we want is, if we have an Afrikaans-medium school, a Black child who wants to go to that school must be perfectly entitled to do so if he is prepared to use Afrikaans as medium.

We want no more than that. We want it for all language communities, not only for Afrikaans. We want single-medium educational institutions in which, where practicable, all students who want to learn and to be taught in that medium should be able to enrol. If the school community so desires, their children should be given an education based on their particular religious values.

\*The degree of success in discussions about these two thorny issues in the next few days will determine how effective the constitution would be as a legitimate instrument of national reconciliation.

Prof A K ASMAL: Mr Chairperson and fellow parliamentarians, I have a speech which I will not use, because I hope you will allow me to begin on a personal note. I have been teaching human rights law at a university for 30 years. It is therefore a great pleasure and an honour to speak on behalf of the ANC on the Bill of Rights provisions. I do so with the greatest pleasure and with a great deal of humility, because what we have crafted is our own native-born provisions, laid down in the Bill of Rights.

The Bill of Rights must reflect the soul of the nation. All bills of rights have certain common elements—those who have been living through the negotiations recognise that—but no two are identical. The reason is very simple. A bill of rights takes its character from the struggle and the aspirations, anxieties, fears and sometimes isolation of the people through whom it is won, and by whom it is often resisted. So we look simply at the majority.

The struggle for liberation in South Africa was not only a struggle for the right to vote, to move, to marry or to love. It has always been a struggle for freedom from hunger, poverty, landlessness and

homelessness. Our Bill of Rights must therefore reflect, as we believe it does, the multidimensional and all-encompassing nature of the struggle for liberation. Our freedom is impoverished if our Bill of Rights and our constitution in their entirety reflect only some of the rights and some of the freedoms for which we have fought.

The second point that I would like to make is that the Bill of Rights must reflect the needs and aspirations of the vast majority of our people. Rev Meshoe may think that 85% of the views reflected by two parties may not reflect the vast majority of the views of our people. This is an arithmetical calculation that may escape his mathematical genius. [Applause.] The fact is that the Bill of Rights must reflect the needs of the majority. At the same time, it must provide protection in relation to the anxieties of different groups of people, of what are generally described as minorities. That is why the Bill of Rights must be crafted not by reference to some abstract principle or some lawyer's notion of what is correct, but by the actual needs of the people as the first Bill of Rights, the American Bill of Rights, was crafted to meet the particular needs of the colonists at that time. Our Bill of Rights has a third dimension that tries to meet the anxieties of those who had power, and those who continue to have economic power in our country.

Thirdly, the Bill of Rights, as we tried to reflect throughout the negotiations, attempts to reflect universally accepted standards. While we tried to fine-tune it to South African needs, it had to subscribe to certain accepted standards. That is why some of the provisions in the interim Constitution which we were compelled to accept at Kempton Park have now been quietly removed from the Bill of Rights. We will learn from accepted international agreements, conventions and practices, from the Declaration of Human Rights, from the conventions and covenants that we are going to look at and ratify ourselves.

We might even look at Kazakstan, as the Deputy President, Mr De Klerk, has told us to look at Kazakstan. This is an extraordinary illustration. We have rejected the introverted parochialism of South Africa, we have rejected everything which was foreign, and now we are prepared to learn from Kazakstan! [Laughter.] *Mirabile dictu!* This is a remarkable transformation of our body politic, but, of course, we are not going to pick and choose selectively. That is why it is important

to recognise that we are going to reconcile certain fundamentalist assumptions.

I regret very much that Deputy President De Klerk said that uncertainty about the constitution might be an explanation for the crisis that our currency is facing. This is an original view as a negotiating position. It is the first time that I have heard it.

We have to reconcile. At the end of the day, we are going to do things to meet our needs. We are going to have growth and development with respect for human rights. We cannot do it in the way that the Pacific Rim countries have done it. We cannot be authoritarian and anti-libertarian, and have growth. It is an impossibility, because pluralism takes different forms. It is not only race and ethnicity in our country. Pluralism must also encompass the fact that vast inequalities are created and developed in our country on grounds of class. Class and race in our country are inextricably bound together.

We cannot have the solutions used in the Pacific Rim countries. I cannot mention them now that I am a Minister. If I was still a backbencher, I would have mentioned them. [Laughter.] We cannot adopt those solutions. The Pacific Rim countries would use battering rams for purposes of economic growth. We will have to—either we succeed or we perish—reconcile growth and development with fundamental human rights. [Applause.]

We have no choice and we should not pander to feelings and opinions that certain forms of human rights which we have are expendable because foreign investors do not like them. I say to that, carefully: If you do not like our fundamental assumptions and democratic order, keep your money, keep your investments, keep your assumptions. [Applause.] We are not imposing. We are not being chauvinistic about this. We are not being racist. We are not kicking out anyone.

For us, the sixth principle is that the Bill of Rights is the guardian against the savages—the savagery of the market, the savagery of the chauvinists and the savagery of the racists. The Bill of Rights is the final outpost. That is why we say that we have to be very careful about assumptions that certain provisions of the Bill of Rights will militate against foreign confidence.

We reject this and we regret this very much. It has been raised at the final stage of what should now

be a celebration, because the real celebration is the indivisibility of the Bill of Rights which we have accepted now. However, one cannot separate certain categories of rights from others. The real celebration is that we now say, in the first provision in the Bill of Rights, in section 7, that it is not enough to respect and protect rights. We now say the State must promote and fulfil the rights, and this has enormous implications. The State must vindicate the rights, and that is important for all the things that Gen Viljoen stands for. To vindicate rights means the State must provide for effective guarantees in application for the rights.

That is going to be judicially interpreted ultimately by the Constitutional Court, in the dynamic and creative way in which the Constitutional Court has already been working. The provisions of section 7 will surprise all sides. In the same way we have, for example, the extraordinary acceptance that social and economic rights are integral, and have a qualification that depends on the resources of the State. We do not want to throw a rope of sand to our people. We want them to accept the indivisibility of rights.

In the same way, we have the horizontal application, particularly in the context of equality under section 9(4). This is a remarkable change from the feeling that a horizontal application is the greatest threat to individual autonomy. In the same way, we have a limitation clause which is simple and easily understandable and moves away from the previous dualism of the interim Constitution. We must also recognise that some rights we identify are rights that we recognise from our South African existential position. We want the right to lock out not to be assimilated to the right to strike, because we do not believe that a collective right is comparable to an individual right.

There are many other issues which we can celebrate. Obviously, there are blemishes. Obviously, there are limitations. Obviously, we have learned from experience in relation to the freedom of information debate. We have learned from experience in relation to the administration of justice debate. We have learned from experience that reasonable qualifications are required.

At the end of the day, what we are doing is achieving the kind of freedom to achieve and create more freedom. The Bill of Rights will allow us to expand the area of freedom, to achieve more freedom on the basis of the freedom we have

achieved and won in the present Bill of Rights. [Applause.]

Dr P W A MULDER: Mr Chairman, I am tempted to put my speech aside and to react from the heart—in Afrikaans, my mother tongue—to Mr Asmal's saying "Keep your investments, etc". He spoke from his heart in his mother tongue—Irish, if I heard him correctly—but I will not do that. [Laughter.] There is no time for that.

The year 1996 will become known as the year of the constitution. History and our children will one day judge 1996 as the year in which the foundation for a new constitutional dispensation was laid.

In 1919, after the First World War, the Treaty of Versailles was negotiated and signed in France. Today history looks back at 1919 and the Treaty of Versailles as a foundation that did not bring peace and prosperity, but paved the way for a much bigger and a more devastating war, namely the Second World War. This may never be allowed to happen here.

The FF is committed to seeing that we do not repeat the mistakes of the past. The FF was neither satisfied with nor part of the constitutional deal in December 1993. The FF leadership entered into negotiations with the leadership of the ANC during the last part of 1993. The mandate and instructions of the FF leaders were to negotiate the establishment of a volkstaat before the election of 27 April 1994. This was given to us at a big "volksvergadering".

ANC negotiators argued that it was not politically possible at that stage. It was argued that the FF should buy into a process. The amendment of the Constitution with the inclusion of Constitutional Principle XXXIV and the addition of Chapter 11A, dealing with the Volkstaat Council, became vital elements in the FF's decision to take part in the process. The further provisions of the accord between the ANC and the FF on Afrikaner self-determination made it possible to give the Afrikaner a new vision of hope and constructive engagement which paved the way for the FF to participate in the general election of 27 April 1994.

Of the 17 parties that took part in the election of 27 April, only seven made it to Parliament. The FF, being barely one month old at that stage, came fourth after the ANC, the NP and the IFP. We fought the election asking for a mandate for

Afrikaner self-determination and a volkstaat. By voting for us, 640 000 people instructed us to achieve this. That is what we are about. In his Opening Address to Parliament a year ago, President Mandela referred to the constitutional process and said we "must conduct ourselves in a manner that ensures that we have as inclusive a process as possible". That is what negotiation is all about, finding compromises between the different mandates and positions.

The Constitution at present strongly emphasises South Africa as one country and one nation. This is only one side of the coin. The other side of the coin is the cultural and language diversity in South Africa. A balance between the two is the final answer for South Africa.

It seems that because of South Africa's apartheid past, we kept avoiding these issues. Addressing these realities in a commission, as was done, is therefore important. The ANC took one step towards facing these realities, and that is a positive sign. We still need to add group rights and self-determination to ensure a balance between these realities of South Africa and to attempt to make amends as far as possible on those grounds.

Last week I addressed a few public meetings. The overwhelming reaction of Afrikaans-speaking voters was that they were disillusioned by referendum and election promises that the Afrikaans language would be protected and that Afrikaans State schools would be recognised. That was the grassroots reaction, whether hon members like it or not.

The FF will always fight for what we believe to be the universal right to educate children in their mother tongue and in their culture.

One should not confuse teaching a child to be bilingual or multilingual with Anglicising the child. That is the way that is perceived in the Afrikaner community. One has only to look at our children, at our history of conflict with the British, and make a study of these issues in Quebec, for example, or in Belgium or in Eritrea to discover that the emotions concerning these issues must not be underestimated. This is nothing to do with race or going back to apartheid, but has everything to do with the way a community conveys its culture from generation to generation. This must still be addressed. [Interjections.]

Mr D J DALLING: The English never got it right.

Dr P W A MULDER: Yes, they are still struggling. You are quite right. They are still struggling all over the world.

Mr D J DALLING: Why are you worried now?

Dr P W A MULDER: They tried it with Milner, but they never succeeded with us. At the moment they are mobilising us again.

In Nigeria the constitutional debate at present is about democracy and nation-building. Chief Emeka Anyaoku wrote in a recent book:

Nigeria remains in essence an amorphous mass of individuals busy pretending to be a people.

In Western and Eastern Europe the constitutional debate is about the protection of minorities and the granting of cultural autonomy and self-determination to groups without disturbing the ideal of a bigger national European unity. That is the balance I am talking about and the balance that we are trying to get in South Africa.

In a recent article in *The Economist* of 23 September this issue is addressed as follows:

The trick in a successful society is for minority citizens to be able to feel that they are more than one thing at once—to be able to feel American and Black, Scottish and British, an orthodox Christian and Bosnian, a Muslim and Indian.

Many Afrikaners in South Africa, as seems clear from my meetings with them, do not feel that way. Loyalty and legitimacy will be some of the main problems of the new constitution in the future South Africa. As President Mandela pointed out, an inclusive process and constitution are the answer to this problem.

In Europe, governments bent over backwards to accommodate the problems of 68 000 German speakers in Belgium. [Interjections.]

\*I cannot hear what the hon member is saying, but he is making me angry.

Mr C ACKERMANN: [Inaudible.]

\*Dr P W A MULDER: Oh man, where were you in those days? Now you are writing culture things here . . . [Interjections.] [Laughter.]

We have heard nothing today about power-sharing. They are dead quiet. They are seizing on the cultural things about which we have been talking for two years and are making as if this

were a success. [Interjections.] This is all that is going on here, and then they come with clever talk here. [Interjections.] No, man!

†In Belgium, 65 000 French speakers in the new Swiss canton Jura . . . [Interjections.]

\*This was a peaceful debate. I did not trouble you. We are now talking about the future of the Afrikaner.

†Are long-term solutions and stability in South Africa possible if the aspirations of 640 000 FF supporters, or more than a million Afrikaners who feel strongly about self-determination, are ignored? This is one of the questions which the Government of the day, and the constitution, will have to answer in the future.

The question for the FF is not whether we realise our goals or change our goals. Our goals are fixed. The big question is whether we are going to take the long or the short route to reach them. The short route is that of wisdom and statesmanship in negotiating solutions. The long route means that one only gets there after many years of strife and conflict. The FF is here, working towards following the short route.

Mr O C CHABANE: Mr Chairperson, firstly, let me join those who congratulated and thanked the CA administration for having performed their functions and responsibilities in a very professional way. [Interjections.] I cannot thank the management committee.

First and foremost, I think it is important to correct the wrong perceptions which have already been created. Firstly, a perception exists that the IFP did not participate in the constitution-making process. That is not true. The IFP was involved in the process in the province, and that involvement was aimed at drafting the constitution for the province, which, as far as we are concerned, was part of the constitutional transformation of our country.

The second point that I want to mention in this regard is that in the early sitting of the CA, when we received the President of Botswana, the leader of the IFP was sitting with us as a member of the Constitutional Assembly, and not as a member of Parliament. I thought that that was very important also. That was the CA sitting.

Thirdly, the IFP participated with us in all the programmes on television on constitutional mat-

ters organised by the CA. Therefore, we consider that to have been participation in the CA process.

Fourthly, IFP members took part in the public participation programmes which were held in KwaZulu-Natal and in other areas. Their views and considerations were taken into account in the draft which we are discussing here now. It is unfortunate that they might not have participated in some aspects of the constitution-making process, but they were definitely part of the process.

The second issue that I want to address is the perception created by the ACDP that there were times when the Constitutional Assembly took decisions without consulting all the minority parties. I would like to say that that is not correct. Unfortunately the ACDP is not here to be reminded of this fact. As usual, they are not here.

As one of the people who was more involved in the process, I would like to draw the attention of the members to some of the issues. The ACDP claims that millions and millions and thousands of signatures on petitions were sent to the CA on specific matters relating to the draft constitution which we have before us, and that those things were not considered. In other words, what the ACDP is saying is that we should have considered the majority view in order for us, the political parties, to decide which direction to take on the various issues.

I would like to ask the ACDP whether that is the approach that it would like this country to take, namely, that once one is satisfied that the majority wants something, that is the direction the political leadership has to go.

If that is the case, then I am sure that the matters that have been quite amicably resolved amongst the political parties and all groups in our country could not have been so resolved. If that is what the ACDP wants, they need to be very clear and consistent on that issue.

Secondly, the ACDP claims that we have not considered submissions which were made by the public. I would like to draw the attention of the House to the fact that the submissions which were brought into the Constitutional Assembly were thoroughly considered by most of the parties, except the ACDP. The ACDP will need to explain to the public why they did not consider those public submissions which were brought to the Constitutional Assembly, even by their own supporters. As the ANC, we considered submis-

sions, even from supporters of the ACDP. We did not think that consideration of submissions meant that each and every issue raised on paper, in a telephone call or in a public meeting would need to find its way into the constitution. We thought that it meant we had to consider all the views, weigh their value with regard to other issues which were being raised by others, and take final decisions on various matters. That is how we have approached the issue, and that is why we, as the ANC, are sure that we did consider the various submissions which came from the public, political parties, public forums and all forums which we decided to approach people to participate in.

The PAC has raised the issue of traditional leaders. In the minds of members of the PAC, the current constitution provides very little compared to what was provided for in the interim Constitution. I would like to draw the attention of the PAC of Azania to the fact that, with regard to the issue of traditional leaders, if one went to the interim Constitution, one would see that there are only two sections in that document, which is, in the main, exactly what has been done in terms of this draft constitution.

If one checks, it will be seen that the last two sections of that chapter deal with procedural matters—one basically deals with how the provincial House of Traditional Leaders is supposed to interact with the provincial legislature, and the other deals with how the national Council of Traditional Leaders is supposed to interact with the national Parliament. But, on the other issues, as far as we are concerned, we are confident that the Constitutional Principles have been addressed, and, in the spirit of the approach to the drafting of the new constitution, there was general consensus that we did not have to include minute detail which related to procedural matters that could be dealt with elsewhere in subsequent legislation. It was within that context that the issue of traditional leaders was addressed. If the PAC feels that the position of traditional leaders has not been sufficiently dealt with, they are free to take that position, but they have not been able to provide substantial argument in the committees in which we sat to discuss this matter. As far as we are concerned, the provisions in this draft have received general consensus amongst various members of political parties.

In the main, the ANC supports the Bill. We are going to indicate the proposed amendments to those sections which we feel have not been

covered, but we will also take into account that the Bill itself is a product of more than 18 months of discussions and negotiations between political parties and various stakeholders. It generally reflects the consensus which has been arrived at after those fruitful discussions of the various participants in the constitution-making process. Therefore, even when we put forward amendments, it will not be in the spirit that the ANC's view needs to prevail. It will be with a view to improving the text to make sure that the aspirations of our people are fully met. There is no way in which the ANC will stick its neck out and say that it will not support the Bill unless the ANC's position is accepted. That is not the approach which has been taken, and I do not think any other party would like to take the risk of saying that since its view does not prevail, it is not covered by this constitution.

Lastly, I would like to indicate to those who do not want to participate in this process that we would not agree with someone born 20 years from now saying that he was not part of the process, and therefore this constitution does not bind him.

We would like to say from the beginning that we will not accept that 20 years down the line, and we will not accept it now. Those hon members who do not want to participate in the process, and who deliberately walked out with the intention of saying at some point that this constitution does not bind them, will not get away with it, because that will not be acceptable to the South African people.

This constitution will be the constitution of the country and every action of every government and person will need to comply with the provisions of this constitution, whether they participated or not. [Applause.]

Ms M SMUTS: Mr Chairperson, politics is said to be the art of the possible, but constitution-writing is something more. Even when a constitution is negotiated, as ours is, it cannot simply be the reconciling of opposite positions. It also has to make constitutional sense and has to be a lasting document within which not just the politics of our time but the politics of the future may be played out.

When it is a Bill of Rights that is at issue, the point applies even more strongly. I make the point because some of the last outstanding rights issues have been complicated by the entry onto the scene

of political lobbies advancing a particular point of view which affects the position of some of the negotiating parties. I refer in particular, of course, to the provisions on property and on labour.

Kites have been flown in recent days suggesting that opposition parties may agree to drop the lockout provision. As far as the DP is concerned, this is not so. It cannot be so, because it cannot be constitutionally so and politics cannot change that.

The history of the property clause thus far serves as an illustration of how political demands can ruin a good clause. I remind hon members that by October of last year property was a noncontentious issue. Theme Committee 4 produced a clause which closely followed the interim Constitution's property provision. It was at this stage that the land lobby entered the process through a different theme committee altogether.

For our part, we reiterated our party's support for land reform and suggested or agreed that land reform should be explicitly mentioned as an example of the public purposes for which property may be expropriated. That is all that is, was or ever will be necessary. Instead property has been on a roller-coaster ride, notwithstanding constant reminders in the form of public submissions from particularly the business sector over the months and now in the form of a falling rand, that secure rights with regard to all forms of property must be put beyond question.

Frankly, we should revert to the interim Constitution's property clause, or at least to the clause agreed to in October by the Theme Committee 4 process. It meets the needs of all, including the land reform lobby, and adopting it would send a firm economic signal at a time when South Africa cannot afford to send anything else, as Deputy President De Klerk has eloquently said here, a statement which we heartily welcome.

However, since the Arniston compromise is still on the table, we must for our part insist that the ambiguities pointed out by people we have consulted from Arniston onwards, ambiguities about the dominant meaning of the clause and about the overrides, must be cleared away. It was surely the intention of the drafters to be unambiguous both about protections and about land reform. Why should there then be a problem?

Allow me to quote to hon members an authority who has seen draft after draft of the property

provision over the months up to Arniston, containing the override, which stated variously over the months that property should not invalidate, and later impede, land reform, a subsection which has constituted a kind of assault on the safeguards. I quote Prof A J van der Walt:

I have studied a large number of these clauses from all over the world. In Malaysia, Jamaica, Mauritius, Uganda, Botswana, Zimbabwe, Guyana, just to name a few, and nowhere else is there a clause which cuts its own throat.

I leave that thought with hon members. These ambiguities should be cleared out of the way.

Finally, let me quote again—since I have done so before—an authority on labour, in this case Prof André van Niekerk:

To include a right to strike in the constitution and to exclude a right to lockout admits the argument that a lockout, particularly as a defensive measure, is an infringement of the right to strike.

In other words, any attempt by an employer to lock out, even in response to an unlawful strike, can be met with the response that the lockout is an infringement of the right to strike. The Labour Relations Act admits many forms of partial strike action by go-slow campaigns and overtime bans. Employers ought to be entitled to respond without incurring the risk of any statutory provision authorising lawful lockouts being declared unconstitutional.

It is a constitutional and legal question. It cannot be lobbied into the kind of shape that Cosatu wants. We, all of us as the CA, cannot shrug off a poor compromise as the product of the art of the possible, because constitution-writing is more than politics.

Ms J Y LOVE: Mr Chairperson, the Public Service was a key component of apartheid's machinery within the former RSA, including the self-governing territories and the TBVC areas, at all levels of government. Not only did the Public Service implement apartheid's policies, often with vigour and enthusiasm, but a number of public servants also actively participated in the formulation of policies, laws and programmes that constituted the very backbone of apartheid.

The culture of covert operations, the absence of transparency and the lack of accountability were deeply entrenched through practices of the Public

Service for decades prior to April 1994. Not surprisingly, the legacy that the new Government faces is riddled with examples of inefficiencies, corruption and decay within the administrative structures of the Government. In addition, in many instances the inequitable distribution of resources was made worse by actions of public servants themselves. So, those who clamour against the allegedly recent politicisation of the Public Service should recognise the role of the Public Service in the shaping and the maintenance of apartheid.

Such people should recognise that the overwhelming concentration of White Afrikaans-speaking men at the helm of the Public Service was no accident. It was part of a deliberate employment policy to promote some, while excluding others. It is not through the stroke of a pen that those South Africans who were kept out can be brought into the Public Service, but rather through an equally deliberate policy to include South Africans who are Black, who are women and who have a track record of struggling for democracy. It is through this equally deliberate policy that such people must be included. Our basis, as the ANC, was to recognise that this constitution cannot enable the maintenance of White privilege, but that we must rather work towards the dismantling of this terrible legacy.

Such an approach should not be misconstrued as denying the importance of the collective experience of public servants. Indeed, in the process of drafting the section of this constitution, the Bill that is before us, which deals with the Public Service, this experience was drawn upon and constantly referred to. At a hearing organised by the theme committee, the directors-general of all departments were invited to make submissions, and each and every one who was present mentioned the fact that this was the first opportunity that they had been given to express their opinions on an aspect of the constitution that so directly affects them.

Such people have an important role to play, and many have embraced the new direction of this first democratic Government. From the single occasion at Codesa when senior public servants were invited to a briefing, through the months of the TEC when contact and the exchange of ideas increased, up until the CA and its structures, this positive approach towards public servants has continued and is growing. This positive approach is also towards ensuring the implementation of

the policies of the Government of National Unity; this is no more politicised than the approaches of the past. Whereas the politicisation of the past was discriminatory and undemocratic, in the present it must be based on democracy, social justice, human dignity and the achievement of equality.

The constitution-making process has created a unique opportunity for all South Africans to establish appropriate public institutions for good governance. We need this new ethos of equity, openness, service and accountability. We must realise these values in order to enable the Public Service to be ethical, responsive, productive and developmental.

Efficiency and effectiveness cannot be measured in terms only of numbers, rands and cents. More importantly, it needs to be measured against our goals, such as the promotion of human resource development, which is not simply a question of fair labour practices. It is also about career pathing, re-examining job allocations and building capacity within the Public Service itself. So, we are not saying that right-sizing should be down-sizing. We are not talking about retrenchments. In the constitution we are laying the basis for a much more wholesome human resource development process.

These are the challenges with regard to administration which any government needs to meet, and it is these challenges for which Chapter 12 attempts to provide a framework for all future governments. Although we have had to make certain compromises and have certainly had to expend a lot of energy on nursing the concerns of other parties, we in the ANC feel that this chapter provides such a framework.

It sets out the basic values and principles that every South African citizen can expect from the administration in every sphere of government, as well as from statutory bodies and public enterprises. It clearly acknowledges the possibility for appointments to be made, as regulated by law, which recognise individuals' understanding of policies and considerations such as our language policy plays an important role in the ability of public servants to implement the policies of the day.

This has been misinterpreted—often deliberately—as condoning the appointment of persons only on the basis of their political affiliations. The ethos, the values and principles enshrined in

Chapter 10 make such nepotism or jobs-for-pals untenable and unacceptable. No longer will this practice as exercised by past governments be able to continue in terms of the new constitution of our State.

Chapter 10 goes further to direct the government of the day to enact appropriate national legislation in order to properly structure the Public Service. It promotes the cohesion, co-ordination and co-operation of government at all levels. It provides for the establishment of a Public Service Commission to ensure the realisation of the basic values and principles, and also to build, especially through the involvement of provincial representatives in the Public Service Commission, intergovernmental co-operation. This notion of co-operative governance goes to the heart of our envisaged structure of government in the new South Africa.

To achieve the transformation of the South African society as a whole, the Public Service must first be transformed in order to ensure the effective implementation of government policies. Meeting such challenges of a democratic administration, or a public service which is worthy of the name, is not an abstract ideal, nor is it an unrealisable goal.

The administration of the Constitutional Assembly itself bears testimony to the fact that such administration is possible and that it works.

\*Mr J A RABIE: Mr Chairperson, it is a pleasure to address you in my own African language. [Laughter.] It was born and bred here. As far as my colleagues in the NP and I are concerned, our involvement in constitution-making spanned five chapters, namely Chapters 4, 5, 6, 9 and 12, as well as Schedule 5 and Annexure A.

The citizens out there, apart from Cosatu members who are in alliance with the ANC, do not always realise how complex the negotiating process is. It is very easily stated that we must achieve this or that, for example a government of national unity, an electoral system based on proportionality, the seat of Parliament and the amendment of certain sections of the Constitution with more than a two-thirds majority vote, to mention but a few examples.

As opposed to this, the NP negotiators are confronted with inflexible points of view. The ANC negotiators quite often declared: "That is our firm standpoint and we will not deviate from it." By that they mean that it must not be

contained in the constitution at all, or that it must be possible for it to be accepted by means of national legislation with an ordinary majority. The NP often stood alone with regard to such standpoints. We simply had to persevere and exercise our own particular persuasive abilities. Other parties had to be included in order to steer the ANC's way of thinking in a different direction in the interests of South Africa and its people.

In the face of the numerical superiority of the ANC, we must negotiate a constitution which is acceptable to everyone. The constitution must entrench a multiparty democracy and regular elections. South Africa must not be doomed to a one-party dictatorship. It is by no means an exaggeration to say that it sometimes looked to be an impossible task. I sometimes felt, as in the cruelest days of apartheid, as though I was hitting my head against a marble wall. The situation continued in this way for days and nights, but there was no question of giving up. There was always a voice that whispered: It is now or never. Parties were continually involved in bilateral and multilateral discussion. In my opinion, bilateral discussion was the most successful. Little progress was made in multilateral discussion, because participants clung steadfastly to standpoints for fear that they would be accused of making concessions.

Our patience was tested to the utmost, sometimes with blatant rudeness. Our perseverance helped to bring about breakthroughs. Fortunately we were not negotiating in an atmosphere of absolute hostility, as was the case at Kempton Park. I would like to congratulate the negotiators on this. It contributes to nation-building. Let us now be more magnanimous and reach agreements on the few outstanding issues. In this way we will strike a blow for reconciliation and future generations will be eternally grateful to us. Come, brothers and sisters, let us cut the final knot and turn our backs on an unpleasant past forever. Would it not be wonderful if we could face the Second Reading next week without any amendments whatsoever? Let us see to it that a two-thirds majority for the approval of the constitution on 8 May 1996 is only of academic importance.

KwaZulu-Natal unanimously agreed to a provincial constitution. We can also do so if we want to, not so? Something is on the way. A home-made constitution is on the way. I repeat, a home-made constitution is on the way, which was written without interference from outside. It is of cardinal

importance to me that we could reach agreements on the fact that certain members of the National Assembly can apply to the Constitutional Court to declare an Act unconstitutional. The ANC must be congratulated for changing their way of thinking, otherwise this measure would not have appeared in the constitution Bill. Forward South Africa!

Another thorny issue that was settled amicably, is that every citizen who is 18 years or older, will have the right to vote. Here was a definite movement away from the right to vote for 14-year-olds. In this way stability with regard to the right to vote has undeniably been established and we are indeed moving away from a banana republic.

It is equally important that Constitutional Principle XIV has been incorporated into the Bill as it stands. In terms of this principle, provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy. Furthermore, it was agreed that capacity would be created for opposition parties and that they would be empowered. This has yet to be put into words in the Bill.

Clause 44 is a deviation from our original agreement about proportional representation and has not yet been negotiated, as is the case with Annexure A, with which we have a few problems. Firstly, this system will only be valid for the first election after the acceptance of this constitution. Secondly, the issue of a free mandate for members is not dealt with. An electoral system cannot be composed without considering this aspect. The NP is on record as being entirely opposed to the so-called clause 43(b) of the interim Constitution, in terms of which a member who crosses the floor loses his or her seat. We will therefore propose amendments in this regard.

For the first time parliamentary committees now find constitutional expression. As the saying goes: Success has many fathers, but failure is an orphan. This was also true in the case of the entrenchment of cultural councils in the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

Culture is respected in the ANC's manifesto and Mr Colin Eglin ostensibly also pleaded for cultural councils in 1977. The FF also climbed on the bandwagon, but I do not take them seriously. Not a single word was said about this matter at Arniston. A lukewarm appeal was made for a sort

of open clause on self-determination. Not one of the parties touched on or included these concepts in the constitutional process, least of all the FF. From the outset the NP bravely raised this issue.

When the FF realised that a volkstaat was taboo, they covertly and outside of the process sought favour with the ANC using the NP's cultural principles. Just last week they said that they experience it as an embarrassment to speak to us about this matter, because a breakthrough is in sight. It is just as well that this has not happened, because members can imagine what kind of dispute it would cause within the constitutional process. The only thing that now remains is that collective or group rights must be recognised in the Bill of Rights, as agreed upon.

\*The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Ladies and gentlemen, I have noticed that you are enjoying the conversation immensely. Bilateral conversation is increasing hand over fist. The administration and I are quietly taking down a register of those who are so actively involved in bilateral conversation and you are all invited to the evening sitting of 29 April, next Monday.

†I really appeal to members. We only have three speakers left and 30 minutes to go. You have listened patiently and I would ask you to continue doing so.

Mr M W MOOSA: Mr Chairperson, I want to start this debate by addressing something that Ms Smuts presented to this House earlier.

She said that nowhere else in the world did a property clause cut its own throat. The DP expects the ANC to cut the throats of millions of disempowered South Africans who have been deprived of property all these years. We in the ANC told the DP, at the beginning of the discussion on the property clause, that we did not want a property clause. We said that we were prepared to allow the common law to regulate the way in which property relations in this country were dealt with. The DP is afraid of the common law. They are the ones who wanted the property clause and unfortunately, at their insistence, they will have to live with a clause that the majority of South Africans will be satisfied with.

I also want to address two further issues which were raised in this House. The hon Deputy President De Klerk and the leader of the DP, Colin Eglin, mentioned in their speeches that the ANC

does not want an independent judiciary. I quote the words that were used:

That an independent judiciary must be placed beyond doubt. That we must overcome the differences between parties and have a judicial system that cannot be politically interfered with. That we must structure the judiciary in a fair and even-handed way.

Colin Eglin even suggested that we put the judiciary beyond the control of political parties. That is very far from the truth.

If one looks at the first clause of the judicial chapter, one sees that it clearly entrenches the independence of the judicial system in this country. It was the ANC which insisted that that independence should remain. We have spoken about impartiality in that clause, and we have spoken about the judiciary treating all matters before it in a fair manner and without favour or prejudice.

Regarding what certain hon members suggested to this House, it could only be that party hacks such as Douglas Gibson and Danie Schutte had briefed them. I do not believe that the Deputy President read the chapter on judicial authority before he came here to make that particular statement.

Two days ago those particular members accused the ANC of bullying them when we were negotiating this particular chapter. Regarding clauses 173 and 174 of the constitution, it was the DP and the NP which insisted that political parties be consulted when judicial officers are appointed. It was not the ANC which insisted that political parties be consulted when judicial officers are appointed.

The leaders of those two parties have probably not been briefed about their party-political positions. Douglas Gibson, as he sits there, has himself time and time again said that the DP, like other parties, wanted to be consulted about who the judges in this country would be. They are not prepared to leave the appointment of judges to the Judicial Service Commission, which is a fair body, which is structured in an equitable manner and which will make recommendations to appoint judicial officers in this country.

Having said that, I want to say that in Chapter 8 of the constitution we have changed the judicial authority in this country forever. No more will we

have a court system which is subject to the will of politicians. No more will we have our courts forced to detain and incarcerate people because the law says so. No more will anyone disgrace the judicial system by making it uphold unjust laws. No more will we have 11 administration of justice bodies that all entrench and alienate our people.

In simple terms, this constitution creates a new system of justice, an integrated system of justice which is dynamically and organically related to every facet of the administration of justice. We have created one single court system for the whole of South Africa which will be governed by the internationally recognised principle of the rule of law. Our court system, as it stands in Chapter 8 at the moment, is locked into its role of upholding the constitution and the law. It will be based on the justice rights that are entrenched in the Bill of Rights, on the democratic system of co-operative governance, and on the institutions supporting democracy that are written into the rest of the constitution.

For the first time in the history of this country, a judicial officer will be just that. The judiciary and judicial officers will not be hamstrung by having to fulfil their duties according to the rule of one or other political party, but rather in the interests of justice and according to the constitution and the law. For example, in constitutional matters the Constitutional Court will be the highest court in the land. It will itself decide what matter is a constitutional matter. It will decide disputes between organs of State at the national and provincial levels. It will decide the constitutionality of any parliamentary or provincial legislation. It will decide that Parliament or the President has or has not failed to comply with a constitutional duty. If those provisions of the constitution bring about a judiciary that is not independent then I would suggest that the parties come forward with a formulation better than that one.

I have already dealt with the appointment mechanisms in clauses 173 and 174 of the constitution. We had agreements, reached at Arniston in consultations among political parties, on the clauses regarding the appointment of judicial officers. Those agreements related to a number of other mechanisms which the ANC opposed.

The NP, for example, wanted to have six additional people on the Judicial Service Commission, and they required those six people to come from the National Assembly, and to be appointed by

political parties. The ANC opposed that. At this point in time there are a number of those issues in the judicial chapter that need to be addressed, and we believe that we would be able to find the other parties on some of those clauses.

However, there is one clause that we feel we cannot find one another on, and that is the clause regarding the attorneys-general. We have come up with proposals time and time again to create an independent judicial authority in the form of a national attorney-general who will prosecute on behalf of the State, deal with crime and see the matter through to the end, so that criminals should not walk the streets.

The other parties, through negotiations, have consistently tried to water down the powers of this particular attorney-general, and yet they have continued to argue that the ANC-majority Government is not addressing crime sufficiently. The parties have yet to convince us that the kind of weak, watered-down attorney-general that they are proposing is the right kind to address crime in this country.

Mr R J RADUE: Mr Chairperson, Chapter 2 of the Bill before us enshrines the Bill of Rights which will be the cornerstone of democracy in South Africa, and the soul of the nation. It must set the standards and stand the test of time. It must guard our citizens against the power of the State, and it must entrench justice, equality and freedom for all South Africans.

The draft Bill of Rights goes a long way to meeting these aspirations, but is by no means yet perfect. It has certain shortcomings which we in the NP would seek to address. It is my task and the task of my colleagues during this debate to give notice of certain amendments which the NP will propose, which we believe will improve the Bill of Rights. Apart from technical refinements, there are certain matters of principle upon which our standpoint must be made abundantly clear. Other NP speakers will deal with matters affecting education, the security of the person, the property clause and cultural rights. Today I will deal with the right to life and labour relations.

The NP regards the right to life as the most fundamental of all human rights. The NP accordingly recognises the onerous duty imposed on the State to protect the lives of all South Africans against the unlawful deprivation of this right. Where this right of innocent victims is deliber-

ately, callously, brutally and unlawfully violated, the NP is of the view that the open and democratic South African society, in the person of the State, may demand, and is justified in requiring, the limitation of the right to life of such perpetrators after due process of law.

The NP has not taken an emotional approach to this sensitive issue. What are the facts in South Africa today? The overwhelming number of representations made by the public to the Constitutional Assembly on any one constitutional subject concerned the reimposition of the death penalty. No fewer than 186 376 petitions in support of the constitutionalisation of the death penalty have been received. This far outnumbers representations for abolition. We have a moral duty to take these views into account.

Markinor surveys have consistently indicated that the overwhelming majority of South Africans, across the whole spectrum of society, favour the death penalty for serious crime. The rate of brutal slayings, murder and rape is totally unacceptable. An average of 20 murders are committed daily in KwaZulu-Natal. Over 200 policemen and police-women have been murdered this year. Surely this is repugnant to any civilised society.

Although it has not been established that capital punishment is not a deterrent to crime, it is still part of the punitive sanctions against serious crime in many international states.

The recent development in South Africa, where local communities take the law into their own hands and summarily execute alleged perpetrators without due process of law, is alarming. The NP has noted and has accepted the decision of the Constitutional Court, but it is not convinced that the death penalty for the most serious and violent of crimes must be permanently abolished. We believe that space should be created in this constitution for legislation in this regard. For these and many other cogent reasons, the NP will therefore move an amendment to clause 11 of the Bill, which will provide for a special limitation of the right to life and which will read as follows:

This right may be limited following conviction of a person for a crime specified by national legislation and after due process of law.

Formal notice of this amendment will be filed tomorrow.

With regard to labour relations, there has been considerable debate and negotiation over employers' right to lockout. This right is contained in the interim Constitution and the matter is still the subject of negotiation. The NP is of the view that national legislation should regulate industrial action, including the right to strike and defensive lockout, and that preferably neither should appear in the constitution. They are already catered for in the Labour Relations Act. However, Cosatu adopts the attitude that the right to strike should be constitutionalised, but the right to lockout and the property clause should be discarded. This stance is totally unrealistic in the South African context, and will send shock waves through investor circles, both national and international. It will result in an imbalance.

While the NP agrees that aggressive lockout should not be accommodated, employers should not be seen to forfeit defensive lockout as a last resort in the face of illegal strike action. Negotiations on this point will continue and the NP remains confident that, given the spirit of goodwill and reconciliation on all sides, this matter can be resolved.

**THE DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY:** Order! Before I call on Dr Nzimande to address the Assembly, I would like to remind political parties that their amendments may be sent to Mr Hassan Ebrahim. The time has been extended. Amendments will be received throughout the day until we adjourn tomorrow. When we close for business tomorrow evening, we would like to have those amendments in order to prepare them for the Constitutional Committee meeting on Thursday afternoon.

**DR B E NZIMANDE:** Mr Chairperson, before I start, I would like to ask Mr Radue, when he calls for the death penalty, how we ensure that in future we do not hang people of the likes of Vuyisile Mini and the Solomon Mahlangu.

I would like to start by responding to Rev Meshoe. Normally I do not like to waste my time with an insignificant party, but I want to correct something for the record by pointing out that it is simply not true to say that the preamble represents an agreement between two parties. As is routine, all bilateral agreements and multilateral agreements are submitted to the Constitutional Committee for discussion and decision. Therefore, it is such a lousy excuse, especially coming from a minister of religion, to say that he had asked the

Executive Director of the Constitutional Assembly to act as his secretary by telling him when the preamble was going to be discussed. The preamble was discussed in a scheduled meeting of the Constitutional Committee at which all parties, including the ACDP, were represented. He is merely being economical with the truth, to put it mildly.

Secondly, the other thing we would like to correct is what the NP is saying about education, which we must place on record before this Assembly. It is a pity that the hon the Deputy President Mr De Klerk decided to speak in parables instead of telling us exactly what the issue is in education. [Interjections.] What the NP wants is the constitutional entrenchment of exclusively Afrikaans-medium schools. [Interjections.]

Whilst we are sensitive to the issue that we must bring together all parties, how do we ensure that we do not create hundreds of Potgietersruses? How do we reconcile what the NP wants with this constitution which outlaws discrimination of all kinds?

It is also very interesting that Mr Marais talks about section 32(c), which was the result of a proposal of the NP at the World Trade Centre that we should include a clause stating that schools based on common language and culture would be accepted. We as the ANC agreed to that as a compromise. Now they are abandoning that clause because the Constitutional Court, only two weeks ago, ruled that that clause means that such provisions can apply only in private schools and not in public schools. So what they are now trying to do is to entrench single-medium schools and have the public fund them. Our position as the ANC is this: We are aware that in reality there will, for a while, be single-medium schools, given the fact that we come from an apartheid South Africa that had a Group Areas Act. However, to entrench that is to violate the major constitutional right of the children of this country to have unfettered access to education and to be taught in the language of their choice.

What I want to say today is to ask what this constitution means to the majority of the people who have been oppressed in this country. I know that the constitution is for everybody, but our people, the majority of whom grew up under apartheid colonialism, need to understand the significance of this constitution.

All national liberation struggles are essentially about the resolution of the national question. The resolution of the national question in South Africa means, specifically, the dismantling of the structures of apartheid and, specifically, the effective dissolution of the White state founded in 1910, of which the basis was the national oppression of the Black majority by the White minority. The particular form which this national oppression took has been correctly characterised by the national liberation movement as colonialism of a special type in that the relationship between the White minority and the Black majority was that of the coloniser and the colonised respectively. It is because of this internal colonialism that the ANC correctly identified the main content of the national liberation struggle as the liberation of the Black people in general, and Africans in particular.

Underpinning such national oppression of the Black people has been the superexploitation of the Black working class. It is for this reason that the ANC continues to identify the working class as the leading force of the struggle for the total liberation and transformation of South African society.

However, the national question will never be resolved without the full emancipation of women. Gender inequality and the oppression of women constituted one of the main pillars of colonialism of a special type. Facing the harshest forms of women's oppression and exploitation under apartheid have been the Black working-class and rural women. It is for this reason that we as the ANC have come to understand the national question as a complex interrelationship between national oppression, class exploitation and women's oppression. None of these problems can be resolved in isolation from each other.

It is also against this yardstick that we should judge the historic constitutional Bill before us today. The political perspective and vision I have just outlined still remain valid in the period of transition, and it is against the backdrop of this vision that the overwhelming majority of our people are going to judge this constitution.

Okufanele sikuqonde kahle-hle ngaloMthethosisekelo omusha esixoxa ngawo namuhlanje wukuthi ngeke nje uMthethosisekelo uwodwa ubhaliwe phansi ukwazi ukuzalula zonke izinkinga ezidalwe wucindezelwa kwabantu abamnyama ngaphansi kombuso wobandlululo. Kepha kufanele loMthethosisekelo siwuthathe njengesizinda esibalulekile

esingakhela phezu kwaso ukuze kukhululeke ngokuphelele bonke laba abebecindezelwe.

Ake sibalule ezinye zezinto ezinqala ngaloMthethosisekelo okuyizo ezisiyisa phambili kwiNingizimu Afrika ekhululekile. Okokuqala nje, loMthethosisekelo uyaqinisekisa ukuthi iNingizimu Afrika ingeyabo bonke abantu abakhele kuyo, abamhlophe nabamnyama, kanye nabesilisa nabesifazane. Lena yinto ebeyizabalazelwa yiningi labantu balelizwe njengoba kubekwe ku*Somqulu Wenkululeko*. Okwesibili, lokho okushiwo yilungu elihloniphekile uPatricia de Lille, ngeke sikuthathe njengento eyiyo ngoba akawuqondi u*Somqulu Wenkululeko* [Freedom Charter], yiyo futhi lento eyabangela ukuba i-PAC iphume ihambe kwi-ANC.

Okwesithathu, loMthethosisekelo wenza isiqiniseko sokuthi izwe lakithi liba yizwe elilodwa elibumbene. Futhi loMthethosisekelo wenza isiqiniseko sokuthi kube khona ukulingana phakathi kwabesilisa nabesifazane ukuze kushabalaliswe ukucindezelwa kwabesifazane nabo babe yizakhamizi ezinamalungelo afanayo nawabesilisa.

Engingathi kubaluleke kakhulu ngaloMthethosisekelo wukuthi wenza kungabi bikho ukushayisana phakathi kokuthi izwe lethu linamasiko ahlukene, libe ngokunjalo lizama ukuzakha libe yisizwe esisodwa esibumbene. (*Translation of Zulu paragraphs follows.*)

[What we have to understand about the new constitution is that the constitution itself will not solve the problems created by the oppression of people under the apartheid regime. What we have to do is to regard this constitution as a foundation on which we can build so that these people can be completely freed.

Let us mention some other important issues that help us to progress in this free South Africa. Firstly, this constitution ensures that South Africa is for all its citizens, Black and White, males and females. This is something that was fought for by many people in this country, as indicated in the Freedom Charter. Secondly, what the hon member Patricia de Lille is saying, cannot be taken as true because she does not understand the Freedom Charter, and this is what caused the PAC to defect from the ANC.

Thirdly, this constitution ensures that our country remains united. It also ensures equality between males and females so that oppression practised

against females in the past is eliminated, and they become citizens with equal rights to men.

What I consider to be most important about this constitution is that it ensures that there is no contradiction between the various cultural expressions of our people to build a single South African nation.]

In other words there is no contradiction between the various cultural expressions of our people and building a single South African nation.

Nokho-ke ukuze senze isiqiniseko sokuthi konke okuqukethwe kuloMthethosisekelo kuyafezeka. kubalulekile ukuba sibheke ngehlo elibanzi ukuthi amaqembu ehlukena amele idlanzana abethini ngesikhathi sixoxisana. (*Translation of Zulu paragraph follows.*)

[To ensure that what is contained in this constitution bears fruit, it is important to look critically at what the parties representing minority groups said during negotiations.]

The first and most important lesson that we should learn from this is that the implementation of the provisions of this constitution will be contested by the various political, social and class forces.

Our people must be fully aware that it is in the implementation phase that a bigger task lies ahead of us. We also need to learn some lessons from the approaches of parties such as the NP and the DP on matters such as the Bill of Rights. These parties have approached the Bill of Rights, not as an extension of universal human rights to all of our people. For them the Bill of Rights has been taken as an entrenchment of White minority privileges accumulated under apartheid, in particular to protect the economic position of the bosses.

It is interesting, for instance, to note that the NP claims to be talking on behalf of the Coloured working class in the Western Cape, yet it is the very same party that wants to give the bosses an unfettered right to lock out the very same Coloured workers the NP claims to represent. [Interjections.]

The approaches of these parties also indicate that whatever differences might have existed between the NP and the DP before April 1994, these have now been completely obliterated. Both parties stand for the protection of the interests of the bosses and White minority privilege. [Interjections.] The hon member Mr Eglin must now listen

to this. If there is any difference that still exists between the NP and the DP, it is that the DP has, in fact, shifted to the right of the NP.

However, what is heartening in this whole process, is that workers of this country have understood the fact that unless the working class itself takes the lead in shaping this constitution, the bosses are going to use their economic muscle and political clout to try to produce a constitution that frustrates the total liberation of the masses of our country. It is for this reason that we as the ANC—and for the record, because the papers do not quote this party, the SACP as well—fully supports Cosatu's call for action to defend and entrench workers' rights. [Applause.]

Kufanele ngisho ukuthi kuyamangalisa lokho okushiwo yilungu elihloniphekile uNkosi uButhelezi uma ethi lisi siteleka sikazwelonke esihlongozwa wu-Cosatu sicekela phansi. Zolo lokhu, ubethi uma kungase kuthiwe uyaboshwa mayelana nodaba lomashayabhuqe, lelizwe lizosha libe wumlotha. [Inhlokomo]

Yikuphi okudlula ukungazimiseli ukuthi sakhe izwe elinekusasa elikhanyayo kunokuba njalo sonke isikhathi uma sithi siyakhuluma sitshelwe ukuthi izwe lizoba wumlotha? (*Translation of Zulu paragraphs follows.*)

[I must stress that it is surprising to hear the hon member Dr Buthelezi saying that Cosatu's proposed call for action is destructive. Just a day ago, he said if he was arrested and put on trial for the massacres, this country would be burnt to ashes. [Interjections.] What is better than building the country with a bright future, instead of always being told that the country will be ashes?]

Just like the NP, they say that if we do not entrench minority rights, this country has no future.

This constitution might not represent all we wanted, as the Deputy President said, but at least it lays a very firm foundation for the deepening and consolidation of the national democratic revolution. [Applause.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! This is an opportune moment to suspend business. We reconvene at 15:00 tomorrow afternoon.

Debate interrupted.

The meeting adjourned at 18:10.

**PROCEEDINGS OF THE  
CONSTITUTIONAL ASSEMBLY**

Members assembled in the Chamber of the National Assembly at 15:03.

The Deputy Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.

**CONSTITUTION OF THE REPUBLIC OF  
SOUTH AFRICA BILL**

(First Reading debate resumed)

Mr A M OMAR: Mr Chairperson, hon members, comrades and friends, in rising to speak on this historic occasion, I want to pay homage to the countless men and women who died fighting the apartheid forces during the course of the freedom struggle in our country. I salute all the heroes of our struggle, the women and men who are no longer with us, those who are with us and those who were maimed and who are often forgotten. I salute the mothers of our struggle. I salute the youth of our struggle who helped to liberate our country.

During the course of the struggle, our fighting people brought the apartheid regime to its knees, forced it to negotiate and created a situation in which the people of our country, Black and White, could sit down together as fellow South Africans to chart their future. That moment has now arrived. We have therefore reached a historic moment in the history of our country.

The interim Constitution, a gigantic step forward in our country, was the product of negotiations between the parties whose support up to that stage had never been tested in any genuine fair and free elections. The final constitution is a different matter. This is a momentous moment for us, because a democratically elected body, enjoying a mandate from all the people of our country, is now fulfilling its obligation to draft and approve the final constitution.

Every previous constitution in our country, prior to our first democratic elections and throughout the entire history of White rule in our country, was an instrument of division and oppression. Every single one of those constitutions humiliated the Black people of our country, disempowered them

and made millions of them helpless in the face of powerful social forces.

We are left with a terrible legacy today of massive disparities between Black and White, between the haves and the have-nots, between the privileged few and the suffering millions. Throughout our history we have been subjected to a system of minority domination, a system in which the majority was oppressed and exploited by a minority.

If the fundamental objective of the interim Constitution was to end White minority domination in our country, then the fundamental objective of the democratic constitution, which we are now in the process of adopting, is to effect the transfer of power to the people, to create a fully-fledged democratic order and to usher in, for the first time in the history of our country, democratic majority rule. The new constitutional dispensation which we are creating must do a number of things if the promise of the liberation struggle is to be fulfilled.

Firstly, it must finally establish democratic majority rule. Secondly, it must provide for the protection of the legitimate rights—not privileges, but rights—of all South Africans, including language, cultural and religious rights. Thirdly, it must end the humiliation of the majority and restore their dignity. Those who hanker after the “good old baasskap days” and persist with their racist attitudes and arrogance must know that those days are forever over now. Fourthly, the constitutional framework must empower all South Africans to participate in a process which will effect the social and economic transformation of our country to end poverty, homelessness, ignorance and deprivation.

In this regard I respectfully and specifically refer to our draft Bill of Rights, which, despite differences which still exist, is one of the most enlightened rights documents in the world. We must stress, however, that we will never accept a Bill of Rights which is designed to entrench the privileges of the haves against the have-nots. The Bill of Rights can never be a tool in the hands of the rich and powerful to create islands of affluence or privilege.

The Bill of Rights cannot be an instrument to build a wall around such affluence to keep out the Black hordes. It must be an instrument of libera-

tion. It must be an instrument of empowerment. Whilst it should protect the rights of all South Africans, it must empower the disempowered in every facet of South African life. Therefore it is no accident that the chapter on the Bill of Rights now enjoys pride of place in the new constitution. It is designed to move beyond creating equality on paper and seeks to ensure that all human beings in our country have equal enjoyment of all rights and freedoms.

We believe that the right of workers to strike must be entrenched in the constitution. We also strongly believe that the right of employers to lock out employees has no place in the constitution whatsoever. [Applause.] A right to lockout can only exist in a situation in which there is equality between employer and employee, and in South Africa no such equality exists. It is workers who are disempowered and who need protection from employers who, in any event, historically derived the most benefit from the helpless position in which Black workers found themselves as a result of apartheid laws. If members want a lockout clause, they must first create real equality between employer and employee.

The property clause is also a contentious matter. We must never allow a clause which will legitimise what 340 years of apartheid rule could never legitimise. The whole world recognises that the conquest of the indigenous people in our country was accompanied by wholesale land dispossession and deprivation of property. The property ownership pattern and system throughout the apartheid years enjoyed no legitimacy whatsoever. For us to adopt a clause to legitimise the illegitimate is completely inconceivable.

Whilst, therefore, a property clause, if there must be one, needs to protect the legitimate property rights of all South Africans, it must also enable a democratically elected Government to pursue a programme of land reform and redistribution, and provide restoration or restitution in respect of property illegitimately taken away by the apartheid regime.

Our Bill of Rights is an exciting document, and indeed seeks to ensure that the objective of empowerment is attained. The new constitutional dispensation creates a special role for the judiciary in our country. Chapter 8 of the draft constitution, which makes provision for the courts and the administration of justice, guarantees the independence of the judiciary and makes provi-

sion for all justice institutions to operate within a framework which will ensure maximum justice for the people of our country.

I am confident that the chapter on the judiciary heralds a new beginning in our country. Our justice institutions will be seen, not as instruments of repression, as in the past, but as a shield to protect the rights of all the people of our country. The judicial system will say to all South Africans: The justice system belongs to you; it is there to protect your rights and to ensure that disputes which cannot be otherwise resolved, can be adjudicated in a manner which is fair, just and inexpensive.

Acceptance by the people of our country that such a justice system exists will send a further signal to our people that they need no longer take the law into their own hands, that they need not resort to violence, that the era of peace is at hand and that a life of peace, safety and security for all our people can and shall be fulfilled. In addition to making provision for courts, Chapter 8 also makes provision for a single national prosecuting authority in the Republic which shall consist of a national Attorney-General as head of the prosecuting authority and other attorneys-general and prosecutors. The right of the prosecuting authority to exercise its functions without fear, favour or prejudice, and indeed without interference from any authority, including political authority, is guaranteed.

I want to conclude by saying that on the part of the ANC we are determined to ensure that the new constitution answers the prayers of our suffering mothers whose tears have drenched the soil of our country. Through this constitution, let us wipe away their tears. [Applause.]

Mr R P MEYER: Mr Chairperson, hon Deputy Presidents, this is indeed a significant moment for all South Africans because it finally brings all South Africans together under one constitution.

As far as the process is concerned, it remains a big success. From the first day, years ago, when this process was initiated by President Mandela and Deputy President De Klerk and throughout, as it was driven by the two of them, it has remained a success, originally and initially during the first phases, towards bringing the parties together that had to agree in the first instance on a negotiated settlement for South Africa. Thereafter there were the negotiations that led us to the interim Consti-

tution and now also, over the past two years, the negotiations that led us to this final moment of the constitution-making process in South Africa.

Not that constitution-making ever stops. It is an ongoing process and I believe that there should be provision, also in this constitution, for a mechanism that will, on an ongoing basis, analyse and assess the situation as far as this constitution is concerned in order to ensure that it remains a dynamic document giving consideration to the requirements of the whole South African nation.

It is furthermore a success from the viewpoint of process, if one considers the fact that all the parties that are in this Chamber at this moment remain committed to seeking general consensus with a view to finding agreement on this constitution. This shows that the foundations that were laid during the first rounds of negotiations at the World Trade Centre were solid and that the Constitutional Principles that were adopted there formed the basis upon which this new constitution for South Africa could be drafted and adopted. Therefore, it is opportune to express appreciation again today for all those who were directly involved, especially our leaders, President Mandela and Deputy President De Klerk, and thank them for the role which they have played throughout this process to ensure that we get where we are today.

I think it is also appropriate to note that many of those who have been involved in this process right from the start are still here today but, may I say, we had better conclude it before some run away. [Laughter.]

I think it is also appropriate to express a word of appreciation, especially to the staff and administration of the Constitutional Assembly, Mr Hassan Ebrahim and Mr Peter Lilienfeld and those who assisted them in bringing us to where we are today.

From a party point of view, I think it is important to look at what we have achieved and to record the state of play as far as the current proceedings are concerned. The NP had two main objectives that it continually emphasised throughout the negotiating process. One set of objectives dealt with the principles underlying the democratic foundation of the new South Africa. The other set of objectives dealt with key elements, especially those addressing the specific requirements of the South African nation.

As far as the first set of objectives is concerned, viz those that form or should form the democratic foundation. I would like to list them. They are: one sovereign state with one common citizenship; universal adult suffrage at the age of 18 years and above; regular free elections; representative and accountable government; supremacy of the constitution; a justiciable Bill of Rights, and three entrenched levels of government.

We believe that these will form the underlying foundation of a future democracy in this country. These are matters already agreed upon that are in the draft before us.

\*One important aspect falling into this category that became evident in the negotiating process, and which I believe is also an important matter that did not necessarily form part of our original set of objectives, is the principle of co-operative governance between the various levels of government. This point has also been added.

In this category the one aspect which is outstanding, and about which there is no final agreement as yet regarding specific formulations, is the principle of the independence of the judiciary. At this stage further negotiations about this are still taking place.

The second set of objectives deal with the specific targets that had to be pursued from the NP's point of view, specifically in order to handle the South African situation in the new constitution.

These issues include, among others, the following: A clear definition of provincial powers and the management of the conflict between central and provincial authorities from the perspective of the legislative powers of both. In the negotiating process this matter has often been described as "the heart of the constitution". Right from the start it has also been referred to as possibly the most difficult issue to be resolved. It has actually been resolved to the extent in which it is reflected in the draft before us.

I feel that the reaction by commentators to this in the past week or so suggests that there is a fairly general consensus about the way in which this issue has been set out in the draft constitution and that this points to the satisfaction of a broad spectrum of the South African political opinion.

I think that the negotiators of the various parties should get the credit for having worked with such devotion on this issue, and that success was

attained with an acknowledgable and clearer definition of the powers of the provinces in the new constitution in comparison with the current transitional Constitution.

The other matter is the important issue of the constitution, role and functions of the second chamber of Parliament. Two objectives have been maintained throughout by the NP with regard to this matter. Firstly, that this body should be representative of provincial interests and, secondly, that it should in essence be the second chamber of Parliament.

I regard the model upon which agreement was reached, and which has now been incorporated in the draft constitution, to be a model about which the South African negotiators can be proud. I consider it to be a model for other countries with similar systems of government, and specifically federal systems, to which they can look with a view to their own consideration.

†The third element of this set of objectives was special mechanisms to take special care of the language, culture, religion and special interests of specific minorities in the South African context. These mechanisms have already been successfully addressed.

This could have been one of the most critical and long-standing debates on areas of dispute in the South African constitutional debate. The fact that the parties agreed on this last week, to the extent that certain references have already been included in the draft, is of great merit in the process. As far as the Bill of Rights is concerned, further consideration will have to be given to the outstanding references in this regard.

In the category of special issues or elements in the constitution that should take care of the particular circumstances in South Africa, a number of issues are still unresolved and are still being discussed. They include education, language, property and the concept of multiparty participation in decision-making at the executive level.

These issues were also raised by the NP right from the start in its public positions in regard to matters that should be considered and should be referred to in the constitution to take care of the special circumstances in South African society. They are still being debated. Deputy President De Klerk has already outlined the NP's position in regard to these matters, therefore it is not necessary for me to elaborate on them at this point.

However, it is very important to stress that these issues should not only receive further consideration from the relevant parties, but agreement on them should be reached to the satisfaction of all concerned. I think the principle that Minister Omar referred to when he addressed the issue of the special protection the underprivileged should be given against the Government and the powerful in terms of the constitution should be taken into consideration when it comes to matters of language, education and so forth, because the constitution is there in the first instance to protect the interests of those who are not in powerful positions, to protect the position of the individual, and in this case also the collective rights of individuals, against the Government or the State. Therefore I believe that these considerations should also be taken into account when matters like education and language and, of course, also the very sensitive issue of property rights are discussed.

Other issues which were not listed as essential objectives of the NP in the overall perspective of constitution-making are still on the agenda. Some have already been agreed upon and others are still being debated. There are two that require mentioning now. The first is the so-called labour rights provision in the Bill of Rights. Deputy President De Klerk has already referred to our position in regard to the matter of lockouts. Can I just inform the House that in this regard deliberations are still taking place. From the NP's side we are interacting on an ongoing basis with business, which has a particular interest in this matter, and with representatives from the unions in order to find agreement on this issue.

Lastly, a matter that deserves mention is a question that has been raised by the ANC over the past few days in regard to the so-called free-mandate concept. From the NP's side we believe that this matter, that was addressed in the transitional Constitution through section 43(b), should not be repeated in the new constitution. We believe that after future elections, members should be entitled to express their views according to their own conscience when matters are debated in Parliament.

\*We are therefore of the opinion that this provision should not be reincorporated in the new constitution and that really no provision should be made for the continuation of this provision as it currently appears in the transitional Constitution.  
 ●Our position, as this has now again been brought

to the fore by the ANC, is a clear no to this provision, and we shall maintain this position in further negotiations regarding this issue.

Mr M M S MDLADLANA: Mr Chairperson, I am going to talk very briefly about two issues. One of them is close to my heart, and mainly concerns issues that affect education.

During the last week of March we were met by an Afrikaans unity group, and to my surprise, the NP was part of that group. This is what transpired. Afrikaners are united about their schools. They are worried about the divergent views on language. They are worried about the fight for the Afrikaner language and culture. Their schools are being flooded, and endangered in the process. [Interjections.] They are the people who pay tax. Afrikaans is a language of minorities.

According to the latest document I have received, there is now a threat that if the demands that I have just highlighted are not met, there is going to be strife in this country and 1976 will look like a picnic. The threats are not going to help anybody. It is important that we understand that this constitution is being negotiated. A group of people, representing 20% of the population, standing up and threatening 40 million people in this country, will only lead to confrontation. I therefore plead with those people. They must stop issuing threats.

Dr B L GELDENHUYS: What about Cosatu's strike?

Mr M M S MDLADLANA: We are experienced in the struggle. For their information, we do not want to make this country ungovernable. A small minority like themselves should not try to threaten us, neither should they provoke us. [Interjections.]

Secondly, I want to tell them that Afrikaans is not a language of minorities. They know that 43% of the people of this country speak Afrikaans. That is definitely not a minority. That is a majority. Why then do they mix Afrikaans and Afrikanerdom? [Interjections.]

Afrikaans is a South African language. [Applause.] Afrikaans will never die. It is rooted in South Africa and is spoken nowhere else in the world except in South Africa. [Applause.] Therefore, to me Afrikaans is an African language and it is my language as well. [Applause.] It is not the preserve of a certain group. In South Africa there

are three well-spoken languages—Zulu, Xhosa and Afrikaans. Where do they get this nonsense that Afrikaans is a language of a minority? [Interjections.]

\*Where did they get that idea? [Applause.]

†The problem is that South Africans, especially the adults who have been enjoying privileges during the apartheid era, have an attitude problem. I can speak Afrikaans.

\*I am fairly good at Afrikaans, but I am not going to speak Afrikaans now.

†I have a choice to speak any language.

Ndingathetha naluphi na ulwimi kule ndawo ndimi kuyo. Andinangxaki njengokuba ndimi apha nje. Ndizazi zonke iilwimi zeli lizwe? Andifani nani mna. [I can speak any language. I do not have a problem. I know all the languages of this country. I am not like you.]

It is clear that we now know the agenda. I am not going to repeat what Comrade Nzimande said yesterday. Unfortunately, they want to violate a fundamental principle in education—that of mother-tongue instruction. We are not going to allow any particular person to shift us away from this principle. One must understand that in South Africa there are more than 11 mother tongues. These people should be part of the solution and not part of the problem.

How do we resolve the problem of South Africa where we have more than 11 languages? The ANC is a national liberation movement. It is interested in the whole country and not in the compartments of this country. I have indicated that language is a sensitive issue, and I want to plead that these people should understand that it is sensitive indeed. The issue is going to require some brains—"groot koppe wat kan dink". [Interjections.]

May I also say that the ANC believes firmly that South Africa is a multilingual society. It is a country of diversity. It is a country that has a diversity of cultures. It is a country that is diverse in religion. That must be clear to everybody. Therefore we want no linguistic discrimination. Language must not be used to discriminate against any particular person in this country.

We are committed to the opening of access to all schools in this country.

Mr D P A SCHUTTE: You talk like a Nat.

Mr M M S MDLADLANA: I am glad that that hon member is talking about the Nats. Why, then, is he part of this Afrikaner, Afrikaans group?

Mr D P A SCHUTTE: I am saying that you talk like a Nat.

Mr M M S MDLADLANA: Why is he part of this group? [Interjections.] I will never be part of the Nats, because the NP is about to die a natural death anyway. [Interjections.] Let me finish.

Mandime nje kule ndawo. Namhlanje njengokuba ndime apha nje, andinaxhala, kuba simel' amawaka-waka abantu—abantu abacinezelwayo, abantu abatyatylwe sisikofu sentambo ezintanyeni. abantu abaxhatshazwayo, abantu abenzakeleyo nabonakeleyo emiphefumleni.

Ndandithe ke ngenye imini, ihashe elinesilonda emqolo alikhwelwa—abo bangabafuyi bamelwe ukuba bayayazi loo nto—kuba liya kukukhahlaza likwenzakalise. ubuchopho bakho buya kupharhazeka kukukhwela ihashe elinesilonda emqolo. Loo nto ke thetha ukuthi, abo bazimisele ukutyhala ezabo iilwimi, bashiye ezethu iilwimi ngasemva, bafana nabantu abakhwela ihashe elinesilonda emqolo. [Kwaqhwatywa.] (*Translation of Xhosa paragraphs follow.*)

[Let me stop at this point. Today, as I am standing here, I am not nursing any feelings of apprehension, because we represent thousands and thousands of people—people who were oppressed, people whose necks bear the scars of the yoke, people who were exploited, people who have suffered physical and emotional injuries.

I once said that one may not ride a horse that has a sore on its back—those who are farmers should know this—because it will jerk and throw you off and you fall with a big thud and sustain injuries and your brain will be scattered all over the place. All because the horse's back has a sore. [Applause.]

Lastly, Constitutional Principle II says: "Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties." I just want to highlight one little sentence about the right to walkout. There is absolutely . . .

THE DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Unfortunately your time has expired.

Mr M M S MDLADLANA: Oh, my time has expired. You are lucky! [Applause.]

Dr C P MULDER: Mr Chairperson, it is always interesting to speak after a colleague who feels very strongly about something he believes in. The only problem is that he seems to understand all the facts, but does not necessarily understand the problem. The fact of the matter is that this is a very sensitive issue and we are happy that discussions and negotiations will continue on this issue. I believe we can and we must find a solution for this very difficult issue.

Constitutional law deals mainly with constitutions and concepts written into constitutions. Like many other sciences, constitutional law as a scientific discipline is not static, but subject to continuous adaptations and changes. South African constitutional law is subject to the same dynamics. The only thing that is almost absolutely certain and predictable about the constitutional dispensation agreed upon in this constitution is that in time, maybe even sooner than we all realise, it will once again change. In that sense we in the FF accept that this constitution of 1996 is the final constitution in the present transitional process.

However, we also earmark the same constitution as the next, or new, constitution on the constitutional road of South Africa and on the constitutional road the FF has opted for in order to realise its mission, goals and ideals.

I planned in my contribution today to give a constitutional law analysis of the new constitution. That speech, unfortunately, I will have to put aside. This was prompted by three consecutive speeches by members of the NP yesterday—first Deputy President De Klerk, then Mr Marais, and finally Mr Jac Rabie.

Suddenly, at this final stage of constitution-writing, the NP seems to be very much into self-determination and collective rights. I must say I am now utterly confused. I think it is necessary for me to set the record straight. Parties were elected to the Constitutional Assembly on specific mandates. Is there anyone within or outside this Chamber who would not agree with me that the specific mandate of the NP was power-sharing? Power-sharing was the issue on which the 1992 referendum was held. On Sunday 15 March 1992, two days before the referendum,

the following guarantee was given by the NP in the Sunday newspaper *Rapport*, and I quote:

Die NP is vir magsdeling . . . . Die mag moet op die vlak van die Staatspresident, die Kabinet en die Parlement ten volle gedeel word.

At the beginning of this constitution-writing process, almost two years ago, senior members of the NP said that the most important thing now was to get permanent power-sharing written into the final constitution. I have not even heard the word "power-sharing" in a single speech of the NP during this entire debate. Ten days ago, on Sunday 14 April, the editor of the Sunday newspaper *Rapport* wrote the following, and I quote:

Magsdeling is 'n vergete woord.

He said that power-sharing was a forgotten concept. This Sunday *Rapport* wrote that the sun has finally set on power-sharing.

This reality prompted the NP, without consulting its constituency, to once again abandon its mandate and mission. On 2 February this year, the NP suddenly changed course again and decided to try to become the majority party. In order to do so, the NP will have to move as close as possible to the power base of the ANC. With this in mind, the new secretary-general of the NP is trying to reposition his party as close as possible to the so-called social democrats in the ANC. As recently as last Tuesday, 16 April, Mr Meyer was quoted on the front page of *Die Burger* as saying the following:

Tot nou toe het die NP die beeld gehad dat hy besorg is oor die taal, die kerk en die skool, wat nie die bekommernisse is van die mense wat in Soweto woon nie. Ons moet ernstige veranderinge maak.

But then suddenly something dramatic happened. Two days later, during the early morning hours of Friday 19 April, it became clear that a dramatic breakthrough had been reached in the negotiations between the FF and the ANC on the concepts of collective rights, self-determination and the commission on the protection of communities. Now, suddenly, the NP claims victory as if their mandate has been self-determination and collective rights all along. Could I ask, in all fairness, whether the real NP would be so kind as to stand up, so that we can know whom we are really dealing with. [Interjections.]

I now wish to touch on what is essential to the FF, and that is self-determination. The mandate and mission of the FF since its inception has been realising Afrikaner self-determination, which includes a volkstaat. That is with what we had come to this Assembly. That is what we are doing and with which we shall continue until we have reached these ideals.

A political agreement has now been reached. Provision has been made in the constitution for collective rights as well as the right to self-determination for communities that are bound by a common cultural and language heritage in terms of principle 34 of the interim Constitution. In view of this the FF therefore now formally moves that a new section 230 be included under the heading "Self-determination" in Chapter 14 of the constitution, which goes as follows:

The right of the South African people as a whole to self-determination, as manifested in this constitution, does not preclude within the framework of this right the recognition of the right to self-determination of any community sharing a common cultural and language heritage, within a territorial entity in the Republic or in any other way.

As far as collective rights are concerned, which have also been adopted now, the FF proposes that the clause on human rights in Chapter 2 of the constitution should be amended by the inclusion of a new clause relating to the cultural, religious and linguistic communities.

It is furthermore well known that education is of cardinal importance to the FF. It is also known that the clause on human rights dealing with this is not acceptable to the FF. In the light of this the FF, along with all the other parties and organisations that are involved in the unity front as far as education is concerned, will submit an amendment for the urgent rectification of this matter.

There are other matters that are still outstanding and need to be dealt with. Other members have already mentioned this. The FF will state its standpoint in this regard in the Committee.

I started my speech by saying that nothing in constitutional law is static. This also goes for the constitutional dispensation that must be established in terms of this constitution. Right from the very beginning the FF said that we would achieve our ideals by way of a process, precisely because

we knew that a volkstaat was not simply readily available.

This constitution is an important part of that process, but certainly not the last word on Afrikaner self-determination and a volkstaat. On the contrary, the clauses dealing with self-determination included in this constitution can be called sunrise clauses as opposed to the sunset clauses of some people. These sunrise clauses will enable us to take this process further to the advantage of our people.

Ms J A SCHREINER: Mr Chairperson, comrades and colleagues, now is the time for us to measure our progress. For the ANC, it is time to measure the extent of the liberation of our people from that special type of colonial oppression under which we lived side by side with the social forces that had oppressed us.

It is time for us to measure ourselves against the revolutionary content of the Freedom Charter. Our vision, in 1955, stated that:

There shall be peace and friendship. South Africa shall be a fully independent state, which respects the rights and sovereignty of all nations: South Africa shall strive to maintain world peace and the settlement of international disputes by negotiation and not by war; Peace and friendship amongst all our people shall be secured by upholding the equal rights, opportunities and status of all.

And it ends—

Let all who love their people and their country now say, as we say here: These freedoms we will fight for, side by side, throughout our lives, until we have won our liberty.

It is time to measure ourselves against the demands of 94 years of struggle and nearly 30 years of war in order to secure peace. That, perhaps, is the hardest lesson for seurocrats to learn—that the declaration of war is ultimately to secure peace and stability.

It is also a time for us to look at the State of yesterday and to ask the question: How does this constitution prevent a recurrence of the abuses of State power and manipulation of the armed and security forces by the executive that South Africa has seen?

It is against the stories that emanate from the Truth and Reconciliation Commission, the Malan

trial and the De Kock trial that we can best measure this constitution. Never again in this country will a member of the security services be able to plead innocence in the face of evidence of their involvement in atrocities on the basis that "I was just following orders". The provisions of Chapter 11 make it illegal for any member of the security services to obey a manifestly illegal order.

Equally, never again will the executive be able to wash their hands of the responsibility for bloodshed and violations of human rights committed by the security services. The constitution we debate today states clearly that the security services act under the direction of the executive and within the law and the constitution of this land.

This constitution also recognises the essential unity of South Africa, rejecting any basis for fragmentation. The sum of the nine parts as an integral state is reflected in the provisions in our Chapter on a single defence force, a single police service and national intelligence services. One party which, unfortunately, has deserted us in this Chamber had put forward arguments for provincial paramilitary forces and even suggested that there should be provincial intelligence capacities. We who remained were unanimous in rejecting the federalising of the security services. Much of our debate had revolved around the need for the integrity of chains of command and direction through the executive, through the head structure of the service and to the membership of the service.

This issue has been a particularly complex one in relation to the police service, and discussions between parties continue, even at this stage. We, as the ANC, remain committed to the need for provincial government involvement in the real overseeing of the efficiency and conduct of the police and in the practice of community policing.

At the same time, we are very sure that for policing to be effective, there has to be a single line of authority. We also believe, absolutely and without any doubt, that the head of the police service must act under the direction of the national Minister, as the command of the defence force must be under the direction of that Minister. Without that direction, the very essence of civil-military relations that characterise democratic states, as opposed to those states in which repressive institutions hold sway in governance, is done away with.

Chapter 11 recognises that the Minister responsible for policing has executive powers, while ensuring that the National Commissioner controls and manages the operational work of the police. It prevents the police service from acting on its own, independent of political direction. The role of provincial government is facilitated by section 203(5), which can perhaps be rephrased to make the responsibilities clearer, and also by the inclusion of a special type of policing in Schedule 4.

We feel that the balance of the Chapter avoids the danger of provincial vetoes over the National Commissioner, and over the provincial commissioners, in the execution of their powers and functions. Read in conjunction with Chapter 3 of the Bill, the necessary liaison between a Cabinet member and the provinces to effect community policing and to combat and investigate crime is facilitated. The Chapter facilitates provincial and local-level policing, without detracting from the need for a single police service.

It is true to say that Chapter 11, and indeed the constitution as a whole, is not an ANC document. It is a product of debate and compromise through negotiation. Our own ANC Constitutional Conference had mandated us to put far more into the Chapter than one sees in its current form. Within the theme subcommittee we entered into thorough debate, including submissions from parties that had left the Constitutional Assembly, covering and taking on board views of NGOs, the security services themselves and Ministries. Our report contained a very high degree of consensus, which was taken through to the Constitutional Committee and subcommittee levels.

In the process of the Constitutional Committee debate the Chapter was severely pruned, at times causing us concern that the gut of civil-military relations was being tampered with. However, we remained confident that the Chapter, as it stands now, contains the essence of new democratic civil-military relations.

The clauses of Chapter 11 have, in them, structure and content that still need to see the light of day in legislation. The legislative framework for full democratisation of the State is not completed by the passing of this constitution. Chapter 11 of the constitution also encourages the speedy resolution of the ongoing debates and struggle to transform the security services.

South Africa is leading the way in terms of a new vision of intelligence. Some have even argued that intelligence should not have been included in the constitution. We believe that we have been correct to include the right of the executive to establish the intelligence services, while at the same time ensuring that this is done through the legislature and that there is very comprehensive civilian oversight of all intelligence matters.

Intelligence, by its nature, involves secrecy. Balanced in Chapter 11, against this secrecy, is a mechanism for detailed and investigative civilian oversight.

As the truth about the extent of the role of military intelligence, the security police, NIS and the executive creeps out of the dark corners, where those who were in power have tried to hide it, we debate a constitution designed to ensure that these institutions serve the far broader security of the nation. The governing principles of Chapter 11 enshrine a non-militarist, people-orientated concept of security.

We have encapsulated a new trend in security thinking that recognises that the threat to security lies most fundamentally in the lack of democracy and the absence of the basic socio-economic needs of the people. South Africa can claim the honours in constitutionalising this approach to security—an irony, perhaps, in a country with such a bloody and atrocious record of violations in the name of national security.

\*Mr C ACKERMANN: Mr Chairperson, I would like to make a contribution on the National Council of Provinces, or the so-called second Chamber or House of this Parliament. The great enjoyment experienced with regard to this part of the constitution is that if one looks for the proposed model in the submissions which the parties made, you will not find it—not in *Our Future Together*, nor in *Building a United Nation*. One may perhaps find a few elements and characteristics here and there, but one will not find the proposed model.

The logical conclusion that can thus be drawn is that the National Council of Provinces, as proposed in this constitution, is firstly a negotiated model in the true sense of the word. There were therefore no losers; only winners. When reading this section of the constitution, one can justifiably study it with Danie Botha's song *Wenners* as a background, particularly the following lines:

Blind het ons gekyk.  
Die lewe gevrees.  
Soek jy na 'n toekoms?  
Wil jy ook daar wees?

Wenners, wenners,  
Wenners, wenners  
Moet ons wees.  
Lewe jy met haat,  
Lewe jy met vrees.

Wenners, wenners,  
Wenners, wenners  
Wil ons wees.  
Lewe vir 'n toekoms.  
Lewe om daar te wees.

Because it is a negotiated model, it will also obviously not be perfect. Of course there can be criticism, but what is important—this brings me to my second point of departure—is that it is a unique South African product, manufactured and moulded locally, for our own, unique needs and circumstances. As a matter of fact, if my colleagues in the ANC will grant me this, I would like to point out that this model was negotiated somewhere on the road between Caledon and Riversdal. It took form in the office of T C Eiendomme in Riversdal. It was processed, refined, honed and polished in our own ranks and in bilateral discussions. Today I therefore want to pay tribute not only to my own colleagues in the NP Constitutional Committee, our advisers, and Mr Roelf Meyer and Mr Kobie Coetsee in particular, but also to my colleagues in the ANC, namely Bulelani Ngcuka, Pravin Gordhan, Johnny de Lange and their adviser, for their will and perseverance to create a model, when originally this appeared to be an impossible task. [Interjections.]

A third important characteristic of this model is that it fits in with the concept of co-operative governance. This in particular is something new for South Africa that has been taken from the German model, that the provinces will have a joint decision of one vote about legislation covered in Schedule 4. This will mean that consensus will have to be reached within the provinces about what would be in their best interest. This in itself is a challenge which means that the provinces will have to accommodate different points of view in their own ranks, which can lead to better mutual relations, to an understanding of respective aspirations, and eventually to a better life for all. One trusts that the provinces

will take the initiative in this regard, not simply to be hangers-on, but to make provincial and community interests a priority in the national sphere of legislation. It will possibly also be desirable for senators to have a stronger bond with their provincial caucuses than with their national caucus.

There are still a few remaining issues with regard to Chapter 4 that will have to be addressed. Many of these are merely technical amendments which will simply be able to improve the legislation. But there are two issues in particular that have not yet been worked out. One is contained in clause 59, which deals with the composition of the permanent delegates or members of the National Council of Provinces in particular. It was agreed that the principle of proportionality would apply with regard to the entire provincial delegation of 10 members. However, the question is: How does one accommodate the minority parties in the permanent delegation, the so-called six? In this regard the attitude in bilateral discussions was that minority parties must not be excluded. I think I can rightly say that there was unanimity. We consequently submitted an amendment that is still being studied by my ANC colleagues. In my opinion, this is not a perfect formula, but it can put an exceptionally delicate and difficult matter in order.

The second remaining issue is that contained in clause 72(2). Agreement has not yet been reached with regard to the majority when a province itself must decide about a matter affecting that specific province.

In terms of Constitutional Principle XVIII, a two-thirds majority is required. However, I have no doubt that we will be able to solve this matter in the same spirit to which we have become accustomed. The interim measures will also require further refinement, because it has a tremendous impact, also on our Senate colleagues.

In conclusion I want to say that this model can still have far-reaching implications in future. Where self-interest is so often one's inherent weakness, it will inevitably be manifested in provincial points of view and standpoints. While provinces will now become directly and personally involved in the national legislative process, they will also inevitably be more accountable to their voters with regard to their own provincial preferences and interests.

This model can therefore be managed and used by provinces as a right. It can lead to further democratisation of our decision-making process and can serve to counter any abuse of power. It can also cause the political power in South Africa to be more evenly distributed as far as the choices of provincial governments are concerned.

I was privileged to be able to participate in this process of negotiation. It was an enriching experience and will always be with me. I would also like to dedicate the spirit and attitude of this speech to Dr Blade Nzimande, Pieter Mulder, Janet Love and Dullah Omar. If I could foster a spirit of win-win in them for the sake of South Africa, and not at the expense of South Africa, it would make me even happier. On a personal level I want to thank my Creator for the insight and perseverance that He gave me in order to be able to make a contribution. [Applause.]

\*Prof D C DU TOIT: Mr Chairperson, we are most grateful that Senator Ackermann has now made a bit of personal propaganda. It would appear to me as if the senators still need it a bit.

†I want to speak about co-operative governance. [Interjections.] The point which Senator Ackermann must acknowledge, and which I think he did, is that structures are underpinned by principles. The co-operative principles which were pushed by all the parties, by some more strongly than by others, were, I think, at the heart of the success which we had. I am talking about Chapter 3 which deals with co-operative government. The ANC will move some amendments. It will not change any political agreements, but only try to refine the chapter so as to make it more elegant and logical.

There are a few pillars on which the final constitution will rest, things like human dignity, rights and freedoms, the supremacy of the constitution and democracy. But Chapter 3, on co-operative government, is another of these pillars of our Constitution. It actually pervades the whole constitution, and I think that this Constitutional Assembly can really accept that it will be one of the scintillating contributions of South Africa to the international canon of the best of constitutions.

Now clause 39, the heart of the matter, as agreed between the parties but unfortunately wrongly printed in the Bill, simply reads that “governance of the Republic is constituted as distinctive but

interdependent”—and we should like to add “and interrelated”—national, provincial and local spheres of government. It is about the governance of South Africa, the Government of South Africa, the system of governing in South Africa. Now, with this clause 39, and the rest of the principles enumerated in Chapter 3, we actually have the rules of the game for South African government.

We have the intergovernmental rules of the game. While we are mixing metaphors, what it is about is this: We are all in the same boat in South Africa, the *SS South Africa*. We are sailing on the same tack—all the provinces, local governments and the national Government. At the same time, however, we must put the saddle on the right horse for every sphere of government, and give every devil his due.

The context of South Africa and our empirical reality demanded that we write a constitution that would really answer the anxieties of our times. On the one hand, modern systems of government, modern technology, macroeconomic demands and urbanisation demanded increasing interdependence, interrelatedness and mutual involvement. On the other hand, the logistics of a modern state, and the sheer complexity and devastating magnitude of the problems facing the South African Government, were simply too overwhelming not to distribute and democratise decision-making to the level where it is most efficient and practicable.

We had to create a balance. We had to give expression to this interrelatedness. There was no way in which we could allow for the disintegration of governability in a developing country like South Africa. We could not allow a decline in the problem-solving capacities in the country, which would result in decreasing efficiency and innovativeness. It goes without saying that co-operative government is something that is essential. The way in which all three spheres of government were, with one stroke, included in the spirit of co-operation and co-ordination is to my mind unique, and represents South Africa's unequalled contribution to the canon of constitutions of the world.

It is true that we have learned from other constitutions about co-operative governance, but we have concretised it in a special South African way, as could be expected, because South Africans have learned the hard way, by experience, through violence and catharsis, through apartheid

and togetherness, to negotiate consensus, co-operation and understanding. Chapter 3 simply states that we should continue in this way.

Perhaps we have at last reached some political wisdom, coming as it were out of that constitutional emptiness in which we wandered and wept, to arrive at this achieved anxiety of the distinctive but interrelated spheres of governments. I say "achieved anxiety" because it grew out of anxiety about the polarities in our society, but the anxiety will not be removed with one sweep. We must still make this system work. We still have eruptive and violent opposing forces in this country, and as the scope of conflict grows it becomes urgent to look for instruments with which to keep the system together.

We now have a framework to make it work. We have the formula. South Africans are now perhaps more experienced in co-operation than any other people in the world. We know the rules of the intergovernmental game. We can say: "Skop af! Laat die spel begin." A re dlaleng or bapala jwale ka Bafana Bafana. [Let us play like Bafana Bafana.] We just have to play according to the rules. That will be the challenge to South Africa in national, provincial and local governments. We have the full might of the united South African people behind us.

The main results of the basic conceptualisation of co-operative governance is, firstly, the National Council of Provinces with its refinements, as it has been negotiated. Secondly, provincial constitutions must comply with Chapter 3 and with the principles of co-operative government when those constitutions are written. That is stipulated in clause 139(2). What is very important—I think that is of primary importance in South Africa in this respect—is that local government has been brought into this co-operative governance system. [Time expired.]

Mr A J LEON: Mr Chairperson, over the next week or so we will have the opportunity of showing South Africa a bright, harmonious future, a future that holds, for the first time, a promise for all South Africans that we can deliver to them a constitution which entrenches justice, a constitution that binds all South Africans to a common good, and a constitution that liberates all and excludes no one; a document that makes all equal before the law, so that the humblest in our land becomes the peer of the most privileged.

The new constitution should represent a path winding up and out of the injustice of the past, towards the summit of a new dawn. However, it must be a new dawn, and not a false dawn. The path to a new constitution has already been strewn with many tributaries and forking routes down which we, jointly and severally, have wandered from time to time.

In the final lap we must scramble over many obstacles, keeping in sight our vision of a diverse society, protected on the simple premise that the individual South African must enjoy rights against the Government, and not the other way round; that people give the State its authority and not the other way round; that the individual South African, whoever he or she is, and wherever he or she lives, will only be empowered when power is tamed, diffused and distributed throughout our country; and finally, a constitution which never promises more than it can deliver, and which does not pretend that for every social problem there is a legal remedy, or that we can thrust onto the constitution or the courts the essential political and economic questions which we ourselves must resolve. Should we fail, our nation will perish.

THE JUDGE LEARNED HAND ONCE SAID: ICA

A society so riven that the spirit of moderation is gone, no constitution can save; a society which evades its responsibility by trusting upon the courts the nurture of that spirit, will in the end perish.

By the end of today, the DP will have submitted more than 80 amendments to the new constitution. We make these amendments in the spirit of endorsing what Deputy President Mbeki said yesterday, that all South Africans should embrace the new constitution. It is our sincere wish and greatest aspiration to do so. However, the deliberations of the next few days will determine whether or not my party and the people and interests we represent, are able to do so.

The starting point in our thinking and inputs into this process is that a constitution must be designed to limit the excesses and the extremities of bad governance, and not surrender each principle and every clause to the hope that a government will always be good.

Our second fundamental is that human rights are inherent or God-given. They are not bestowed on free citizens as a gift from a government to be removed by caprice.

Our third fundamental is that the power of morality, rather than the morality of power, must resonate throughout this document and inform the conduct of future governments, just as it was denied by previous regimes.

Our fourth hope of a successful constitution is that this document will pave the way for our society to provide access to home and hearth, food and water, for those who are now without. Those who are without work will be able to earn a living and face no obstacles other than their own limitations.

It is because the DP believes that we all have a responsibility to one another and to those less fortunate, that we take these issues so seriously. Our hope is that the final version of this, the highest law of the land, will allow all South Africans to pursue their dreams without barriers or restrictions, with only opportunity.

Our problem with the current draft is that while it goes to great lengths and into enormous detail to confer equality, not just in name but in fact, and while it correctly holds the premise that never again will certain groups or individuals be beyond the law or above the reach of the constitution, in the crucial and massive area of labour relations, it immunises profoundly such antidemocratic and anti-association concepts as the closed shop. It goes further. Instead of balancing the rights between organised labour and employers, it does the reverse. That is why the lockout issue is so important. It is the balance.

While the Bill of Rights confers fundamental rights on our citizens, its other provisions make it far too easy for the Government or a specific majority to remove those provisions. In the crucial and critical area of property rights, the current draft simply does not provide a coherent right to property at all. The current formulation is a land restitution clause making a few concessions to deprivation of ownership. That balance also needs to be altered, if we are all to live under the same constitution.

Viewed as a whole, the current constitutional draft places too much power in the hands of the centre, the party bosses, the majority party and organised labour. It places too little faith in the provinces, too few powers in the hands of local government and political minorities, and denies the electorate the right to choose their own MPs.

We have been earnestly requested to ground this constitution in the realities of South Africa. Yet

one of the most startling and depressing realities of the day is that since May 1993, 126 000 jobs have been lost in three sectors. If the constitution does not address itself to that reality, then it will fail.

Finally, this constitution must also learn the lesson of language and culture, not as practised by Lords Somerset and Milner in the days of colonial overlords, nor indeed by the overlords of apartheid Christian National education. It must recognise that education is the most powerful means of creating a continuing life for a language and indeed for all 11 official languages.

My party therefore has reservations and amendments and will seek to put them forward. If the constitution can achieve a balance, then, Mr Cyril Ramaphosa, we will truly celebrate.

Mr P J GORDHAN: Mr Chairperson, I thought that today Mr Leon was going to be in a profoundly diplomatic and philosophical mood, but his last sentence gave him away. He could not restrain himself from a barb against the Chairperson of the Constitutional Assembly in respect of an uncalled-for, unfortunate and what I have publicly called a puerile attack on the Chairperson, on the Constitutional Assembly and on the Constitutional Assembly staff for allowing us, and organising for us, an opportunity to celebrate what is indeed a very momentous day in our history, the day on which we, or the majority of us, by a very large consensus, are going to say to South Africa and to the world that we have reached another pinnacle in our search for true freedom and democracy, and that is the adoption of this constitution.

However, the petulant DP must find fault with whatever they can so that the newspaper editors who belong to their cabal can find something to write about in trying to promote the DP.

This period in our history is indeed a momentous period. We have reached yet another important milestone in the liberation of all our people, Black and White.

We have travelled another another important mile in our long trek to find democracy, peace and stability for our country. The essence of this constitution-making process has been about, firstly, completing the transition process which still has some way to go. It has been about consolidating democracy in our country.

We have only begun that process and have a long way to go. There are many centres of power in our country which we still have to reach in some way and bring within the concepts of equality and accessibility to the masses of our people.

During this process, we explicitly want to change the balance of forces that we have suffered historically and by which we have been disadvantaged. We want to change the balance between the historically disenfranchised and the enfranchised. We want to change the balance between the millions of poor and the few rich in our country. We want to change the balance between former oppressor and the formerly oppressed in our country. Most importantly, we want to open a new era for the masses in our country who have suffered at the hands of apartheid.

Let it also be said that this has not been a technical and academic exercise in which we have been engaged. The constitution-making process that we are engaged in today has been in place in our country for many decades. Over those decades, through the many painstaking and painful struggles and wars that have been waged against the past regime, we have made gains—socio-economic, economic, political and ideological gains—that we are trying to inscribe in the constitution.

It is in this sense that the constitution-making process is the culmination of a long historical process in which the millions in our country have searched for the peace and democracy we talk about. Whatever the cynicism of our critics, there is no doubt that through this process, South Africa has made its mark in international constitutional law. It has made its mark by developing the unique concept of co-operative governance that Dirk du Toit spoke about. It has made its mark by developing a whole new conception of what we know as the Senate and will call the National Council of Provinces.

I want to thank Senator Ackermann for his complimentary words to the ANC comrades and about the relationship that they have struck with him and others in the NP. When the local government chapter has been completed, we will see that it is another international landmark as we search to find meaningful roles and powers for the local level. Here Mr Leon is off the mark as usual, because our discussions on local government are nowhere near completion. He is aware that discussions with his party and other parties will

continue over the next few days in order for us to find the perfect solution.

We have developed a new notion of socio-economic rights to ensure that the disadvantaged in this country finally will have access to the basic resources and services that they deserve. We have also found new forms to develop checks and balances to ensure that the democracy that we have created in our constitution is able to secure itself for generations to come.

Indeed, in searching for an answer to the demands of the so-called cultural groups, I believe we have made a unique contribution to giving concrete meaning to what unity and diversity really mean. Of course, one of the refrains we will hear, particularly from the DP, because it has little else to say in this regard, concerns the question of powers to the provinces.

Here again, I think the parties have worked hard—Mr Eglin has been very much part of this process—to ensure that despite one or two areas where we might have differences, we have guaranteed provinces a new era, a new role and a new set of guarantees, in terms of their powers as set out in the constitution, but more importantly, in terms of the role that they will have in co-operative governance.

I cannot restrain myself from responding directly to some of the public comments that the DP, and in particular Mr Leon, has been making against the CA and against the ANC in particular. I want to say very humbly that the the DP is unable to work in a spirit of building consensus. It is unable to work in a spirit of give and take. It is unable to engage in this exercise through a process of constructive criticism. It is fundamentally unable to address the needs of the masses of this country.

On the other hand, it is so self-righteous and it arrogates to itself the belief which it enforces on all of us, that it is the only party that has solutions to democracy in South Africa, that it is the only party that can give guidance to all of us on what the democratic content of this constitution should be.

The DP amendments, which are now quantified as amounting to 80, are not an indication of how diligent and vigilant the DP is, but a sign of the inability of the DP to find consensus with the other parties in the constitution-making process. That is a signal to all of us of its refusal to participate . . .

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Andrew, are you rising on a point of order or do you want to ask a question?

Mr K M ANDREW: Mr Chairperson, I wish to ask a question.

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Is Mr Gordhan prepared to answer a question?

Mr P J GORDHAN: Yes, Mr Chairperson.

Mr K M ANDREW: Mr Chairperson, I would like to ask the hon Mr Pravin Gordhan whether he deliberately chose to speak after the last DP speaker in the debate . . . [Interjections] . . . knowing full well he could make cowardly attacks on the DP that they would be unable to respond to. [Interjections.]

Mr P J GORDHAN: The answer is no. I did not even see the list. If the hon member approaches the ANC, it can be arranged that he gets three minutes.

I want to continue by saying that what we have had throughout, both in the press and the speech made by Mr Leon, is a pretence at democracy. However, what we really have—this begins to emerge even in his speech—is that the DP is here to protect minority interests, to protect the interests of the bosses of South Africa and to protect the property rights of those with property in South Africa. [Interjections.]

And yet the DP has the gall, in Kwazulu-Natal and the Western Cape, to go to the Black masses and say: Vote for me. [Interjections.] The same Black worker that the DP says the employer must have the right to lock out, is the Black voter who is expected to vote for the DP. The same Black person who is seeking to address the imbalance in property ownership in our country as a result of the history of our country, is the person who is told property will be entrenched with the 87% that lies in the hands of the small minority in our country. [Interjections.]

Then we must ask ourselves: Where is the democratic content of the DP? After all its flowery words and speeches, the DP has been taking its so-called tough negotiating stances in bilaterals, multilaterals and in the CA process, not in the defence of democracy, but in the defence of a false image—that it is the sole protector of democracy in South Africa—and, most impor-

tantly, in defence of minorities that hope that through the pretence of the DP and through the apparent vigour of its argument, they will be guaranteed certain rights in a democratic South Africa.

Let us say that any effort, by any of the parties, to secure rights of minorities which are going to hold back the progress of the majority, will fail. We hope that when the press becomes democratic in South Africa the truth about the DP and its positions will be told.

Mr M J MAHLANGU: Mr Chairperson, the ANC has fought long and hard for democracy in South Africa. We now have a democratic state with a government that was chosen by all South Africans. This democratic state must have laws which will bring justice to all South Africans and ensure an improvement in the quality of life of all our people in the country.

The Constitution of the Republic of South Africa Bill that we are debating today seeks to address precisely that. The ANC is pleased that this Bill is not a product of intellectuals alone. The ANC is very pleased that this Bill is not the product of experts alone, but a product that has involved many of the people of our South African society.

In his opening speech yesterday, the Chairperson of the Constitutional Assembly outlined broadly how many submissions we had received from people, either by their writing to us, our listening to people talking to us in broader meetings throughout the country, or at small hearings in the precincts of Parliament.

Those were exciting moments for all of the CA members who participated in those discussions—to listen to the variety of the people of our community saying, for the first time in the history of South Africa, to the legislators of this country: This is how we want the constitution to be drafted, this is how we want our lives to be. These were very exciting moments that we experienced as members of the CA.

The ANC has always fought for a constitution that creates a framework on which to build a united and undivided nation, a multiparty democratic state, a constitution that commits the country to a nonracial and nonsexist order based on the inherent dignity of all persons and the equal enjoyment of human rights.

I rise today to touch on a few clauses in the draft constitution, namely Parliament and the President and National Executive. The way it is proposed in this Bill, Parliament consists of the National Assembly and the National Council of Provinces. The legislative authority of the Republic of South Africa is vested in Parliament. The National Assembly consists of between 350 and 400 members, and its exact number of members will be determined by legislation.

Why did we decide that the size of the National Assembly should be decided by national legislation? It is because it has been so difficult to negotiate with the political parties on the exact number that we need for the National Assembly. I would like to give but a few examples. The DP, for example, has been proposing 300 members, the NP has been proposing 400 members and the ANC has been proposing between 300 and 400 members. As it became so difficult to decide on a precise number, all the parties then felt that it was a good thing to decide the precise number through national legislation. Therefore we all have agreed that by national legislation, once we have legislated on an electoral system that would be best for us, we could also determine the exact number of members for the National Assembly.

The National Assembly chairperson will have the powers prescribed in clause 53(1) and (2), something which we as the ANC support. Therefore Parliament, subject to the constitution, shall be the supreme law-maker and give expression to the will of the people. The executive will be accountable to it. Parliament should be committed, however, to a full and open parliamentary committee procedure which would be structured to ensure executive accountability to an informed Parliament.

I would like to give but a few examples. The committee chairpersons should be capable of pro-active investigation. This is a job that the committees should do. They should be pro-active in everything so that they are in a position to participate fully and freely in all the matters of the National Assembly. Secondly, we feel that the committees should have the powers to propose new legislation. Legislation should not only come from the departments or the executive, but power should also be given to the committees of Parliament, via the National Assembly, so that they are in a position to propose new legislation. Thirdly, members of the National Assembly, as well as members of the Cabinet, should have

freedom of speech in the National Assembly and its committees, subject to Rules and Orders, and should have the necessary powers to conduct public inquiries into matters within their area of jurisdiction. We are happy that all the principles that I have just mentioned have been negotiated satisfactorily among the political parties.

The Constitution of the Republic of South Africa Act, No 200 of 1993, makes provision for the Government of National Unity. The new constitution does not provide for the Government of National Unity, precisely because the ANC does not believe in forced coalition. At the same time, we are not opposed to coalition, as long as it is voluntary. We are happy that the President will be the Head of State and of the national executive, and that he will uphold, defend and respect the constitution of the country. We are also happy that the powers given under clause 83 are the powers that have also been negotiated very satisfactorily. Let me point out that it was not easy to negotiate those powers of the President under clauses 83 and 84, but I would like to congratulate my colleagues in the NP, namely Jac Rabie, Andries Beyers and Senator Van Breda for the co-operation that they gave us when we negotiated all these matters. They were difficult, but at the same time very reasonable. I would like to compliment them in that regard.

In conclusion, Mr Chairperson, comrades and hon members, when we started the constitutional negotiations two years ago, we were going unknown ways. These unknown ways required gifts of character. They required courage and poise in the face of adversity and danger, imagination to conceive the new possibilities, steadfastness to persevere through disappointment, and they required informed and expert intelligence. Hon members in the Constitutional Assembly possessed all those qualities in large measure. They all had the courage; they did not hesitate to tackle this big task which lay ahead of them, and today, as members of the Constitutional Assembly and members of the Constitutional Committee and its subcommittee, they can all be proud of the product which is in front of them. On 8 May, when hon members come here, they will be proud to say that they are going to vote for a Bill which all of us have participated in, which all of us are proud of and to which all of us have really applied our minds and our energy, as we were expected to do.

Lastly, I want to thank the Chairperson and his Deputy. Why do I take this opportunity to thank them? I thank them because for the past few days they have really been tackled and accused of rushing this process, of leaving other people behind and doing all sorts of things. However, I thank the Chairperson and his Deputy for showing the people of South Africa, for showing the international world, for showing all of us that the skills that both of them possess have actually led us to where we are today. They have really made us proud as members of the Constitutional Assembly. They have been driving us to complete this process. All those who oppose the Chairperson and his Deputy know very well that we have been engaged in this process for the past two years, and they also know that they agreed that our time limit to finalise this constitution was exactly two years, and nothing more. I therefore thank the Chairperson. He has done a very good job. [Applause.]

Mrs S M CAMERER: Mr Chairperson, in the five minutes available to me, I firstly wish to say a brief word about the negotiations on the property clause. Although these took place between political parties in open committee at first, as well as in a series of multilateral and bilateral meetings lately, away from the public eye, it is nevertheless perhaps the most open and transparent and widely participated-in negotiation on any clause in this constitution. There is obviously huge interest in it, and everyone with an interest or a stake, from big business to the landless, whether for or against property rights, has had a hand in it and is keeping up with the wording as it is amended, on a blow-by-blow basis every step of the way. No clause in this constitution has been more minutely analysed by a battery of senior counsel as it has developed than this one has.

If a comma moves or an "and" is deleted now, a huge circle of South Africans will immediately comment to us in no uncertain terms. The faxes are flying. There is enormous pressure on all of us to get it right, and I believe we will. Needless to say, we have not got it quite right yet and the clause in the constitution before us will be amended, hopefully by consensus between the parties, and hopefully also including the DP.

We are indeed on the verge of achieving agreed wording because the result of all this healthy interaction has been that a broad consensus has been developing outside Parliament as well on the principles governing the clause and the elements

that must be dealt with in it, namely that property rights must not stand in the way of land reform, but that while the right of the State to expropriate property is recognised, the owner must be compensated fairly, as well as the fact that the property clause must apply to all forms of property. Some technicalities in the drafting of the clause remain to be refined and certain aspects remain to be clarified so that it says what we all mean and what we want it to say.

I believe that all stakeholders have shown remarkable restraint in this final phase, while the politicians who in the end have to carry the can for the clause have battled away with the wording in a good spirit. We have to get it right, because there will be no peace or stability in our country unless we have land reform. But equally, we will not have the economic growth we so vitally require, unless this constitution inspires both domestic and foreign investor confidence.

The very fact that we have been debating the issue so fiercely has, no doubt, led to a drop of a few percentage points in the value of the rand, which hopefully it will regain when we settle the wording of the clause. This clause must be able to live easily with the protection of investment agreements that the Department of Trade and Industry is in the process of signing with some 90 foreign countries, and which guarantees compensation equal to market value on expropriation. If the property clause in the constitution does not measure up, these agreements would be rendered worthless, and the Government could be accused of giving better rights to foreigners than to its own citizens.

I also wish to motivate the amendment that the NP will be putting to clause 12 on freedom and security of the person. The NP cannot accept subclause (2)(b), which gives everyone the right to security in and control over their own bodies. We believe that this goes too far, and could open the constitutional door to legislation allowing abortion on demand, but not only that, assisted suicide and euthanasia as well. It could even render drug control laws inapplicable.

This very detailed provision already gives everyone the right to bodily and psychological integrity, which is defined as including the right not to be subjected to medical experiments, and the right to make decisions concerning reproduction. Adding the explicit right to control over one's own body could, even according to the Constitutional

Assembly's panel of experts, assist a litigant in overthrowing the present abortion legislation in favour of abortion on demand.

My information is that various lobby groups in America which have tried to get these or similar words written into legislation, or accepted as a constitutional interpretation, have failed. They failed specifically on the grounds that such words could render drug control laws ineffective or inoperable, on the basis that bodily control allows bodily abuse with drugs by a willing user. [Time expired.]

Mr T V SIFORA: Mr Chairperson, Deputy President, I think this is a time when we should be congratulating ourselves, acknowledging how grateful we all are at this stage of our lives and development to have an organisation called the ANC. I am saying this subject to correction.

I am thinking of my younger days—back in 1938. If we could take our minds back to 1938, I could tell hon members a little story about a journalist called Seloape Thema, who worked for what was then called the *Bantu World*. I will not forget the few moments I spent at that man's feet, talking about the very same ANC that I am referring to today. The man was telling us young boys that he was in Oliver Tambo's class in Form IV, somewhere. He was telling us that if there was going to be salvation for South Africa, and for all South Africans, it would come about because, firstly, there was an ANC which had a policy, and secondly, that policy was practicable, and thirdly, that policy would be accepted by humanity.

That is why I stand here wishing to thank this organisation. If I could not count on the big-heartedness of this organisation, I would hesitate to say what I am going to say now. But fortunately I have said it before, and they did not cut off my head then, so I am going to take the risk and say it again!

It was not only the ANC. The ANC was not the only role-player. I want to mention another personality who also had an impact on the development. [Interjections.]

An HON MEMBER: The ACDP!

Mr T V SIFORA: I wish I knew what the ACDP was.

However, let me say that I put a question to him at a National Peace Convention which was held in Johannesburg. I put a question to Mr De Klerk.

\*I am glad he is here to hear these remarks. I asked him that day what had come over him . . . [Interjections.] No, I must speak Afrikaans so that they can know "Afrikaans is not the language of a minority, and I am not a minority". [Laughter.]

I asked him: "What came over you? Is this ordinary conversion, or have you experienced something that frightened you so much that you are a changed person today?" I wondered whether he possibly, like Saul or Paul on the road to Damascus, suddenly changed like a flash of lightning. He has not yet answered me.

I am, however, sitting here today and listening to the other Nationalists and I am happy.

†I think quite a number of them are beginning to change their attitude. They seem to know now that our little world does not belong to Afrikaners only.

However, what I want to say in the presence of Mr De Klerk is that he took over from Mr PW Botha in 1989 and, within months, already in 1990, he had changed the scene. He had levelled the fields to the extent that he could, as an individual, make it possible for us to reach the stage where we could be together.

I heard Mr Ackermann speak.

\*He has just spoken.

†He was making some remarks. A friend of mine in the ANC asked me: "What has happened to Mr Ackermann?"

\*He asked: "Has he also been converted?" I would like to think that Mr Ackermann has been converted.

†On Saturday, 27 April 1996, all South Africans, with the exception of the eternal dissidents, will celebrate a crucial event in our history—the anniversary of the first ever democratic elections in the land of their birth. It will be and has to be a celebration of freedom and, as Mahatma Gandhi would have put it in his day: "A freedom to be free, free to decide that we shall be free, and free to decide that we shall not be free."

The debate in the Constitutional Assembly of the Republic of South Africa today is about that quest for checks and balances which will place our freedom firmly within the law. Without the restraints of law there can be no freedom. For the first time South Africa is free to decide about its

collective destiny. We carry a shared responsibility, whatever our partisan views or reservations as individuals, political parties or community organisations are.

Here is a moment of truth at which I want to suggest that all South Africans can and must join hands and cry out, like we see our children do daily through the facilities allowed them by the SABC. Let us listen to our children. Let us listen tonight, when they will be singing a nice little song. The song goes: "Simunye, oh, we are one." Another group of children, in Potgietersrus, indeed engage in games together while their parents parade their prejudices at the gates of the school. That is the least we can do for these children—set them all on the road towards a culture of unity, of peace, and of joint parenthood as families, communities, the church and the State.

Electoral victories, significant as they are, have not delivered the turkey on the table. Our next crucial challenge is not necessarily to provide the turkey, for that would be a weakness of strategy, but to make it possible—it will be possible if we make it happen—for individual citizens to be empowered in the ever-increasing circles of the masses down there to put the bread of their choice on the table. Our challenge is to put a roof over their heads instead of regarding them—as our history has done—as a nuisance, a liability, a risk and sometimes even as a threat to vaunted property rights or property values. We appeal, as the ANC, that instead of goose-marching them from camp to camp, however transient, in forced removals, they should be given a perch of their own—residential or industrial land, and secure permanency of tenure—so that we can see what happens in the next 10 to 20 years. The need may never arise to put up shanties or some matchbox houses called homes for them. [Time expired.]

Ms Y L MYAKAYAKA-MANZINI: Mr Chairperson, Deputy Chairperson of the Constitutional Assembly, hon members and members of the public, it is indeed a great pleasure for me to participate in this debate on the First Reading of the Constitution of the Republic of South Africa Bill, 1996, a right which our people were deprived of for many centuries. This debate is indeed a historic occasion to the majority of the people of South Africa who for years have struggled for national liberation in order to bring about a democratic, nonracial, nonsexist, united and prosperous South Africa. Therefore, the final constitution should be dedicated to all those men, women

and children of this country who dedicated their lives to attaining these objectives. Some are no longer with us, others have been maimed in the process of the struggle, and many have lost their families, property and whatever belongings they had. We say to all these people: "Your contribution was not in vain".

The Constitutional Assembly which was conceived by the Harare Declaration, a document which Comrade Oliver Tambo is closely associated with, has finally come up with a draft final constitution which will be adopted on 8 May 1996. The final constitution opens a new era in the history of our struggle, that of a multiparty democratic state based on majority rule. It closes the chapter of forced coalitions. The final constitution seals the new culture laid by the interim Constitution, that of human rights, in its second chapter containing a bill of human rights, and not just a chapter on fundamental rights as contained in Chapter 3 of the interim Constitution.

The justiciable Bill of Rights guarantees universally accepted fundamental rights, freedoms and civil liberties including socio-economic rights such as housing, health care, food, water, social security, children's rights, education, property, freedom of occupation, labour rights, environment and freedom of language and culture. This makes our constitution one of the most modern in the world. It is the ANC's firm belief that economic and social rights are an integral and essential part of the core internationally accepted rights. These rights are recognised and described in all the significant international charters and covenants and have also found expression in many domestic and national constitutions.

In the process of negotiations, the area of socio-economic rights was one of the most difficult, but with persuasion from those who believe in socio-economic rights, from political parties, members of civil society, especially women and workers, through the charters they submitted to the Constitutional Assembly, to the rural people in various public hearings and the nongovernmental and community organisations, we were able to reach agreement on the need to include these in the final Bill of Rights.

The inclusion of socio-economic rights in our final constitution provides a vision of human freedom that has substantive or egalitarian dimensions. It provides the potential for the holistic development of human dignity and seeks to create

a socio-economic environment and a platform of civic equality which enables all citizens to enjoy the freedoms of speech, opinion, assembly, dignity and belief.

Our Deputy President Comrade Thabo Mbeki correctly stated: "The morality of the constitution is also tested by its endeavours to safeguard the economic rights of its citizens." Political and civil rights will be meaningless to our people if their basic needs are not addressed. Our new democracy will be meaningless if the Government does not address social needs.

Indeed we have made achievements in our struggle for political liberation and we have now entered the struggle for economic liberation. The incorporation of socio-economic rights lays a firm foundation for the transformation of our society. It lays the foundation for the emergence of a new form of justice in our country which is characterised by gross inequality, abject poverty and a lack of basic facilities for survival.

The final constitution is an instrument for peace as it addresses the concerns, fears and aspirations of all the people of our country. It is not an ANC constitution. Various parties inside and outside the Constitutional Assembly have contributed to writing the final constitution. Even the views of the IFP, which walked out of this process, were taken into consideration.

Since April 1994 our country has become a constitutional state, in that the Constitution and not Parliament, as was the case in the past, is the supreme law of the country. This position has opened the need of our people for more education to enable them to claim their rights.

Some of the clauses in the constitution are going to be contested by various interest groups and social forces. Already we have witnessed this in the debate on clause 181 which deals with a commission for the promotion of and protection of the rights of cultural, religious and linguistic communities. This clause will have to be found to have some relationship with clause 6, which deals with languages, and with clauses in the Bill of Rights dealing with freedom of association, equality, education, language and culture.

Another contested area is going to be that of the chapter on the institution of traditional leadership, which I had thought Comrade Sifora would cover. In view of the fact that he did not cover it, I would like to say something about it.

In the interim Constitution we have a detailed chapter dealing with traditional institutions, while in the final constitution we have only three clauses dealing with this subject. It is our view that unlike the interim Constitution, which was a settlement constitution, the final constitution should be as brief as possible. We were bound by two constitutional principles to draw up this chapter, the one dealing with the recognition of the institution of traditional leadership, its status and role, and also the principle dealing with the Bill of Rights. The chapter has recognised this.

Secondly, we have also made allowances for provinces and for the national Government to establish either houses or councils at various levels in order to accommodate the institution of traditional leadership. Submissions were received not only from traditional leaders, but also from women's organisations, community organisations dealing with land and community organisations dealing with interests of women.

It was our task to balance these submissions. Many of us may remember that the interim Constitution had to be referred to this House to be amended from time to time because it contained so many details, especially in the chapter on traditional leaders. This does not mean that the institution of traditional leadership has been sidelined in the constitution, as has been reported by the media.

For the first time in Southern Africa, our constitution—as I said, it is a modern one—has recognised this institution. We in the ANC firmly believe that this institution can be accommodated and can coexist with the institutions of democracy elected by the people. We also believe that there is no way in which the institution can bypass the democratically elected structures, be it in rural areas. We want to create one united, undivided South Africa. [Time expired.]

\*Mr S J SCHOEMAN: Mr Chairperson, if we succeed in approving the new constitution on 8 May, it will be the result of the decision that confronted the leaders of this country for many years, viz, whether we should talk it out or fight it out.

I want to pay tribute to these leaders, starting with Deputy President F W de Klerk, who on 2 February 1990 stood here and decided that we in South Africa would talk it out. [Interjections.] I want to pay tribute to other leaders, for example

President Mandela and others, who together decided that we should talk it out in this country, no matter how difficult it might have been. I want to pay tribute to each hon colleague, to advisers and many other people who sat for hours, days, and also nights in negotiating chambers in order to avoid our children having to lie in trenches and fight the matter out. [Interjections.]

If we approve this constitution on 8 May, it will not, however, simply become a magic wand that will magically remove all the problems that South Africa has been grappling with within minutes. It is only then that we shall have to begin to work hard. This constitution will be meaningless if the Government and governments to come and the individuals in this country do not also reflect the spirit that is prevalent in this constitution in their dealings.

It will not help to have a wonderful charter and many freedoms and rights if people do not respect those rights. If there is no respect for another person's life or property and lawlessness develops from this freedom, this constitution will be meaningless.

It is said that, thanks to the process that we followed, a political miracle has actually been achieved in this country. I think that what we will need in this country after the completion of the constitution-making process, is an economic miracle because nothing will come of the laudable things that we all want to do—and I am thinking here of the upliftment of people, the eradication of poverty, the building of houses, the redistribution of land and the settlement of farmers—if we do not also succeed in making this country economically prosperous.

That is why this constitution will be sending out important signals, also about matters such as property rights and the security that it brings for people with regard to dealing with land and the security it should have for the owners, as well as reform in this regard.

Prof Kader Asmal said yesterday that once we had completed the writing of this charter and were satisfied with it, foreign investors could go to blazes ["in hulle moer vlieg"] if they did not like it. [Interjections.] He actually said that we did not need them.

We are a small role-player in a big, competitive world. [Interjections.] South Africa has a short shelf-life, that makes people interested in this

country. This shelf-life will, however, not last forever. The signals that we are going to send out with regard to what we include in the constitution will determine what we will be 10 years from now. Does South Africa want to be the Japan or the Mozambique of Africa? [Interjections.] It depends on the signals that we send out. [Interjections.]

When the NP says that certain rights must be protected, we believe and accept that somewhere in this process of development a point will be reached where we will have more Black millionaires and property owners than Whites. It therefore does not deal with protection with a view to the immediate short term, as has been suggested, for the White privileged. One of these days the Chairperson of the Constitutional Assembly, Mr Ramaphosa, will be a millionaire. [Interjections.] We also want to protect his property. We want to protect every person's property. [Interjections.] There is thus a misconception. [Interjections.]

Dr E G PAHAD: Mr Chairperson, comrades and colleagues, may I just remind Mr Schoeman that life . . .

\*Mr JH MOMBERG: Mr Chairperson, on a point of order: Is the terminology that the previous speaker used when he said that investors could "go to blazes" [in hul moer vlieg] parliamentary, or is it Prof Asmal's Irish? I just want to know what your ruling on this is. [Interjections.]

\*Mr S J SCHOEMAN: Mr Chairman, I did not intend it to refer to any member, but I will say "in hulle maai vlieg" [go to blazes]. [Interjections.]

\*The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I think we are reasonably at peace with one another. We do not want to sour that now with all kinds of things.

Dr E G PAHAD: I would just like to remind Mr Schoeman that life in South Africa did not begin on 2 February 1990. The ANC was founded in 1912 and the SACP in 1921. We were the ones who created the conditions for the transition to democracy in this country.

I would like to start with a message to Mr Leon. Of course, he is not here, but it can be conveyed to him. He says that promises that cannot be fulfilled must not be made. I would like to appeal to him not to make promises to the few DP supporters that he has, because he has not been able to keep a single promise that he has made.

I would like to start with the electoral system. In some of the newspapers in this country there have been front-page articles about the fact that a deal had been brokered between the ANC and the NP with regard to the electoral system.

Quite clearly, what this means is that the impression is created that somewhere in the bush, some people conspired and then came to an unsuspecting public, in this case an unsuspecting DP, and imposed this view on them. What is true is that there have been multilaterals and bilaterals, and on every single occasion on which there has been a bilateral, we have come back to the Constitutional Committee and reported in open session what we have agreed to and what we have not been able to agree to. No deals were brokered outside the processes that we had set in motion.

As an example of this press which seems to want to be the mouthpiece of the DP, let me quote an article by Anthony Johnson in this morning's *Cape Times*. He says in an article he is writing on the electoral system:

Against this background many observers . . . As usual, it is "observers". They never tell us who they are—

. . . as well as those actively involved in the constitution-writing process, were somewhat taken aback by the deal hatched by elements within the ANC and the NP in the dying days of the process .

The only thing that is dying is the DP, which excludes the possibility of MPs being elected to constituencies in 1999. I would like the hon members to take note of this. He goes on to say:

Some constitution writers claim the sudden about-face stemmed from fears harboured by certain Indians within the ANC and Whites within the NP over the reduced prospects of non-African candidates making it to Parliament via the constituency system.

If anybody knows the history of this country, he will know that underlying the entire racist approach in this country was the view that Africans were not capable of thinking for themselves, that these Africans needed Whites and Indians to think for them, and if those Whites and Indians were communists, that made it even worse. I want to say to Anthony Johnson that unless he wants to enter the gutters of journalism, and he wants to be part of the old system of journalist writing, he

should examine himself and not write the pernicious, vicious, and, in my view, racist rubbish that appears in the *Cape Times* today. [Applause.]

The agreement we have reached is clear. If one looks at the Bill in front of us, it is clear that the next election will be fought on the same basis as the elections of April 1994. There is nothing in the constitution which says that thereafter a constituency element cannot be introduced. There is nothing in the draft provisions in the Bill as it stands which is inconsistent with any provisions of any of the Constitutional Principles. However, once we say we want to fight the elections on the basis of April 1994, then I think we need to ask ourselves whether there were elements which were connected.

In my view one of the elements connected to a system of pure proportional representation is section 43(b) of the interim Constitution which concerns the right of members to cross the floor. Mr Meyer has already spoken about this. He said that the NP wanted to change that. They do not want that section in the new constitution. I would like it to be recorded that the ANC has made it clear that it is now going to enter into discussions with the view that this matter should form part of the new constitution.

We should not confuse ourselves with talk of free will. I do not know who in the NP is free, because even in their caucus they are not free to stand up and speak. They must get the permission of their provincial leader before they can raise issues. [Laughter.] That is how much free will they have. If there is a party . . . The last time I called them sheep, they objected.

If there is a party that thinks like a robot, it is the NP. [Interjections.] If they had free will, all or most of them, except those "Blackies" and "Brownies" . . . [Laughter] . . . would not have been in the NP that has been oppressing us since 1948. Why are they going on about free will?

Mr L D CHUENYANE: Do not call members of Parliament "Blackies" and "Brownies"! That is insulting.

Dr E G PAHAD: OK! Those who are rainbow-coloured. [Laughter.] I withdraw the word "Blackies", and I say those who are rainbow-coloured.

Mr L D CHUENYANE: I still object.

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Can I just say that we have conducted a wonderful debate. I do not want speakers, interjectors or anybody to come and spoil this now. Let us address one another with respect. . . . [Applause.]

Mr L D CHUENYANE: Mr Chairperson, I am not a Blackie. That I have to make clear. I am opposed to it.

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: OK! Your point is taken. I want you to treat one another with respect.

Mr L D CHUENYANE: But is he going to withdraw it, Mr Chairperson?

Dr E G PAHAD: I withdraw that. I said those who are rainbow-coloured. [Laughter]

The issue in so far as the electoral system is concerned is that it is important to note that we do have basic agreements. A basic agreement does not preclude, in any elections following the next one, the introduction of a constituency element. But both from the point of view of political theory, as well as a conceptual understanding of democracy, it is not correct to argue that only when one has a constituency element does one have the possibilities of interaction between the elected representatives and the constituency. Somebody like me, incidentally, voted in two British general elections. Let me say that I voted in two British general elections and never saw my member of Parliament even for one minute.

The second point that I would like to come to is that the discussions with the NP and the other party—if the DP is interested, they are most welcome to join us—will still be on the question of whether or not and in what way we can introduce section 43(b) of the interim Constitution. We would also like to say that from the ANC's point of view, if we move towards a situation in which we allow people to cross the floor, we then have to ask the following question. How does this electorate say whether or not the person who has crossed the floor still retains their confidence? We must consider the possibility, if we are going to move in that direction, whereby one could have by-elections in which people will go back to their constituents and say: "Vote for me. I have left the NP. I do not like them. I am a rainbow-coloured person. I want to come to a rainbow party. I want to come to the ANC." We

are saying that that person must go and test the electorate and see what the electorate thinks about that person joining the ANC.

Within the National Assembly there still remain some points of contention. On the question of the dissolution of Parliament, it is an accepted fact in a number of countries, including the United Kingdom, Israel and other places, that it is possible for the ruling party to call a snap election without declaring a motion of no confidence in itself. We have been discussing this with the NP for I do not know how long.

The NP insists that in order for that dissolution to take place we need a two-thirds majority. I say to them, what is the point of a two-thirds majority? We can change the constitution by a two-thirds majority. Similarly with the seat of Parliament, we made a concession to the NP. We said to them we were prepared to say that the seat of Parliament is in Cape Town, but it can be changed by an Act of Parliament. What do they want? They want us to say it must be a two-thirds majority. Well, we might as well not put it in, because one needs a two-thirds majority to change the constitution.

I said to them that they have to fight this election against the DP in Cape Town. The NP is shouting about Cape Town, but they are not prepared to accept our compromise.

Rev K R MESHOE: Mr Chairperson, first of all, I want to register my strongest objection to the political bias of the SABC. Whenever they cover the ACDP on television, they only air half or incomplete sentences which leave questions unanswered in the minds of our people. [Interjections.]

They are deliberately trying to make a mockery of what I say by quoting me out of context. The people have the right to hear what I have to say in its proper context, and not what the manipulative SABC wants them to hear. [Interjections.] The more the SABC misquotes me, the more the public will believe that it is "His Master's Voice", and not independent.

I now call on the SABC to stop being the obvious political tool of an obvious political party, and to start being an impartial broadcasting corporation. [Interjections.] If they do not want the public to know what I have to say about giving a sinful lifestyle like homosexuality constitutional protection, then I will have to say it much louder for the public to hear it without the SABC's help.

I am now going to present more arguments about the unacceptability of Chapter 2 as it now stands. In the speech I gave in this House last year on the supremacy of the Constitution, I said (Hansard, Debates of the Constitutional Assembly, col 32):

The ACDP wishes to see a constitution that will be legitimate, enduring, and that upholds biblical, family and traditional values.

We all know that this constitution undermines the above. To substantiate this point, I want to look at Chapter 2 in the light of section 9(4) which says:

No person may unfairly discriminate on one or more grounds in terms of subsection (3).

Subsection (3) lists the grounds on which there should be no discrimination. According to the word of God, homosexuality is a sin, but according to the South African constitution, it is a right. The ACDP will not accept attempts by the Constitutional Assembly to make what the word of God says invalid. We say that laws inconsistent with this 1996 constitution, but consistent with biblical laws which have existed for thousands of years, are still valid today. No Constitutional Court, liberal bishop, religious leader or any court of law in South Africa will tell me that I am wrong in saying that, according to God's word, homosexuality is a sin. The supremacy of the constitution of South Africa will be supported by the ACDP as long as it does not undermine the supremacy of God's law. We judge laws made by humans by using the most reliable yardstick—the Bible.

Committed Christians, not casual or submarine Christians, may obey the constitution of a country, but only to the extent that such constitution is not in conflict with God's law. Any provision in the constitution which undermines the Bible should actively be resisted by committed Christians. Absolute authority and power belong to God alone, and no earthly institution can claim to have absolute authority and power.

Our constitution is so liberalised that it offers no protection for children who are preyed upon by lustful men burning with passion. Which clause in this constitution protects innocent children from immoral teachers who order schoolchildren aged between six and 10 to have sexual intercourse in front of other pupils, as happened at Sihlangene Primary School in the Mpumalanga province? [Interjections.] The ACDP wants a constitution which protects all citizens, especially law-abiding

citizens, and not one which exposes our children to dangers as a result of rights that are not balanced with responsibility.

Over the past five years, the Ministry of Health has reported receiving hundreds of thousands of petitions, letters, postcards and leaflets protesting against plans to legalise abortion on demand. The overwhelming majority of these submissions have upheld the right to life of unborn babies. Why does our Constitution not acknowledge that right? The ACDP strongly opposes having immoral abortion slaughterhouses and abattoirs in the constitution described as "reproductive health care centres".

Another omission which we feel is a glaring mistake, is the disregard of the importance of an individual's obligations and responsibilities in the light of the freedoms the constitution offers.

Furthermore, the constitution only partially meets the ACDP's requirement of moral governance, because it does allow for delegated powers to the provinces, but it does not distinguish sufficiently between the provinces' functions, roles and authorities, simply because they are too closely connected to one another.

Therefore we will see to it that the proximity that exists between central, provincial and local authorities is not too closely interconnected. The ACDP would have preferred a better devolution of powers and responsibilities.

The constitution is not a blueprint which guarantees democratic activity. In order to do this, our nation must be educated in how to make the constitution work for them in their everyday life. Never again should people remain ignorant and leave things to chance. Never again must the nation allow a government to rule over them with an iron fist.

The new constitution must assist our citizens to respect one another, to rise up as one nation against any type of crimes or national policies that will threaten the social fabric and dignity of our society. The ACDP will continue to fight for the rights and obligations of its constituency. We will ensure that the constitution is used to remind our people continually of the rights and obligations they have.

In conclusion, our vigilance over the affairs of this nation and the direction it takes will be even more sharply focused than before, and our prayers will

be ever more effective whenever any attempt is made to deny our people the rights they so richly deserve. This is our party's moral responsibility.

Dr B L GELDENHUYS: Mr Chairperson, the resignation of the Chairperson and the Deputy Chairperson of the Constitutional Assembly from Parliament is a disaster for South African politics and we sincerely hope that they will make a comeback in future. [Interjections.] Whatever, it remains a disaster.

The hon member Dr Pahad said the only thing that was dying was the DP. That may be so, but nevertheless the DP has far more members than the SACP does, so who is dying? [Laughter.]

\*In addition I must address Dr Mulder of the FF, who accused the NP of two things. He said that the NP had abandoned power-sharing and that the NP had associated itself with collective or group rights. The NP has not associated itself with collective or group rights. In fact, the proposal by the cultural commission is virtually word for word the NP's proposal, which it negotiated over a period of months.

Cultural councils that are established at the national level are a form of power-sharing. In fact, the principle of proportionality, the basis on which we are sitting here, is a principle of power-sharing. So, the NP has not abandoned power-sharing and has timeously promoted this important matter of collective rights.

Ms Y L MYAKAYAKA-MANZINI: No, do not claim easy victories!

Dr B L GELDENHUYS: It is not a matter of easy victories. It is a fact. [Laughter.] Of course it is a fact! [Laughter.]

Mr Chairperson, allow me to react very briefly to the criticism launched by the hon member of the ACDP against the NP in yesterday's debate, after which I will elaborate on the NP's position regarding the preamble. The hon leader referred to the sentence "May God protect our people", which is no less than a prayer in itself, as a cheap dummy. This borders on blasphemy and is totally unacceptable to the NP.

The hon leader went on to say: "Their action is nothing short of selling the soul of South Africa to communism." This statement is absolutely unfounded. Karl Marx, the mentor of all the members on my right-hand side . . . [Laughter.] I am glad to hear that he is not the mentor of some

of the members. Karl Marx said that atheism was a prerequisite for communism. No preamble ending with a prayer can, by any yardstick, be labelled as an atheistic or, for that matter, a communistic product.

He also said:

My warning to the NP is that if they do not insist on honouring God Almighty at the beginning of our preamble, then they have no future.

I do not want to belittle the importance of the phrase "in humble submission to Almighty God . . .". That is exactly what the NP proposed and if we as the NP could have had our way, that would have been part of the preamble. Let me, however, humbly remind my colleague of the words in Matthew 7:21, which reads as follows:

Not everyone who says to me, "Lord, Lord," shall enter the kingdom of heaven, but he who does the will of my Father who is in heaven.

[Applause.] The crucial test, therefore, for a party's future is not so much what is written in constitutions, but whether a party's actions on the ground are in harmony with God's will.

It is also not correct to say that agreement was reached on the preamble as it stands. The NP agreed to the printed text, provided that we would be given an opportunity to propose an amendment, which we did. The NP's amendment entails the following, namely that "May God protect our people" be substituted by the words "May God, in whom we trust, protect our people". In our view, this amendment reflects the trust that the vast majority of South Africans have in God. Given the fact that the preamble is the value-footprint of a nation, we believe that it should be reflected in the preamble. This amendment is still under discussion.

\*If this amendment of the NP is not adopted the NP can live with the printed text, because there will never be unanimity on the way in which God should be referred to. The NP was accused 13 years ago that it had betrayed Christendom when it used the very words in the former constitution which the hon leader now wants to have included in the preamble. In other words, the words "in submission to Almighty God" were criticised then and it was said that the NP was betraying Christendom by these words. The NP came under attack for doing so.

This reminds me of something that happened long ago.

\*My colleague must go and read the book of Judges, the twelfth chapter.

‡There it is mentioned that Jephthah, when he wanted to identify the Ephraimites at the passages of Jordan, said to them: "Say now Shibboleth", and if they said "Sibboleth" he killed them.

Each one of us has his "Shibboleth" when it comes to the reference to God in a constitution, but we should avoid a situation in which we figuratively kill one another at the passages of Jordan because we pronounce "Shibboleth" as "Sibboleth". We should display tolerance here. We should not eventually crucify one another with theological semantics. In the end I as a Nationalist and a Christian can live with a preamble that is concluded with a prayer:

May God Protect the people of South Africa.  
Nkosi Sikelela iAfrika.

I can live with that, because it is indeed a prayer, and the concept that is used for it, seen from a theological viewpoint, has precisely the same power as other concepts that are used here.

When I say this, I wish to add that the NP will nevertheless do everything within its power to improve the exiting concept. We do not say that it should be left as it is—I have explained the reason for our amendment. However, if the decision is made in its favour, this is a preamble which the NP could accept. I do not think that the accusations made by my hon colleague were justified.

\*Mr W A HOFMEYR: Mr Chairperson, since I am following on a clergyman, I feel that I should count my words.

‡I would like to say that it is an honour for me to speak here today. I think that in the process which we have gone through in the past two years we have indeed achieved a great deal, and I wish to talk a bit today about what we have achieved in the Bill of Rights.

I would like to say that I think that we have achieved a very good and very balanced Bill of Rights. It is not perfect. It does not have everything that every party would have liked to see in the Bill of Rights, but I think that we have to realise that we come from a very divided society, a society in which there are very diverse interest groups. I think that it is a miracle that we are

standing here today with really only two issues outstanding in the Bill of Rights, the education and the lockout issues.

I think that the progress that we have made is a tribute to the members of the different parties who participated in the discussions in the Bill of Rights group and, perhaps because we had some of these discussions so many times—I think some of them over 50 times—it is also a tribute to the spirit of exhaustion that pervaded in the end. But in the end, I think, we have managed to solve many of the difficult issues that have confronted us, and I want to deal with some of them.

Perhaps the most important and most difficult issue that we have resolved is the question of the property clause. A number of other speakers have spoken about it already, or referred to it. I think we have managed to achieve political agreement between the major parties on this issue. There is an agreement today that no party will introduce a deadlock on this issue. There may still be minor changes that will have to be made to make the issue clearer, or to meet some of the concerns that have been raised, but I think we have agreed that we are not going to disturb the very delicate balance that we have achieved in this property clause. We know that there are still people outside who are not happy with the property clause. I would like to call on them to support this clause in the spirit in which it has been negotiated here, and that, in the words of our Chairperson, no party was going to get, in this property clause, everything that it wanted. There would have to be a compromise between the different parties. I think we are happy with what we have achieved in the property clause, although we are also not perfectly happy. I believe the other parties are in the same position.

The second very difficult issue that we have had to deal with is the question of equality. We have seen, particularly over the past couple of months, an outburst from particularly what I would call right-wing, liberal organisations which have started to argue that there should be no horizontal application of equality and have tried to raise all sorts of scares about it. Now I think, from the ANC's side, we have said very firmly that we are not going to tolerate apartheid becoming privatised in South Africa in the future. We have fought for this constitution and against discrimination all our lives, and we are not going to allow a constitution which does not give our citizens protection against privatised discrimination.

I think that in the end, in the discussions that there have been between different parties, we have come up with a good solution. I think we have found a way of meeting those concerns that were raised about the fact that the complete horizontal application of equality may well lead to chaos. I think we have found a way of addressing the concerns, while keeping the principle that there must be a right in the constitution for our citizens when it comes to private discrimination.

The other issue which I want to deal with and which I think we have also resolved is that difficult question of hate speech. I do not want to talk about it for too long, but again I think we have managed to find a solution that addresses the particular difficulties in our society. I think it is in fact a society in which there is still the need for us to be very careful about how we hold our country together. I do not think it is a society in which we can allow radio stations to broadcast racist propaganda as, for example, happens in the United States, where there are radio stations that do that on a 24-hour basis each day.

I think we need to look at the Germans, who say that sometimes one has to be a little bit more vigorous in the defence of democracy. I think that is the approach that we have followed here. I think it is a completely justifiable approach.

Another question on which we have had difficult discussions has been on the new-generation rights to information and to administrative justice. These are rights that help to make our constitution unique in the world and to make it one of the constitutions, in fact, that lead the world. These are not rights that one finds in any other constitution, except that of Uganda, which has copied our interim Constitution.

However, there are also rights that confront the Government with unique problems around the costs of implementing those rights and the administrative burden that this imposes on the Government. I think that in the way that these rights are formulated now, we have managed to strike a very good balance, not only in meeting the concerns around the administrative burdens, but actually also in extending those rights more broadly than they were in the interim Constitution. For example, now the right to information can be used not only against the Government, but also against other persons. The limitation that the right to information from the Government is only a right when somebody has an interest in that informa-

tion has been deleted. So in effect that right, in relation to the Government, is considerably wider.

Similarly, this also applies when it comes to the right to information. Although we have again provided that it should be tied to a regulatory framework, which means that it can be an implementable right in a practical way, our new constitution actually extends the scope of that right to make it clear that administrative action has to be reasonable, and not just in the compromise formulation that there is in the interim Constitution.

I also want to say something about the DP, although I feel a bit guilty about kicking somebody who is already down, after so many other speakers have spoken about them. However, I think that Fanus Schoeman had a point when he said that some of us had to take a decision some years ago about whether we were going to talk out our future in this country, or whether we were going to fight it out. Seeing that the DP only prides itself on speaking out, and not talking things out, I think it would be too much to expect them to take part in this process. They certainly have never tried to fight it out. That is for sure.

However, I think that there is a special responsibility on the part of bigger parties to ensure that the constitution is adopted on 8 May. I do not think that any of us would like the consequences that would flow from the nonadoption of the constitution. I think that is why the bigger parties have gone into this process in a spirit of give and take, in a spirit of trying to reach agreement and not being inflexible in their positions. Unfortunately the DP has not come into these talks with the same spirit. They do not bear the same responsibility. They do not feel as the bigger parties do. Even where we have had agreements, as with the property clause, of which they were a part, they have subsequently pulled out of those agreements.

My time has expired, so I will end there.

Mr K M ANDREW: Mr Chairperson. I would like to thank the ANC. I am sorry Mr Gordhan is not here, but at least at the next election I will be able to tell the voters that the ANC kept one promise. They gave me three minutes when they said they would.

Mr Gordhan devoted most of his time to attacking the DP. His main charges were that we were obstructive in the negotiating process, and that we

are a small party. [Interjections.] On the issue of obstructiveness: The DP participated in all processes, and repeatedly made submissions on virtually every aspect of the constitution. Despite its size, the DP has participated fully, wherever possible, often against tremendous odds in terms of schedules and timetables.

The DP has made many compromises and has been flexible in finding solutions on many issues, as have other parties. However, while compromise and give-and-take are desirable and necessary, horse trading of principles for party-political benefit is unacceptable to us. Like it or not, the DP will not abandon its principles to strike a deal—not now, not in the past and not in the future. [Interjections.] If Mr Gordhan considers this obstructive, so be it. If Mr Gordhan would have preferred us to walk out, like the IFP, or buckle under, he is in for a surprise.

The DP and its predecessors have stood up to an authoritarian regime for decades in the past, and, if necessary, we will stand up in the future to anyone who believes that might is right. [Interjections.] The DP is small—that is correct. We represent fewer than a million people in this country, although many of them play a critical role in our country and our economy. However, it is amazing how much time all these people, who keep telling us how small we are, devote to talking about us. Hon members here know whom we represent, but do you know whom Mr Gordhan represents? Does Mr Gordhan represent the SACP . . .

An HON MEMBER: What is wrong with that?

Mr K M ANDREW: . . . or does he represent the Natal Indian Congress, hiding behind the skirts of the ANC to get to Parliament?

Mr M S MANIE: Nonsense!

Mr K M ANDREW: He is mesmerised by power. He has a might-is-right mentality. [Interjections.] A democratic government will generally protect the majority as long as there are elections, so constitutions are needed far more by individuals and minorities than by majorities. Some people merely need to realise this.

Mr Pahad, besides his offensive and insulting comments about many things, indicated quite clearly that he was upset, but he protesteth too much about the rigging of the electoral system to

remove power from the voters and put it in the hands of party bosses. [Time expired.]

Mr D P A SCHUTTE: Mr Chairperson, a number of speakers have already stressed the need for our country's final constitution to be South African-made for South African circumstances, that it must be a South African document with a distinct South African flavour to it, a document that is relevant and which specifically aims to meet the needs and aspirations of our diverse South African nation. Great strides have already been taken in this regard. One can only refer to the recognition of customary law, traditional leaders, different cultures, geographical differences and the various languages of our country.

However, we need to go further. We must also aspire to produce a constitution which will be in line with internationally acceptable standards. In meeting our local needs and aspirations, we have to do so by employing methods that are acceptable internationally, and particularly in constitutions which incorporate a bill of fundamental rights, and where the constitution is the supreme law.

Three matters still have to be finally resolved, particularly in this regard. The first is the prosecuting authority. It needs to be enshrined in the constitution that the prosecuting authority is totally independent and, as was said by the hon the Minister of Justice this afternoon, is free and beyond political interference. As far as that is concerned, this side of the Assembly will support him, but that has not yet been enshrined in the constitution. There has even been resistance just to the use of the word "impartial" with reference to attorneys-general.

Internationally, all developments have been towards the independence of the prosecuting authority and its freedom from political interference. If we are perceived to go the other route in which criminal prosecutions can be instituted for political purposes and at the whim of political functionaries, it will be to the detriment not only of the international standing of this constitution, but also to our country. Very few people would have confidence in our criminal justice system if that were to remain as is. It is therefore important that the independence and impartiality of the prosecuting authority should be laid down in the constitution beyond doubt.

The other matter that has not been finally resolved is the appointment procedure of Constitutional Court judges. Having regard to the constitution of other "regstaat" countries, two features come to the fore: Firstly, because the Constitutional Court is a different court dealing with highly politicised issues, the court is never constituted in the same way as the other courts of the land. Secondly, for the sake of credibility and of being acceptable to all the major parties and to the great bulk of the population, the final decision to appoint Constitutional Court judges should not be left in the unfettered hands of a political functionary, whoever he may be.

It is for this reason that in countries like Italy, Germany, Spain and Portugal, the final decision to appoint constitutional court judges is made by an increased majority of the legislatures. In the specific context of their legislatures it has the result that the major parties have to agree on the appointments. In reality and practice there is a commitment that the appointments are made by consensus by the major parties, and a vote is very rarely taken on the subject.

These are time-honoured procedures, and South Africa would do well to consider and to follow them. For the sake of the credibility of our Constitutional Court, and to avoid controversy regarding appointments—which must be avoided—it is imperative that it should be laid down that appointments should be made with the concurrence at least of the major parties, if not all the parties. The aim should essentially be consensus on this very important issue. Great progress has already been made in this regard, but it now needs to be finalised in accordance with the principles that I have stated.

The last matter that must now be finalised in this context is the question of the referral of Bills to the Constitutional Court. That is also in line with international constitutional precedent, and should be dealt with in such a way that it is not a dead letter, but a reasonable and realistic option to test legislation, essentially in the interests of constitutionality.

We are very close to finalising this constitution. Let us do so now with cool heads, and only with the best interests of our country in mind.

Dr R H DAVIES: Mr Chairperson, the Constitution of the Republic of South Africa Bill which we have before us includes a number of provisions

related to finance, and it is to these that I would like to address a few remarks.

A constitution that is expected to last, cannot define in detail a budgetary system or the process of economic policy-making. There is no other permanent constitution in the world that does so, and the fact that our interim Constitution contains more detailed provisions on some of these issues, is largely explained by the fact that it was generally understood to be of temporary duration and that it had to deal with new institutions and arrangements not covered in pre-existing legislation.

In preparing this Bill, we have had to confront a number of submissions and proposals, however, which argued for detailed provisions on financial matters to be included. Several of these appeared to derive from notions that majority rule would inevitably lead to financial mismanagement and there was therefore a need to tie down future governments in the constitution in ways that the previous minority regime was not, and which did not apply to any other governments in the world.

Some such proposals were based, frankly, on thinly disguised attempts to protect vested interests of the old order. To have acceded to them would have amounted to tying future governments down to arrangements which, at best, might seem to be reasonable now, and, at worst, reflected some fad in vogue in Newt Gingrich's Washington, but which may not necessarily be appropriate several decades from now when, we hope, this constitution will still be in force.

What we opted for, instead, was the insertion of general principles which, in fact, go much further than in almost any other constitution in the world, in laying the basis for sound management of the country's finances.

The chapter on finances, like the constitution as a whole, is not an ANC creation alone. It is the product of multiparty negotiations and we were also bound by several of the 34 Constitutional Principles. Nevertheless, I believe that it is necessary for the record to point out that it was the ANC that drafted many of the formulations in Chapter 13, which require budgets and budgetary processes to promote transparency and accountability, which require legislation to introduce generally recognised accounting practices at all levels of government, and which require the establishment of a national treasury to promote

expenditure control. These were put forward by the ANC.

We in the ANC are confident that the draft before us provides a sound basis on which to continue the struggle to place our economy on a development-orientated growth path to effect realistic, as distinct from merely nominal, redistribution and to pursue innovative budgetary reform through national legislation.

We have consulted widely and we are satisfied that the present draft enjoys broad support among practitioners as well as parties represented in the Constitutional Assembly. The bulk of the financial provisions are contained in Chapter 13. Most of this chapter is concerned with providing a framework for equitable intergovernmental fiscal relations. This can never be a purely neutral or technocratic exercise. Questions of how much money should be allocated to each different level of government will in the end always require a political decision.

There is, however, a significant difference between, on the one hand, a political decision that such transfer should be based on clear transparent criteria, operating on a longer term basis, offering stability, certainty and promoting co-operative relationships between different spheres of government and, on the other hand, a political decision based merely on year-by-year slogging it out in intergovernmental forums and budgeting committees.

What we have opted for in this constitution is essentially a process which is more like the first, in which decisions on allocations of resources between levels of government are based on relatively certain, objective and transparent criteria.

Clauses in this chapter provide for provincial and local government to receive an equitable share of revenue raised nationally and for these spheres of government to be assigned powers to raise additional revenue.

Within a framework that allows for co-ordinated fiscal policies and encourages co-operative governance, a Financial and Fiscal Commission is provided for, as required in Constitutional Principle XXVII. We see this as essentially an independent advisory body which includes advisors of confidence to national, provincial and, for the first time, local government.

It is worth noting that provision is made in this chapter for a flexible system of contracting by the government. This system is fair, transparent, competitive and allows for principles of affirmative action to play a role in determining how contracts are awarded by the government.

Chapters 13 and 9 provide for two other independent institutions, a central bank and an Auditor-General to audit government accounts. The provisions relating to the central bank set out, from a broad consensus, of which the ANC is certainly part, that monetary policy should be shielded from partisan political interference of the kind which our colleagues with experience of this told us the SA Reserve Bank was subject to in the past.

We certainly do not want to see situations in which, just before an election, the government of the day acts to hold down interest rates or allow money supply growth to accelerate merely in order to stoke up short-term popular support, and then, immediately after the election, has to impose painful austerity measures to correct the imbalances which it itself has created.

This does not mean, however, that we should in the constitution tie ourselves to the current fads or fashions of mainstream economics. Dogmatic assertions that Keynes was wrong, and that there is no policy trade-off between the level of inflation and unemployment, or that the fundamental priority goal of policy everywhere and at all times ought to be to contain inflation at single digit levels—preferably at no more than 1% or 2%—may be in vogue at present in a number of academic circles, but they cannot form the basis of provisions in a constitution that is intended to last.

There is, in fact, fairly wide agreement that the independence of the central bank needs to be qualified. This cannot mean that that institution does not have to account to elected bodies, or that it can pursue its own agenda without reference to the broader society. Put another way, if society is delegating the power to conduct monetary policy to an independent central bank, it therefore has the right to insist that that institution accounts to elected bodies in society.

We in the ANC are generally satisfied that the provisions on the central bank in this draft allow for the kind of delicate balance which draws wide support from existing practitioners, and also

allows for a variety of options in terms of subordinate legislation to promote accountability.

As I said earlier, provisions in these chapters go much further than many other constitutions. We have laid a basis for sound financial management, and that, I believe, is good news. I do not know whether those amorphous controllers of currency markets can raise their sights above the latest silly rumour. However, I would suggest that if they could, what they would see here is a constitution which is extremely positive from the point of view of economic growth and development in this country. [Applause.]

Mnuz D M MALATSI: Mphathiintambo, gifuna ukuthoma ngokulotshisa kubo bonke abakhona lapha namhlanje. Bengitsho bona bazi ilimi esikhulumako eSewula ne-Afrika. Nanyaka lona leli engikhulumako, ngelinye leenlimi zangakomthetho eSewula ne-Afrika. Ngithome ngokuthi ngivumelana nelungu elihloniphekile uMdladlana lokha nakathi singavumeli iinlimi kube yinto esihlukanisayo njengentshaba zalapha eSewula ne-Afrika. Kodwana, angivumelani naye lokha nakathi iinlimi ezintathu kuphela ngizo ezinkulu eSewula ne-Afrika, okusiBhunu, iSixhosa, kunye neSizulu. Indlela le akhulume ngayo ngiyo le eyenza ukuthi naphambilini iinlimi ezinye, ezifana nesiNdebele, iTsonga, nesiVenda zigandangelwe phasi. Nasingajwayelana nje sikubani sithome ngokwenze njalo, sizokuraga kubehko sithiyo phambili, sithome ezinye iinlimi zabantu sizicalele phasi. Ilimi lami, ngokoMthethosisekelo lo esiwutlamako khona gadesi, liyalingana nazo zonke ezinye iinlimi ezikhulunywako lapha. Begodi ongakwaziko lokho, kufanele akwazi namhlanje. Ngivavumelana naye nalokho.

Ngifuna ukuthokoza ithuba leli engilitholako namhlanje. Begodi abaningi selebakhulumile ngalokho okuvunyelwana ngakho, nalokho okungavunyelwana ngakho. Kodwa namina engifuna ukukutsho lapha namhlanje ukubani loMthethosisekelo esiwakhako ngeze wafana nalo elinye nelinye iqembu lezombusaphasi, elikhona lapha namhlanje, eliwufunayo. (*Translation of Ndebele paragraphs follows.*)

[Mr D M MALATSI: Mr Chairperson, I want to start off by talking about the issue of language. This refers more to the South African languages. Firstly I would like to voice my agreement with the hon Mr Mdladlana when he stated that we as South African linguistic groups should not allow

ourselves to be divided by language. However, I disagree with Mr Mdladlana when he says the three most spoken languages in South Africa are Afrikaans, isiXhosa and isiZulu. It is this manner in which he spoke that has led in the past to the non-development of other languages such as isiNdebele, Tsonga and Venda. If we can adopt such an approach, we will end up arresting the development of other people's languages. According to the constitution which we are discussing at this very moment, my language is equal to all languages spoken in South Africa. If there is a person who did not know that, he or she has to know it from today. I agree with Mr Mdladlana in that respect.

I am glad for this opportunity which I have been accorded today. Different people have put forward their views about those aspects on which there is agreement and also those for which there is no agreement. However, I want to state that the constitution that we are making today is not going to be exactly what each and every political party wanted.]

In short, I would like to say that the present constitution which we are drafting will not, in our view, be a totally true reflection of each party's needs and interests. If the ANC could have had its way, it would have drafted this constitution differently. The same applies to the NP. Therefore, what we are dealing with here is a situation in which, as a result of give-and-take, we have a totally new concept in our democracy which accommodates almost all the communities of this country.

I want to concentrate on the provisions of clause 207(2) of the constitution, which reads as follows:

A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, and any amendments to, or repeal of, that legislation or those customs.

In my view . . .

Isiko alikwazi ukugadangelwa ngokomthetho, which is isi Ndebele for "One cannot repeal a custom".

One cannot repeal a custom on the basis of the aforementioned provision in the constitution. I would like to propose an amendment, and the NP will propose an amendment to this effect, rewriting the clause to read properly, because there is no

way in which we can, in an African context, provide for the repeal of a custom in the constitution. We definitely cannot do this. There is no custom that any of us here can repeal. A custom can only become obsolete on its own, when the people no longer want to use it, but one cannot provide for the repeal of a custom in the constitution. Therefore, we will provide an amendment in this regard, and I hope that in the spirit of give-and-take, the amendment will be regarded as a real improvement on the clause as it now reads.

Furthermore, I wish to draw the attention of this Assembly to the fact that the Constitutional Principles which provide for the establishment of the institution, role and status of traditional authorities are subject to our reading them correctly. I am concerned that maybe what we provide for in clause 207 of the constitution, and clause 206 of Chapter 12, may not be sufficiently in agreement with the Constitutional Principles as they are, because we are definitely not providing for the role of traditional leaders. We are simply recognising the role of traditional leaders, but we are not defining exactly what they should do and how they should do it. I feel that the lack of detail as far as this is concerned may lead to some confusion in some provinces, which might in turn lead to the institution of traditional authorities having problems with the provincial legislatures, something which I think is not our intention.

We are trying to avoid as much detail as possible in the constitution, but we should not avoid detail to such an extent that we are not clear about our intention in the constitution. In this instance, I would like to say that clause 208, as it reads now, as it provides for the establishment of the council of traditional authorities but does not put an obligation on the State . . . [Time expired.]

**THE DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY:** Order! Ladies and gentlemen, in this process we have developed a sensitivity when it comes to discovering when consensus is growing and there is a growing spirit urging us to wish Bafana Bafana well this evening. [Applause.] I simply must tell members, however, that I am not vested with the authority to tell speakers how they should conduct their speeches. [Laughter.]

**Dr I M PHILLIPS:** Mr Chairperson, colleagues and comrades, I want to restrict my remarks this afternoon to Chapter 11, which focuses on security services.

As we know, and as has already been indicated, the constitution as a whole arose from the trials and tribulations of the centuries of undemocratic racist overrule. Democratic forces within South Africa, and Southern Africa as a whole, never gave up the struggle for democracy, national liberation and socio-economic emancipation. But if there is one theme that runs throughout this whole constitution, it is that our country will be governed by a constitution that draws its strength from a positive vision of a wholly democratic future, and not from the bitterness of revenge, retribution and horror associated with the past.

We must not forget, however, that the democratic vision survived and grew, despite the evil trying to snuff it out, and part of our democracy's strength will be its ability constantly to put as much distance between the country's oppressive past and our own democratic future.

The chapter on security focuses on those areas of the modern State in which the most powerful forms of physical power and violence are concentrated. At the same time, military, police and intelligence services are supposed to be the most disciplined, professional and determined instruments of the State. This potential combination of massive force and discipline makes it essential for the constitution of any democratic State to make it crystal clear what the parameters of that power are, who is ultimately accountable and responsible for its control, and what ethos it is necessary to inculcate in those services to ensure that they remain legitimate and trusted by the people of the country as a whole.

This chapter is a home-grown one, influenced by the concerns of people who took the trouble to address themselves to the Constitutional Assembly in a number of different forums, from the SA National Defence Force itself through to rural peasants. It is worth mentioning that from time to time we found parallel concerns, in other constitutions around the globe—the new definitions of security from El Salvador, parliamentary and constitutional oversights from Poland, Hungary and Zimbabwe and other emergent democracies.

However, we also noted silences in a number of important areas, particularly in the constitutions in some of the established democracies of the world. So, in some good measure the breadth of the chapter on security in this constitution reflects a recognition of our status as an emerging democracy, a democracy that must consolidate

and defend its gains, a democracy that must deepen, and a democracy in which we must realise equality, peace, justice and freedom from want and fear.

The governing principles of this chapter and the general section outline clearly the major thrust of the transformation of our security thinking, and of the creation of new security services suited to democracy rather than to tyranny. Read in conjunction with the Bill of Rights, the sections on the relevance of international law and Chapter 3 on intergovernmental relations, this chapter outlines structure, conduct and responsibility.

The constitution's role as a transformative agent goes deep indeed. Greater security for the people as a whole is captured by the illegalisation of private armies, Rambo militia and rogue security services.

It recognises, however, one lawful military force in the country, a single police service structured to ensure effective, efficient and community-based policing, and only permitting other formations under framework legislation. The people of South Africa are assured of effective oversight over the security services through a combination of Parliament, the Cabinet and the exercising of the presidential prerogative in certain areas. Illegitimate interference by the security services in the everyday life of our citizens and their institutions is expressly condemned.

The people who serve in the security services are also provided with safeguards against personal abuse and discrimination. The Bill of Rights ensures that in our security services no discrimination in terms of gender, sexual orientation, language, ethnicity or religion can be tolerated, either directly or indirectly. At the same time, the scope of the limitation clause permits appropriate reservations in some areas, eg in the conducting of strike activity or the formation of trade unions.

In times of war, prisoners of war, medical personnel and other categories of people covered by instruments such as the Geneva Convention and protocols are assured of proper and humane treatment. No more torture, no more abuse of children, no more threats of the use of force to secure illegitimate ends, no more acts of State terrorism against neighbouring and other states and no more acts of terrorism against individuals.

Building on the work of the new democracy since April 1994, our desire and declaration to act

responsibly in the world is constitutionally enshrined. The institutions, as collectives, and the individuals who make up those forces, are committed in this way. The constitutional requirement for the security services to act and to teach their members to act constitutionally and in accordance with the law, means that each and every one of them, from the highest-ranking officer to the lowest, becomes an actor imbued with the highest norms of service and the widest possible exposure to an ethos designed to enhance and strengthen democracy in its fullest sense.

There are a number of areas in the chapter that require further refinement, and we are still working on these. I will only refer to one. Clause 198, which refers to the command structure of the defence force, has caused concern in some quarters. We do not doubt the integrity and concern of those who have responded to this clause. The ANC's perspective on this issue, however, is very clear. Throughout the work of the CA, we have been conscious not to define structures and institutions in narrow or personal ways. We have attempted to acknowledge the inclusion of concepts, leaving substance to legislation and other instruments. We believe it is inappropriate to constitutionalise a single model when there are many different types of models for the top command of a defence force.

Our defence force is currently engaged in a massive exercise of transformation, review and assessment, adjusting to the times and the circumstances of our existence. In many ways, the global military context is fraught with uncertainty. The involvement and deployment of military force is varied, is challenged and is under regular review. Shapes of command, of structure, can potentially alter more rapidly than constitutional definition may find desirable.

For those reasons we would urge support for the section that does not close options for future structures. At the same time, we alert people to the fact that whatever structure is devised as most appropriate for our defence force, it will be established clearly and firmly within legislation, as required by section 195(4). We do not envisage breaking the principle of unity of command, but we recognise that different models exist, and it would be unwise to decide one way or the other at this stage. The clause does not automatically mean the destruction of the present structure, nor does it favour any system over another. It is open, and takes the debate beyond the constitution,

where other people and other decisions can be taken.

The constitution provides the framework, the ethos, for a new order. It combines a number of elements: education, alignment with relevant international law, civilian authority and oversight, clear divisions of power between the legislature and the executive, subordination to the constitution and the rule of law, and the clear demarcation of specialised functions such as military and police command. Together they provide the firm foundation for the development of highly professional, well-motivated, efficient and effective security services that will act with the necessary respect for human rights, and, under the instruction and supervision of the political authority, secure the ultimate protection of our new democracy.

I would submit that great strides have already been made towards these ends. However, this constitution—and Chapter 11 in particular—builds on, enhances and enriches the transformation of our security forces so far. But more than that, it urges the security services to conduct themselves and their members to act in ways that will guarantee them the respect and trust of our people and of the people of the region. These forces and their members should and will feel proud to serve South Africa and its people. South Africa in its turn should and will be proud of them. [Applause.]

Dr F J VAN HEERDEN: Mr Chairperson, in my contribution I am going to follow on an aspect raised by Mr Danie Schutte, namely the appointment of judges to the Constitutional Court. In the founding provisions, the constitution is elevated to the supreme law of the land. Section 38 in Chapter 2 depicts the kind of society which this constitution is striving to attain, namely an open and democratic society based on human dignity, equality and freedom.

These elements of dignity, equality and freedom, although in slightly different words, have been present in our vocabulary since we started negotiations at Codesa. They were raised specifically in the December 1991 Declaration of Intent in which reference was made to liberty, equality and social justice. Human dignity, equality and freedom are the golden threads that run through the constitution, and if we apply them selectively only to those who support the majority party, then

this constitution will not be regarded as legitimate.

Whilst the constitution is there for the majority, it is also there for the minority. Those who are not part of the majority must feel that this constitution protects their interests as well. Democracy is more than just a multiparty system and secret elections. It is also more than an independent legal system and a great measure of privacy.

Democracy is an ongoing process through which real freedom for all can be achieved. This constitution is a legal document and not a party-political charter, although it deals with highly politicised issues.

The Constitutional Court is that special court which is empowered to interpret the Constitution and therefore is very different from pure legal courts which deal with legal issues and then in a very strict sense. Although some of these courts can deal with constitutional issues, the Constitutional Court is the court of final instance in constitutional matters. It is, therefore, very different in substance from other courts. This has been accepted in different countries in the world which also have constitutional states. They have different appointment mechanisms for constitutional court judges, because of the peculiarity of the court.

To give a few examples, in Italy one third of the members are appointed by the president, one third by parliament in a joint sitting and one third by the ordinary and administrative supreme courts from the categories of magistrates, law professors and lawyers with more than 20 years' experience.

In Germany, 50% of the members are appointed by the Bundestag, 50% by the Bundesrat and in all instances by two-thirds majority.

The situation in Portugal is as follows: 10 out of 13 members are appointed by the assembly and three out of 13 are co-opted, six of them from among serving judges and seven from among jurists.

In Spain, the situation is as follows: The congress and the senate each appoint four out of 12 members, in both cases by a 60% majority. Furthermore, the government and the general council of the judiciary each appoint two out of 12 members and all of them are appointed from the categories of magistrates, prosecutors, law professors, officials and lawyers. All of them are

required to have at least 15 years' legal experience.

The examples we have in different countries in the world indicate very clearly that we must look very seriously at the composition and the appointment of judges to the Constitutional Court, because this court is going to deal with very sensitive issues. The court must have legitimacy also in the eyes of minority parties. Therefore, we would like the other parties to give serious consideration to this reality when we come up with an amendment.

**Mr M BHABHA:** Mr Chairperson, Deputy Chairperson, clause 146 of the Bill records that one of the objectives of local government will be "to promote social and economic development of local communities . . . and to enhance social and economic development generally".

These few lines represent a fundamental shift in how local government is now viewed. It is an attempt to move away from the previously held notion that local government is merely an institute to provide services. Local government will now play a dynamic role in the transformation of society, a role that will be played within the context of co-operative governance. This dynamism will manifest itself in a role that vacillates between serving the immediate needs of the community on the one hand and perpetuating the ethos of development on the other.

Clause 40(1)(d) of the Bill entrenches the integrity of local government in the constitutional framework. Local government is no longer a level of government; it is now a sphere of government. It will no longer be vulnerable to the whims and fancies of national and provincial government. Every effort has been made to maintain the integrity of local government within the context of co-operative governance. For the first time, local government can claim to be truly autonomous.

I wish to thank the members of all other parties for their efforts in achieving this goal, particularly Mr Ken Andrew and Mr Jaco Maree. Language and religion are matters that strike an emotive chord in an individual. These are issues that are rightfully dear to us, but they must never be used to maintain privilege.

I have heard a number of speakers today and yesterday mention their cultural rights. If some of us claim to have crossed the Rubicon and supposedly represent the interests of all the people

of this country, then how does one justify empty classrooms in schools which claim to be protecting cultural rights, when less than a kilometre away, children are being taught under a tree? If we are true to our manifestos, then there is no justification for using culture to marginalise the majority of the people of this country.

Fundamental to transformation is the right to own property. If we do not succeed in providing ownership of land to the majority, the miracle we are relishing will merely be the eye of the storm.

I appeal to the sense of logic and the sense of morality of those of us here in the Assembly who wish to place every possible impediment in the path of redistribution of land, and I urge them to look beyond their parochial interests and negotiate in the interests of transformation and the future of this country.

The ANC has always maintained that its quest for freedom was a quest to be free of bondage. Of course, our protagonists will always maintain that the masses aspired only to have palatial homes with swimming pools.

The evidence led in the recent hearings of the Truth and Reconciliation Commission confirmed our trust and confidence in the people of South Africa. It was not and is not a witch-hunt, as many of us have claimed. Many of those who have already given evidence in the hearings are not only prepared to forgive, but they also have a simple desire to reclaim their integrity. This is reflected in the simple requests for tombstones for their beloved or for education for the dependants of those who were murdered.

It is strange how those who are hardened by their own atrocities cannot recognise the humanity in their victims. Once again this is proof that the masses of this country are the miracle that we are talking of.

The Bill of Rights now protects us from being victims of selfish ideologies. For the first time we are now armed with a document that will prevent the atrocities of the past. Never again will we allow history to repeat itself.

Finally, allow me to congratulate the Chairperson and Deputy Chairperson and their administrative staff on a monumental effort in achieving yet another milestone.

\*Dr T G ALANT: Mr Chairperson, I would like to start by thanking you as Chairperson and your deputy for the work you have done in the past almost two years in managing this process. As you are leaving us shortly as Chairperson, I want to say to you that it is our opinion, and I think I speak on behalf of everybody, that you have made a significant contribution to the new South Africa with the work that you have done.

I would like to refer briefly to Prof Asmal's speech of yesterday. He spoilt an otherwise very good speech by two points of criticism: Firstly, as regards a remark by Deputy President De Klerk that the instability in the value of the rand could also be related to the uncertainty regarding the constitution, I would like to tell him that, from an economic point of view, there are a whole lot of concurrent factors causing the instability in the value of the rand. This situation cannot be improved upon through overseas trips by Ministers or merely by opinions given by the President.

The undervaluation of the rand and its instability are being caused by uncertainties on a political-economic level; the expectations of unavoidable conflict that may well take place between the labour and business sectors; the increasing inflexibility in the labour market and the direction in which this may develop; the absence of a comprehensive economic plan in the country and the uncertainty because of that, concomitant with the precarious foreign policy as executed by Minister Alfred Nzo with his embrace of Libya, Iran and Cuba—a man is known by the company he keeps; the ANC's support a few days ago of the protest action and possible strike action by Cosatu concerning fundamental provisions in the constitution; and the possibility of conflict, in view of the local election situation in KwaZulu-Natal. All of this is causing uncertainty. That is why the rand has reacted like this.

Secondly, I also want to refer to his, to my mind, unfriendly utterances to potential foreign investors. In this regard he stands opposite Ministers Manuel and Erwin, who would like to create an investor-friendly environment and invite people over here.

We need foreign investors. We need their expertise, we need their capital and we need their technology. There is nothing in the bill of rights

that should in any way deter foreign investors. Maybe Prof Asmal was carried along a bit yesterday by his own eloquence.

I now want to make a few remarks about the chapter I have spent a lot of time on, namely the one on finance. I want to link up with what Dr Rob Davies has said here. There was very good co-operation between the NP, the ANC and the DP. This chapter, like all the other chapters, was actually written by a very small group of people, and we can all be proud of our product.

In the first place, this chapter carries out constitutional principles. It creates a framework for the handling of Government finance on all three levels—national, provincial and also local. What the chapter does not do, is to establish economic policy, because economic policy is the prerogative of a government.

It makes provision for the distribution of certain revenue that is collected nationally. Each level of government in the provincial and local government sphere will receive a fair share of this revenue. That is their constitutional right. We have again included the Financial and Fiscal Commission as advisory body to advise the Government on how to distribute that revenue. There are also constitutional provisions on the SA Reserve Bank which meet with everybody's approval.

I want to refer briefly to something that is not to be found here, namely formulas, as in the German constitution, on the distribution of revenue. One should realise that the Germans only reached that stage in 1969, after they had already accepted their constitution in 1949. In all fairness, it cannot be expected from South Africa right at the outset to enshrine such basic formulas in the constitution. We may be in that position in 20 years' time, and then the people coming after us will have the wisdom to register such formulas.

This constitution, as regards Chapter 13, contains many more provisions than those of comparable countries, but this is because we are starting afresh. Economic management on the same level as that in industrial countries is not a part of our history. Economic mismanagement in many ways is a part of our history, and once and for all we have to place government finance on a very good footing. That is what these provisions then aim to do.

\*Mr J W MAREE: Mr Chairperson, I am glad Prof Asmal is here, because I want to refer to him later in my speech.

During our discussions, which took many hours, I developed the firm belief that all the parties in this Assembly agree that it is important that local government must be left as independent and protected as possible. In particular I want to thank Mr Pravin Gordhan, Senator Bhabha, Ms Fatima Chohan, Mr Ken Andrew and others for their contributions in drafting Chapter 7 as quickly as possible. Thank you also for the friendly comments made by Senator Bhabha.

However, there are certain exceptionally important aspects of local government that have not yet been finalised among the parties. The outstanding issues are the following. Firstly, we believe that there is a particular connection between local government and the provinces. In the current draft legislation the relationship between the national legislature and local government is overemphasised. The important bond between local government and the provinces is being excessively diminished, if not severed.

†Let me deal with the basic problem. Section 148(3) is too wide and section 148(4) too restrictive. This creates another problem. We all started off with the knowledge that local government had been a creature of statute. We intended to create an independent sphere for local government. However, paragraph 148(3) now reads that national legislation must determine:

- (a) the different categories of municipality that may be established; and (b) the powers, functions, other features of local government.

I would argue that national legislation can be too inhibitive. If Minister Pik Botha takes away electricity through national legislation, and Prof Kader Asmal takes water away through national legislation, then councillors will sit with crumbs like parks and gardens. They must be sensitive to that, and we must protect the third sphere as much as possible. With this provision in section 148, we are back to square one. We now again have municipalities a creature of statute—in the past a creature of provincial legislation, now a creature of national legislation.

The only answer to this dilemma is to put more in the constitution and less in national legislation.

\*There is a second problem that has not yet been sorted out. We believe there must also be financial discipline at local government level. No one is

more concerned about the misappropriation of money than precisely the component that has to pay. Therefore taxpayers must be able to vote in municipal elections even though they live outside the boundaries of the municipality.

Thirdly, we also believe in the protection of minorities. We can only pursue a meaningful programme of nation-building if each person feels protected as an individual. This constitution already makes adequate provision for the individual. Further provision must be made for group rights. Only then, when each group feels protected and nurtured, will each of us, in our diversity, be a good South African citizen. Group rights must therefore also be protected at local level. Groups can also be protected when wards are demarcated in such a way that minorities are taken into account. We must not underestimate this instrument. We will therefore submit the proposal, as far as the demarcation of residential areas is concerned, that the respective cultural differences should also be taken into account.

Fourthly, and finally, we also want to empower the minorities in city councils to be able to make meaningful contributions. They must therefore be empowered to obtain proportional seats in the committees.

There are also other matters that must receive attention, but my time has expired and these can be discussed in more depth elsewhere and in due course.

Mrs G N M PANDOR: Comrade Chairperson, the comments of many of the speakers in this debate clearly acknowledge the courageous step that all South Africans took when they decided to take the risk of committing themselves to this transitional phase in our struggle for true democratic transformation. The constitutional Bill, as one of the most significant signposts of the transformation of our country, indicates that the ANC's objectives that were outlined through the Harare Declaration were and are the correct objectives for South Africa.

Of course, it is well known that the ANC's commitment to a democratic framework did not begin with the Harare Declaration. Almost three decades before it, the ANC, together with the people, drew the Freedom Charter, the first ever democratic constitutional framework for South Africa. The ANC's vision of our future has never been complex or obscure. It is simple and clear to the majority of South Africans.

It speaks to them frankly, dealing effectively with their reasonable aspirations and demands. The views put forward in the thousands of submissions received by the Constitutional Assembly attest to the link between the ANC's vision and the will of the people. The people generally want a constitution that upholds the dignity and value of each person, and that ensures that justice, peace and progress are the cornerstone of a transformed nation.

The basic vision set out by the ANC has always reflected these aspirations. Our vision states that we will strive for the achievement of the right to political and economic self-determination for all South Africans. It is because of this vision that we enshrine universal suffrage for the first time in a South African constitution. In addition, in an effort to give greater effect to our vision of economic empowerment, we have at least ensured that our new constitution will not, as with the interim Constitution, provide further economic privilege to those who control all access to economic means.

For many of our most oppressed people, the constitution does not go far enough in addressing the redistribution of South Africa's wealth. However, it does provide a framework which will stimulate the beginnings of redress and access for the dispossessed and the deprived of our country. We recognise that there are many in this Assembly who do not wish to see wealth in new hands, who wish to retain privilege as theirs and only theirs. To them we say that the people of this country support the ANC's vision of creating new hope and opportunity through our constitution.

Another of our visions is that we, as a nation, should create conditions that will ensure that we overcome our legacy of injustice and inequality. This legacy resulted, of course, from our colonial experience of a special type, apartheid. This vision is one that we must address swiftly, because our democratic state will be like ashes in the mouths of our people if we do not ensure that we strive towards justice and equality.

There are some in this Assembly who believe it is unjust to strive for equality through affirmative action and other positive measures. To them we say that the practice of apartheid, as exemplified by the brutal acts we are hearing of every day as we revisit our past, demand that we actively provide for the eradication of all vestiges of our apartheid past. Our constitution as it stands before

us begins this process. It does not provide all the answers that we want, but it certainly takes us a long way on the road towards transformation.

A further vision that the ANC has articulated is that of improving the quality of life of all our people. Many South Africans live in abject poverty. They are homeless and have no access to health services and water. The Bill of Rights in our new constitution provides a basis for changing their lives qualitatively.

All these objectives are addressed by the Bill that we have before us. All of them together form a tapestry that holds the nation's concerns and interests. We have before us a Bill which tables a fully South African vision—a vision that is not encumbered by the prejudice and sectarianism that governed our past.

Despite these reflections on the vision of the ANC, the constitution is in no way an ANC blueprint. The ANC committed itself a long time ago to a South Africa for all South Africans. This commitment informed all our contributions to this constitution, and so we can, as a party and as citizens of this country, proudly state that we remained true to our promise to represent all our people, and to ensure that they all feel that at last they have a document that is very much a charter of the people.

I would not want to leave this debate without saying to the women of our country, my sisters and my mothers, that the constitution has not ignored them. It speaks to them in several ways.

For the first time, they as women are equal citizens. For the first time, religion will no longer have the right to oppress them because they are women. They will also be beneficiaries of affirmative action. It goes even further; for the first time, their women's bodies are theirs to control and protect. Culture and custom will not hold them hostage, and they, like every other South African, will have access to opportunity and to a full range of human rights. It is a constitution for all South African women and men, truly a South African first.

In conclusion, I think we need to reflect on some of the comments we have heard this afternoon. Hon members to my left made reference to the possibility that South African citizens might wish to abuse human rights. I think it is important to state that the only people we know of who have a history of human rights abuse, sit as a minority in

this House. We also wish to assert that the economic plight of Mozambique was, of course, created through the actions of these people. We share none of their abusive tendencies.

We as the ANC have always been surprised by the predilection of the ACDP for sexual connotation. It is clear as we read the Bill of Rights that no reference is made in the document to homosexuality. Yet they constantly make reference to homosexuals. The Bill prohibits discrimination on the grounds of sexual orientation, and each individual has the right to choose his or her sexual orientation. The Bill also makes no reference to "reproductive care centres". I do not know which constitution the hon member of the ACDP was reading.

In terms of languages, we believed that we would be doing our nation a disservice if we agreed to entrench the rights of only one language in our country. We cannot take such a step. We do not believe that it augurs well for our nation to agree to such a step.

On the question of custom, I should inform the hon Mr Malatsi that custom is not immutable. It does not stand still. Traditional leaders, we say, should not abuse their position by hiding behind constitutional protection. Traditional leaders are dealt with adequately in the draft. Given our history and our democratic intentions, we can do no more than is outlined in Chapter 12.

In terms of the administration of justice, the hon Mr Schutte has tried to create the impression that the ANC wants to create a system that is subordinate to the State. This is patently far less than the full facts of the draft. Clause 175(1)(b) provides that the prosecuting authority will exercise its powers without fear, favour or prejudice. This is more than we had under previous judicial dispensations that the hon member was very happy to associate with. We all know what sort of law they practised.

The outline of Constitutional Court appointment procedures was very interesting as we heard it this afternoon. The intention of the analysis was not clear to me, because in the Bill we have the outline of a process that we all agreed to. Members who are now giving notice of amendments, are signalling that agreements and undertakings mean nothing to them. What would they say if the ANC were to renege on the cultural

commission, the property clause and the language and culture clause?

We, however, as a party are more honest and committed to our word. The devaluation of the rand, which we had so much talk of, began with the deficit and insecurity that the apartheid state created. We are striving to eradicate their negative footprint on our country. [Interjections.] Our submissions have been made in this spirit, and we hope that the NP as a party will finally act as a responsible party. They may deny the fact that they have created the deficit, but it is true, however much they may deny it.

We believe that they must now have the courage and the heart to keep to the agreements that we so strenuously and so painstakingly agreed to over two years of hard bargaining.

The time has come for us to show the maturity with which we can write a constitution for our nation. The framework is there. It is acceptable to all of us. Let us take it forward and adopt it on 8 May 1996.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I want to say that the Deputy Chairperson and I, sitting up there, received the following messages. One is from the previous speaker who said:

Dear Chairperson,

I am shocked to learn from the Whips that you will curtail your speech in order to watch soccer. I had thought that you had far superior tastes and interests. However, as an avid soccer fan myself, let me congratulate you on your good sense.

[Laughter.] That was from Naledi Pandor. Another message reads:

Chairperson and Deputy Chairperson,

We, the loyal and committed members of the Constitutional Assembly, remind you that Bafana Bafana are in need of our support in front of our TVs today. Forward to the new constitution!

[Laughter.] [Applause.] Here is another one.

HON MEMBERS: From?

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: This one is anonymous.

Kgaetsedi,

Are you aware that Bafana Bafana are playing tonight? Please do not replace absent speakers with other people, otherwise you will be in trouble.

[Laughter.] It is from Ousi Limpho Hani. It is signed "From the people on behalf of the people". [Laughter.]

We have also received many other requests from a number of people who said that they would like to go and watch Bafana Bafana. I am told that they probably will commence playing at a quarter to eight, and people would like to be out of here quickly so that they can get transport and get home early.

We had prepared a 45-minute speech which would have taken us beyond a quarter to eight, but we are not going to deal with that.

I just need to say, and I speak on behalf of the Deputy Chairperson, too, that we are rather pleased and we would like to extend our deep gratitude to all those who have spoken in this debate. This has been a very good debate. At an earlier stage, one of the members of the Constitutional Assembly said that this was a flat debate. That was said before today's proceedings, and he proceeded to liven it up and added quite a bit of humour and fire to the debate.

I would like to thank everyone who has participated in this debate. I would also like to thank members of the parliamentary administration, the Speaker and the Whips, who have allowed the Constitutional Assembly the time to have this debate. I think it has been very important and very good that we have been given this time. If we had not been given this time, we would not have finished in time.

Every party has had, in many ways, an opportunity of stating and restating its position. In some cases, parties have stated their positions in very strong terms and, in some cases, in uncompromising terms.

From where the Deputy Chairperson and I sat observing the debate as it moved along, and hearing what everyone was saying, we were able to see a good measure of consensus emerging out of what many of the speakers were saying. Not a single speaker suggested that we would reach an unresolvable deadlock. Not a single speaker threatened with a referendum. Not a single speaker threatened to walk away. Not a single

speaker even threatened with the holding of an election or anything like that.

What we were able to observe from where we were sitting was interesting. In some cases, no sooner had people spoken, restating their parties' positions, than we saw them moving towards their negotiating partners, beginning to discuss things, and, in one case, they even brought a formulation to us at the table to test whether the formulation would be acceptable. In other words, even as we were talking here and even as the speeches were made, people were proceeding with the negotiating process, and they were moving towards consensus. That is very heartening. We did say at some stage that we had to see this process as a win-win situation. In the end no party—this I promise—will get everything it wants.

If we would like to have a constitution which will represent the aspirations of the people of this country, we have to approach it in the true South African spirit, which is one of give and take.

There are a few issues that remain to be resolved. I will easily say that there are five issues. These issues can be resolved, even though they may seem to be unresolvable at the moment. They are all very sensitive issues. The parties are wide apart, but I believe that if we approach these with the unique South African spirit of give and take, we will be able to find solutions, if we accommodate one another. We do not want these issues to sink the work that we have already done, and the achievements we have already had. They are resolvable issues, and I believe that we will be able to resolve them all.

We will have a meeting of the Constitutional Committee tomorrow where parties will be submitting their amendments. The amendments may run up to 200, 300 or even 400, and if they do, the newspapers may put on their front pages that this constitution will not be finalised in time. I believe that even those amendments that will be proposed will easily be resolved. Each party has been given an opportunity to present its own amendments, and we have been given a deadline of six o'clock tonight.

The Deputy Chairperson and I have had a discussion and believe that this deadline, having been set as a flexible deadline, can be extended to 10 o'clock tomorrow morning to allow parties more time to table their amendments. However many they are, however many they will be, I

believe that these amendments will be addressed in the course of tomorrow and the day after and will be resolved, and indeed I expect even the five issues that may seem to be the most problematic will be resolved over the weekend and possibly into the beginning of next week. That will then allow us to print the final draft and table it in the run-up to 8 May, when we will adopt the new constitution.

I believe that this is all achievable. We have already demonstrated that we are able to resolve many difficult problems. I do not see why we, having resolved the difficult problem of the apartheid conflict, will not be able to resolve the problems of education, language, the lockout, the property clause, or whatever other issue.

I believe it is practicable, and all of us will be able to rise to the occasion and deliver to our people the constitution that they mandated us to come and draft here. That, I believe, we can do. We have the capacity and the ability. I urge all of us to proceed in that way to fulfil the mandate that we were given. [Applause.]

Debate concluded.

Bill read a first time.

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! In terms of the Rules, as amended, the Bill now stands referred to the Constitutional Committee.

The meeting adjourned at 19:02.



PARLIAMENT  
OF THE REPUBLIC OF SOUTH AFRICA

**PROCEEDINGS OF THE  
CONSTITUTIONAL ASSEMBLY**

Members assembled in the Chamber of the National Assembly at 16:05.

The Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.

**NEW MEMBERS**

(Announcement)

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Before we come to the first item on the Agenda, we would once again like to welcome everyone to this meeting of the Constitutional Assembly where we are about to enter the Second Reading of the Bill.

I have an announcement to make with regard to some of the vacancies which have occurred in this Assembly, and which have subsequently been filled, owing to the resignation of Messrs A T Meyer and P W Saaman and Dr P J Welgemoed. The vacancies have been filled in terms of section 44(2) of the Constitution by the nomination of Messrs F P Smit, A E Reeves and K J Modise, with effect from 1, 19 and 24 April 1996 respectively. We welcome the members.

The vacancy in the National Assembly owing to the resignation of Mr S J Macozoma has been similarly filled by the nomination of Mr M Mpehle with effect from 6 May 1996. [Applause.]

The new members were sworn in during private ceremonies—not secret, but private—on 30 April 1996 and 6 May 1996 respectively.

**CONSIDERATION OF AMENDMENTS BY  
CONSTITUTIONAL COMMITTEE  
DURING SECOND READING**

(Draft Resolution)

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Coming back to the Second Reading of the Constitution of the Republic of South Africa Bill, 1996, it has been recommended by the management committee which met this morning that a resolution should be passed by this Assembly to enable provisions of the Bill to be referred back to the Constitutional

Committee during the course of the Second Reading for possible amendment.

Before I call upon Mr Wessels, the Deputy Chairperson, to address us in this regard, I want to say that the management committee has agreed that our proceedings should last until 18:00 this evening and that we should reconvene tomorrow from 10:00 to 12:00, and that from 12:00 the Constitutional Committee should meet to consider whatever amendments may be put to it. The management committee has already identified a few that are presently being processed by sub-committees that were set up for this purpose. The Constitutional Committee will therefore definitely meet to consider a number of amendments. I would like to ask the Deputy Chairperson to address us and to put forward certain proposals whereafter we will need to take a decision.

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, as you indicated, it has been agreed amongst the parties that during the course of this Second Reading debate certain provisions of the Bill should be referred to the Constitutional Committee for possible amendment. As we know, the Rules as they stand at this moment do not provide for such an event. As you have indicated, Mr Chairperson, provision has been made for the Constitutional Committee to sit tomorrow between 12:30 and 15:00.

The committee will, after deliberation, immediately submit to the Constitutional Assembly any amendments it sees fit to make, including consequential amendments. Such amendments will then be deemed to be part of the Bill as placed before the Assembly for Second Reading. Accordingly, I would like to move as follows:

That, notwithstanding any provision of the Standing Rules to the contrary:

- (1) The Chairperson may, during the debate on the Second Reading of the Bill containing the recommended new constitutional text, direct that a provision or provisions of the Bill be referred to the Constitutional Committee for reconsideration; and
- (2) after due consideration of the relevant provision or provisions of the Bill, the Constitutional Committee shall effect

such amendments to those sections, as well as consequential amendments, as it sees fit and forthwith submit such amendments, if any, to the Constitutional Assembly. Such amendments shall be deemed to be part of the Bill as placed before the Assembly for Second Reading.

Agreed to.

## CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA BILL

(Second Reading debate)

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! We now come to the first item on our Agenda, namely the Second Reading of the Constitution of the Republic of South Africa Bill. The debate will be informally structured in two parts, the first of which will focus on the preamble to the constitution, as well as Chapter 3, which deals with co-operative government; Chapter 4, which deals with Parliament; Chapter 5, which deals with the President and the national executive; Chapter 6, which deals with provinces; and Chapter 7, which deals with local government.

The second part of the debate, which is due to start after the lunch break tomorrow, will deal with the founding provisions, the Bill of Rights and Chapters 8 to 14, which deal with courts and the administration of justice, State institutions supporting constitutional democracy, public administration, security services, traditional leaders, finance and general provisions.

I would now like to call on the hon the Deputy Chairperson to speak to us.

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, I am in favour of the Bill being read a second time. This is not a Second Reading speech in the true sense of the word. It is merely a report on progress since we last met.

When the Bill had been tabled and the First Reading debated, the Constitutional Committee met, divided into various subcommittees, spent long hours considering the various amendments placed before those subcommittees and subsequently received reports from those subcommittees. Furthermore, long hours were then spent in each other's company in an effort to resolve all the outstanding matters.

As we have just reported, not all the matters placed before us then have been resolved as yet, hence the option and the route that we have taken, namely to allow discussions on those topics to continue. The document before us is the ninth edition of the Bill, as amended.

It is not my brief to explain all the agreements reached and amendments effected to the Bill to this Constitutional Assembly. However, as we place the chapters before the Constitutional Assembly parties will once again be granted the opportunity to explain their viewpoints, to declare their positions on the various topics and, in their representations, to indicate to the Constitutional Assembly whether these amendments which have been effected meet with their expectations, as reflected in the amendments they placed before the Constitutional Committee.

It is not my brief to make a speech full of sweet-sounding phrases. I believe I will have that opportunity on Wednesday. Therefore, speeches full of sweet-sounding phrases should be reserved for Wednesday because we still have a lot of work to do.

However, I do believe it is opportune at this stage, since this is a report about the work in progress, to reflect once again, for the record, on how indebted we all are to the executive director and his staff members for assisting us by working so diligently throughout this whole process. I believe that when history reflects what happened, they will be mentioned favourably. The assistants and experts of the various political parties ably assisted their party colleagues in advancing their viewpoints, as placed on record through the various amendments.

We are now moving beyond the phase in which we had side-bar notes in the constitution, but I would like to add one more. I will not give it a higher status than that of a side-bar note. I believe that this process has been extremely transparent. Never before had I been involved in a constitutional negotiating process where so many cellular telephones were used to consult stakeholders and principals. Stakeholders and principals had been engaged throughout. That, I am sure, has led to good constitution-making. I believe it has made, to a certain extent, the process a worthwhile one, because when we finally resolve these matters we will have the endorsement of the various participants.

I am not sure that I will have the opportunity on Wednesday to make this particular statement and therefore I will do it right now. It concerns the chairperson, Mr Ramaphosa. It was the wish of the Constitutional Assembly that he should be chairperson and I should be deputy chairperson. It was endorsed by the members. Mr Ramaphosa acted as chairperson, but as the *primus inter pares*—first among equals. I thank him for that. [Applause.]

**THE CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY:** Thank you, Deputy Chairperson.

We are now at a point where we can switch off our cellular telephones. As much as they were used during the negotiating process, they are not necessary in this House at this point in time.

We have a list of speakers, but before calling on them, I have to say the following. We are advised that as hon members go through the Bill that is being distributed, they may come across areas where there are some grammatical errors. Those will be corrected through a composite amendment that will be placed before the Constitutional Committee tomorrow and also before the Constitutional Assembly. We therefore ask members, if they come across such errors, to point them out to us so that they can be included in the composite amendment that will be put forward.

**MR M V MOOSA:** Mr Chairperson and members of the Constitutional Assembly, it is my honour and privilege to be the first speaker in what will perhaps go down as the most historic and significant debate ever conducted in this Chamber.

This is a debate which is to result in the adoption of the first truly democratic constitution, a constitution which serves as a record of our freedom, which serves to entrench the hard-won freedoms for which all of us have sacrificed so much, a constitution which creates equality and which serves as a tool for the transformation of our country, a tool for building the nation, and a tool which says to all of South Africa and to the world: Never again will we have apartheid. [Applause.]

Historians will no doubt place this particular debate and the record of the debate in Hansard under a great deal of scrutiny so as to understand what we meant by various things. Therefore I would like to state, for the record and for the sake of posterity, that this two-day debate cannot even begin to record the richness of the constitution,

because we have taken two years to mull over submissions and to have debates in the many theme committees, subcommittees and public discussions—all of which resulted in this. The richness of that flavour will not necessarily emerge in this debate. At best, it will give historians a mere whiff of what was in the minds of the drafters of the constitution.

Starting off with clause 1 of the constitution, I would like to make a few comments on the topics which you, Mr Chairperson, have singled out for discussion today. Clause 1 is a new and innovative insertion. It records the constitutional fundamentals. For us, clause 1 represents the very ethos of the constitution. In future, whenever we want to know whether we are going against the fundamentals of the ethos of the constitution, we will look at clause 1, which, right at the outset, reads as follows:

The Republic of South Africa is one sovereign democratic State founded on the following values:

(a) Human dignity . . .

Human dignity is placed above everything else. It then goes on to record fundamentals without which a constitution is really not a constitution. It is for that reason that this clause has been inserted, not only as the first clause of the constitution, but as a clause elevated above all other clauses through the requirement that there should be a 75% majority of the National Assembly if ever these fundamentals are at issue. That is, in my view, an extremely strong statement to make.

The language clause, clause 6, is also a product of much discussion and consultation. The important thing about this particular formulation is that it ensures that, in the words of the clause itself, "all official languages must enjoy parity of esteem and must be treated equitably." There is no one language more important than another.

This clause for the first time also provides that not only should the official languages be promoted and conditions be created for their development, but also that those indigenous languages that have been trampled upon for so many centuries are now given a similar status. These are the Khoi, Nama and San languages. No longer do they feature in a long list of other South African languages such as German, Greek, Gujarati, Hindi, Tamil, etc.

Apart from Khoi, Nama and San—this I would say is unique anywhere in the world—the constitution not only gives recognition to sign language, but it also demands its promotion and development. [Applause.] This is directly as a result of the lobbying that has been done by disabled people themselves.

I would like to make a comment on Chapter 3, which is a very short chapter. It is less than one and a half page long and deals with co-operative governance. We realise, with the proliferation of government in this country, that one of the biggest gaps we had in the interim Constitution was the fact that we did not have a mechanism to ensure that people co-operated with one another. We found some governments in this country which simply refused to co-operate with other governments.

Therefore we have now entrenched in the constitution clause 41(1)(h) which reads as follows:

All spheres of government and all organs of state within each sphere must co-operate with each other in mutual trust and good faith by . . . assisting and supporting each other; informing each other and consulting on matters of common interest; co-ordinating their actions and legislation with each other; . . . and avoiding legal proceedings against each other.

For the first time we will now have a framework within which we will not only be able to practise co-operative governance, but perhaps compel all organs of state and all governments in all three spheres to co-operate with each other.

Before I sit down, I would like to make some comments on the question of local government. Local government in this country, as in many other countries, has always been treated as a stepchild of the first and second tiers of government. We have attempted, and I think we have by and large succeeded, in removing this second-class status of local government. Local government is now recognised, side-by-side with the national and provincial level, as a tier of government in its own right with the full constitutional protection that provincial governments themselves enjoy.

The constitution grants in clause 151 that “a municipality has the right to govern, on its own initiative, the local government affairs of its community . . .” In clause 156 it says further that a municipality has executive authority in respect

of, and has the right to administer, the local government matters listed in Schedules 4 and 5.

What we have done now is to remove local government as a mere competence or functional area of another level of government. Local government is a level of government in its own right. It is not a function of provincial or national government as such, just as provincial government is not a function of any other level of government, including national government.

This, for the first time, creates a situation in which we would be able to avoid the one shortcoming that exists in almost every other—I use the term guardedly—federal-type system.

In India, for example, after the creation of a federation there, over a period of decades one found that the states—which are the equivalent of our provinces—simply withdrew all the powers of local government, to the extent that almost 40 years after the adoption of the Indian constitution they had to insert a new chapter dealing with local government.

When a multiparty delegation from this Constitutional Assembly visited Germany in December 1995, a question was put to Chancellor Kohl: If he had the opportunity to amend the German constitution, what was the first thing he would do? He said the first thing he would do would be to insert provisions which guaranteed the powers and functions of local government. We have done that upfront in this constitution. For the first time, as members can see, the powers of local government are now listed in two schedules in the constitution.

More than that, local government will now participate directly in the national legislative process, because the National Council of Provinces will not only have nine delegations from each of the provinces, but will also have one delegation representing local government, so that there will be 10 delegations sitting in the Council of Provinces. Local government will now not be at the mercy of someone else who will be arguing their case; they will be doing so themselves. For the first time local government will also have the power to nominate members of the Financial and Fiscal Commission.

In conclusion, I would like to take this opportunity to thank the many technical experts who have worked with us and put up with us over the past two years. I would like to express particular thanks to the executive director and the staff of the

Constitutional Assembly who, in the most dedicated and competent manner, have conducted the affairs of this Assembly. [Applause.]

I would also like to thank the Chairperson of the Constitutional Assembly and his Deputy who have captained this ship through stormy waters in a most able way that has won the admiration of all of us. I would also like to thank the members of the Constitutional Assembly, although I am one of them. I think they have lived up to the mandate they were given. This body of men and women was elected to draft this constitution and what I have seen over the past few weeks and months is an unequalled dedication on the part of this body, slogging literally day and night to fulfil that mandate. I think the hon members ought to applaud themselves. [Applause.]

**THE CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY:** The hon member's time has expired.

**MR M V MOOSA:** My time has expired, but I would like to thank the public out there without whose guidance, through the tens of thousands of submissions that we have received, this constitution may have contained that much less.

**THE CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY:** I call upon the hon member Dr Boy Geldenhuys. [Interjections.]

**DR B L GELDENHUYS:** Mr Chairperson, hon members will not be disappointed. [Laughter.] The previous speaker said: "Never again will we have apartheid." [Applause.] That is also my wish and it is also the wish of my party . . . [Interjections] . . . provided that apartheid will not in future be succeeded by scientific socialism or, for that matter, communism. [Interjections.]

The constitution under discussion is not a *de novo* phenomenon. It would have been a *de novo* document if South Africa's history had begun with the ANC. However, South Africa's history did not begin with the ANC. This constitution, although extremely important, must therefore be regarded as just another milestone on South Africa's path to constitutional development. It is neither the beginning nor the end.

For this very reason the NP can associate itself *inter alia* with the content of the preamble. I will refer briefly to some of the issues touched upon in it. "Honour those who suffered for justice and freedom in our land." We can associate ourselves

fully with that. It is not only the ANC freedom fighters who suffered for justice and freedom. [Interjections.] The Afrikaners were the very first to take up arms against a colonial power on the African continent. The suffering of so many women and children during the Anglo-Boer War is common knowledge. [Interjections.] However, the Afrikaners forgave unconditionally, without ever instituting a Truth and Reconciliation Commission. [Interjections.]

Tribute should also be paid to those who died whilst preventing the establishment of a Marxist state on the subcontinent of Africa. [Interjections.] It is an injustice and oversimplification to accuse them of having merely defended apartheid. There was much more to it than that. They were engaged *inter alia* in an effort to stop Soviet expansion in Southern Africa, which was no myth.

It is indeed a tragedy that a legitimate liberation struggle was confused, owing to communist involvement, with a totally different agenda. [Interjections.] This, in fact, deprived the liberation struggle of its moral high ground. Perhaps the Minister of Justice should take cognisance of this.

The NP appreciates the fact that its amendment was accepted and that the following line was inserted in the original text: "Respect those who have worked to build and develop our country."

Every head of state worth his or her salt who has addressed Parliament so far, has referred to the excellent infrastructure which exists in South Africa today. This did not fall from heaven. It is the result of the combined effort and the sweat and expertise of workers and employers. They should be honoured for this.

A line in the preamble says " . . . united in our diversity".

\*In the preamble the rich diversity of the South African population is recognised, but if recognition is not at the same time afforded to the religious, cultural and linguistic rights of this diversity, one can simply forget about national unity or nation-building.

It is praiseworthy that the preamble also refers to a democratic dispensation as an ideal. But we must be careful in our use of the word "democracy". East Germany was known as the German Democratic Republic while there was no question of a democracy in the true sense of the word.

With guidelines from the United Nations as a yardstick, minority protection becomes a test for a truly democratic model.

†The preamble expresses the wish that democratic South Africa as a sovereign state will once again be able to take its rightful place in the family of nations. However, as long as South Africa continues to embrace the polecat nations of the world, this will never happen.

\*Although the NP would have wanted the preamble to begin with the words "In humble submission to Almighty God", and we therefore also place on record our disappointment that this is not the case, we can live with the words "May God protect our people". The NP does not agree with the reproach that it is merely an afterthought at the end of the preamble. It is indeed a prayer which precisely registers the omnipotence of God by implication.

†The NP appreciates the fact that recognition is given to God in the preamble, despite the fact that many believers and unbelievers perceive South Africa to be a secular state. The biggest common denominator in South African society is our mutual trust in God Almighty. It is therefore appropriate that this should be reflected in the preamble, which has been described as the valued footprint of a nation.

Someone once said: "Africa is dying." Definitely not, if "Nkosi sikelel' iAfrika" applies. [Applause.]

**THE CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY:** Could I just say that in debating the chapters we should bear in mind that we are also debating them as a bloc. You can choose whichever chapter you would like to address the House on. In my early announcement I omitted mentioning Chapter 1, but I am rather pleased that some of the speakers have already referred to it in their inputs. I would also like to repeat that there are a few errors, some typographical and some grammatical. If you see any errors in the Bill before us, please send us a note. That will be taken up in the composite amendment that will be put before the House tomorrow.

\***Dr P W A MULDER:** Mr Chairperson, I think that in the light of the speakers who have spoken thus far, recent events and what still lies ahead for us, 1996 will certainly, correctly or incorrectly, be known as the "Year of the Constitution". Future generations will also judge all of us by the extent

to which South Africa's problems are solved by this constitution and the extent to which it will realistically be able to deal with the problems of the future.

The FF had very difficult choices before April 1994. The argument in our ranks revolved around the extent to which Afrikaners would best be able to achieve their political objectives within the new constitutional system or outside of it. In heated internal debates many valid arguments were advanced that greater success would be achieved outside of the constitutional system. One of the arguments was *inter alia* the success of the ANC outside the system of the day. Our decision was indeed to participate in the system, with, as everyone knows, traumatic consequences for our power base, which believed that we would be able to achieve our objectives through war before 27 April 1994.

This constitution is the result of two years of tough negotiations during which the FF had to prove that it was a better choice to participate and to try to achieve our objectives within the system. The mandate we received from 640 000 voters was to negotiate about territorial self-determination on the one hand and cultural self-determination on the other.

The FF's mission also consists of these two elements, as accepted by our congress after a democratic exercise in all the various provinces, namely territorial self-determination in a volkstaat on the one hand and cultural self-determination in the rest of South Africa on the other, as contained in our congresses. That is the mandate with which we came here and about which we had to negotiate. That was, and still is, our mandate.

What makes negotiation so difficult is that on the one hand parties are expected to make compromises for successful negotiation. On the other hand, each party has a mandate from its party organs and its power base to achieve their objectives. No one who is not part of this process will understand how difficult it is still to achieve success between the pressure and expectations of one's supporters on the one hand and the pressure of the negotiating situation on the other. [Interjections.]

This is even more true for a small party whose standpoints often go against the current popular and so-called politically correct standpoints. [In-

terjections.] I would dearly like to negotiate from a position of power for a change, because that is something I am not familiar with and I do not know how it feels.

The fact that the FF could achieve certain successes says a lot for the hard work of each member of the party who made a contribution, and I want to thank every one of them. Naturally, we did not succeed in achieving everything that we wanted to, and we are disappointed about that. Therefore there has been criticism from outside, and we still have to account for the extent to which the people outside will accept what we did not achieve here. That is part of the entire negotiating test.

However, the test that must actually be applied, is whether or not our participation brought the Afrikaner closer to his ideals. That should also be the test applied by the people outside. I would like to quote N P van Wyk Louw, where he said in "Dieper Reg" a long time ago:

Ek kom om vir 'n volk te pleit  
 wat klein naas al die volke staan, —  
 dat hulle naam nie sal verklink en tot die stiltes  
 gans vergaan;  
 maar dat hulle sterk voor God durf kom —  
 rein is die mens wat suiwer streef —  
 en deur hul reg 'n nageslag  
 in verre eeue nog kan leef.

Parties such as the CP, the HNP and others which refused to participate in the process, must therefore answer this same question. What have they done during the past two years to bring the Afrikaner closer to his ideals? This is in fact the test that one must apply. The FF is convinced that the big risks we took have indeed brought us closer to these ideals. In tomorrow's debate other members of the FF will speak specifically about self-determination and what has been achieved in this regard, such as collective rights, amongst others and the manner in which this appears in the constitution.

In the limited time at my disposal I am going to confine myself to the preamble to the constitution. I am a Christian, and I have never been ashamed of that. The point of departure and philosophy of Christianity, as I understand it, attempts to promote tolerance towards everyone. We therefore have religious freedom in this constitution. However, this does not mean that a Christian can compromise on his standpoints. I would like to quote from Luke 9:26:

If anyone is ashamed of me and my words, the Son of Man will be ashamed of him when he comes . . .

I can also refer to Psalm 33:12, which reads:

Blessed is the nation whose God is the Lord.

I can also quote Martin Luther King who, as part of the entire mission in his life, said:

You ought to believe something in life. Believe that thing so fervently that you will stand up for it to the end of your days.

The basis on which the FF was founded consists of seven points, of which the first is that the FF accepts that the Triune God rules the destinies of peoples and nations, and that we as fellow citizens undertake to live to the glory of God. Against this background we proposed an amendment. We would have liked the following to be contained in the preamble to the constitution: ". . . in humble recognition of Almighty God".

That would place South Africa and all of us in a position where a greater power—God Almighty, the Triune God—who is appointed above us, is recognised. We negotiated about this matter seriously and proposed various amendments. We hoped that we would succeed in having it included in the constitution. Our dilemma is that the preamble, as it now stands, creates the impression that people are more important than God, and we are convinced that this cannot succeed. We would like to place on record that we regret that our amendment was not accepted and that we will consequently have to state outside that we lost in this sphere.

We will continue to participate in the debate and highlight our standpoints. We want to express the hope that this constitution will give South Africa a peaceful future and that we will be able to solve all the problems—also the harsh realities of Africa. As Afrikaners we are after all bound to Africa. We are committed to searching for solutions here, because there is no other way in which to solve our problems. Our modus operandi is pure, whether we will take the shortcut by continuing with negotiations and viewing this constitution merely as a first hurdle, or whether we will be forced to take a longer road at a later stage—something which will be to no one's benefit.

Mr C G NIEHAUS: Mr Chairperson and hon members of the Constitutional Assembly, it is with pride that I stand in front of you as a Christian South African to speak on this constitution, and specifically on the preamble, particularly because this preamble is the product of long negotiations. It is the product of negotiations into which the ANC went with one aim, and that was to express what stands in the first sentence:

We, the people of South Africa,  
Recognise the injustices of our past;  
Honour those who suffered for justice and freedom in our land . . .

If we say that this constitution must indeed be representative of everyone, then the ANC could not go into negotiations about the preamble simply with the aim of allowing what we wanted to prevail. Indeed, through all the long negotiations the ANC was prepared to negotiate, not only on what we placed on the table, but also taking into consideration what the views of all the other political parties were. The result that we have is a preamble which, in the first instance, recognises that we are a country of a diversity of peoples and of religions and also a country where there are people who are nonbelievers.

The ANC was prepared to try to find ways to accommodate the positions that have been stated by other political parties. However, we were not prepared to accommodate them in such a way that any person in this country, of whatever belief or persuasion, would be disregarded by this constitution or be trampled on, and be made a second-class citizen.

I am glad to say that the constitution as it stands, and specifically this preamble, meets exactly that demand. However, it is sad when we are faced with speeches such as we heard this afternoon, specifically the speech made by Dr Boy Geldenhuys, trying to justify many of the things that happened in the past. Truly, if we say that we wanted the preamble to this constitution to start: "In humble submission to Almighty God", we must ask ourselves what happened in South Africa for 48 years under constitutions of which the preamble read: "In humble submission to Almighty God". [Interjections.] Was it in humble submission to Almighty God that people were trampled on, that people lost their land, that District Six is still sitting there as a wound in Cape Town? Was it in humble submission to Almighty God that we must today hear the evidence given at

the hearings of the Truth and Reconciliation Commission?

What happened to Griffiths Mxenge, what happened to Solomon Mahlangu, what happened to all of them? If what was done to them was done in the name of Almighty God, then it was indeed treacherous to God.

\*Then that was indeed heresy, and we cannot allow heresy of any kind to prevail in South Africa.

If we take another look at the constitution, we see that it says we should build and work towards making this country a place of justice in order to ensure freedom and justice and democracy for all. It is indeed sad that we are still here this afternoon to debate the constitution, uncertain whether it will finally be approved by a two-thirds majority.

Is this because the NP finds it so difficult to find real solutions to the lockout clause, because they really find it so difficult to find solutions to the problem of education and their case in favour of single-medium education, or does this in fact concern the perpetuation and preservation of apartheid in a new guise?

I think these are the questions that we should ask, because this is the challenge which the preamble to this constitution presents to all of us. This preamble expects of the NP, as of all parties, to tackle its task in a real spirit of reconciliation and co-operation and justice. This in fact means that one should admit what one has done wrong in the past.

I believe that the great challenge to South Africa will in fact be whether we can succeed in the application of this constitution, or succeed in not only getting people to admit that apartheid was wrong, but also their being prepared to see how deeply apartheid has hurt people.

Then, as Dr Geldenhuys as a former clergyman ought to know, one should also know, confession means one should do something in order to rectify the sins of the past. I am afraid that, in view of what the NP is now doing, we cannot be certain of having their full support in this as yet.

I want to conclude by quoting an example from my own life. I do this in reaction to the kind of attack that was made here on members of the SACP. I want to tell the Assembly about a man called Dennis Goldberg, whom I met in prison. When I went to prison, he had already been there for 21 years. He received me, supported and helped me.

During the time that I was there I came across warders who went to church every Sunday, or sat in churches where Dr Geldenhuys preached and unfortunately proclaimed apartheid, who sometimes cursed me and shouted at me. One day Dennis Goldberg came to me and asked me why I had turned against apartheid. I told him that I believed apartheid was not Christian. He then took me by the shoulders and said: "Carl, do not allow these people to rob you of your faith." That is what a Communist said.

I want to say in the presence of everyone here that I would much rather associate with people who have devoted their lives to the struggle against apartheid—people who have kept the preamble of the constitution in mind and pledged their full support—than with people who still want to take apartheid into the new South Africa in some or other guise.

I associate myself with people such as Dennis Goldberg and a man who played a great role in the new South Africa, and to whom we paid tribute during this past weekend, Joe Slovo. I thank all my comrades, those who are religious and also those who do not belong to any specific religious group, for their struggle in order to unite us here today. I thank them that we can have this constitution, and that we can say together to one another: "God bless South Africa!" Nkosi Sikelel' iAfrika! [Applause.]

Mr C W EGLIN: Mr Chairperson, I have no intention of trying to compete with the theologians. I want to get back to the constitution as I see it. [Laughter.]

This South African constitution, like so many constitutions, is structured in two parts. There are a number of chapters which deal with the structures and procedures for creating good democratic government. The other part creates structures and procedures as a protection against bad or authoritarian government.

This afternoon we are actually considering the first part. Chapters 1 and 3 to 7 deal with governance. They deal with how one creates good government. Tomorrow we will deal with those matters which deal with protection against bad government. Let me say with regard to the overall structure for creating governance, while we would have reservations about matters of detail, we believe this constitution has gone a long way towards ensuring that South Africans of the future

will enjoy governance that is representative, democratic, transparent and accountable. These will be the features, we think, of the structures that we are trying to create.

I want to respond to some of the chapters and provisions to identify the DP's attitude. First of all, section 1 of the founding provisions, as Deputy Minister Valli Moosa indicated, is absolutely fundamental. Section 1 lies at the very heart of our constitution. It encapsulates the philosophy of the constitution. It puts in place the keystones of the constitutional structures and it provides very important reinforcements to the principles that follow. I would hope that we shall all look at section 1 and engrave it in our hearts, so that we as legislators around the country, whenever we are in doubt as to how we understand this constitution of South Africa, can go right back to section 1 for the founding provisions of our constitution.

The second unique feature of this constitution is the section in Chapter 3 which deals with co-operative government. I have not seen the concept of co-operative government stated in this form in any other constitution in the world. It is unique and it is necessary, because the concept of co-operative government embodies the separation of government into three defined, constitutionalised spheres, namely national, provincial and local. Having separated those spheres, the question is how one may bring them together in the concept of co-operative government.

This constitution contains both a separation of the instruments of government into their different spheres and the concepts of co-operation, respect and mutual trust between those three spheres.

People might say that it detracts from the autonomy of local government, of provincial government and of national government. It does all that, but we believe that it replaces that autonomy with respect, which is essential, and co-operation, which is even more essential.

I now come to the question of Parliament. In terms of Chapter 4, it is a normal, democratic parliament consisting of two Houses, the National Assembly and the National Council of Provinces. We would have preferred other provisions in respect of the National Assembly. We would have preferred a smaller National Assembly, as we would have preferred a smaller Cabinet. We think the numbers should have been restricted to 300 and 20 respectively. We would also, in the next

election, have liked to see the constituency component of the election brought back. Then, as members, we would all be directly accountable to our constituents, and our constituents could have a lien directly on us and have direct access to us.

However, there are important features and changes in this particular chapter. First of all, the powers of Parliament, in relation to the national executive, have been strengthened. Parliament will be a stronger body in relation to the national executive. The national executive, from the President down to all the Ministers, is going to be accountable to this Parliament and to the committees of this Parliament. Nobody other than this Parliament will be able to dissolve this Parliament. No one, whether a President, Prime Minister or other potentates will be able to decree that Parliament should be dissolved. The dissolution of Parliament is in the hands only of this Parliament, and is a democratic decision of this Parliament.

For the first time, Parliament, and not only the executive, is entitled to initiate and prepare legislation. Parliament itself will be able to introduce legislation, not just through private members' motions, but through the various committees of Parliament. While the executive can introduce legislation, Parliament will be a master in its own house and can also introduce legislation.

There is to be a special committee of Parliament to keep the constitution under constant review. It is not going to be the executive which will say when it is time that the constitution is changed. A special, permanent committee of Parliament will be set up constantly to review the constitution to ensure that it is adjusted in terms of the needs and requirements of the time.

However, what is more important in respect of the changes to Parliament is the question of access to Parliament. It is not just a question of access to the gallery or through television. The provisions of this constitution require that Parliament, in terms of our standing orders, give access to the public, not merely as observers, but as participants in the legislative process through the committees of Parliament. This is a distinct improvement on what we have had before in our Constitution.

The second House of Parliament, as we all know, is a novel institution which will be known as the National Council of Provinces. One can talk about

the detail later. However, I have no doubt that despite all the problems there are going to be in structuring that body, it is going to strengthen the role, the position and the stature of the provinces in relation not only to the process of government in this House, but to what I would call the process of politics in South Africa. I believe that provincialism and local government are going to become important elements of politics, and not only important elements of Parliament, in South Africa.

As far as the President and the national executive is concerned, the constitution once again emphasises, without detracting from the status of the role of the President, the collegial responsibility of the President and his Cabinet, in administering the national executive of our country. We are less impressed by the concept that the President can choose two people who are not members of Parliament to become Cabinet Ministers. This is a fundamental departure from the concept of parliamentary accountability and responsibility. It also means that those individuals will not be accountable to the public through the political parties that normally nominate them. In a country like ours, accountability through political parties is a very important brake on the authority of the executive. We would have preferred all Cabinet Ministers to come from amongst the members of Parliament.

As far as the provinces are concerned, we would have preferred more exclusive powers for the provinces than they have at the moment. However, I will leave that issue, because my other colleagues are going to deal with it in due course.

We believe, however, that the fact that the three tiers of government—provincial, local and national government—now have a clearly defined constitutional position is going to revolutionise the nature of our politics in South Africa.

Mr P A C HENDRICKSE: Mr Chairperson, I am today very honoured and privileged to be participating in this, the most important debate in our country. I have had the privilege and honour, since 29 November 1991, to have been part of the Codesa and Kempton Park processes. This debate is very important, because it will lead to the adoption of a constitution which for the first time recognises all of us as citizens of our country. This constitution was written with the participation of the people and will be voted for by elected representatives of all the people of South Africa.

It is therefore appropriate that we acknowledge those who, over the years, contributed to this moment, many of whom paid the ultimate price. We need to remember not only those who are known to all of us, but also the thousands of unknown men, women and young people who all made sacrifices in the pursuit of the dream that one day we would be free. We need too to acknowledge the pain and suffering of their families and loved ones. Many made sacrifices in various ways and degrees to bring us to where we are today.

The preamble to our constitution acknowledges our past and encapsulates our ideals for the future. This debate should be a happy one, a debate that celebrates the commitment of our people to democracy, human dignity, the achievement of equality, the advancement of human rights and dignity, and nonracialism and nonsexism.

What a pity it is that today there are some parties that do not feel that they can celebrate with us. One would have expected the NP in particular, being conscious of their past, their history of oppression of the people, and their perpetuation of a crime against humanity, to have seized this opportunity as a means of apologising to the country for their evil policies, as a way of showing that they have renounced their past, mended their ways and committed themselves to the new South Africa. One would have expected the NP and its members to show some sign of humility, and not the arrogance of one who has not done anything wrong, evil, immoral or shameful.

However, this may be part of the problem. We tend to think that the NP also sees apartheid as immoral and iniquitous. We forget that there are those amongst them who believe only that apartheid was wrongly applied, or was not practically feasible, and therefore that they needed to opt for some sort of change. We forget that what we have today is not necessarily what they had in mind when they decided to negotiate as a result of the pressures on them. Dr Boy Geldenhuys did not disappoint us today when he came with his typical knee-jerk response. This is the same Dr Geldenhuys who, with his commitment to the so-called Christian values, supported apartheid through its darkest years.

It is at times like these that the true colours of the NP come out. We see in their caucus and in their party structures the debate between those who still

want to serve the interests of a narrow, racially defined minority and the perpetuation of immorally accrued privileges and those few amongst them who believe that the NP needs to reach out to people across the colour line and to act in the interests of the people and the country as a whole. It is at times like these that we see the control exercised by the ultraconservatives in the NP.

I want to take this opportunity to appeal to all parties in this Assembly to support this constitution. All the parties here have been part of the negotiating process, and will therefore know of the compromises the ANC has made in the interests of the country and for the sake of inclusivity.

The ANC has gone out of its way to accommodate other parties. It is a fact that the overwhelming majority of South Africans voted for the ANC and its principles, programme and goals. This is a matter which is conveniently overlooked by smaller parties and negated as not being of relevance. We say that we believe in a democracy but when the majority of the people democratically support a certain party, the parties who fail to get 2% or 5% support say that that is not important; they have the answers. When people talk of the support for the ANC, there are people in the NP, like Minister Dawie de Villiers, who say that it is because of the political immaturity of Black people that the ANC has so much support. When we become more mature, the support base will be different.

There is the tiny DP, which could not even convince 2% of the people to support it, acting as if its members alone know what is right for the country.

Mr K M ANDREW: What about the Labour Party?

Mr P A C HENDRICKSE: You got less than 2%, Ken.

The DP only needs to look at the popularity of its leader, Tony Leon, in *Rapport*, a newspaper which makes fun of the pain, suffering and tears of people when they testify before the Truth and Reconciliation Commission. These people suffered under apartheid. Those members should ask themselves why *Rapport* is so enamoured with their leader. Are they still faithful to their founding principles?

In the past we have had preambles—this has been stated—to constitutions which started, “In humble submission to Almighty God”. They referred to the upholding of Christian values and civilised standards. All of us know what was perpetrated in the name and in the guise of civilised standards and Christian values. I appeal to all parties to accept this preamble, which cannot be considered to be contrary to the beliefs of anyone present. Although people may have wanted more, let us take this preamble to our hearts and commit ourselves and our people to the continued realisation of our goals so that South Africa can truly belong to all our people, united in diversity. [Applause.]

Mrs P DE LILLE: Mr Chairperson, I want to start by referring to the process, which, I must say, was tiring and exhausting. However, we have finally produced a constitution which will enjoy legitimacy and the support of the majority of the people of this country. It was therefore worth every minute of work. [Applause.]

I also have the permission of the chairperson of the subcommittee which dealt with the preamble, Comrade Blade Nzimande, to restate my position here today. The fourth line of the preamble reads:

... South Africa belongs to all who live in it  
..

We still have problems with that statement. With due respect to the Freedom Charter, as I have said previously, I think we need to qualify that statement by saying that South Africa belongs to its citizens. [Interjections.] Azania belongs to its citizens. [Laughter.] Yes.

In Chapter 1, under the founding provisions, a new vision for this country is encapsulated, a vision which all of us fought for and which will finally allow South Africa to become one united Azania. [Interjections.]

Chapter 3, on co-operative government, is commendable, especially the principles in clause 41(1)(c) and (d), stating that all spheres of government and all organs of state must -

- (c) implement effective, transparent, accountable and coherent government for the Republic as a whole;
- (d) be loyal to the Constitution, the Republic, and its people . . .

Chapter 4 deals with Parliament. It is unfortunate that we could not finally decide on the seat of

Parliament, and that that will now be decided by an Act of Parliament. We must remove the uncertainty in the nation as to where Parliament will finally be seated. We had hoped that we would decide that Parliament would be in Cape Town. [Interjections.]

Clause 46(1) states that the National Assembly should consist of no fewer than 350 and no more than 400 members. The PAC proposed 350 members and we are happy that this has been accepted. Clause 60 deals with the National Council of Provinces. We feel that the new council of provinces will be more representative and accountable to provinces and will assist in achieving national consensus on important issues.

Chapter 5 deals with the President and the national executive. It provides far more clarity on the powers and functions of the President and the national executive. This being the case, the PAC has no major problems with this chapter.

Chapter 6 refers to provinces. Clause 142 deals with the adoption of provincial constitutions. The PAC is of the view that we should only have one national constitution, and not have constitutions all over in the provinces, which could lead to further divisions in our nation.

Chapter 7 refers to local government. The PAC welcomes the local government matters referred to in Schedule 4(b) and Schedule 5 which have been assigned to municipalities and which they will now also have the executive authority to administer.

Mr M BHABHA: Mr Chairperson, from the point of view of local government, we stand on the threshold of a most exciting era.

Clause 151 and clause 155, read together with Part B of Schedules 4 and 5, usher in an era that is fresh and entirely new, a system that is perhaps unprecedented in the constitutions of the world. In effect, no other sphere of government can ever attempt to usurp the powers of local government in performing its functions. This tier is no longer a subservient one to the other tiers of government. Local government now derives its powers from the constitution itself. These powers are mentioned in Part B of Schedules 4 and 5. Municipalities will now have the autonomy to administer their powers within the parameters of the functions mentioned in these schedules. Local government will no longer be vulnerable to either provincial government or national government.

No longer can provincial government or national government interfere with the operations of municipalities.

The provisions of Chapter 7 epitomise a particular paradigm shift in the way local government is now viewed. This chapter now allows local government to play a key role in the context of co-operative governance. It is now not only an arena for service delivery, but an arena for development.

Mr Chairperson, I must report to you on one stark political difference that we did have with the NP. The NP insisted upon ratepayers or landowners having an extra vote in addition to their residential vote. In effect, that would have meant that those very wealthy people who own homes in Hermanus—and I am told that there are quite a few of us sitting here who do so—and visit them once every one or two years, would also have a vote in Hermanus. Now we oppose this most vehemently.

An HON MEMBER: Why do you not have a home in Hermanus?

Mr M BHABHA: Because I did not have your privileges. We oppose this most vehemently, because what we would be doing once again would be to reward the rich, the privileged and those who had access to land in the past. Again, we would be punishing the poor. I am glad to announce that at some stage the NP did come to its senses. At least we succeeded in something. Now there will only be one vote, and that will be a residential vote.

Before I conclude, I would like to thank the Chairperson and the Deputy Chairperson of the Constitutional Assembly for doing a sterling job in a monumental task.

\*Dr F J VAN HEERDEN: Mr Chairperson, before I start I would like to tell you that nine years ago today I and a few of my colleagues became members of Parliament. I want to take the opportunity, on the one hand, to congratulate them, and on the other to inform you that when we joined Parliament the NP was involved with an internal and in-depth investigation into the political morality, if any, of the policy of withholding political rights from blacks at the time.

I would subsequently like to react to what the hon member Mr Carl Niehaus said about the Christianity and morality of the NP. Since I have come

here, and during the past nine years, I have experienced the NP as a party which has discussed this matter of political rights intensely and in depth in the caucus, passages, offices and recreation rooms. I take exception to what he said, but fortunately I take it whence it comes. When it comes to such a superior issue as the understanding of God, I look at the person who is levelling accusations against the motives of the NP. I really take exception to the contemptuous and derogatory reference that Mr Niehaus made about regarding the motives of the NP in this regard. However, I am grateful to be able to say that one day, when it is time for the Judgement, I would rather fill my own shoes than those of someone else. And I say this without mentioning any names. [Interjections.]

†I would like to get back to Chapter 1. As Mr Colin Eglin quite correctly indicated, this is a very important chapter. In the very first chapter of the Bill the spirit of the constitution is stated unambiguously, namely that the State is based on the values of human dignity, human equality, human rights and human freedoms.

Everything that follows in the constitution is particularly aimed at achieving exactly this kind of society, in other words a society of which these values are the very foundation. These values are entrenched in the constitution and, in particular, in the Bill of Rights. Furthermore, it is clearly stated that the constitution is the supreme law of the country and that the law shall rule. The constitution is there to protect everybody, not only the majority. It is particularly there to protect the minority, individuals, against excessive State power. In this protection these core values must prevail.

This first chapter further deals with three emotional issues, namely the National Anthem, the National Flag and languages. Regarding the anthem, the Bill provides that the President can determine this by proclamation. Before a final decision on this, the President must consider how an anthem can serve to achieve national unity. I understand that the President intends to give an indication concerning the anthem soon, and we would like to request him to take the opportunity to make an announcement in this regard.

On the flag issue, there was an agreement that the present flag should remain as it is. This is a new flag which, in the short time since it has been used, has been very broadly accepted. It is our

submission that a new anthem, or a combination of the existing two anthems, could, like the flag, serve to promote unity in South Africa.

\*As far as language is concerned, I want to say the following. The Senate subcommittee on language of the Select Committee on Education, Sport, Recreation, Art, Culture, Science and Technology describes the importance of language as follows, and I quote:

Language is a form of human communication. It is an instrument to convey meaning. Mother tongue could virtually be considered one's second skin. It is the natural possession of every normal person, as we use language to express our thoughts, norms and values, to explore our experience and customs and to form our society and the laws ruling it. It is by way of language that we convey our hopes and ideals.

By way of the language clause in the Bill the strong tendency towards unilinguality that has existed since 1994 has changed. Unilinguality marginalises and deprives those who do not speak the dominant language of power. By way of this clause the Bill is brought into line with the international move in the direction of multilinguality as a basic principle in a democratic state. Multilinguality is an essential characteristic of the modern world. The language clause therefore reacts positively to the diversity of languages in South Africa.

I would now like to try something. I think that those who speak Sesotho will forgive me if I do so very badly. With apologies to Senator Direko for my attempt, I ask them to listen to me patiently.

Ke thabile ha e mong le e mong wa rona a tseba ho bina, ho ithoka le ho sebetsa ka puo ya hae, fatsheng lena la rona le letle la South Africa. Ha re tshwaraneng ka matsoho re ye pele. [Mahofi.] *(Translation of Sotho paragraph follows.)*

[I am happy that each one of us can sing, work and sing praises in his own language in our beautiful country, South Africa. Let us join hands and move forward. [Applause.]]

Ms M VERWOERD: Mr Chairperson, this Bill before us today is yet another very important landmark in the dynamic, although often very difficult, transitional process that we have been going through in South Africa. It is the culmination of a process that stretches back over many centuries, a process which saw many people

dying in the hope of seeing freedom as embodied in this constitution today.

In the continuing challenge of transformation on the economic, social and political level, it is well known that local government can and must play an integral part. It is this challenge that is addressed in Chapter 7 of the constitution.

The apartheid value system manifested itself deeply at local government level. Already in 1922 Col Stallard formalised separate urban residences and denied municipal franchise to Africans. This segregation was, of course, formalised by the NP government who, over decades, systematically divided local communities along racial lines in every aspect of life. Privileges and money were to a large extent in the hands of the White sector of society.

However, as resistance to apartheid grew on the national and international front, so did the opposition at local level. As a result of this, the Local Government Negotiating Forum was formed in 1993 and its recommendations were to play an integral part in the later multiparty negotiations and the interim Constitution.

It can be said that in the past local government was completely subject to other tiers of government, and only had those powers that were delegated to it by another tier of government. Despite a shift away from this in the interim Constitution, the fact that local government was still listed as a Schedule 6 function caused endless problems. Although local government was listed as a concurrent power, it was still made a function of other levels of government, thus, once again, making it the stepchild of government.

It is against this background that Chapter 7 was written. In this new constitution, local government, as my colleague before me stated, is clearly defined as a separate, although not independent, level of government. It is stated clearly in clause 151 that a municipality does not only have the right to govern local government affairs on its own initiative, but that national and provincial legislation may not impede a municipality's rights or abilities to exercise its powers and perform its functions.

These powers and functions are derived from Schedules 4 and 5 where the local government functions such as water, sanitation, cleansing, refuse removal and electricity reticulation, are listed as Part B of the schedules. Clause 156 gives

municipalities the right to administer these functions as listed, as well as any local government matter assigned to it. It further gives municipalities the right to make bylaws in respect of these spheres, subject to national and provincial legislation.

However, certain obligations and developmental duties are conferred on local government, thus giving content to the concept of local government being the hands and feet of the RDP. Clauses 152 and 153 compel local government to structure its budget and planning processes in such a way as to give priority to basic needs in the community, and also to promote the development of that community.

They further place an obligation on municipalities to participate in national and provincial developmental programmes. In most of these issues, all the parties were mainly in agreement. However, when it came to the election procedures for municipalities and to demarcation, substantive and serious differences started emerging. Although it was agreed that demarcation should be done by an independent body, the NP insisted that cultural diversity should be placed in the constitution as a criterion for ward demarcation. At times one could forgive the negotiators for wondering whether they were negotiating with the old CP instead of the new NP.

They further persisted, as my colleague has stated, in arguing for the property vote, saying that businesses and holidaymakers should have more than one vote owing to the fact that they were paying rates. Although this might sound very rational, it would have put us back into the situation in which the previously advantaged in our society would have more votes than the disadvantaged, and those who could not, for historical reasons, obtain wealth would once again be penalised.

It must be said that it is shocking that the NP, in this day and age, still so blatantly wants to entrench White privilege, through both demarcation and the selected extra vote.

It is true that South Africa is experiencing a miracle, but it is a phased miracle. During the inauguration of our President, the rainbow nation was launched, while the Rugby World Cup, and the President in his rugby jersey, gave some practical content to reconciliation.

The way in which consensus will hopefully be reached in this Constitutional Assembly will consolidate all of this. It is, however, important for all these factors also to find expression at local level, because the success with which we will be able to transform the policy, bureaucracy and delivery infrastructure will determine whether we will be making a meaningful change to the lives of people in this country. It is only once we can truly claim that we have given a better life to all, that the South African miracle will at last be completed. [Applause.]

Mr L M GREEN: Mr Chairperson and hon members, when we compare the present constitution with that of the previous dispensation, the ACDP recognises that this constitution is substantially more democratic, more transparent and more inclusive than any other constitution we have ever had, but admitting this does not mean that every aspect of the constitution is acceptable to us as it stands.

I would now like to turn to the preamble and make a few brief comments. We believe that the preamble should explicitly recognise the sovereignty of Almighty God over South Africa. The fact that the previous government had, in its preamble, "In humble submission to Almighty God", but did not submit to His sovereignty and His law, does not mean that we must discard the principle of submission to Almighty God.

As Christians we do not discard the Bible because certain persons who profess to be Christians have broken God's law. It is precisely because we are sinners, saved by grace, that we need the word of God to remind us daily of our shortcomings. It is precisely for this reason that we strongly support the preamble beginning with the words "In humble submission to Almighty God".

The ACDP has already compromised on this position, because we initially asked for the inclusion of "In humble submission to the Almighty Triune God". But because we accepted the fact that this would not include the Muslim, Jewish and other religious communities who believe in Almighty God, we accepted the more inclusive phrase which would include more than 80% of the people of our country.

We cannot water down the preamble to such an extent that we ultimately undermine the word of God. The sovereign rule of Almighty God must, at the very least, be acknowledged if we are to enjoy

the Lord's blessings and protection, as requested in the present preamble.

Government is said to be based on the will of the people, and we accept this. The intent of this statement is good in that it highlights the need for governments to be accountable to the electorate, and that is excellent, but alone it could be misinterpreted to read that governments are accountable to the people only. The authority of the State originates with God. In Romans 13:1 the Bible says: "There is no authority except that which God has established. The authorities that exist have been established by God."

The people are to choose their own leaders. In Deuteronomy 1:13 it is said: "Choose some wise, understanding and respected men from each of your tribes, and I will set them over you." So God recognises governments. He recognises the authority that governments have over us. However, the governments' authority is derived from God, and that we must admit. Governments are accountable primarily to God as their source of authority. It is on issues where God has not given commands in the Bible that we, the people, and the will of the people, become the guide and the decision-making process or the democratic process takes over.

The primary purpose of the Bill of Rights, for example, is to entrench God's written instructions for human government so that they cannot be easily altered to conform to the fluctuating will of the people or the changing political leadership. The reference to South Africa as a sovereign state is accurate in that the country is free from domination by a foreign power, and we accept that. It must, however, like all other nations, be subject to the sovereign rule of God. The term "sovereign state" was deliberately omitted from the American Declaration of Independence and the constitution for this reason.

In conclusion, it is therefore suggested that this should be qualified by statements which recognise God's authority over the constitution and South Africa as a nation. It is important that the preamble, as a statement of intent by the writers of the constitution, and that includes all of us, should reflect the Christian consensus in South Africa. This would not inhibit individual religious freedom but would affirm the obligation on the State to uphold moral principles rather than secular value systems.

\*Mr J A RABIE: Mr Chairman, in general I can express my satisfaction with what was negotiated in Chapter 4, "Parliament", Chapter 5, "The President and National Executive" and Chapter 6, "Provinces". Allow me a moment to highlight a few clauses and subsections regarding the National Assembly. I shall discuss the others tomorrow.

Clause 46 provides for a voting system based on proportional representation and a voters' roll. Clause 46(1)(c) provides for a voting age of 18 years. I appreciate the fact that the ANC has accepted the voting qualification without let or hindrance.

It is a pity that we were unable to provide for a free mandate in the transition. However, there is agreement that this will be dealt with as soon as possible during the transition. I am perplexed that the ANC, which boasts about its size and numbers, is so afraid to allow or accept a free mandate.

We have virtually reached consensus that after the elections geographical areas are to be allocated statutorily to members so as to bring the representatives and the electorate closer together. Ordinary legislation is needed for this.

It was important to the NP that a joint committee should be created to review the constitution on a regular basis. This is now being provided for in the constitution, which will to a large extent contribute to the elimination of *ad hoc* amendments to the constitution.

Financial and administrative help for parties within the National Assembly is now a cornerstone of the constitution. This has been done mainly so that all parties can participate effectively in the democracy.

Recognition is now also given to the Leader of the Opposition. In other words, the Leader of the Largest Minority Party becomes the Leader of the Official Opposition.

There is also a measure to fund the parties' activities outside of Parliament, which is widely welcomed. A similar measure should also apply to the provinces in this regard.

Originally there was no reference to the seat of Parliament and the ANC did not want to have this included in the constitution. The NP wished to maintain the status quo, which could only be amended by a two-thirds majority. The seat is now in Cape Town, which can be changed by an Act of

Parliament based on a normal majority. There are people who now want to use this as an electoral ploy, but the parties are still going to get an opportunity to bargain about this matter in the portfolio committee, so that whatever they may want with regard to this matter will be contained in it.

On the other hand, it was a breakthrough that the institutional measures could be amended. Provision was also made for a 75% majority with regard to clause 1 of the constitution. I listened to Mr Valli Moosa when he boasted about that clause in the constitution, but once again I was perplexed that they would not have it amended by a 75% majority. But they backed down in this regard.

Another central point which the NP wanted included in the constitution deals with the referral of an Act to the Constitutional Court. Clause 80(4) in particular has been settled to our satisfaction. It now reads:

If an application is unsuccessful, the Constitutional Court may order the applicants to pay costs if the application did not have a reasonable prospect of success.

By and large this chapter on Parliament therefore contains all of the measures the NP has campaigned for and we can live with it.

Dr E G PAHAD: Mr Chairperson and Deputy Chairperson, perhaps I should start by apologising to Mr Boy Geldenhuys. I apologise to him because the communists have confused him so much that he never knows what he is talking about. [Laughter.]

I would like to start my speech by dealing with some of the sections in the constitution which relate to the National Assembly and the national executive. Mr Rabie, who spoke just before me, touched on some of those issues.

I think that we should state quite clearly, for the benefit of Colin Eglin, what the constitution does not do. It does not prescribe that at some future time a constituency element may not be introduced into the system. It certainly does provide for that. What is important, I think, is that the next election will be held on the same basis as the one which was held in April 1994. Therefore in Annexure A of the constitution we have reintroduced in a different way section 43(b) of the interim Constitution.

Now, of course, if Mr Rabie were interested in telling the truth, instead of pontificating about people being afraid of a free mandate, he would then have had to accept that one could only take this electoral system in its totality, and its totality, as far as the interim Constitution is concerned, had to do with the question of the vacation of his seat in Parliament. It is not a question of a free mandate. Anybody who wishes to cross the floor may do so. It then becomes the responsibility of the receiving party to make place for that person, because our position was that the proportionality principle should not be affected by the crossing of the floor.

Let me also say that an Act of Parliament may within a reasonable period of time amend this provision, and provisions have been made to try to cater for the question of mergers of political parties or subdivisions of political parties that may occur. Of course, the reason I was resisting this matter of the subdivision was that I was in a good mood and I wanted to protect the NP from killing each other, but since they are hellbent on dividing themselves within the next two years I think we should welcome them doing so.

The next question concerns clause 57, which Mr Rabie dealt with. The question here is that up to now, we have not constitutionalised the question of financial and administrative assistance to each political party represented in the Assembly. This is now in the constitution, as well as the fact that the Leader of the Largest Minority party will be regarded as the Leader of the Opposition. We think this is a good thing.

Secondly, we now have, for the first time, in the constitution a stipulation to the effect that "to enhance multiparty democracy, national legislation must provide for the funding of political parties participating in national or provincial legislatures on an equitable and proportionate basis". I think that is very correct.

Mr Rabie also talked about the seat of Parliament. I presume he was criticising the DP, but the NP were also playing political football with this question. The reason they are playing political football is that they are afraid because there is a Cape metropolitan election taking place and the DP might steal some White votes. That is all they are worried about, the White votes.

For this reason we should say something about the seat of Parliament in Cape Town. I must say to

this Assembly here that very foolishly the NP kept on insisting that this should be decided by two thirds. We had to remind them that if it was by two thirds, we could amend the constitution, which also requires two thirds. Eventually, after a lot of hard bargaining, they did see sense and came to the position that we could change it by a majority of the members of Parliament. I must congratulate them on sometimes having sense.

I also agree with Mr Eglin with regard to the old powers of the National Assembly. For the first time we are constitutionalising the whole question of the powers of the National Assembly and its committees. Up till now these powers basically related to rules and orders. Relative to that is the fact that the national executive is quite clearly accountable to the National Assembly, and this is a very important point. It means that members of Parliament have to work even harder to ensure that they stay on top of all the developments so that they can truly make the national executive accountable to the National Assembly and to the other House of Parliament.

Let me say the following on the national executive. The ANC made it very clear, at Kempton Park already, that we would agree to a Government of National Unity only up to 1999. The NP tried its damndest to have this extended and we refused. Eventually they had to agree that from 1999 majority rule shall be in place and the majority party shall be the ANC. [Interjections.]

The NP and some other parties then tried to raise the issue of a council of state, and then wanted the President to consult leaders of minority political parties on important State issues. I kept on wondering what was the matter with them. We agreed in the founding provisions that we were going to have a multiparty political system. A multiparty political system requires an opposition party. Now they want the President to go and consult their leader. If their leader agrees with the President they cannot oppose us. What kind of opposition party do they want to be?

If they want to be an opposition party they must be a genuine opposition party. They must not seek favours, they must not seek unnecessary consultation procedures and they must oppose us on the basis of their policies and their programmes. Then we will see who is “bang” of the people of this country. It is not us.

An HON MEMBER: We have seen it in the marketplace.

Dr E G PAHAD: Yes, of course. I am an Indian; I know how to make money. If that hon member comes to me I will teach him. [Laughter.] As a good communist, too, I will teach him how to make money. Let me tell the senator that if he read Karl Marx properly he would become a good capitalist.

Let me just end by saying one more thing about some of the issues that were hotly debated. During the course of the negotiations on this constitution we had some very heated, very intensive debates. We started, in many respects, from very different points of view. Our own perceptions and understanding, as political parties, in regard to the political system, even its conceptualisation, were very different.

But I am very happy to report to this Constitutional Assembly that in so far as the chapters on Parliament and the executive are concerned, we now have full agreement. I think it is very important for us to realise that on two of the fundamental chapters of this particular constitution we now have full agreement. It is my hope—and this is directed at Mr Colin Eglin—that even at this late hour the DP will see sense, will support this constitution tomorrow and will vote for it. [Applause.]

Debate interrupted.

The meeting adjourned at 17:52.

**PROCEEDINGS OF THE  
CONSTITUTIONAL ASSEMBLY**

Members assembled in the Chamber of the National Assembly at 10:07.

The Deputy Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.

**NEW MEMBER**

(Announcement)

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Before dealing with the first item on the agenda, I have the following announcement to make. A vacancy in the National Assembly owing to the resignation of Dr R A M Saloojee has been filled in terms of section 44(2) of the Constitution by the nomination of Ms Maunye with effect from 6 May 1996. The new member was sworn in this morning.

**CONSTITUTION OF THE REPUBLIC OF  
SOUTH AFRICA BILL**

(Second Reading debate resumed)

Mr S M MALEBO: Mr Chairperson, some of the most courageous battles of our liberation struggle were fought in the streets of our townships over bread-and-butter issues, issues which were the direct responsibility of local government. However, because the apartheid local government system was not only a tool of central government, but the football of both central and provincial government, local government became an oppressor's tool and only then a provider of the people.

It was because of the courageous stand taken by, among others, the Committee of Ten in Soweto, Pebco in Port Elizabeth, the Mangaung Residents' Association in Mangaung and also lately Sanco, that our perspective of local government was changed. Local government was constitutionally entrenched as a tier of government which derived its powers and functions from the constitution.

Owing to the battles in respect of high rentals, homelessness, and municipalities' lack of capacity to render services, infrastructure, water and housing we became convinced that local government objectives must be not only service oriented, but also developmental. Hence, we say that

local government is the delivery point of the RDP. Today this is the position in our constitution, because according to clause 152, the objectives of local government are developmental.

In this constitution local government relations with other levels of government are clearly defined within the constitutional principles of co-operative government. The status, powers and functions of local government are protected from any interference by either the National Assembly or the provincial legislature. This constitution goes further in giving recognition to organised local government representation at national level. This will ensure the participation of local government in the structured National Council of Provinces on matters that affect local government directly.

Representation is also ensured for local government on the Financial and Fiscal Commission. The ANC ensured not only that we are giving constitutional entrenchment to all aspects of local government, but also that local government's share in the revenue collected nationally is entrenched.

We believe the fact that local government is guaranteed representation in the Financial and Fiscal Commission and its share of national revenue is a major victory for local government. It is our belief that this major achievement will have a particularly meaningful impact in the evolution of local government in rural areas. The weakness of local government in rural areas and small towns is mainly attributed to the lack of financial resources. Given an ability to generate its resources, local government in these areas will be on the same footing as its counterparts in metropolises and urban areas.

The existence of municipalities is a consequence of urbanisation and the inability of national government to address the day-to-day needs of the people for public amenities, goods and services. Municipalities are the instruments of local communities to determine what kind of life they want and what kind of environment they prefer.

The constitutional principles that determine what the constitution must contain regarding local government are aimed at enabling municipalities to fulfil their purpose. The purpose of local government is to promote the wellbeing of local

communities according to their needs and aspirations. The promotion of the living standards and the quality of life of the people requires that municipal councils should provide public amenities, goods and services that people need to facilitate development in communities.

These primary functions of local government can only be performed if three basic conditions are met, namely an adequate financial resource base, the capacity to manage those resources effectively and efficiently, and an appropriate budgeting, financial management and control system. The financial resource base of a municipality determines its ability to sustain community life consistent with the aspirations of the community. This has to do with the nature of the local economy and its potential for growth.

However, adequate resources must be managed efficiently and effectively. This, in turn, implies that people, both councillors and municipal officials, with appropriate skills, knowledge and insight have to be available. Government spending in all spheres must be developmental. This means that a budgeting system which involves the community as active participants must be designed and implemented. Not only must these people be able to define their needs, but they must also be able to prioritise those needs and monitor and assess the impact of spending.

Financial control in the local government sphere has only three purposes, namely to ensure that proper authorisation for expenditure exists, to ensure that spending is goal-orientated and to enhance accountability.

In conclusion, may I dedicate my speech to all activists of local government, not only to those who were involved in the era of the Committee of Ten, Pebco and Cahac in the Cape and Mara in Mangaung, but to all those who were involved in the negotiations, starting with the Soweto Accord, in which you, Mr Chairperson, and some of the comrades in this House were directly involved, and all locally based negotiations and the provincial negotiations on local government in which we demanded to negotiate an alternative local government system, but the NP refused us that opportunity at the time.

I dedicate this new chapter of local government to the provincial negotiation forum which took place in the Free State and the negotiations that produced the Local Government Transition Act.

Those negotiations paved the way for the Codesa and multiparty negotiations that gave us Chapter 10 of the interim Constitution. Today we have remained faithful and true to those agreements.

Above all, we are delighted that the guiding principles of the civic movement during the 1970s and the 1980s are actually enshrined and are the cornerstones of this new local government system. Those principles are accountability, consultation, democracy, transparency and report-backs. We still have a tough job to do, though, to convince and teach our counterparts in the NP about the value of these principles.

May the hard work of writing this constitution in the last two years be compensated for by a mature South African patriotism, guided by this constitution and the Bill of Rights. The ANC has delivered, and the future for this country can be none other than black, green and gold. [Applause.]

**THE DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY:** Before I give Mr Groenewald the floor, I would like to ask members to respect the speakers. I can see a member standing on the floor, engaged in a bilateral discussion. I am sorry, but it is simply not done. Could we please show some respect for the speakers?

**\*Mr P J GROENEWALD:** Mr Chairperson, the current draft constitution before us makes provision for three tiers of government, of which local government is the lowest tier. This morning the previous speaker paid tribute to those from the ANC who waged the struggle at this tier of government also to make provision for them to be fully accommodated in the new democracy, as he put it.

I am glad that we can say we have reached the point where people can now no longer argue that apartheid exists and that there are people receiving preferential treatment. The reason I say I am glad to be able to say this, is because it brings with it a co-responsibility for all our people at the third tier of government. That responsibility means that we will all jointly begin paying the same tariffs for the same services.

When we speak about local government there is always uncertainty on the part of the executors of that tier of government as far as their powers are concerned. If we look at the constitution currently before us, we see that clause 157 in Chapter 7 on

the composition and election of municipal councils makes provision for the system that can be used to determine the composition of the councils.

As it currently stands, it provides that a council can be composed on the basis of proportional representation or that it can be composed on the basis of proportional representation as well as wards. We in the FF, held discussions about this matter because it is very important to us in the FF that there should also be a ward system with regard to the composition of these local government councils.

We held this discussion. One can also see that in this constitution it is proposed that this matter should be dealt with further through national legislation. It is true that there are certain areas, particularly in the rural areas, that are so sparsely populated that it is not possible to introduce wards. Our standpoint is then that there must indeed be wards in towns or urban areas.

The ANC has given the assurance that they are also in favour of a ward system. We are therefore assured that provision will definitely be made in national legislation for ward representation. Ward representation in itself is also a type of proportional representation because wards are composed on an equal basis according to the number of voters.

However, we must say to one another that a ward system offers the great advantage that the representative of a specific ward bears a greater responsibility toward the voters in that particular ward. It is also easier for those voters to know precisely who they can take their problems to at local government level.

As far as the powers and functions as proposed in this constitution are concerned, the FF welcomes the fact that the powers are stipulated in Part B of both Schedules 4 and 5, because local government also wants certain powers and there is always a threat on the part of a provincial authority or even regional authorities to take certain powers that belong at local government level away from them.

This constitution provides that the local government has absolute certainty with regard to what its powers are. It is protected in this way. We also welcome this matter because it will bring with it greater certainty as far as local government is concerned. If we look at the powers that they are allocated and we look at Part B of Schedule 5, for example, we will see that they have control of

cemeteries, *inter alia*. Furthermore they must take care of markets, local sport activities and facilities, parks and recreation, the need for refuse removal as a result of street trading, lighting, traffic and parking. I have only mentioned a few.

It is also an issue that local governments must have the certainty that they have the funds to be able to manage their affairs properly. If we look at clause 229 with regard to the powers they have to impose tariffs, I want to sound a warning here today. The FF wants to state this very clearly. As soon as we impose tariffs—powers are given here to the effect that they can impose tariffs with regard to rates on property and other taxes—we are dependent on national legislation to a certain extent.

When it comes to the fixing of these tariffs, I want to return to the beginning of my speech when I said that co-responsibility exists. Today we can say that the time is past when there was discrimination on the basis of tariffs. Today we can say that if we use one unit of electricity, we pay the same amount of money for that unit, and that if we use one litre of water, then we all pay the same tariff for that litre of water. The water I drink cannot taste better than the water that another person drinks. If that is our point of departure from now on, then we can be assured that there will be harmony, justice and fairness at local government level, and then all will go well at local government level.

\*Mr J A RABIE: Mr Chairperson, today I want to discuss the chapters which deal with the President, the national executive authority and the provinces. I will again try to single out the measures which did not appear in the first working document.

To the powers of the President there has been added the calling of referenda in terms of an act of Parliament. At the insistence of the NP this power as well as the appointment of commissions of enquiry has been extended to the premiers of the provinces.

The President may be removed from office by a two-thirds majority on the grounds of a serious violation of the Constitution or the law serious misconduct or inability to perform the functions of office. If this happens, he or she may not receive any benefits of that office, and the President may not serve in any public office.

There is admittedly no Government of National Unity owing to the obstinacy of the ANC. This

organisation has shown no understanding for the fact that South Africa is still going to be in a transitional phase for some time. This situation makes it absolutely vital for there to be consultation with other parties in order to establish democracy properly.

To expect only an opposition role to fulfil this function is outrageous and naïve, to say the least. The NP introduced an amendment to try to resolve the issue. This involves a consultative council which consists of the President as chairperson and members of the Cabinet appointed by the President in general or for any specific purpose or activities. Other members would consist of the Leader of the Largest Minority Party and at least two other representatives of any willing party with at least five per cent of the seats in the National Assembly.

The consultative council would discuss matters which require multiparty co-operation, such as the Budget, Foreign Affairs, security, national unity and any matter referred to it by the Cabinet. The President would, in consultation with the Leader of the Largest Minority Party, determine the procedure, and any other matter which deals with the functioning of the council. This was not an attempt to act against the wishes of the majority, but rather a serious attempt to promote reconciliation and national unity. The ANC summarily swept this proposal from the table without thorough discussion.

The NP trusts that the ANC will not realise too late that a consultative mechanism is essential for our circumstances. Even in the old dispensation the Government consulted the opposition on sensitive matters. [Interjections.]

The ANC proposal on the Speaker of the National Assembly got into difficulties because it was an ill-considered step. They wanted the Speaker of the National Assembly also to be the Speaker of the National Council of Provinces. They forgot that the National Council of Provinces has completely new functions and that it will function differently to the Senate.

Clause 92(2) establishes beyond any doubt that the Cabinet is collectively and individually accountable to Parliament. They must also act in accordance with the Constitution and must report regularly to Parliament. The Cabinet can also by law assign a function to a member of a provincial executive council or a municipal council. For that

reason it is also absolutely vital for the Government to create the necessary power for these spheres of Government.

The measures for the structure of the provinces correspond more or less with those of Parliament. I shall refer only to a few of them. Firstly the committee system works according to the same principle. Secondly an Act can be referred by 20% of the members to the Constitutional Court to test its constitutionality. Thirdly they may write their own constitution. Fourthly political parties receive financial and administrative aid. Fifthly the Leader of the Official Opposition is recognised in the provinces in accordance with the constitution.

I would however be neglecting my duty if I did not mention that I am sorry that we only have an English text of the constitution to work with, whereas there are 11 official languages in the Republic of South Africa.

Mr R K SIZANI: Mr Chairperson, I am joining this debate for the first time this morning. I want to say by way of an opening remark that my party is known not to be overenthusiastic or excited about some of the changes and such things as the drafting of the constitution, unlike our counterparts in the ANC. However, today I do feel we have also been part of this historic moment, with the drafting of the new constitution.

I am joining the debate to talk a little about the provinces and to remind the Assembly about some of the things which we have said before. One of the things I would like to remind the Assembly about is that at the World Trade Centre we were opposed to the Constitutional Principles that were entrenched in the Constitution to guide us in relation to the drafting of this constitution.

We felt that if we allowed that type of process to go on, it would be difficult for us to bring about any changes that we might like to effect to the new constitution. It might also allow us to be amenable to blackmail and stalling by other parties in the negotiations. Thirdly, it would prevent us from bringing about innovative and creative changes.

Let me again say that, with regard to the provinces, the PAC regrets that the constitutional principles have deprived the Constitutional Assembly of the power to review the boundaries of the nine provinces. These provinces were imposed by the World Trade Centre process without consulting the people and without accommodating possible land claims, and were based largely

on ethnicity and political convenience. These issues are clearly stated in the minority report of Anvil Steyn, a member of the demarcation committee at the World Trade Centre. That report was suppressed by that process.

Even at this late hour, the PAC would call for a review of boundaries of the provinces. We need to ascertain whether we need nine provinces or less and we must deal with the question of boundary adjustments. We suggested then as we do now that there is a clear-cut criterion that we can apply when dealing with the question of the provinces, the issues of ensuring economic viability and bringing governance closer to the people.

The question of de-emphasising ethnicity as a criterion in drafting provinces is very important. It has already been shown since the interim Constitution has been in operation that the Eastern Cape, KwaZulu-Natal, Northern Province and Mpumalanga might be involved in boundary wars. I wonder if we want to go back in history to tribal wars over claims for territory. I am worried that our constitution, in a democratic country, may lead to tribal conflict in our own country.

I wish to deal briefly with the issue of powers. We accept that provinces are a distinct tier of government and that they should be given powers which are derived from the constitution. The PAC therefore was satisfied with Schedule 4 of the fifth draft of the constitution, which by and large gave provinces powers concurrent with those of national government.

Allow me to say that the proposals which were made later in the process by the ANC, forced of course by legal opinions and so on, that provinces should be given exclusive powers in Schedule 5, apart from concurrent powers, is an unhealthy development as far as we are concerned. We are not happy with that. We think that the provinces have now been given too many powers in our constitution. We think that we are moving towards a clear-cut federalism in our constitution and that we are going to Balkanise our country, contrary to what we thought we were going to do. We therefore want to express our concern about the extent of the powers that have now been given to the provinces.

The provinces have been given a great many powers in the constitution, including exclusive powers. For the first time in our country they have been given a much greater say in national

legislation via the National Council of Provinces. There will be a much greater empowerment of provinces through the National Council of Provinces. Why do we now want to create small enclaves of legislative powers for them in our constitution?

With regard to the question of provinces and how they are going, we want to say that although we have given the National Council of Provinces our qualified support, we are still worried about the spectre of overgovernment. We are worried that the National Council of Provinces has again been made a second chamber of Parliament, whereas we thought it would not be a chamber of Parliament, but a sort of advisory council of provinces to advise national government on national legislation.

We are worried about the spectre of seeing nine provincial premiers coming with full delegations to Cape Town with a fanfare. This is going to require more offices, more travel expenses and other expenses in our national government, when that money should actually go towards building the capacity of our people on the ground.

We want to remind those who at this late hour are still calling for more powers for the provinces that unlike America, Canada and Australia, provinces in our country are an artificial creation of the interim Constitution. They are not organic states like those of the United States of America.

If we want to give them more powers, we need to ensure that they have the capacity to carry out those functions we want to give to them. If one looks at the provinces objectively, one will find that some of them have not shown the capacity or the ability to carry out even the functions they were given under the interim Constitution. Why then do we want to give them more powers? It simply means that we are not interested in empowering our people on the ground. We want to emasculate the only tier of government, which is the national government, that has the power to implement a single policy for the country. We are concerned about that.

Mr K M ANDREW: Mr Chairperson, when we look at the Constitution of the Republic of South Africa Bill before us, we need to remind ourselves of what I consider to be the essence of the political challenge facing South Africa—it has been the challenge for many years—and that is how to reconcile the legitimate aspirations of the major-

ity of the people of this country with the legitimate concerns of the minorities within this country. Therefore, when one is looking at this constitution, one needs to ask oneself not only whether it is a democratic constitution, but also whether it caters adequately for the wide diversity and deep divisions in our society.

One constitutional mechanism to help cater for a society such as ours, is the devolution of power. It takes government closer to the people, it makes government more accessible and responsive, it helps to cater for diversity, it may provide an additional line of defence against tyranny, and it may reduce the intensity of the struggle for control at the centre. So when we look at this constitution, we need to measure it against some of these things.

Our constitution does make provision for provincial and local government spheres. However, in looking at this we unfortunately come from completely different directions, different mindsets. From the DP's point of view, we look first at the individual. We say we must give that individual as much freedom and as much choice and power to direct and make decisions in respect of his or her own life as possible. Where individuals cannot manage things themselves, we say one should allocate power to the level closest to those people, which means local government. What local government cannot handle, provincial governments should handle, and finally what provincial governments cannot handle should be left to the national government.

The ANC, in contrast, has a different perspective. It takes the view that one must have a national government, and that national government must relinquish powers only when it can trust other spheres to look after them, and that it must retain wherever possible the right to intervene if national government believes things are not going the way they should. That is a completely different perspective.

Our view is that each sphere of government is primarily responsible to its electorate, and not to some other sphere of government. The ANC perspective tends to be that each level of government has its rights subject to the supervision of some other sphere of government.

If one looks at the provinces, we believe that the matters which have been allocated to provinces and local governments in Schedules 4 and 5 are

appropriate. However, we believe that too few of the functional areas have been allocated exclusive powers in respect of both provincial and local government and in addition local government has been allocated too few powers.

The right of the national government to intervene in respect of provincial matters is far too wide. In fact, it is wider than those provided for in the interim Constitution. We are, however, pleased that judicial review has been restored in respect of provincial powers, but we are unhappy that the presumption remains within the constitution.

The effects of this are going to be an overlapping of responsibility which will result in inefficiency in decision-making and, in particular, inefficiency in the delivery of services and an unwieldy bureaucracy, as each level of government duplicates the efforts of other levels and attempts to second-guess what they should be doing.

We also have the very serious problem, which we have seen in respect of other aspects of our Government in the past two years, of a lack of accountability because of joint responsibility. When one asks who is responsible for either a success, but more particularly when things are not happening, each level of government will say that it is not its fault, the national government provided this norm and standard which cannot be implemented. So it goes on at the various levels of government, and one has a lack of accountability. This is also, of course, a recipe for conflict.

Let me turn finally to local government. Inadequate attention has been given to local government. There was quite a lot of preliminary work in terms of seminars, but the actual production of the text of the constitution has been rushed over the past few weeks, and there has not been the necessary time for this to be referred to local governments throughout South Africa with a view to having them give their opinions and point out both policy and technical problems that they may have. Local government has, however, been recognised constitutionally for the first time as a distinct sphere of government, but it will depend on the wisdom and goodwill of national and provincial governments for it to realise its full potential.

In the final analysis, we can have whatever constitution we want, but unless we can establish a democratic culture in our society, encourage and allow political tolerance to develop, and provide

space for variety and free choice amongst our people, no constitution is going to achieve what we need, namely reconciliation of the aspirations of the majority and the concerns of the minorities.

Mr J H DE LANGE: Mr Chairperson, hon members, I rise on this occasion to speak from some notes hastily scribbled this morning, in full support of this first democratically drafted constitution for South Africa. Although there are some aspects of the constitution that one may not be in full agreement with, I think the final product that we have been able to agree upon is not only a tribute to this country, but a tribute to constitution drafting.

In fact, if one looks at this constitution one sees that it is unique amongst constitutions in the world. We have come up with many new and creative ideas and, at the end of the day, if anyone were to ask us which country's constitution does this constitution mirror, we would be able to show them bits and pieces from Germany, Israel or wherever, but at the end of the day this is a South African constitution, drafted by South Africans, without intervention from outside. In fact, it is a home-grown product. It is for this reason that I stand here with very great pride, honour and a sense of joy, because I think we are all part of a very profound sense of history-making in our country. I am not sure that we always realise, when we sit here, that in these days we are not only drafting this constitution, but are, in fact, part of history; in fact, we are making history.

When people like Cyril Ramaphosa, Kader Asmal, Roelf Meyer, Leon Wessels, Colin Eglin, Bulelani Ngcuka and others are mentioned one day, they will be mentioned in the same breath as the great constitution drafters in the past, people like Madison and others. It is with this profound sense of history-making that we should actually be celebrating these days we are living in.

The point I am trying to make is that it is not only the final product and the final words in this constitution which are important. Equally important is the process that we have had to go through to agree to and adopt this constitution. This is a process that started many decades ago and that, in the nineties, has culminated in a constitution-drafting process which led, firstly, to an interim Constitution, and has now led to the first democratically drafted constitution for this country.

We have had other constitutions. For example, in 1910 the four White "homelands" in this country got together and drafted a constitution as a marriage of convenience between British imperialism and White capital in this country, which excluded the majority of our people. In 1961, internal capital, particularly White Afrikaner and English capital, got together, and drafted a constitution which again excluded the majority of our people. In 1983 there was an attempt to co-opt some of the people in our country, but again, the vast majority of our people—Africans—were excluded from that constitution.

We then went through a constitution-drafting process, a negotiation process, by means of which we were able to adopt our interim Constitution in 1993. However, we know who drafted that Constitution. There were 26 parties present, and very few of those parties had any legitimacy. At the end of the day, we were left with six or seven of them in this Parliament. That is why it will be such a profound moment in our history when we actually adopt this constitution tomorrow, because we have now, for the first time in the history of our country, been able to draft and adopt a constitution with maximum consensus and, for the first time ever, it has been done democratically.

I also want to pay some tributes. Firstly, I want to pay tribute to one of the great sons of Africa, Comrade Cyril Ramaphosa. [Applause.] I think there can be no doubt that with his tremendous intellect, his charm, his warm smile and his ability to find very creative solutions for issues that sometimes seem intractable, he will never be extinguished from the history of this country. I think it is his leadership qualities and his ability to work collectively, not only within his own party, but also with people who hold views diametrically opposed to his, that make up the greatness of the man. It will always be with a sense of pride that I will remember that I was part of a tremendously talented negotiating team in the ANC that was led by Cyril Ramaphosa, which has been able to bring us to this point that we have reached. I think this country owes a special tribute to Cyril Ramaphosa.

I also want to pay special tribute to someone I have come to know in the past few years, and that is Leon Wessels. Leon Wessels has not only been an able and willing assistant and deputy chairperson to Cyril Ramaphosa, but in his own way he has imprinted his own intellect and his tremen-

dous ability not to be overcome by adversity, on this process. [Applause.] I think that Leon's leaving this Parliament, will be a tremendous loss not only to the NP, but to Parliament itself.

I also want to pay tribute to my comrades in the smaller team that I worked with in this negotiation and constitution-drafting process—Pravin Gordhan, Bulelani Ngcuka, Fink Haysom, Essop "Deadlock" Pahad, Collins Chabane and M J Mahlangu and the local government team. These are the people who worked in our team and I want to pay special tribute to them in particular. [Applause.] They are the ones who have had to pull me into line at the times when I have been at my most difficult, which has been regularly, and I thank them for that.

I also want to thank the opposition. I have had a tremendous working relationship with people like Piet Marais, Neels Ackermann, Jac Rabie and others within the NP. I am not going to mention all their names. There are so many of them.

I also want to thank Colin Eglin. Whenever we were worried about anything, Colin Eglin always used to provide suggestions in an attempt to resolve that problem for us. I think it has been of tremendous benefit to have had him with us, and to have had him as a member of the multilateral teams or negotiators that have had to debate the issues that we were enjoined to resolve. I think we also need to pay special tribute to Colin Eglin. [Applause.]

I am sure that the next thing I am going to say is going to be a bit of a surprise, but I particularly want to thank the panel of experts and all the technical experts who have assisted us. We have had some interesting times together. We have had some heated debates and some clashes with them, but I must say that at no time have we ever doubted their abilities, and a lot of what is good in this constitution can be directly attributed to these experts. On behalf of everyone I want to thank them for that.

Now I want to turn to someone whom I regard as one of the most humble giants of constitution drafting in this country, Adv Gerrit Grové. Not many hon members will know him. He is a very quiet, unassuming man. Not often in my life have I met anyone who has not only the drafting skills and the intellect to match that he has, but who also understands government the way that Gerrit Grové does. [Applause.] In both constitutions that

we have drafted, the interim Constitution and this one, Gerrit has been central to the process. I think that the ANC and South Africans in general should salute him for his enormous and selfless contribution to the drafting of this constitution.

I also want to thank the Canadian who came to our country and has assisted us with drafting a constitution in simple English. Sometimes I thought it was not that simple, but I want to thank Phil Knight and David who have very ably assisted us.

Lastly, let me say that I think that one of the principles in this constitution which is unique is contained in Chapter 3, and that is the whole issue of co-operative governance. I want to agree with much that Colin Eglin said yesterday in this regard. When we started off with this process we had two options. We were able to draft a system of governance which would be confrontational in style as our interim Constitution is, or we had the option of moving towards a co-operative form of governance. I am happy to say that every single party present in this Parliament at the moment was able to embrace, and unconditionally too, the principle of co-operative governance. I think that that only bodes well for this country, because what it means is that not only is it a question, in our ordinary life, our ordinary political life, of talking reconciliation and trying to find each other, but our form of government also enjoins us now to ensure that our government structures do not work in conflict with one another, that we should work within a system and within a structure which is co-operative in form.

Nowhere in the world—at least that I am aware of—has there been a chapter like this in a constitution, one actually spelling out the principles of co-operative governance for the country, with each structure of government, each organ of State having to confine its operations and its work within the parameters of such principles. I think that if there is one unique characteristic that we have brought to constitution-making it is the emphasis upon and spelling out of this whole principle of co-operative governance, because once we agreed to these principles, and did so unanimously, from that moment onwards the constitution drafting became so much easier.

There are many other things that I can say, but I think I have said enough during this constitution-drafting process, and I thank everyone for putting up with me for as long as they have. [Applause.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Thank you very much, Mr De Lange. I also thank you for reminding us that we are all part of history, and therefore at 15:00, on the steps of the Senate opposite the Marks Building, a CA photograph will be taken of all of us.

Dr T S FARISANI: Mr Chairperson, I do not know whether I should say good morning South Africa, whether I should say good evening or good day, because I am not God. I do not know what the next 24 hours have in store for the nation. God is waiting, the nation is waiting, everybody is waiting. The child must now be born, for this dispensation has been pregnant for the past two years. [Laughter.]

I dedicate this speech to Martin Luther King Junior, the dreamer. I dedicate it to Isaac Tshifhiwa Muoshe who made the supreme sacrifice for the liberation of our people, and I want to dedicate this speech to God Almighty who made it possible for us to perform the miracle that has earned the respect of the international community.

May God protect our people

Nkosi sikelel' iAfrika. Morena boloka setjhaba sa heso.

God seën Suid-Afrika. God bless South Africa. Mudzimu fhatutshedza Afurika. Hosi katekisa Afrika.

Let us look at the preamble to our constitution, which is the area that I want to highlight. In the old, now discredited, document, once called the Constitution for South Africa, we had a chorus-like preamble which went:

In humble submission to Almighty God, Who controls the destinies of nations and the history of peoples;

Who gathered our forefathers together from many lands and gave them this their own;

Who has guided them from generation to generation;

Who has wondrously delivered them from the dangers that beset them . . .

That is not the language of the new constitution. Whereas the old one had only forefathers, the new one has foremothers and forefathers. [Laughter.] Whereas the old one spoke of "their" land, referring to a small segment of the population only, we now refer to the whole nation by the definitive possessive word, "their". We no longer talk of a destiny and a history of one section of the

population, but about the history and destiny of the whole country. We no longer talk about some South Africans being protected against other South Africans. We now talk about protection for one and all, across religious, racial and gender barriers.

In other words, this preamble takes us across the Rubicon. Where God and apartheid were synonyms, here God is the Spirit who moves the process of transformation; where we had "children of God"—that is, Whites—and "children of a lesser god"—that is, Blacks—we now have children of the same God, who cares for all equally. Where God was required to sign an ideological blank cheque for apartheid, on which Verwoerd wrote what he wanted, on which Vorster scribbled what he dreamt, and on which Botha said what he preferred to say, we now have a preamble which takes God in all seriousness as the Spirit that inspires the population to move from the era of apartheid to the era of freedom. May God bless our people! [Interjections.]

In the spirit of Martin Luther King, we also have a dream. We have a dream that a new South Africa will be born where workers will not be locked out of earning their bread. [Interjections.] There is a way of saying it in Afrikaans.

\*Leave my post alone; it is my food. Apartheid does not lock people out of their workplace, for work is actually their food.

†We have a dream of a new South Africa in which neither Afrikaans nor English nor Venda, etc, will be used as a disguise for promoting apartheid chameleons in the name of democracy. [Applause.] Of course, we have had this dream for some time, and we continue to have this dream. We shall fight for this dream, for a South Africa where property will not be the monopoly of the select members of a *Herrenvolk*, but where property will be accessible to everybody.

Where is one's Christianity, where have those Christian values gone, when one talks the language of lockouts, of Afrikaans only, of property for a few?

\*What has happened to that Christianity of yours? [Applause.]

†Now the question is: Where is the Moses of the ACDP, the Rev Meshoe? Why do we not hear him protecting Christian values on this issue?

The spirit of the preamble to the new constitution calls for justice to prevail, and lockouts are a form of injustice. We call for freedom in the place of apartheid oppression. In the new dispensation martyrs are martyrs and no longer terrorists. South Africa is for all and not just for some. We call for unity in diversity, not for division and rule.

The Constitution, and not law and order, is the supreme authority in our country, no longer promoting the culture of some citizens who live above the law—the likes of Magnus Malan. [Interjections.] Now the ANC is ready. We stand before the Red Sea. The ANC is ready to cross.

\*Are the NP and their friends ready to cross the Red Sea?

†Now we stand before the Rubicon. P W Botha failed to cross the Rubicon.

\*Why are the NP still in doubt? Now is the time to cross the Rubicon. [Applause.]

†God is waiting upon the nation. The ANC is ready to take this nation to its tomorrow. The ANC is ready to create a new South Africa for our children. Why is the NP trembling?

Ayangena, ayaphuma, ayesaba, ayadidizela amagwala. [The cowards are coming in, going out, shivering and wavering with uncertainty.]

Let us cross the Rubicon! [Applause.]

In conclusion, let me say that actions speak louder than words. We will not be judged by our rhetorical support for Christian and democratic values. People will judge us on whether, like God, we give this planet to all or whether we want to keep some continents for ourselves. [Time expired.] [Applause.]

Mr O C CHABANE: Mr Chairperson, it is going to be very difficult for me to speak after such a great speaker.

Firstly, let me thank all the people who participated in this process. Without singling out any of them, I think that they performed very well.

Secondly, I would like to indicate that the deadlock which we have now, the conflict which we have about certain clauses, proves two points. The first is that some of the great thinkers in the past did indicate that one of the major factors which would determine the transformation of society would be the outcome of the conflict between labour and capital. In that regard, if one

looks at the clauses which are in dispute, one sees a clear indication of the struggle between labour and capital. It is the duty of this Assembly, we ourselves, to try to find a way out, in such a way that we do not increase that conflict.

The second point is that in the early sixties, the ANC identified the conflict in our country to be one of class and race. If one marries the issue of education with the issues of the lockout and property rights, one sees a clear indication of what was meant at that time. It is within that context that these issues need to be resolved. They need to be resolved with a clear understanding of what we are actually dealing with.

Much reference has been made to constitutional principles. Our approach to the drafting of the constitution, and our understanding of the meaning of the Constitutional Principles and their application, was not such that we understood Constitutional Principles to be a set of topics around which we needed to write the main body of the constitution. We understood the Constitutional Principles to be the framework within which the constitution would need to move if we were to draft the constitution as envisaged in 1994.

It has also been pointed out that the Constitutional Principles restricted the aspirations of the parties and prevented them from doing what they wanted to do. From the beginning, our approach as the ANC was not to write an ANC constitution. For us, the challenge was to do what would be best for this country, regardless of our personal feelings at some point.

If we recall the history and aims of the Constitutional Principles, we will remember that they were intended to achieve what was considered at that time the best for this country and for transformation. Therefore the ANC was prepared at all times to comply with the Constitutional Principles in the drafting of the constitution, at the same time securing what would be best for the country as a whole.

There are speakers who came to this podium and misrepresented the facts. I refer specifically to a speaker from the NP. I will not mention his name.

An HON MEMBER: What is his name?

Mr O C CHABANE: Jac Rabie. We entered into serious and honest negotiations with them. He was in the team in which I participated. It is

unfortunate that he came here and tried to misrepresent the facts. We were not there to score points as the ANC, as I have already indicated. We were there to ensure that what came out of those discussions was what would be best for this country. I believe that what came out of those discussions was the best we could achieve under the circumstances. To come here and say that the NP proposed a consultation forum is a misrepresentation of the facts. What the member did not tell the House was exactly what I mentioned initially when I said that the struggle in this country was characterised by race and class.

The intention of that council or consultative body would be to ensure that even if there was a Black government, there would always be a White watchdog which that Black government would have to consult. It is within that context that the ANC said it could not accept that. We did that in a very good spirit and in very honest discussions. For Jac Rabie to come to this podium and say that the ANC did not agree and that there was no reconciliation about this issue constitutes a misrepresentation. They just wanted to make sure that the Black government would always have a White watchdog around its neck. That was completely unacceptable to us. We did not see it as controversial. We did not see it as a major point of dispute. We all accepted in good spirit that we were not going to raise this issue in public. Jac Rabie decided to raise it in public and I thought we needed to put the record straight.

Secondly, in the chapters we are dealing with in this debate, we have achieved what is best for this country in terms of the Constitutional Principles. In our view we have managed to adhere to most of the Constitutional Principles. The Constitutional Court will still have to judge whether we did so or not, but we are convinced that the principles contained in the chapters on the founding principles, Parliament, the provinces and so on have been complied with.

The PAC tell us we are giving too much to the provinces. This is what we are doing. I would like to indicate to the PAC that if we had to go the federal way we could say we have given too little to the provinces. We need to accept the reality that in terms of the Constitutional Principles and what was agreed upon at the World Trade Centre, we have a unitary state which has strong federal elements. We do not need to run away from that. We need to accept it and do what is right.

We believe that the powers which have been given to the provinces are sufficient for the running of the provinces and this country, and that they enhance the democracy which we are talking about. Therefore we do not owe anybody any apology with regard to the issues which we have raised about the powers allocated to the provinces, the national government or the local governments. We believe if there is any chance for improvement, generations to come still have the chance to do so.

We believe that whilst this constitution is a document which should last, we should not make it impossible for society to develop. If, 20 years down the line, society feels that what we did was wrong, they have the chance to amend it, but only if they are satisfied that the majority of people agree with what they want to do. It is in that spirit that I would like to call upon every party in this Assembly to vote in favour of this constitution. If not, then a very historic moment will be missed.

If one remembers what happened in 1954, when Bantu education was introduced, and in 1976 when Afrikaans was introduced in education . . .

An HON MEMBER: Is that a threat?

Mr O C CHABANE: I am not threatening anybody. If the hon member wants threats, I can give them to him, but I am not threatening him here. [Laughter.] Actually, I do not threaten, I do.

I would like to indicate that we seriously need to consider that if we are going to hold this constitution ransom on the basis of education, we should remember that this country has many milestones, events related to that issue. It is in that spirit that I am calling upon all parties to put their heads together and resolve these issues as quickly as possible. I would also add, for the benefit of those people and those parties that would like to vote against this constitution that there will never be another opportunity to vote for the constitution in the manner in which we are supposed to be doing it tomorrow, because after that they might not have an opportunity to put their cards in those slots in order to vote. [Applause.]

\*Mr C ACKERMANN: Mr Chairperson, I have always regarded Collins Chabane as a gentle person. I take it that the belligerent speech he delivered here today was aimed at the fact that he would like to become Premier of the Northern Province. [Interjections.] We wish him well.

I want to tell Dr Farisani that the NP has long since crossed the Red Sea. We crossed the Red Sea in 1989. I want to tell him and the ANC today that if they wish to cross it only now, they should watch out that it does not submerge them like it did the Egyptians. That is what could happen to them. [Interjections.]

It is a privilege once again to be able to participate in this historic debate. When I participated last week, there were two outstanding issues, namely firstly the manner of the constitution of the permanent delegates of the council, as contained in clause 61, and secondly the whole question of a two-thirds majority when a particular matter involves a province, as set out in clause 74(3).

As regards the former matter, it is my view that a measure of satisfaction was attained. The principles of proportionality and the participation of minority parties in the so-called "six" are indeed contained in this constitution, and national legislation will be formulated by taking these principles into consideration in order to establish a watertight formula.

The whole question regarding a two-thirds majority in the provincial legislature is a matter that is more involved than would appear on the surface. Therefore the NP is of the view that it is indeed a serious matter. It could be reasoned that, as clause 74(1)(a) and (b) makes provision for a two-thirds majority in both the Council of Provinces and the National Assembly, this will render sufficient protection to the provinces. That is indeed a valid point.

However, seeing that in clause 104(2) we have provided that a province must gain a two-thirds majority in its legislature in order to change its name, and a provincial constitution must be adopted with a two-thirds majority, as set out in clause 142, it strikes one as very strange that the provincial borders can be changed by a mere majority of votes in the legislature. Surely the substance of a province lies in its borders. In the history of the world it is the question of borders and border violations that have triggered off most of the wars. This is therefore a matter that should not be approached too lightly. Consequently the NP's position is that a two-thirds majority should also apply when there is talk of a serious matter like border changes.

Where will it end if Gauteng is now already laying claim to the Rosslyn industrial area of the North

West? Where will it end, when seen in the light of all the other aspects to which Mr Sizani has referred?

We did propose an amendment which, however, was not accepted by the ANC caucus. I specifically say the "ANC caucus", because to my mind the facts should be recorded for posterity. As was the practice during the recent negotiating process, when matters reached a deadlock they were referred to a so-called channel which then had to decide. My fellow negotiator in the ANC, Mr Ngcuka, an honourable person for whom I have the highest regard, and I took this particular matter to the channel. The channel consisted of the two of us, as well as Mr Ramaphosa and Mr Meyer. It was then decided that a two-thirds majority in the legislature would apply when a province's borders were to be changed. The next morning this was reiterated by Mr Ramaphosa in the presence of members from both sides at a channel meeting dealing with outstanding matters of the National Assembly.

During that day, however, Mr Ngcuka mentioned to me that his and Mr Ramaphosa's decision had been rejected in ANC ranks and that they could no longer honour their undertaking. From within the ANC's own ranks a serious reflection was cast upon the integrity of both Mr Ngcuka and Mr Ramaphosa, which must have been an embarrassment to them.

Notwithstanding this occurrence, I wish to reiterate my continued high regard for the integrity and co-operation of these persons. I will always remember Mr Ngcuka's diligent attempts to secure a future for his fellow senators in the ANC.

However the question is: Why did the ANC ranks not agree to a two-thirds majority? The apparent answer, despite any sweetening argument that may be used, is to change the borders of the Northern Cape in order to include 1,5 million people from the North West in the Northern Cape. This is regardless of the assurance given to the people of Namaqualand and the North West by the ANC leaders after the elections, namely that they would not be changing the borders of the Northern Cape. When a million—mostly unemployed—people are to be included in a province where 40% of its 750 000 people are already unemployed, that is a very serious matter.

I therefore want to appeal to the ANC, for the sake of the integrity of Mr Ngcuka and Mr Ramaphosa,

as well as for the sake of the Premier of the Northern Cape, Mr Dipico, to hold a referendum on this matter in the Northern Cape. Then they will show South Africa that they do not place their own party-political interests above the will of the people of these provinces.

Finally, I am perplexed that the FF has not shown much interest in the Council of Provinces. Whereas it was their position that cultural groups should have representation in this council, we now have a resounding silence on this matter. It has not even been mentioned in any multilateral discussions. [Time expired.]

Ms G L MAHLANGU: Mr Chairperson, Mr Ackermann can shout rhetoric until his vocal chords give in. He will never see the NP in power again. [Laughter.]

I want to thank my comrades, those selfless men and women who fought hard against the racist, sexist and undemocratic apartheid regime and who continued fighting to address the atrocities of the past. The result of that fight is the constitution we have to adopt less than 30 hours from now.

I am proud to have been a member of the Constitutional Assembly, because for the first time, after decades of oppression, our people were listened to in their millions. Through the submissions made to the assembly, our people spelled out what kind of South Africa they needed, a country in which all the people, young and old, literate and illiterate, with all their cultural and linguistic diversities, would live in harmony. There is glory for all the people of our country for the participatory role they played.

Our negotiators cannot be forgotten, having spent sleepless nights in executing the mandate of the electorate. Gone are the days of legalised anarchy, abuse of power, human rights violations and the violation of women's and children's rights through the inhuman constitutions of the past which were used by the NP regime to perpetrate acts of violence against the masses of South Africa.

Our dignity is now finally restored by this constitution. No individual or institution can ever abuse power. The adoption of this constitution comes at an opportune time when the Malan trial, the Truth and Reconciliation Commission, the Eugene de Kock trial and many others are on. The Truth and Reconciliation Commission has answered and is in the process of answering root

causes of a lot of pain suffered by mothers, wives, husbands and children at the hands of State agents.

With this constitution in our hands there will not be any need for a Truth and Reconciliation Commission in the future. I am shocked and disgusted at people who, after so many concessions have been made to accommodate them despite their insignificant results in the national election, are today threatening to hold the whole country to ransom by threatening to pull out or vote against this constitution.

This constitution, I must emphasise, is not for a group of individuals but for the country at large. Many Afrikaner children are at school with other racial groups and have no problem with it. Section 29(2) of the new constitution even states clearly:

Everyone has the right to receive education in the official language or languages of their choice in public educational institutions . . .

What else do those hon members need? They are given a free hand here and yet they have the nerve to think that we can be held to ransom. We are looking at people like Mzizi, Gogotya and Bikitsha, who are helping to keep their languages as inferior as possible. I know that Bikitsha loves his mother tongue very much. Yet today those members are encouraged to fight for a language that is supposed to enjoy higher status than all the other languages. That is a disgrace! [Interjections.]

By allowing everyone to have so much say in this process the ANC is teaching hon members what democracy is all about. We have the power and yet we never abuse it, like some of those hon members did in the past. Never in the past would members have heard of a Public Protector. It is because the ANC is committed to accountability, transparency, fairness and justice that we have such structures today.

Through the Human Rights Commission respect will be promoted and human rights monitored and observed. We assure everyone that the torture and arbitrary detention that resulted in the deaths of so many people in our country, including Steve Biko, are things of the past. Go ahead and try us on that referendum.

Le tla kopana le pela di falla. Le tla kopana le sefako; tadi e antsha. [You will be in grave trouble. There will be a hail storm.]

We are proud of the establishment of a gender commission, which confirms that until all women are free and empowered no country is liberated. This commission will unite the women of this country and encourage participatory democracy. The commission must be able to reach our rural illiterate and poor women. Women are advocating seven national commissioners and nine representatives from all the provinces to ensure that the structure filters down to all women on the ground, with the possibility of gender desks at local level.

It would be appropriate if by 9 August, when millions of women will be marching the streets of South Africa commemorating National Women's Day, the Commission on Gender Equality was in place so that there would be more to celebrate.

Thank you, Chairperson and Deputy Chairperson, in whom we trust and in whom the people of South Africa trusted, for the fact that this process will today culminate in a document which is going to take all the people of this country on board, a constitution which is going to make sure that the people of South Africa live in harmony. [Applause.]

Ms O N KHOBE: Mr Chairperson, I want to start off by greeting the members. I felt I should say something today on this constitution of South Africa.

Ngithanda ukuqala ngokuwubongela loMthethosisekelo. Thina uma sihlezi endaweni esikuyo namakhosikazi, ngoba yithina bantu esasihluphekile kakhulu, futhi sasingaziwa nokuthi sikhona, siyaye sithi loMthethosisekelo okhona uwumondli wezintandane, futhi uyindoda yabafelokazi. [Ihlombe.] Siqhubeke sithi uyintofontofo okwekhekhe laseMkhumbane. [Kwahlakwa.] Bayalazi-ke abaqhamuka eThekwini ukuthi liyini ikhekhe laseMkhumbane.

Lokhu ngikushiso wukuthi ngomhlaka 30 kuMashi ngike ngaya endaweni yami ngihamba noNgqongqoshe wezeZindlu. Umama okwathiwa makasamukele. *(Translation of Zulu paragraphs follows.)*

[Firstly, I would like to extend my thanks for the constitution. When we are resting with our wives where we come from, because we are the most destitute people who were not even known to exist, we usually say this constitution is the supporter of the orphans, and it is the husband of the widows. [Applause.] We go on and say it is delicious like a cake from Mkhumbane. Those

people coming from Durban know what a Mkhumbane cake is. [Laughter.]

I am saying this because on 30 March I visited my place, accompanied by the Minister of Housing. A woman who was asked to welcome us said: . . .]

I will say this in Tswana because she said it in Tswana.

O ne a re, O! Modimo wa me! [She said, "Oh, my God!"]

She did not welcome us. In fact, she prayed.

O! Modimo wa me! A motse o monnye wa Mapaputle! Kante le wena o a itsiwe mo dibukeng tsa bophelo? Gatwe mo motseng o o latlhilweng wa be wa latlwa le ke beng ba ona . . . *(Translation of Tswana paragraph follows.)*

[Oh, my God! Maputle, what a small city you are! Are you also well known in the books of life? They say in this city, which was abandoned even by its own inhabitants . . .]

. . . where Mr V Sifora comes from . . .

. . . go tla tsalwa Morena Jesu. Gompieno ngwana o tsetswe kwa Jerusalema, mme ena ke Mandela. Mo motseng oo re bone Tona. Puso ya maburu e tile ya be ya tsamaya mme ga re itse le mokwaledi wa teng. Puso ya ga Mangope e tlile, mme le ena ga re mo itse, ebile o tsamaile. Kajeno re bona puso ya batho ba bantsho, O! motse o monnye wa Mapaputle! Ke Mme a neng a bua jalo. Ga ke itse gore batho ba ba rona ba . . . *(Translation of Tswana paragraph follows.)*

[ . . . Jesus our Lord will be born. Today a child is born in Jerusalem, and his name is Mandela. From that city came a Minister. The boer government came and went, but we still do not even know who its secretary was. Then came the Mangope government, but we never really got to know him too, and he is now also gone. Today we have a Black Government. Oh Mapaputle, what a small city you are! My mother used to say that. I do not know why our people . . .]

. . . abantakwethu laba basho ukuthini ngoba sinje-nje, asifundanga kungenxa yabo. [Inhlokomo.] Obaba bethu babethunga izicathulo, bethola u-15 pens no 20 pens. Ufakazi ongakakazi ngami kuleNdlu wumama ilunga elihloniphekile u-Albertina Sisulu owazi ukukhula kwami, futhi owazi nenhluphekho yakithi, ubaba wami ehluhwa yibo.

LoMthethosisekelo akuwona owe-ANC, kodwa ungowelizwe lonke lase-South Africa. Kodwa ngoba umthetho wabo bangabantu abajwayela ukungcola, abafuni ukuhlukana nezinto ezimbi, i-corruption [inkohlakalo] abafuni ukuphuma kuyo. Yiyo-ke lento ebangela ukuba bafune kube khona umtheshwana ozokwenza ukuthi, uma lowomthetho sewusebenza, bese bethi uHulumeni wenu enamkethayo we-ANC owabangela lokhu. Usho njalo uMnumzane de Klerk uma ekhankasela amavoti laphaya ngaphandle. Uthi i-ANC ithe izodiliva, kodwa ayidilivi ngakho votelani i-NP.

Yonke leminyaka besihlala emikhukhwini kodwa sibe si... (Translation of Zulu paragraphs follows.)

[... our children said we are what we are, not being literate, because of them. [Interjections.] Our fathers were repairing shoes, getting 15 pence and 20 pence. My witness in this House is the hon member Albertina Sisulu who knows how I grew up. She knows my sufferings and the sufferings of my father in their hands.

This is not an ANC constitution, but a constitution for the whole of South Africa. But because they are people who are used to dirty tricks and they do not want to get rid of them, they do not want to get rid of corruption. That is why they want a clause that when it is being applied, they will say this is caused by the government that you, the people, elected. This is what Mr De Klerk is saying out there when he canvasses for votes. He says the ANC promised to provide, but is failing to do so, therefore vote for the NP.

We have been living in squatter camps all these years, yet we were...]

... born and bred in South Africa and are also citizens of this country.

Kodwa sabe sihlala emikhukhwini yize kunjalo, kwakwenzenjani? Sabe sikhishwa ezindlini, singamakhosikazi ngenxa yemithetho yabo engcolile. Namhlanje kuthiwa kubo yizani sihlaleni. EsiXhoseni ke kunengoma esiyaye sixhense ngayo thina bantu abaxhensayo, ithi: ... (Translation of Zulu paragraph follows.)

[Why were we living in squatter camps? We were removed from the houses we were occupying with our wives because of their dirty laws. Today, however, we are invited to come and live there.

There is a Xhosa song that we, the people who are dancing, sing, that goes like this: ...]

Yizani size kulala ngengubo enye, kodwa yeyebhokhwe. [Kwahlekwa.] Yizani size kulala ngengubo enye, kodwa yeyebhokhwe. [Kwahlekwa.] (Translation of Xhosa paragraph follows.)

[Come let us sleep together in one blanket, but it is of a good skin. [Laughter.]]

Ngibuye ngacikwa kakhulu futhi nayilaba abathi loMthethosisekelo awukhulumi lutho ngoNkulunkulu. Akukho muntu lapha eNdlini ongesilo ikholwa, ngoba abantu bonke bayamazi uNkulunkulu. I-NP yahlala phansi yathatha iBhayibheli yakhipha phakathi kulo i-apartheid. Kodwa namhlanje uma i-NP isitshela ukuthi loMthethosisekelo awukhulumi lutho ngoNkulunkulu, sifuna ukusho ukuthi asifuni ukukhuluma nge-imitation yamaKrestu, kodwa sikhulumama ngamakholwa. Abantu abangamakholwa lapha yilaba belungu abangapha ku-ANC okuyibona ababona ukuthi siyahlupeka, ngakho bazohlupheka nathi, hhayi i-NP. [Ihlombe.]

Eqiniseni, i-NP yadla imana engafanele, okwakungesiyona imana yabo. Namhlanje imana isibuyele kithina. Kodwa asisho ukuthi masingabaphi imana. (Translation of Zulu paragraphs follows.)

[I was also very annoyed about those people who say this constitution does not say anything about God. There is no one in this House who does not believe in God, because everybody knows God. The NP, at down, took the Bible and extracted anything that had something to do with apartheid. But today, when the NP tells us that the constitution does not say anything about God, we want to say we do not want to talk about imitation Christians, but we talk about believers. People who are believers are those Whites who joined us in the ANC, who realised that we are suffering and they wanted to share that suffering with us. Not the NP. [Applause.]

In fact, the NP ate the manna that did not belong to them. Today, this manna is back with us. We, however, do not say that we do not want to give them this manna.]

They were greedy and ate the wrong manna, yet we are saying let them come and share this manna with us.

Kulendawo yemfundo ngithanda ukuthi masibacele babuye ngoba lento abafuna ukuyenza yiyo ezokwenza kube khona i-havoc kulelizwe. Ababuye, bavumelane nalomthetho. Khona manje bona bayaphikisana lapha.

Izingane zethu njengoba sizele izintombi ezinhle nje, zigaxana nabantwana babo ezitediyamu. [Kwahlekwa.] Kusasa ngizobe ngiwumlingani kaMnumzane Ackermann, ngoba umtanami uzobe egane kwakhe. [Ihlombe.] Mababuye beze lapha yikhona sizovumelana ngaloMthethosisekelo ukuze siwuthathe siwuse ebantwini. Umthetho wabo ongalunganga mabawukhiphele ngaphandle ukuze sibuyisane sembathe ingubo eyodwa, sibe ngabantu base South Africa. [Ngifuna ukuqhubekela phambili ngikhulume nge-abortion (ukukhishwa kwezisu).] *(Translation of Zulu paragraphs follows.)*

[Concerning education, I would ask them to come back because what they want to do will cause havoc in this country. Let them come back and agree with this clause. At present they are against this clause.]

We have children, beautiful girls, who hug their children in the stadiums [Laughter.] Tomorrow, Mr Ackermann and myself will be in-laws because my child will be married to his child. [Applause.] Let them come back here so that we can agree with this constitution so that it can be referred to the people. Let them get rid of their unjust law so that we can come together and share the same blanket, being the people of South Africa.

I want to continue and say something about abortion.]

I want to say something about abortion. I think women are emotionally distressed. Abortion should be freely available. It is the exception to the rule and therefore a personal affair. Those self-righteous religious bodies who treat women as second-class, inferior citizens, for instance—and members will excuse me—the Roman Catholic fraternity of unmarried men and the Dutch Reformed fraternity of married Calvinist men, the NP, have no right to impose and force their male chauvinist doctrines onto a democratic government, or onto women who are not members of their congregations. They should preach their doctrines within the limits and boundaries of their specific congregations. We as women are not going to allow them to get into our bedrooms and

to open our wardrobes. People outside this Constitutional Assembly are singing “Tsiki tsiki yho”! [Applause.]

Mr A WATSON: Mr Chairperson, a while ago a senior member from that side of the House accused members of the NP of ranting and raving. All I can say is that, like in so many other things, they learn very fast. The last speaker was no exception. [Interjections.] I am sure that even those who understand all the languages that she speaks could not hear her for all her ranting and raving. [Interjections.]

At this point, may I also say how amazed I am that she, like so many other speakers today, assumed that the NP will vote against this constitution. I do not know what they have been privy to—whether they have been in the inner circles so that they know things that the others around them do not know—but they should stick to their own party and their own party’s decisions. [Interjections.] The previous speaker, who accused Mr De Klerk and the NP of so many evils, must remember that history goes on.

Ungaxoki ngabantu mama. Mamele, ngiyakhuluma ngithi ungaxoki ngabantu. Ubani lo othi ushintshe lemithetho okhala ngayo? Ubani? Ngoba wuye uMnumzane u F W de Klerk, wuye lowo oshintshe leyomithetho. *(Translation of Xhosa/Zulu paragraph follows.)*

[Do not lie about people, Madam. Listen, I am saying do not lie about people. Who changed these laws that you are complaining about? Who is he? Because it is Mr F W de Klerk, and he is the one who changed those laws.]

\*It was indeed a privilege to have been able to participate in the last two years’ history-writing. I am also privileged to be able to make my humble contribution today. I would have liked to focus on all the aspects in which I was involved, but since our time is limited, I will simply focus my attention briefly on the issue of local government.

At this point I would also like to express my surprise at the many contributions the hon Mr Groenewald is supposed to have made in all the meetings he attended when I and the others were not there. It seems to me they have come here to tell the people what they did, but when things have to be done they do nothing at all.

†Much has been said about the achievements of local government. It has now been recognised as a

distinct sphere of government, and a full partner at the third and local level, where it matters most. The advent of so-called wall-to-wall local government now makes it possible for the third level of government to participate fully in this regard, and for all the people at grass-roots level to exercise their right to govern themselves where it matters most, ie close to home.

However, in this regard there was full concurrence at all times. We are also happy that in line with true democracy, the right of all the parties and independent interests within the council to participate fully in all committees, as well as in cross-representation, has been enshrined in the constitution. What amazed all of us, however, was the initial reluctance on the part of the ANC to acknowledge and agree to this democratic principle, but we are pleased that an agreement could be reached at the very last minute.

The NP is constantly being accused of attempting to entrench elements of apartheid, but the truth is that it is the ANC that is constantly guilty of attempting to eliminate all minorities, clearly because of its dream of having a one-party state. However, negotiations have once again proven that such a dream is only pie in the sky.

We of the NP will never neglect our duty to minorities, and if this constitution is accepted, the ANC can rest assured that their rights as a minority party in the future, when we once again take over the government, will still be protected. [Interjections.] My colleague and principal negotiator on local government, Jaco Maree, will elaborate on the question of the rights of ratepayers.

However, I must react to the views expressed by Mr Mohammed Bhabha. Listening to him speak, we must assume that he regards the previously disenfranchised as people who will never ever be in a position of economic prosperity. He now dooms them to perpetual poverty. We do not agree. We think that they also have that right. [Time expired.]

\*Ms M P COETZEE: Mr Chairperson, Deputy Chairperson, hon members, today I feel very proud to stand at this podium; proud because I am a woman and proud because I am a South African—not a “Hotnot”, a Bushman, a Coloured or a Brown person. For the first time in my humanness as an Afrikaans-speaking South African we have drawn up a constitution which gives

equal recognition to all languages in South Africa. Whether one is a Sotho, Xhosa, English, Jewish, Zulu, Tswana, Venda, Ndebele or Khoi-speaking Afrikaner, one remains an Afrikaner because in English there is no such word as Afrikaner—only African. We as South Africans are acceptable and recognisable abroad as one nation. White, black, purple, yellow, green or brown: It does not matter what language one speaks if one was born as a South African and grew up on this soil.

The language question is a thorn in the side of the NP, DP and FF because in clauses 1, 2, 6 and 30 the constitution provides for all of South Africa's languages. As the NP would like to see Afrikaans elevated above other languages, they favour the notion of a mother tongue. Every language originates as one's mother's knee, but Afrikaans does not. I am sorry. [Interjections.] Maria de la Queillerie was a Khoi woman. She was a Khoi-speaking woman, whereas Jan van Riebeeck was Dutch. That is where Afrikaans originated and was then further formulated into pure Afrikaans, for a small group of people to practice apartheid with among the majority in South Africa.

Whatever became of the Griqua language, my greatgrandmother's language? At every turn Afrikaans was forced down her throat. By making Afrikaans compulsory in Sotho, Tswana, Xhosa and other schools, those pupils had to speak three languages while the White Afrikaner child was not forced to speak any other language, except a little English. Am I not speaking the truth? [Interjections.]

I want to ask aunty Modise how many languages she knows apart from Sotho.

\*Ms T R MODISE: I know six!

\*Ms M P COETZEE: Thank you. May I ask Mr Williams how many languages he knows, apart from English and his mother tongue. Afrikaans? [Interjections.] He knows only two. [Interjections.]

The new NP professes to have changed, but their proposal is still based on a separate language policy. No matter how technically it is formulated, to the man in the street out there it will remain an apartheid activity if we fight about language matters in this Assembly. All South Africans should have already learnt a lesson from the 1976 unrest, which was attributable to the policy of one language in South Africa.

If we cannot vote together for all languages on an equal footing, as summarised in clause 9(2) of the Bill of Rights, in which it is specified that the equality of all of South Africa's languages should be promoted, our great-great-grandchildren may one day rue the fact that in this Assembly their grandparents were divided over the question of language.

The President has christened us a rainbow nation. Let us also turn South Africans into a rainbow of languages. All languages will have to be spoken down to the local government level, because presently the Afrikaans-speaking people are refusing to let a Sotho-speaking person speak in his own language in the local government. Up there in Welkom they are refusing this. [Interjections.] All languages are acceptable to us women. We communicate not only with Afrikaans-speaking women, but with people from every nation in South Africa. Long live the rainbow language! [Applause.]

\*Dr T J KING: Mr Chairperson, I prefer not to react to the hysterics of the previous speaker.

I would like to talk about co-operative governance, a subject which is dealt with in Chapter 3, as well as about the powers of provinces. [Interjections.] A very important insertion in the new constitution . . .

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! May I ask colleagues to lower their voices?

\*Dr T J KING: An important insertion in the constitution is Chapter 3, which lays down the principles and obligations relating to co-operative governance. Government in die Republic is seen as "distinctive, interdependent and interrelated spheres of government". The principles laid down here indeed provide the glue that is intended to keep together intergovernmental relations, as well as the legal philosophical framework within which all spheres of government should function.

This therefore also directly concerns the position and functioning of provinces. It is important to note that the protection not only of the integrity of provinces, but also that of the other spheres of government in this chapter is laid down as a principle that has been derived from Constitutional Principle XXII. A provincial legislature has, as is also the case at present, the legislative power to adopt its own constitution, and to make laws regarding issues that fall in the concurrent

legislative sphere and about matters that are allocated expressly by national legislation to provinces.

Apart from this, provinces have now acquired so-called exclusive legislative power over a number of matters, and certain of their legislative powers can also be allocated to municipalities in the provinces. A provincial legislature can also make a recommendation to the National Assembly for the adoption of a law regarding matters that fall outside the powers of that legislature.

When one gives consideration to the number of functional areas over which provinces have acquired legislative power, it is clear that the picture is somewhat different from what it is at present. There are now two lists containing functional areas, namely Schedule 4, in which the concurrent powers, in other words those over which Parliament as well as the provincial legislatures can legislate, are listed and Schedule 5, in which the exclusive powers of provinces have been noted. Each of these lists also contains a number of functional areas that fall within the sphere of local government.

This means that Parliament, provincial legislatures and municipalities have legislative power over certain functions. These are the concurrent powers. The provincial legislature as well as municipalities have legislative power over other functions. These are the exclusive powers.

The time available does not allow me to give examples of everything that falls within these various categories, but hon members can find this in Schedules 4 and 5 of the constitution that is before them. As far as the concurrent powers are concerned, both Parliament and the provincial legislatures have the power to make laws regarding the areas that are set out in Schedule 4. In the case of conflicting laws there are a number of overrides, which are contained in clause 146, which indicate when a national law will enjoy preference. If these overrides are not complied with, the provincial law will enjoy preference.

An important addition to these provisions is that provision is now being made that national and provincial subordinate legislation can enjoy preference before the original national and provincial legislation if it has been approved by the National Council of Provinces.

The exclusive powers are not completely un-touchable, as one might think they are or ought to

be. Provision is being made that in certain cases Parliament will have the power to intervene. Reference is made to this in the Constitutional Principles as "intervention". This will take place when it is necessary for the maintenance of essential national standards, the determination of minimum standards, rendering of services, maintenance of economic unity and national security, and the prevention of unreasonable actions by a province that are detrimental to the interests of another province or the country as a whole.

The structure of the relationship between the various spheres of government, as far as their legislative powers are concerned, is based on certain Constitutional Principles—in particular Constitutional Principles XIX and XXI. The concept of intervention, which is also dealt with elsewhere in the constitution, is a direct result of Constitutional Principle XXI(2), in which provision has been made that in the abovementioned cases the national government may intervene in provincial matters.

It is very clear that we have negotiated a fairly unique situation here. This is something which poses a great challenge to South Africa, the people of South Africa and all the groups in the Government—viz those who form part of the Government as well as the opposition. Although we have brought about this very unique situation, which could probably be copied by many other countries, its ultimate success lies in the hands of the people. This is in the hands of those who comprise the Government, as well as those with the responsibility who, as the opposition, should ensure that the Government gives effect to its mandate. This can only be done if it is done in good faith. Therefore I want to say at this stage that what we have achieved as far as the powers of the three spheres of government are concerned is something of which to be proud. This is something which will provide us with direction for the future. However, I appeal that this will take place with the necessary responsibility on the part of everyone who will be involved in doing this.

Mr S M RASMENI: Mr Chairperson, Deputy Chairperson of the Constitutional Assembly, hon members and the public at large, I salute you. It is a well-known fact that South Africa has been a theatre of human rights abuse. It is not accidental that the international community had to declare apartheid a crime against humanity.

In a country with the kind of history that ours has, the constitution-making process could not be as easy as most of us would want it to be. It is within this process of constitution-making that various parties with different backgrounds would like to put forward their different views so as to influence the laws of the country. Most of these contestants put their ideologies first and the citizens of this country second. It was against this background that our constitution-making process faced its ups and downs. We should be grateful for our Constitutional Assembly, which made a miracle happen by reconciling the irreconcilable interests of the privileged and the underprivileged classes of South Africa.

The new constitution is, in essence, restoring the dignity that was taken away from the vast majority of South Africans by apartheid. For the first time ever, all citizens of South Africa will be protected by the laws of their country.

In the past, the vast majority of South Africans were never afforded an opportunity to participate in the constitution-making process. Our predecessors expected the majority of our citizens to obey the laws which had no regard for their interests. We need to state here, loudly and clearly, that it will not be business as usual. Our political opponents have to accept that gone are the days when people were detained indefinitely without trial. Gone are the days when the innocent lives of those who were opposed to the system of apartheid—including women and children—were brutally taken by the State. We welcome the provision under the new constitution which says: "Everyone has the right to life."

It is not surprising, therefore, that there is this major resistance from those who benefited in the past, especially when it comes to key areas such as the property clause, education and the right to strike, which are about the betterment of the lives of our people. No well-off class under the sun will ever agree to take some of its wealth and then give it to the poor. It becomes worse still for those who gained that wealth by unjust laws. Typical of them is that they will tend to be protective of the status quo.

The same applies to the apostles of apartheid who will always want to marry ideology to education, as they did in the past. All those who are opposed to the system of apartheid in all its manifestations should once more reject a system within the system of education which will promote discrimi-

nation on the basis of language and culture. In the same breath we should avoid entrenching a process in our new constitution that begins to deny or to contradict the basic principle of the RDP. The property clause, if taken as our opponents want it to be, will restrict all attempts by the RDP to make sure that land is available so as to build houses for millions of our people who have no roof over their heads.

We dare not forget that the writing of this new constitution is the result of the culmination of the tireless struggles of our people. History will not forgive us if we forget the valuable contributions made by distinguished leaders such as Comrade O R Tambo, Chris Hani, Joe Slovo, Harry Gwala and many of our comrades who selflessly fought for the attainment of freedom in South Africa.

It would be a denial of fact if we did not acknowledge the support we had from the progressive forces internationally. With the support of countries such as the former Soviet Union, Cuba and our neighbours within the African continent, we were able to usher in the new democratic order with this new constitution which emphasises the need to respect human rights.

We are pleased to see all South Africans of goodwill joining hands to bring about this new constitution. Those who have nothing to offer have decided to run away from the constitution-making process. It is a well-known fact that it is easier to destroy than to build. We would like to take this opportunity to invite them once more to build this country, and not to destroy it. [Applause.]

**THE DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY:** Order! In terms of the resolution adopted yesterday, the Assembly will now suspend business to enable the Constitutional Committee to meet. Members are requested to be at the Senate steps opposite the Marks Building at 15:00 for the taking of the Constitutional Assembly photograph. The Assembly will reconvene at 15:30.

Business suspended at 11:58 and resumed at 17:30.

#### *Afternoon Sitting*

**THE DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY:** Order! We have a slight difficulty in that we were supposed to have had a Constitutional Committee meeting and were

to have tabled a report of that meeting at this session. As many hon members are aware, that meeting did not take place, because the process of consultation and networking was still in progress.

I am now suggesting, with the support of Mr Ramaphosa, that those members who are affected by the three major outstanding matters which were supposed to have been dealt with in the Constitutional Committee meeting, and whose names are on the speakers' list, should simply not use their option to speak. I will hold their names in abeyance and we will give them an opportunity to speak later, because I foresee that when we have the report ready, the Constitutional Committee may have to meet, preferably not concurrently with the Constitutional Assembly, but hopefully only for a short period. We will therefore proceed on an informal basis as we have in our past Constitutional Assembly meetings.

**REV M A STOFIE:** Mr Chairperson, taking part in this historic debate evokes a lot of mixed feelings in some of us. On the one hand it evokes a sense of pride and triumph at the work that has been done and achieved. The sweat of many hours, days and months has produced what we hope will be a very useful compass for our people and our Government. As the Deputy Minister of Provincial Affairs and Constitutional Development, Mr Valli Moosa, put it yesterday, it will benefit posterity for many generations to come.

On the other hand the debate evokes a sense of sadness that South Africa has had to wait for so long and our people have had to suffer so much agony at the hands of so few. Indeed, it evokes a sense of regret that worthier sons and daughters of South Africa cannot stand where we stand, benefiting from the fruits of their sacrifices. As was said yesterday and has been repeated today, never again should our country be a victim of apartheid.

No country in the whole world has produced a perfect constitution. We are not purporting to do the impossible today. However, we have reason to believe that, being the last amongst the countries of the world to achieve liberation, our constitution will be a better document than many others that other countries have produced. In fact, I dare say that the whole world is waiting in great expectation for South Africa to produce a constitution that will enrich theirs as well. There is a sense, therefore, in which we are latecomers to as well as pioneers of democracy.

Previous regimes were not only illegitimate, but also wanting in the sphere of human rights. For decades they agonised about it and mentioned it for specific South African communities. In the end, true to their real colours, they voted against such a clause when the crunch came and it was to be entrenched in the constitution. It is therefore with a sense of triumph that we will support a constitution which entrenches once more such rights of our people.

This is so precisely because of the rooting of this constitution in the re-establishment of a sense of morality and respect for human life which was destroyed by neofascism and apartheid. As such we are re-establishing a sense of the entitlement of all, without discrimination on whatever basis, to a set of fundamental human rights, justice and equality, which are concepts which must not only be mouthed, but be concretised in respect of human dignity.

Because the last statement is correct, we cannot just end at eulogising our entrenching of a human rights clause in the constitution, nor can we just stop at merely creating structures that restrict the Government, for example the Human Rights Commission, the Public Protector and other similar structures. All human rights, in our view, are social rights. They have a human face and an economic one.

Having entrenched these rights in the constitution we have to provide a means to perform their attendant duties. Inequalities of different communities have to be eradicated. Equality of all before the law must be a reality. For that reason we can no longer tolerate a situation in which, in some provinces of this country, such as KwaZulu-Natal, carnage is perpetrated without a whisper from this august Chamber, and indeed without a whimper from the world community. This is a sad situation and a dangerous threat to the embryonic democracy which we are trying to bring forth in our country.

All people must enjoy security and freedom, the freedom to vote and to be voted for, and all must be equal before the law. For that reason it is totally unacceptable and should not be tolerated that whilst we are producing an august document such as this one, we have individuals who want to put themselves above the law. Nor can one tolerate, as a moral obligation on the part of the leadership of the people, their leaving a process as important as

this one and abdicating their responsibility which their own constituency has placed upon them.

It is with great pride that we support this effort of sowing the seed for the production of the rights of women, children, workers and all, but it is with equal sadness that we do so with a lot of empty benches in this Chamber which belong to people who have the mandate to be here with us but who have chosen to sit outside this Chamber, neglecting that mandate, indeed neglecting the task of assisting in the transformation of the people of this country.

We must establish social, cultural and economic prosperity for all, and thereby establish peace in our country. We should treat poverty and want as evils. This is what would address all the other problems such as the high rate of crime and the corrosion of human rights. It would, in my view, be a more fitting monument for posterity that we have, in fact, been here at this point in our history and that indeed we have discharged our responsibility with equity.

Ms M SMUTS: Mr Chairperson, as we approach the end of the second and final stage of the constitution-making process, which has dominated our lives for some years now, it is appropriate to stand back and compare the interim Constitution's Chapter 3 and the Bill of Rights which is finally taking shape in the proposed final constitution. The Bill of Rights has, in certain significant respects, been amplified. I cite only the most marked amplifications. The first is that of application. The uncertainty about the vertical versus the horizontal application of the rights, which caused the interim Constitution to lean like the Tower of Pisa, has been removed.

The infusion of our common law with the values enshrined in the Bill of Rights is made certain by binding the judiciary, as this final Bill does. Once this step is taken, private relations are necessarily involved, and this Bill of Rights takes some brave and ground-breaking steps along the logical path of horizontality.

Other notable areas of amplification include the right of access to information and to administrative justice. The right to information held by the State is now without qualification, save for a proviso that the legislation giving effect to the right may observe administrative burden and cost.

The right to administrative action which is not only lawful and procedurally fair, but also reason-

able, is a very great advance on the previous position in our law, and it is one of the best safeguards, in this Bill, against the growing bureaucratic power of the State, a worldwide phenomenon, but one of which we in South Africa have had particularly bitter experience.

The most obvious amplification lies in the inclusion of the socioeconomic rights. The DP supports, as a matter of party policy and principle, the inclusion of an obligation on the State to secure, for its people, the means of survival. We think that these provisions could have been more tersely framed, and we wished them to say, in so many words, that these rights are not enforceable. The rights of access to housing, health care, food, water and social security are perhaps overgenerous. However, we support their general inclusion.

This brings me to those areas in which this Bill has not amplified, but is in the process of shrinking, the rights in Chapter 3 of the interim Constitution. It is significant, it is deeply disturbing, that the goose that lays the golden egg with which the socioeconomic rights must be financed has been under concerted attack during the drafting of this Bill. I am referring to labour and property. I am referring to our economy and our country's prosperity or otherwise. Firstly, the rights of employers are being eroded. I take this opportunity to remind hon members of Constitutional Principle XXVIII, which reads as follows:

The right of employers and employees to join and form employer organisations and trade unions and to engage in collective bargaining shall be recognised and protected.

Employer and employee rights, not the centralised bargaining which we are on the point of constitutionalising, must be recognised and protected, yet action pursuant to the right to collective bargaining, the lockout in the case of employers, is now, as things stand at this moment, to be contained only in a reference to the Labour Relations Act which may be repealed or amended by this same Parliament. That is no constitutional, positive right. [Interjections.] It is not, and as for the reference to consultation with the Forum for Centralised Bargaining, that means nothing. The constitutional principle has to be given effect to. It is our solemn duty to give effect to it, and as things stand at this moment, that is not happening.

I now come to property rights. Property rights are in the process of being eroded. The interim Constitution's Chapter 3 got it right. It established

the eligibility to hold property, so long denied to most South Africans under apartheid. It created certainty about the circumstances regulating deprivation and expropriation, without which our economy cannot grow. Our economy cannot grow without certainty. [Interjections.] Socioeconomic rights cannot be given effect to without growth. [Interjections.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Can I just say that I appreciate the enthusiasm, but this is not a shouting match.

Ms M SMUTS: Mr Chairperson, thank you.

The new provision is not a good one, with or without late improvements.

Let me say please—and with great solemnity again—that the erosion of rights is a dangerous thing. In a famous case in 1970, when the Indian government made an attempt to nationalise 14 major commercial banks, the judge made the following remark. He remarked that the erosion of one right in the constitution must inevitably erode the whole constitution. Let us think deeply about this matter.

Let us also, just for a minute, trace the history of subclause 8, in which the debate and the negotiations have become trapped. Subclause 8 only came about in October, after this body, through the Theme Committee 4 process, had agreed on a property clause closely resembling the one in the interim Constitution. At that point the land lobby entered the process, and the idea was mooted of a subclause which would override everything which went before in the property clause.

The problem is that this does not override only the expropriation provisions, but also constitutionalism. If any measure aimed at land reform is not subject to the constitution, this means plainly and simply that the Government can do anything it likes in terms of that provision. It is dangerous.

Now an improvement has been attached to subclause 8. It is now stipulated that any law or measure has to be reasonable and justifiable. But this is not safe. It does not guarantee just and equitable expropriation. What is it doing there at all? Subclause 8 ought not to be there if one is serious about dealing with deprivation and expropriation in terms of clauses 2 and 3. What is this game, and why is negotiation trapped in that subclause?

Mr Chairperson, we sound a retreat from the interim Constitution on these two matters amid the rout of the rand. What are we doing? We are sounding a retreat on economic rights amid the rout of the rand.

There is one final matter, beyond the strict economic sphere, and that is the limitations clause. Again, a clear retreat from the interim Constitution, it sends a message to the courts that all of the rights may now be more freely infringed by the Government. The interim Constitution predecided which rights carried the reasonability and which the necessity test. The only difference now, by including a reference to "when the nature of the right warrants it necessary," would be that the courts will decide which rights deserve the necessity test, in which circumstances.

Two worrying trends have emerged from negotiations on the Bill of Rights. Firstly, a certain government-mindedness has entered the thinking of ANC members, and secondly—I come back to the economic rights—the inability of the ANC as a government to deal firmly with its own lobbies and allies has become a matter of deep concern within this Place and outside. South Africa cannot prosper if it is held hostage by Cosatu and the land lobbies. [Interjections.]

Mr A M OMAR: Mr Chairperson, now is the time . . .

HON MEMBERS: To vote ANC!

Mr A M OMAR: I am sorry; I was going to say "to adopt a new constitution". [Laughter.] Now is the time to adopt . . .

HON MEMBERS: A new constitution!

Mr A M OMAR: . . . a constitution which is made in the interests of all the people of our country. That is what we have come to do. What our people expect, is that we shall have a constitution which will allow us to break from the past.

It will be easy if those parties that are obstructing a settlement stop their obstruction. Breaking from the past means that we must break from a past in which there was arbitrary rule and replace that arbitrary rule with the rule of law.

Our people—those who never had the vote in our country, those who have been marginalised over the years and those who have been disempowered—have been subjected to arbitrary rule for too long. The establishment of the rule of

law will end arbitrary rule once and for all in our land. The new constitution must ensure that we establish the rule of law. I stress this, because the people on my left do not know anything about the rule of law. [Interjections.] Therefore those who have suffered under their rule must teach them what the rule of law means.

Secondly, our people have suffered insecurity for too long, also because of their rule. This has meant that our people never enjoyed the individual liberties, freedoms and security which exist in all civilised countries. This constitution provides that kind of security for our people, and in providing that security for those who have been oppressed and exploited over the years, we will be providing the same security for those on our left, who do not deserve it. [Interjections.]

Thirdly, because of apartheid policies in our country, millions of our people have been marginalised and disempowered. They have been marginalised politically, socially and economically. This constitution must lay the basis for ending that marginalisation. It must begin to empower our people in order to enable them to be recognised as citizens in the country of their birth, enjoying social and economic rights like everyone else in our country.

It is very significant that the issues on which we have been deadlocked hold a tremendous lesson for us. This is an education for us. I am hopeful that the whole country knows what the line-up has been on the question of these deadlocks. I have heard the speaker from the DP here before me speak arrogantly about the Bill of Rights and the erosion of the Bill of Rights. Who does the DP represent? [Interjections.] If one wants to know who the DP represents, one should look at what the standpoint of the DP has been in respect of these deadlocks. [Interjections.] They have not spoken for the propertyless people, they have not cared about the landless people of our country . . . [Interjections.] . . . they do not speak for the workers of this country, and they do not speak for the unemployed. They speak for big capital, whose interests they are trying to protect. [Interjections.] [Applause.]

When one looks at what their attitude has been to the lockout clause and to the property clause, and when one looks at what their attitude has been to many of these issues in the constitution and the Bill of Rights, there has been only one concern, and that is protecting the privileges which were

positive and constructive manner. In exchange for that I could contribute positively and constructively towards the extension and upliftment of the country that offered me that opportunity. The new constitution also makes this possible, except that a serious concern exists that unless the issue with regard to mother-tongue education is resolved—surely no one can blame me for this—I may justifiably fear that in a few years' time there will no people for whom to negotiate self-determination. This is an honest opinion and a genuine fear.

It is a pity that not enough time has elapsed so that everyone who still doubts whether the FF's claim to religious, linguistic and cultural rights is genuine, can be assured, and that they can realise that the FF no longer needs to be suspected of harking back to apartheid or isolation. To date I have noticed that some of the sceptics are saying to one another that perhaps these people are sincere and have no hidden agenda. Perhaps an increasing number of people are realising that the attainment of our ideals does not really constitute a threat to the country and that the result will rather be a win-win situation.

In the spirit of sincere co-operation we will use the few remaining years until the next election—whether we vote in favour of or against this constitution—to develop this country economically so that prosperity can become the destiny of an increasing number of people.

†When one looks at the mere six pages making up the chapter on finance, one wonders how it was possible that so many dozens of meetings have been held and so much time has been spent on its preparation. When one, however, recognises the importance of financial matters, one can understand why many things, which may have such dire consequences for the future of the country and the wellbeing of its people, that look so simple and uncomplicated on paper could have taken us so long to complete.

My personal viewpoint was that certain principles had to be embodied in the text. Often the meetings were about minor details and, in particular, about exactly how to put them into words. In that process I was a silent observer as I, as Afrikaans-speaking member of the committee, could not understand why it was so difficult to formulate matters in English that it sometimes took the committee so long to do so.

The fact that the result is phrased in rather simple terms, very short and understandable, is a tribute not only to the members of the committee, but to those who decided on the final phrasing.

The South African economy is under siege, the reason being the fact that the very important portfolio of finance has at last been politicised. Although it was to be expected that it would not go down very favourably in financial circles, the reaction of the financial markets was more severe than was expected.

Unfortunate statements from political leaders did not help to ease matters, but created the impression that not everyone talking on financial matters was fine-tuned to how the financial markets work or understood the consequences of their statements. The financial markets are not positively influenced by cheap talk. There is a sophisticated audience out there in the financial world that does not weigh only the literal meaning of every word, but also the nuance with which it is spoken.

This turmoil around the value of the rand is in sharp contrast with what has happened and is happening around the finance clauses in the constitution. One can be sure that the crisis about the rand would have been aggravated if it had not been for the good sense that prevailed over the control of the Reserve Bank. Had it not been for this fact, the country could have been in deeper trouble than it is now and could surely have been written off as a place to invest any but speculative money.

It is good that the constitution allows independent operation of the Reserve Bank. Politicians' planning horizons are much shorter than is good for sound long-term financial planning. They want to reap immediate benefits for political gain. Long-term consequences of their decisions do not always receive the attention they deserve. Control over the Reserve Bank also means control over the money-printing press. The less the control politicians have over this, the better it is for inflation.

I want to say a few words on the National Revenue Fund, specifically in relation to a balanced budget. We all know what problems the dispute in Congress between the Democrats and the Republicans caused in America. It brought the state machinery to a grinding halt. Every American knows that the government cannot carry on with a large budget deficit as is the case now. The

remedy for this problem, as everybody knows, is to move towards a balanced budget. The big dispute in the United States was how to move towards such a situation.

In South Africa we have a similar problem. Everybody agrees that the budget deficit is too high and must be reduced. There are plans on the table to reduce it to 3% of the GDP. The FF would like it to be taken a step further, namely a complete balance of the budget. We realise that this cannot be achieved overnight.

Our proposal was, however, not well accepted in the committee, as it could, according to arguments raised, be interpreted as subscribing to a particular economic doctrine. This was one of the rare bits of real politics that surfaced in the committee. Although this is not entrenched in the constitution, one would like to urge the Minister of Finance to make it his target to work towards a balanced budget. A statement such as that can do a lot to repair some of the damage to the economy, which may be greater after the resignation of the Director-General of Finance today. It may do a lot to repair some of that damage to the economy.

It is not necessary to reach a balanced budget overnight, nor is it necessary to make a rigid rule that we should have a balanced budget under all circumstances. [Time expired.]

Mr M E SURTY: Mr Chairperson, Ms Smuts has come to this Assembly with a dubious political agenda. In the beginning I was quite pleased and heartened to hear her saying that we had engaged each other constructively in formulating what was perhaps one of the best bills of rights in the world. This we have achieved through a process of consultation and engagement, through a transparent process.

However, I sensed in the latter part of the speech an attempt to mislead the public, as the DP tends to do quite often, by exposing or conveying half-truths. Ms Smuts has referred to the lockout clause. She has failed to mention to this audience that in no single constitution in the world, in no international instrument, is there a confirmed right to lock-out. She has misled us into believing that this is a constitutional right when in fact it is nothing more than a defensive mechanism which is provided to employers under specific circumstances.

She has also failed to convey to this Assembly that the right which is set out in clause 23 is a balanced

and well-structured right which confers rights not only on employees, but also on employers. It also sets out very clearly that there is opportunity to engage in collective bargaining. This, however, does not come out at all in her utterances here. Her only concern is to appeal to an audience or a sector whose brief she carries when she comes to this Parliament, to tell them that her party is expressing their concerns vociferously, but without conveying to that sector that it should look once more at this particular clause. It is a balanced, comprehensive and fair clause. After all, the labour relations clause commences as follows: "Everyone has the right to fair labour practices". Does that not include the employer as well as the employee?

Furthermore, Ms Smuts has failed to convey to this audience the fact that employers and employees are not engaging with each other on an equal level. The power is always tilted in favour of capital when such an engagement takes place. This disparity in the relationship between capital and the employees is, in fact, specifically why the lockout clause has to be excluded as a constitutional right which does not exist anywhere in any event.

Thirdly, she has forgotten the history of the struggle of our people who were subjected perennially and perpetually to all types of exploitation. This ignorance, or pretended ignorance, of the dismal history of our people shows clearly the arrogance and contempt of the DP for the masses of our people who have engaged with their toil and sweat in the development of this country. [Applause.]

I was going to address hon members on human dignity as for equality that is necessary. In the process of developing a bill of rights, may I mention that this nation can be very proud that at the centre of this constitution, at the heart of the Bill of Rights, lies the notion of human dignity. In its opening statement the constitution affirms the values of human dignity, equality and freedom. In its opening statement the Bill of Rights again, as the constitution does in its founding principles, reflects that democracy is underpinned by these very values.

What have we achieved as a committee and a Constitutional Assembly in developing and expanding this notion of human dignity? We have expanded it to the extent that human dignity is recognised not only as a right, but as a right which

has to be respected and protected. This means that the State now has a duty to develop legislation to protect those people who were subjected to racial abuse and humiliation, who were called "kaffirs" and "coolies" in the past, against this violation of their human dignity.

What more have we done to enrich this concept of human dignity? We have expanded this notion into the arena of social and economic rights. Strangely, this has been the reservation of both the DP and the NP, but particularly of the DP. We believe that there can be no human dignity unless there is enrichment of the quality of human life, and people have access to land, homes, social welfare, pensions, food and water. That means that this Constitutional Assembly has gone out positively in inspiring the notion of human dignity with the content that it deserves. Previously, we had human dignity merely as an abstract and vacuous concept with no substantive content whatsoever.

A further development in the Bill of Rights relating to dignity which straddles every right in the constitution, is the fact that in the previous Constitution we had two values, namely the value of freedom and the value of equality, and these two values were juxtaposed as adversaries. When we had to determine what a democracy was, we had to decide whether freedom would override equality or equality would override freedom. We have now placed this in its proper perspective. We have ensured that human dignity stands as a partner with freedom and equality, and that the values that inspire this nation and this democracy will be the values of human dignity, equality and a full range of freedoms as set out in the Bill of Rights.

Perhaps I should also revert to an important matter that was raised yesterday. This is quite mysteriously being raised by various NP speakers from time to time. Mr Geldenhuys stated that the Afrikaners, too, could be regarded as freedom fighters who fought for their liberation. My response to him is an absolute No! I say this because, in every conflict and in every struggle, the person that is oppressed seeks to affirm something that is in common with every other human being. He seeks to affirm the human dignity that is common to other people. What have the Afrikaners done with their victory? They have ensured that they raised the quality of life of only a sector of this nation and that they transgressed and violated every other right to human

dignity of this nation. [Applause.] Certainly they cannot—and they have no right whatsoever to do so—come to this podium and state that they were engaged in the struggle as freedom fighters.

We have also heard Senator Ackermann stating that they have already—look at the arrogance, the condescension—crossed the Red Sea, which means that God has already favoured them as His people. He has taken them across the Red Sea, but ANC beware, you may be swallowed by the Red Sea. What is the suggestion here? Is it that those chosen people are already on the other side, and that is why they have to cling to their property clauses and to the labour rights, since they feel there may be an impingement on their privileges of the past? Is that what they are saying? They should rather say, thankfully, that they are crossing through the Red Sea and the ANC is taking them along, so that they can aspire to freedom and equality and, for the first time, achieve human dignity. [Applause.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! I would just like to make a further announcement. We will not be suspending business for dinner, but dinner will be available as from 18:30. I would like to ask hon members not all to leave at the same time but perhaps, by arrangement with their Whips, to go in groups.

Rev K R MESHOE: Mr Chairperson, the Constitutional Assembly had two years to negotiate a final constitution that was supposed to be legitimate, credible and accepted by all South Africans. A number of scheduled meetings were cancelled because there was no sense of urgency. More meetings were cancelled in March and April this year than during the rest of last year.

Important decisions were made in the early hours of the morning instead of during normal working hours. Breaking up the Constitutional Committee into subcommittees that met concurrently was good strategy by those who wanted to sideline smaller parties.

If the objections raised by the ACDP are not considered favourably then this constitution will become a source of ongoing friction, resentment and mobilisation of committed Christians whose values, principles and beliefs are being threatened. It will become, not a tool of reconciliation and protection, but a weapon that will strengthen the divisions in the South African fabric which

this constitution could have effectively harmonised.

We as the ACDP still argue that biblical laws, which brought liberty and prosperity to millions of Christians in many nations over many centuries, cannot be subjected to a constitution that was drafted by mortal and fallible men and women within a period of two years.

Peace and prosperity in a country are dependent on God's merciful blessings. A morally unacceptable constitution, such as the one we now have, which undermines God's law, will result in His judgment. The ACDP wants God's blessing for this nation and not His judgment. That is why we are concerned about, and indeed insistent on, giving God the honour due to Him. It is not enough to conclude the preamble with: "Nkosi Sikelel' iAfrika. Morena boloka setjhaba sa heso." If we ask for His blessing and protection then we must be willing to submit to His laws instead of challenging them.

The ACDP will accept and promote the supremacy of a constitution that does not undermine biblical law. We do not question the relevance of the Bible that addresses moral, social, economic and all other bread-and-butter issues. We believe that the Word of the Lord is right and true, as stated in Psalm 33:4. Therefore any law or constitution that is against the Word of the Lord is not right or true. In order for a constitution to be right and true it must be in harmony with the Word of the Lord.

We have consistently pointed out in our speeches and submissions that this document can never be said to contain the elements of acceptability and inclusivity that it must inevitably have in order to claim legitimacy with all the South African people. But do not take my word for it. Test this document against the will of the people. Hon members can then see for themselves.

As the ACDP we believe that the time has come to recognise that we, all of us, are merely here to represent those outside this Chamber. Therefore our political future, job security and the like should not be allowed to interfere with our civic duty first and foremost to serve the people of South Africa.

The choice is clear. If we want the South African public to really have a say, we must have a referendum on the unpopular and unwanted clauses in this constitution. We support the call for

a referendum on all moral issues, especially those ones which have so easily been made the subject of compromise in these rooms over the past weeks.

One question remains when everything has been said and done. Do hon members have the guts to let the public approve or dismiss the work done over the past months? The structures going up outside this House seem to answer this question in the negative.

During the only multilateral meeting that all parties had on the preamble, the ANC, through their spokesperson, reiterated their intention of creating a secular state. Their spokesperson went on to say that they want to separate state and religion. The ACDP agrees with the separation of church and state, but not with the separation of state and religion, which includes morality. The idea that it is possible to have a religiously neutral state is erroneous. All laws are based on moral values which in turn are derived from a moral source.

Since different religions and secular belief systems have conflicting ideas, a religiously neutral state is impossible. Christianity, with which the overwhelming majority of South Africans align themselves, is tolerant of other religions and thus there is no need to adopt a policy of secularism that does not guarantee the rights of people to worship as they choose.

We believe in freedom of religion because it is a biblical principle and not a policy of secularism. May the good Lord bless all hon members as they endeavour to make the right decision. [Interjections] Thank you. May He bless all hon members as they endeavour to make the right decisions which will bring true liberty, justice, lasting peace and prosperity for all the people of South Africa.

Mr M W MFEBE: Mr Chairperson, hon Constitutional Assembly members, 41 years ago the biggest and most representative gathering took place in this country in Kliptown on 26 June 1955 at the Congress of the People. This gathering, by adopting the Freedom Charter, gave birth to a vision of a new constitutional order in South Africa. It was a vision in which South Africa belonged to all who live in it, free of racism, and a vision of a South Africa in which, among other things, people enjoyed equal human rights.

We have now arrived at a point at which we must celebrate, because it was at Kliptown that we

erected the signpost that directed this country in the direction in which it should be going. Today we are finalising the constitution and preparing to adopt it tomorrow.

Of course all South Africans have been bricklayers in this process of building this new house called the new constitution. Some of us have blistered our hands in the process of bricklaying. However, there are those who have chosen to be armchair critics on the margins of the process of building so supreme and fundamental a law for the country. These people are the political arsonists who are ready to destroy this house which we built with our blood, sweat and tears. These people have no place in the new democratic dispensation that we are bringing about.

We need to realise that we have come a long way. We have suffered, and some of us have died. Some of the people who fought for the new constitution and for democracy in this country have laid down their lives. The likes of Chris Hani are not here today. Oliver Tambo is not here today, like many others. The Solomon Mahlangu are not here today to witness this important and historic moment in which we are ready to usher in a new constitution in this country. But I believe that tomorrow all of us will be able to adopt this constitution, unless there are some who are prepared to go down in the dustbin of history as spoilers and destroyers. All of us should be ready to adopt this constitution.

I stand here in full support of this constitution, and look at the Bill of Rights and ask: Who am I? I am a representative of the 12 million people who voted for the ANC out of the 18 million people in this country who voted. [Applause.] That is significant. Those people entrusted us with drafting this constitution.

Therefore we as the ANC have no reason to be apologetic. Through the Bill of Rights, for example, we are responding directly to the imbalances, inequalities and injustices that were carefully orchestrated by the apartheid masters through a most abominable and inhumane policy of apartheid.

Therefore, we are not apologetic when we look at the Bill of Rights. We look at it as an instrument for the extension rather than the restriction of rights and democracy. We know—even the hon member Mr Tony Leon would agree with me—that the historical and traditional objective of the

Bill of Rights has been to remedy the unhealthy power relations between the people who are governing and those who are being governed. Therefore, if one looks, for example, at the way in which we have come up with this, we are not looking only at remedying the power relations between the State and its citizens but other sources of power, including employers and big corporations which own and govern the workplace. Therefore, they cannot have enormous power as they govern the workplace and think that those over whom they are governing should be relegated to beggars who are always begging at the locked gates of their masters. We have to rectify and recognise the historical context in which this Bill of Rights has evolved.

If we look at the “Magna Carta”, the United States’ Bill of Rights and the French Declaration of the Rights of Man, we see they were written by the oppressed people, not by the oppressors. In South Africa we have set an example for the rest of the world in that we have sat down with our former oppressors and worked out a new constitution for this country, and we should be grateful for that. For example, people think that the Bill of Rights should be used as an instrument of change.

The NP cannot do that. It claims that it is the new NP, whereas its newness is just like a snake’s. Each and every snake at a certain time sheds its skin, but it remains a snake, even though one can call it a new snake. [Applause.] Although the NP is the “new” NP it remains the snake that we know it was before. It is restricting change.

There is no reason for it not to allow the extension of property rights to other people. We have been fair in that we have agreed to guarantee fairness in the event that property is taken. The NP is not satisfied with that. It wants entrenched property rights so as to block change and the redistribution of resources in this country, but it cannot have that. If it is prepared to fight for this, the battlefield is a referendum. [Applause.] If it is prepared to go there, we are ready to go there too. However, it will be to the benefit of the NP to be constructive citizens of this country who will go on record in history as the makers and builders of the new constitution with its values of human dignity, democracy and peace. They ought to stand up and be counted.

Another question that I would like to tackle is the question of the Commission for the Promotion and Protection of the Rights of Cultural, Religious

and Linguistic Communities. Some may think that this is dating back to the group areas days, but they are mistaken. In fact, it is a victory for our people to have such a commission, because it is our cultures, our religion and our languages that were relegated to the dustbin during the dark days of apartheid.

We declared in the Freedom Charter: "All national groups shall have equal rights". We also envisaged a situation in which everyone would exercise his or her own cultural rights and customs, and that is the situation we have reached. Therefore, we are dealing with a situation. Those hon members did not put this in. It is a recognition of what we said a long time ago, in 1955. Therefore, this should be looked at as an extension, as a richer concept in terms of which rights are not restricted to defend individual rights, but extended to the community as a whole, and that also is a victory to the ANC.

They should be thankful for that. If they think that they will have their own group areas, however, they are mistaken, because the objects of that commission, amongst others, are to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities. The overriding principle is that of equality. [Time expired.] [Applause.]

Mr D P A SCHUTTE: Mr Chairperson, we have seen and heard many emotionally charged speeches in the past day, and there is certainly a place for emotions after such a long constitution-writing process, and after the very late hours we have kept and the hard work of the past few days and weeks.

However, at this late stage I believe that it is also important that we should reflect coolly and calmly on the requirements of a successful constitution. In this regard, I would submit that for a constitution to be successful, it should be a unifying instrument. It should belong to and be supported by all the people of this country. It should be seen as an instrument aspiring to meet the needs not only of certain groups, but of all groups. If it does not, it will be seen to be a divisive instrument, and not a unifying one.

Secondly, we should aspire to write a constitution which can provide the foundation to make South Africa a winning nation. In this regard we are not an island: The provisions of our constitution will be closely scrutinised to see whether they will

encourage growth and stability, or whether they will create uncertainty in the long term.

This has been the commitment of the NP all along— to negotiate a document that is reasonable, that meets the needs of all the people of South Africa and that is also a foundation stone for a successful and winning nation. I believe that we are very close to such an historic compromise, and my prayer is that we will reach it today.

Except for the two qualifications which I will deal with, we can with great enthusiasm support Chapter 8, which deals with the courts and the administration of justice. This is a very important chapter, because it is essential that the courts and the judiciary protect the individual and groups against the excesses of the State. It is therefore of crucial importance that the courts and the judiciary should be, and should be perceived to be, independent. That principle has been enshrined in the constitution. Clause 165 clearly states that the courts are independent, are subject only to the constitution and the law, and that the law must be applied impartially and without fear, favour or prejudice.

The constitution also makes it clear that the organs of State should actually ensure the independence, impartiality, dignity and effectiveness of the courts. I do not think that this could have been placed on a better basis in any constitution. It is indeed a pity that our reservations regarding the appointment of the Constitutional Court judges and the prosecuting authority remain. Time will tell whether our concerns had merit or not. Let us hope that they will be shown to have been unfounded.

In the final analysis a constitution is only a guiding document. The spirit in which it is implemented and used is crucial. That will determine in the final analysis whether the Constitutional Court and the prosecuting authority have credibility in all respects.

Mr D J DALLING: Mr Chairperson, I would like to commence by saying something about "process". In my quite long experience in South African politics, I have never witnessed the birth of a document such as we have before us today, pursuant to so thorough and comprehensive a process of consultation, of consensus-seeking, of discussion and of give and take.

We have experienced this from the very early days of post-April 1994 when the Constitutional Com-

mittee and its management committee were set up, progressing through the months of study and the formulation in the theme committees, the outreach to our people outside this House, the massive task of reading, classifying and evaluating literally millions of inputs, and then on to the multilateral discussions, the bilaterals which are continuing even as we debate here this evening, and the caucuses in the plenary debates in the Constitutional Assembly.

All this has ensured, for the first time in the long history of our country, that the constitution, as near as it is possible for it to be, will be a constitution for the people, of the people and by the people.

In 1983, when the discredited tricameral constitution was created, the select committee charged with the task of producing it heard evidence from a smattering of academics and selected other people, and then proceeded immediately to closed-door deliberations. If my memory serves me correctly, our present Deputy Speaker, Dr Bhadra Ranchod, presented a paper to that committee. I was astounded when, a few days after the last representation had been heard, Minister Chris Heunis slapped on the table a full draft constitution which had no resemblance whatsoever to anything which had been said to that committee in previous weeks. It had obviously been secretly drafted even before the committee had started its work.

The tricameral draft was then rammed, with indecent haste, through the committee, using the built-in NP majority which included the enthusiastic support in that committee of Mr De Klerk, Mr Kobie Coetsee and even poor old Roelfie Meyer. When this Nat document came before Parliament, the committee stage was guillotined at clause 34, leaving some 69 clauses to be bludgeoned through by majority vote, without any debate being allowed at all. That was the sum total of NP process. Words such as democracy, legitimacy, inclusivity and credibility were as yet undiscovered by our NP friends. No wonder this constitution lasted less than 12 years.

It is worthwhile comparing NP-devised process with that brought to our country by the ANC and by the Constitutional Assembly Chairperson, Mr Ramaphosa. Concepts such as universal adult suffrage and a justiciable Bill of Rights were taboo to the NP. On 16 May 1983, in the debates on the constitution of the new tricameral system,

it was Mr De Klerk who said the following when he was answering Mrs Suzman: Why not one Chamber with one man, one vote. He then said: That is the recipe for chaos in South Africa. I am so grateful that he seems to have progressed somewhat since then.

The Bill of Rights, which we proposed for that constitution, Kobie Coetsee rejected, and he used these words (Hansard, 1983, col 7360):

For example, the right to participate in the legal process is so broad, that we would have to draw up an extremely long schedule. We cannot entrench everything. For example, freedom of speech and freedom of assembly are matters which would cause problems for us if we were to entrench them in the constitution.

That is what he said at that time, and with that the Bill of Rights was thrown out of the window. Yet today it is the NP which wants every dot and every comma entrenched in the new Bill of Rights. One of the truest sayings is that the leopard never changes its spots.

In 1983, in the tricameral debate, Mr De Klerk said this, and I am going quote him again: "The fact is that the new constitution makes it possible to achieve two essential objectives at the same time." He was talking about the tricameral constitution. "Firstly, it adequately guarantees the preservation of White security, of White vested rights and of those values which the Whites regard as non-negotiable." That was Mr De Klerk.

Is it not ironic that, at the very time that poor Roelfie Meyer is being asked to devise a strategy to broaden the base of NP support in order to reach out to South Africans of all colours, it is the same NP which is continuing to argue for the entrenchment of single-medium education, in other words for the specific protection of Afrikaans education. The NP reaches out on the one hand and retreats into racial exclusivity on the other.

My own special joy in this constitution is centred on two specific features. The first lies in the fact of the supremacy of the constitution. For the first time in my life I will live in a country where it is the constitution which will define and protect my rights, and the rights of all my countrymen, and not party politicians.

Never again must politicians be free to tamper with the rights of our people—no high court of

Parliament, no inflated Senate, no gerrymandering of constituencies and constituency boundaries in the electoral process. Included today in the document before us is the testing right and power of the independent courts, all critical to a truly independent and democratic State, all part of the checks and the balances which go to ensure freedom for all, freedom not just for a racial minority, freedom not even exclusively for a majority, but rather a full citizenship and a full freedom for all who are proud to call themselves South Africans.

Another joy which, for me, is to be seen in this constitution is implicit in the terms of the new constitution itself, that is the very clear separation of powers distinguishing the executive, the legislature and the judiciary.

When the powers of the executive are blurred with those of the legislature, it inevitably ends, as it did in the past regime, in a pliable, acquiescent legislature totally dominated by the Cabinet and by the party bosses. In that atmosphere standing committees become a sinecure and are no more than rubber stamps of the executive—and Danie Schutte can tell us all about how his justice committee was just such a sinecure in those days. They are no longer rubber stamps of the executive.

I say thank God that with the help of this constitution, and because of the lively spirit of independence being shown day after day by the chairpersons and by the portfolio committees, the legislature in South Africa is at last coming into its own.

In broad terms, in so far as the judiciary is concerned, separation of powers means, firstly, that judges shall not also be members of the legislature or of executive organs of State. Secondly, members of the legislature or executive organs of State shall not also function as judicial officers. Thirdly, the courts of law shall not perform legislative or executive functions. Finally, legislative and executive organs of State shall not also perform judicial functions.

Therein lies the greatest peril, for when politicians write laws which exclude the intervention of the courts, and take upon themselves the right to order arrests, detentions without trial, arbitrary bannings and the like, a country descends into a state of tyranny and an era of suppression and of violent repression. We have been through that and

we know all about it. While this constitution lives, this one which is before us today, never again will those awful conditions prevail in our land.

There is much more that I would like to say, but there is no time. I would have liked to address the DP and to have urged them not to miss this great chance to play a positive role at this moment in our history, but there is no time.

So, in closing, I would like to express my thanks—and I am sure that of my colleagues—to the Chair of this Assembly, who with the aid of the Deputy Chairperson created and set up the consensus-seeking structures in which we have all participated. It is these two persons who have driven us all to achieve, finally, what we hope to achieve at the end of this debate, the adoption of a democratic and a legitimate constitution of which we can all be proud.

When, in the years to come, this constitution is mentioned, the names of Cyril Ramaphosa, and I believe, Leon Wessels, will be remembered. All South Africans are in their debt. We all wish them both happiness and success in all the challenges they face in the future. [Applause.]

Mr D M MALATSI: Mr Chairman, I thank you very much for this opportunity to address this Constitutional Assembly today, the day before the adoption of the new constitution of the Republic of South Africa. I would like to say that I feel humbled to be given an opportunity to participate in this debate, and whatever criticism may be forthcoming in regard to all the parties that are constructively trying to contribute to the improvement of the text should not be seen as being "obstructionist", as I have heard many people say here today.

We would be failing in our duty if we were not to voice those issues about which we feel strongly and which we feel can be improved. Also, I hope that we are not going to fail the people of South Africa. I hope and pray that tomorrow all of us present here today are going to hold hands proudly as South Africans and vote for the constitution of this country. [Applause.] I hope and pray also that the ANC, as the majority party in this country, will look into the concerns of the minority parties so that we have a constitution in this country that will be adopted by consensus.

A referendum is something that we should avoid at all costs. [Applause.] I say that because I believe that South Africa belongs to all of us who

live in it . . . [Applause.] . . . irrespective of what we have seen. Having said that, I also have to say that we owe it to the people out there to bring about the confidence that the economy of this country needs and the investors need, and that can only be achieved if tomorrow all of us present in this Chamber hold hands and do South Africa proud. [Applause.]

I would like to say that we in the NP will do our utmost, even if it means not sleeping today, to see to it that we do not disappoint this country tomorrow. [Applause.] Even though some hon members may doubt my bona fides, I am one of the people who feel very proud to be in the NP . . . [Interjections] . . . and I believe we will be able to cross the Rubicon—is it a second Rubicon or the Red Sea or the Green Sea or the ANC Sea? [Interjections.] Whatever it is, we will be able to cross it proudly with all the people of this country.

Before I leave the platform, may I say that I would be failing in my duty if I did not mention the improvements which have been made to the chapter on traditional authorities ever since I voiced my concern here last week that the chapter, as it then stood, was insufficient. [Interjections.] The ANC, in their humility, have accepted some of the proposals I submitted to them. I would like to give credit to them in so far as that is concerned and say that for the first time the institution of traditional leadership will be recognised in the constitution of this country.

I hope that the traditional leaders out there will accept that and persuade the provincial legislatures to establish Houses of Traditional Leaders in those provinces where they are not yet in existence. We should also pay tribute to the traditional leaders who played a prominent role in the adoption of the interim Constitution that saw to the recognition of Constitutional Principle XIII and Constitutional Principle XVII. Many of them are seated among the ANC members today and I would like to say that from the traditional perspective we owe the recognition for traditional leaders to their contribution.

In this country we will have peace when all the societies we find in this country, namely traditional, nontraditional, women and nonwomen, accept that peace in this country can prevail only when we have the protection of all the institutions.

For the first time, I would like to say that traditional authorities cannot survive unless they

adapt. The institution of traditional leadership should not clamour for the powers of the former homelands where they were politically inclined. Their role should be redefined. We should all accept that the role of traditional institutions and traditional leadership in this constitution will not be to play a prominent political role, but to play a prominent customary, traditional role to unify all people, and in which they will be above party politics. I hope and pray that traditional leaders will do their utmost to see to it that the constitution provides for that as a basis and that they will persuade their provincial legislatures to do what is for the best.

With these words I would like to say I hope that tomorrow will be our day, the day of all of us in South Africa. [Applause.]

Mr M J MAHLANGU: Mr Chairperson, I would like to thank you this afternoon for allowing me to participate in this debate which I find very exciting. I do so with very great confidence.

Sovereignty rests in the people of South Africa. When I talk about the people of South Africa, I mean all South Africans, irrespective of race, colour or creed. Their will shall be expressed by their democratically elected representatives in periodic free and fair elections. These elected representatives will adopt a constitution which shall be the highest law of the land and which shall guarantee their basic rights.

In 1994, when we were elected to Parliament, we were given a mandate by the people who elected us to come here to draw up a constitution which would be the product of all South Africans. The mandate we were given had a timeframe attached to it in that we were to complete this constitution in two years' time. We are going to adopt this constitution tomorrow and yet we are surprised that at the dawn of such a day, there are some people who do not feel free to adopt this constitution tomorrow.

Are they now turning against the mandate given to them by their voters? Are they saying: "To hell with our people. We are not going to adopt the constitution"? Are they not feeling ashamed to say: "Let us not meet the timeframe tomorrow"?

I think if we do that, we shall really be doing a very wrong thing. We should not be seen to be doing a thing like that. I think tomorrow we should be prepared to say: "This is the work we have done over a period of two years, the work in

which all of us have been seriously engaged. We now see the product and we should go ahead and adopt the constitution."

Ever since it was formed in 1912, the ANC's goal has been to give all the people of our country the chance to elect their own government. That is why generations of our leaders and members have set their sights on the objective of a new and democratic constitution which will at last remove colonialism from the African people, abolish all forms of discrimination and recognise the basic equality of all South Africans.

Having said that, I would like to concentrate on two chapters only, Chapters 6 and 12 respectively. Let me touch briefly on the question of traditional leaders on which Mr Malatsi has commented. The institution of traditional leadership has played an important role in the history of our country and traditional leaders will continue to have an important role to play in unifying our people and performing ceremonial powers and other functions granted to them by law.

From time immemorial, the African people have been ruled by the chiefs. The problem that we are currently facing is that the traditional authorities are given precisely the powers and functions which are given to the elected local structures. The immediate problem that one is confronted with is who does what.

When one allocates the Budget, how does one allocate it to the competing structures? Who takes the decisions, especially in respect of the delivery of services? This is an immediate problem we are facing on the ground.

Chapter 12 tries to address precisely these problems. The national legislation should start addressing these problems so as to avoid conflict between the traditional leaders and the elected leaders.

The problem is that once we have such conflicts, then we have the problem of delivering services on the ground. People in the rural areas are the people who do not have roads, water, jobs or electricity. They have poor health facilities and no classroom accommodation. Therefore, we do not seek that confrontation. We need to deliver and to take care of those people.

The recognition of traditional leaders in clause 211 of the constitution is most welcome as far as the ANC is concerned, and we hope that this

institution will find itself contributing very thoroughly and significantly to the governance of this country.

I would like to turn to Chapter 6 on provinces, specifically clause 103(2) dealing with the question of boundaries which has not yet been solved at the present moment. We are all aware that this is a very thorny issue for many South Africans and that it is also causing conflicts on the ground. However, what makes me happy today is that the constitution leaves it open for the provinces, and even the National Council of Provinces, to participate fully, in conjunction with all the people on the ground, in order to deliberate on this matter and try to solve it. This would allow us to avoid bloodshed, misunderstandings and conflicts which we are faced with at the present moment.

In conclusion I want to say what I am now going to say, a little more slowly so that people can understand what I am trying to convey. We are very proud of our role in pioneering democracy and constitutionalism in our land. None has fought harder for freedom and democracy than we have done. Here I want to pause a little.

Ngithanda ukuqhubeka ngikhulume ngesiZulu ngithi: Afile amadoda, elwela inkululeko. Bafile omama, befela inkululeko. Zifile izintombi, zifela inkululeko. Zifile izinsizwa, kungentando yazo, kodwa zifela inkululeko. Bafile abantwana beminyaka emithathu, nabaneminyaka emine behamba ezitladini, belwela inkululeko. (*Translation of Zulu paragraph follows.*)

[I would like to continue in Zulu and say: Men have been killed, killed for freedom. Women have been killed, killed for freedom. Girls have been killed, killed for freedom. Young men have been killed, killed for freedom. Children as young as three and four years old have been killed in the streets, fighting for freedom.]

They were killed against their will, fighting for freedom, and the constitution that we are drafting today is the constitution that wants to heal those wounds. The constitution we are drafting today is the constitution that, as we say in isiZulu ... ethanda ukuthoba amaxeba, nethanda ukususa izinyembezi zalabo abasaphila namhlanje. [... will heal the wounds and wipe away the tears of those who are still living today.]

The constitution we are drafting today, is the constitution which says that now we have democracy in this country and now we are recognised as

first-class citizens of this country. This constitution guarantees a place for civic bodies, trade unions and numerous other organisations which people create to deal with their everyday problems and aspirations. These are the institutions of civil society which are crucial if we are to have a deep and thorough democratic order. This constitution which we are adopting today not only guarantees accountable, nonracial, nonsexist and democratic structures of government, but also empowers all the citizens of this country to shape, and to share in, the many aspects of life outside government.

Sihlalo, ngithanda ukubonga kakhulu lelithuba ongiphe lona. Ngibubonile ubunzima obebubhekene namaLunga alesiSishayamthetho ngesikhathi ezama ukuqedela loMthethosisekelo. Ngisho loMthethosisekelo esizakujabula sonke ngawo, sibuse sinethezeke, singabantwana be-Afrika sonke. Hayi kuthiwe abanye bedla kamnandi abanye babe bephethwe yindlala. Hayi ukuthi abanye begiya ngapha, abanye babe bekhala izinyembezi. Futhi hayi ukuthi abanye bethi becekelwa phansi, kodwa abanye babe behleli kahle.

Namhlanje, ngaloMthethosisekelo, sonke singabantu abamunye, hayi ngobuhlanga kodwa ngoba singabantu balelizwe esihlala kulo sonke. Ngithi masemukele sonke loMthethosisekelo ngokujabula, singaphikisani. I-ANC, akusekho engaphinde ikunikele. Uma singafanisa ngenkomo, singathi sesiyisengile kwaze kwaphela ubisi, ngakho-ke sekuzophuma igazi manje. Manje, akufanele siyisenge kuze kuphume igazi ngenxa yokuphela kobisi. Sinikezile kwanele, akusekho esesingaphinde sikunikele. Masivoteni, sibuse, sinethezeke. (*Translation of Zulu paragraphs follows.*)

[Mr Chairperson, I would like to thank you for this opportunity you gave me. I have seen the difficulties the members of this House had, trying to finalise this constitution. I am referring to this constitution that will make all of us happy and enjoy being the children of Africa; not a situation in which some people are enjoying and some are suffering from hunger; not a situation in which some will be dancing while others are crying; and also not a situation in which some will be oppressed while others are enjoying themselves.

With this constitution, all of us today are one, not racially but because we are all inhabitants of this country. I say, let us accept this constitution with

happiness and without any arguments. There is nothing else that the ANC can do. If we make a comparison with a cow, we can say we have milked it until there is no milk left. Only blood will come out if we go on. We can therefore not milk the cow until we get blood. We have compromised enough and there is nothing more we can offer. Let us vote, be free and be happy.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I would just like to make an announcement. This is the day for mass speakers. We have a mass speakers' list, and this is also the day for mass negotiation. It is now time for the new constitution. The announcement pertains to the following. The CC will meet concurrently with this session of the CA at 19:30. They will go through the outstanding reports which they still have to entertain. Those speakers who are still on our list but engaged in the CC will be slotted in, so that they can report to us in the CA about what happened in the CC since 19:30.

Mr S J DE BEER: Mr Chairperson, we are now nearing the end of the process of establishing South Africa's first real democratic constitution. To me, to have been part of this process has certainly been one of the highlights of the 22 years in which I have had the privilege of being in Parliament. I want to agree wholeheartedly with my colleagues Johnny de Lange and Dave Dalling when they say that Cyril Ramaphosa and Leon Wessels did South Africa proud with the excellent way in which they managed this process.

In this process I had the privilege of being the chairperson of the committee which had to recommend the names of those who were to be appointed to the panel of experts and the technical advisors who were to assist us in the mammoth task of writing a constitution. The wonderful thing about the way this committee executed its task was that it was not necessary on any occasion to vote on the appointment of a candidate.

Furthermore, after having been involved with these experts and advisors for nearly two years, I think that we can say tonight that they really made an exceptional contribution. Not only were they absolutely professional in the execution of their duties, but throughout the process they succeeded in retaining the respect and confidence of the members. We want to thank them for their outstanding contribution.

Right from the start of this process Theme Committee 6 seemed to be a bit different from the other committees. Not only did we have a very broad field of topics to cover, but from the outset all the members in this committee really worked as a team. To me this was a most enriching experience and a wonderful way of getting better acquainted with colleagues of all parties. I want to thank them for their positive contributions and their positive attitude.

Prof Piet van der Merwe and Daya Pillie made a great contribution in assisting us in producing the chapter on public administration, while the staff of the CA was outstanding in the services which they rendered.

\*After the chapter on public administration had been published for comment, we realised that the way in which we tried to determine which institutions should comprise part of public administration would lead to great confusion. We received many objections about this, particularly from the universities. The text as it has now been formulated therefore no longer tries to determine who or what comprises part of public administration. It now determines the basic values and principles of public administration, and further provides that these values should be applicable to the Public Service, organs of State and public enterprises. The field in which the values and principles of public administration should be included has therefore now been determined much more specifically. In evaluating the various values that have been expounded in clause 195 it is important to consider each of the values in association with the others. The values should not be isolated, but read in conjunction with all the other values as far as cohesion and balance is concerned and it should be applied in order to define effective administration.

The proposed change of the name of the Public Service Commission to "Public Administration Commission" (PAC) was also confusing. I do not think the PAC liked it either, and this led to quite a number of misunderstandings about the scope of responsibility of the commission. Therefore the name "Public Service Commission" was reintroduced, and the responsibility of the commission was limited to the sphere of the Public Service. These corrections were also welcomed.

Although the initial standpoint of the NP was that the provincial public service commissions should continue to exist, the committee decided against

it. The provinces nevertheless now acquire the right to nominate a member each to serve on the Public Service Commission. Each provincial representative will also be able to perform the function of the commission within his or her province, and there is nothing in the constitution to prevent provinces from establishing any structures around these members of the commission in the provinces. The basic principles of the Public Service, as defined in the Interim Constitution, are also included in this constitution.

†The expression "broadly representative" is often used in this constitution. I now want to use it in a somewhat different way. In conclusion I want to say that if the general relationship between all the people of South Africa could be broadly representative of the relationships that exist between the members of the parties in the Constitutional Assembly, as I have experienced them in the last two years, I believe that South Africa would be the most wonderful place in the world to live in. I pray this evening that this constitution may contribute to such a South Africa.

Mr M M Z DYANI: Mr Chairperson, I am speaking here on behalf of Mr Makwetu. Unfortunately he had to leave before delivering the speech which I am about to deliver on behalf of the PAC. Before the final word is said on the constitution, we would once again like to state our position on the question of traditional leaders. Before I do so, I would like to emphasise that our position has not changed on the property cause, the lockout clause, the preamble and the language question.

On traditional leaders, the PAC believes that Chapter 12 does not address the provisions of Constitutional Principle XIII. In our submission on the second House, which we made on 12 February 1996, we proposed that at national level traditional leaders should be accommodated in the national council. This did not receive favourable treatment. In the Constitutional Assembly on 23 April 1996 we submitted a compromise that the interim Constitution's provisions with regard to the Council of Traditional Leaders, the Houses in the provinces and the ex officio status in local government should be retained. We had hoped that the submissions to the CA by Contralesa in April 1966, and by Prof J J Olivier and his team on the 31 March 1966, would be given serious attention.

We still feel that this can be done. The CA experts can take them into account in drafting clauses that are in accordance with Constitutional Principle XIII.

We humbly but strongly submit that one of our concerns about the new constitution is the shabby treatment of African traditional institutions, traditional law and traditional authority. The two or so paragraphs in the new draft are not sufficient, and we also think they do not meet the requirements of Constitutional Principle XIII. The issue of African customary law and the Bill of Rights need to be handled in a more serious and sensitive manner. The approach must allow evolution, dialogue, education, interaction and finally integration.

We are convinced that African customary law and human rights principles are not mutually exclusive. It is common cause that some of the principles were influenced in their formative stages by different cultural practices and value systems. Informed and constructive dialogue is necessary to resolve the apparent and unnecessary conceptual differences.

Furthermore, the protection of communal land has not been addressed in the new property clause. There is a possibility that it may be expropriated by the State and sold to private persons. Our people need to be constitutionally assured that such a malady will never be inflicted on them. African experience has shown that the institution of traditional leaders is very resilient and will survive any arbitrary attempt to undermine or abolish it. Time and people alone will determine its relevance.

Lastly, we should always remember that South Africa is an African country.

\*Dr G W KOORNHOF: Mr Chairperson, it is a privilege for me to take part in this historical debate on the eve of the adoption of our constitution. I also associate myself with the congratulations that my other colleagues conveyed to you and Mr Cyril Ramaphosa on your excellent handling and leadership of this constitutional process.

†Chapter 11, which deals with the security services, is one of the most substantial chapters in this constitution. It relates to a large and important segment of our society, namely the people who have selected professional careers in the SA National Defence Force, the SA Police Service and the intelligence services. When we as politi-

cal parties started to negotiate on the security services, a huge gap existed between the various viewpoints. Each party had a somewhat different point of departure. If the ANC had to write its own chapter on security services, I believe it would have differed in major aspects from what is in front of us at the moment. Similarly, if we as the NP were to write a new chapter, we would have placed a different emphasis on the security services. However, in the end we produced a mutually acceptable chapter. There is now a balance between the competencies of central Government and the provincial governments regarding this matter.

An important clause now makes it possible under appropriate circumstances for a municipality to establish a municipal law enforcement agency, that is municipal or metropolitan policing, to be regulated by national legislation. The crime situation in our country has deteriorated over the past two years to such an extent that this clause has become very necessary.

We welcome the acknowledgement that we need strong multiparty parliamentary committees to exercise oversight over all security services. This is confirmed in clauses 57 and 70 of the constitution, which state that the Rules and Orders of the National Assembly and also of the new National Council of Provinces must provide for the participation of all minority parties in the proceedings of both the Houses, but importantly, also in all committees. It also establishes the principles of transparency and accountability.

Regarding the command of the SA National Defence Force, it was decided to leave open the option of either appointing a single Chief of the Defence Force or appointing Joint Chiefs of Staff. These options have to be studied very carefully, and the opinions of the SANDF and stakeholders will have to be taken into account and into consideration if we want to achieve a national consensus on defence.

I think the clause which states that the Minister of Defence must exercise command over the Defence Force under the authority of the President is a case of overkill. It is only natural to expect that such a Minister will liaise with the Cabinet and the President when necessary. This is already covered in clause 92 of the constitution.

Regarding the SA Police Service, we started out with two possible models, namely a single police

service or nine autonomous police services. We are satisfied that we have reached a balance and that the SAPS can now operate at two and, if necessary, at three different levels. We are particularly pleased that the police are now included in Schedule 4 of the constitution, and are therefore part of the concurrent legislative competencies.

In particular, we welcome the following clauses. Firstly, when national legislation establishes the powers and functions of the police service, it must take the requirements of the provinces into consideration. Secondly, national policing policy can only be determined after consultation with provincial governments and by taking the needs of the provinces into account. Thirdly, each province is now entitled, in this constitution, to a wide range of functions, preparing the way for co-operative governance, and making the central government and the provinces important role-players. Fourthly and lastly, the national commissioner can now only appoint a provincial commissioner after consultation with the provincial executive.

I wish to conclude. The chapter on security services is well balanced. It is now time for us, as politicians, to allow the security services to continue with their job and to serve the interests of our beloved country and all its people.

Ms D P JANA: Mr Chairperson and members of this Assembly, this is a glorious occasion, and I am honoured to be part of the proceedings. I think that, even at this stage, we can begin celebrating, because we are now finally moving towards consolidating our freedom.

This constitution, which is not a draft or interim constitution but the constitution of our country and the supreme law of our land, is a product of much sacrifice and energy, not only by us, the members of the Constitutional Assembly, but by millions of South African people who, in many different forms and ways and through different mechanisms, contributed to the drafting of this constitution. It is our constitution, written with the sweat and intellectual labour of our people, no matter whether these contributions were made in a tiny, obscure village in the depths of KwaZulu-Natal or intensely debated in the towering corridors of power. This constitution is the accomplishment of a victory for the people of our country.

I am not going to talk about those aspects of the constitution in which we have failed, as parties, to reach an agreement as yet. I am going to refer to some of those general aspects on which, despite our varying ideologies, we have found common ground. This is important because, in the end, we have produced a document that represents the aspirations of our people. I would like to comment on the Bill of Rights and, in particular, on the so-called second generation rights, that is to say, rights of a socioeconomic nature.

The advancement of fundamental rights pertaining to the liberty of persons and political freedoms, for example the right to equality, the right to dignity, the right to privacy, the right to freedom of expression and freedom of association, is easily containable. However, socioeconomic rights which saddle the Government with positive obligations for fulfilment may not be so easily containable, and certainly pose a challenge to any society, no matter how affluent it is.

The Bill of Rights in Chapter 2 provides for these socioeconomic rights—the right of access to adequate housing, health care, food, water, social security, education, and children's rights to basic nutrition, shelter, basic health care and social services. These socioeconomic rights for children and basic education are unqualified rights whilst further education, together with other socioeconomic rights, is subject to the availability of resources.

What does this provision in the constitution, guaranteeing socioeconomic rights, really mean? It means that the legislature or an executive official is not entitled to place impediments on the rights of a citizen to have access to housing, health care, food, water, social security and education. However, that is not all. More importantly, it also means that the State has an obligation to secure such rights for its citizens. The constitution provides in clause 27(2) and I quote:

The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

This provision imposes on the Government a duty, a responsibility and a commitment to do something positive within the ambit of its resources. This would create an enabling environment in which either the State or sectors of civil society would be in a position to facilitate that

which is guaranteed in this constitution as second-generation rights.

However, the socioeconomic rights provided for in this constitution are limited by the capacity of the State to deliver, and this is expressly stipulated in the constitution. It is important and certainly necessary that we adopt a realistic approach to these rights and not simply have a populist type of approach. Let me put it this way: If the State simply lacks financial resources to give food to the humblest of its citizens, then the logic and ferocity of a judicial order compelling the State to do so will be rendered utterly meaningless. It certainly cannot convert the empty granaries of the nation into baskets full of food. A nation which does not have sufficient resources might not be compelled to fulfil the socioeconomic rights guaranteed in its constitution.

However, if that incapacity is caused by budgetary constraints or where there is an injudicious wastage of natural resources, for example, by disproportionate and wasteful expenditure on arms or a bloated civil service, the budgetary discretion of the legislature or the executive may be challenged, and why not?

In one of the last publications of the Reconstruction and Development Programme Office, the "Key Indicators of Poverty in South Africa", it is stated that the lowest 40% of households, equivalent to 53% of the population, account for less than 10% of total consumption. The top 10% of households, making up only 5,8% of the population, account for over 40% of consumption. It is that 53% of our population which is our primary concern as a Government, and it is at that 53% of our population that the socioeconomic rights in this constitution are directed. Therefore, any disproportionate allocation of national resources must be avoided so as to prevent needless poverty. We in the ANC hail the socioeconomic rights in this constitution and dedicate them to the underprivileged sectors of our nation.

Finally, our constitution is certainly in the forefront of international constitutional trends. However, these socioeconomic rights, as stated in this constitution, should not limit us in our creativity. We should endeavour by different legislative means to achieve a new socioeconomic order which can at least guarantee basic social justice, to which we so boldly commit our nation in our preamble.

After all, a constitution is the formal concretisation of the dreams of a nation. Every nation must dream, and every generation will have an ideal. It is in pursuit of that ideal dream that we hope to adopt this constitution tomorrow.

Finally, Mr Deputy Chairperson, let me be presumptuous and congratulate you and our Chairperson, Mr Ramaphosa, today on your wonderful endeavours. [Applause.]

Mr D H M GIBSON: Mr Chairperson, my friend the hon Ms Jana referred this as a glorious moment. It is a pity that 7/8 of the Constitutional Assembly are having dinner rather than hearing the words that she uttered to us, and that I am about to utter as well.

Nevertheless, the making of a constitution is a profound moment in the life of a nation. The product of our work over the past several years can become a charter for the growth, development, prosperity, happiness, success, the equality and the freedom of all our people for many decades to come. This constitution must not and cannot be permitted to degenerate into paper promises and empty, pious wishes. If that happens, the politicians of this generation will bear a very heavy responsibility. We will not be remembered with respect and affection; on the contrary, we will be remembered as the people who let our own people down, those who dissipated the marvelous potential and promise which heralded the birth of our new nation. We have an enormous responsibility.

In the few minutes available to me I wish to focus on two of the minority parties who played a role in the drafting of this constitution out of all proportion to their size, and I refer to the DP and the SACP. The SACP is fond of dismissing the DP as a 1,7% party, but I think even they will concede that at every step of the way of drafting this constitution the DP was there, and that at every step of the way we made our inputs, and we tried our level best to improve and to refine virtually every clause of this constitution. In many cases we succeeded. We claim the credit for that. I want to say that this constitution would have been better if our advice had been followed more often.

What of the SACP? They are not a 1,7% party. They did not test their support at the last election. They did not seek a mandate, and they did not get it. Despite all of that, however, they also played a role in the drafting of this constitution out of all

proportion to their support or to their numbers. Some of the cleverest, shrewdest, hardest-working people in this Constitutional Assembly are members of the SACP. They played an enormous role. Some of them are very charming, and some of them have become good friends of mine. I want to say as well that some of the most unsatisfactory aspects of this constitution can be placed at the door of the members of the SACP.

I stated at the beginning that this constitution should be South Africa's charter for success, that this should be the charter which really does deliver a better life to all the people in South Africa. The people who belong to the SACP have a pervasive influence, and unfortunately they are still in love with an ideology and an -ism which fails. They support Cosatu, for example, a union which is dedicated to the interests of 1,9 million people, and forgets about the 7 million unemployed people in South Africa. Cosatu and Sam Shilowa care not a scrap about the unemployed mother with kids, who has to fight to feed herself and her children, to keep body and soul together. I would like to challenge any member of this Constitutional Assembly to show me one job that that same Sam Shilowa has created through his policies and his "Viva socialism" and his "Viva SACP". It is exactly those policies which Sam follows and that he leads you around by the nose with that is the recipe for failure in South Africa.

What one must do is to contrast what happens to the successful nations in the world, in the countries of this world which provide freedom, equality and real democracy, and which really do provide a better life for their people. They are not the countries which try the socialistic experiment.

I want to contrast what Mr Shilowa and his "handlagers" in this Constitutional Assembly stand for with what we in the DP stand for. What we stand for is liberal democracy, which has succeeded, and a social market which does provide a better life for all. [Time expired.]

**Mr G M MUSHWANA:** Mr Chairperson, comrades and colleagues, today we stand here tall and proud as representatives of millions of South Africans who, for centuries, have lived in a country in which they had no rights, no opportunities and no say in the government.

As we are gathered here to debate this final adoption of the supreme law of the country, we are saddened by the fact that most of those who

suffered and the many who gave their lives for the realisation of this important day are not here to celebrate the fruits of their labours. I want to say here today that no amount of money will be enough to compensate the parents and families of South Africa's sons and daughters who suffered under Andre Fourie and laid their precious lives down to make sure that South Africans of all cultures were free.

As we enter a new era in our life and history as a new and free nation, we need to erect a monument for all who suffered and died in the struggle for freedom against the oppressive regime. I could not agree more with the sentiments that were expressed by the Chairperson when he opened this debate. While we consider that, I would further like to say that we also need to take cognisance of the role that our women have played in the struggle for freedom. I would also like to take cognisance of the fact that our children, way back in 1976, also had a meaningful role to play in bringing us to where we are today.

The monument will stand as a constant reminder of our sad past, so that future generations remember and uphold the moral ideals our heroes fought and died for. We are not bent on revenge, but we dare not forget our past, lest we commit the same mistakes which caused so much pain.

Let those who wept weep no more. Let those who have lost their loved ones find solace in the knowledge that all of us who are gathered here today share in their loss and their grief. Yes, we are ready to forgive, on condition that we all join hands as fellow South Africans who are ready to build a country in which we will all live in harmony and cherish the ideals of a free and united society.

Chapter 9 provides for the establishment of a Public Protector and a Human Rights Commission.

Those are the cornerstones of our constitution. With those establishments we are saying that we are guaranteeing that our people will never again, under any circumstances, go through the abuses of apartheid which were committed against them. In the past the apartheid regime decided for them where to live, with whom to associate, which school to attend, and even whether to go to school, in order that the minority could enjoy all the privileges that the country had to offer.

Allow me, Mr Chairperson, to turn to my mother tongue.

Tolo na tolweni a mi khome nyarhi hi timhondzo mi kamana na xinkankanka lexi a xi tiyimiserile ku mita rixaka. A va lava leswaku hi hanya emunyameni ni le vusiwani byo kala vutivi. Mintirho ya hinkwavo lava va nga xaniseka ehansi ka mfumo wa xihlawuhlawu yi nyamalala.

Vumbiwa leri hi vulavulaka hi rona namuntlha i vumbiwa leri ri tswariweke hi swileriso swa vanhu hinkwavo va tiko ra hina: Vatirhi, vadokodola, lava nga dyondzeka na lava va nga dyondzekangiki, hinkwavo vanhu va tiko ra hina va vile na rito eka vumbiwa leri.

Tolweni wa masiku a hi fambisiwa hi vumbiwa leri ri nga tsariwa hi van'wana lava a va anakanya leswaku Xikwembu xi va nyikile matimba yo byela no lerisa leswaku wa Ntima u fanele ku hanya kwihi na mani, hi yihi dyondzo leyi yi n'wi faneleke leswaku a tshama a ri mutshovi wa tihunyi na muki wa mati.

Sweswi hi ni ku tsaka hikuva vumbiwa leri hi bulaka hi rona i vumbiwa leri vanhu hinkwavo va veke na rito eka rona. Hi hava ku kanakana leswaku vanhu hinkwavo va tiko, ku sukela eka n'wana lon'tsongo ku ya eka vadyuhari, swidyondzeki ni lava va nga dyondzekangiki, swifumi ni swisiwana, voBasa na vaNtima, hinkwavo va amukela hi ku tsaka vumbiwa leri hi voxo.

Loyi a nga amukeriki vumbiwa leri a ye evuhelwa lomu hi vengiwaka kona. Va Jelani wa Jelani lava va lavaka ku sala emarhumbini va lava leswaku hi tlhelela eEgipta laha ku nga na ku getsela ka meno.

Ha karhi ha swi vona leswi swi humelelaka eKwaZulu-Natal laha vanhu va ka hina va faka tani hi tinhongana, va mbimbirhekaka. I siku rin'we ntsena leri vanhu va ka Zulu eNatal va nga ta vula va ku: "Se hi swi twile, a ha ha swi lavi leswi hi swi vonaka." Siku rero loko ri fika van'wana va ta vona xa ncila wa bulubulu.

Mhaka leyi ya ha lavaka ku lunghisiwa hi vurhon'wana i maavanyiselo ya misava ni nhundzu eka vanhu hinkwavo va tiko ra hina. Loko nhundzu yo tala ya ha ri emavokweni ya lavo Basa, vaNtima va nga se va na rito eka yona, swilo swa hina a swi nga fambi hi ndlela.

Vatirhi na vona i khale va dya rikoko ra xilondza ehansi ka va vasi lava va ndlandlamuseke

makwhirhi hi mavoko ya hina. Ha karhi ha swi vona sweswo. Sweswi i nkarhi wa vona ku va na vona va kombisa ku vilela hi tindlela hinkwato eka leswi va lavaka ku swi vona swi humelela eka vumbiwa. Hi nga va soli vatirhi.

Vanhu vo tala va xanisekile etikweni ra hina. Namuntlha, hi ku pasisa vumbiwa leri, hi ri ku nga ha vi na munhu na un'we eAfrika Dzonga loyi a nga ta xanisiwa hi mhaka ya matirhele ya xihlawuhlawu kumbe hi ndlela yin'wana leyi yi tiyimiseleke ku xanisa vanhu. Hi ri lava va nga laviki ku pasisa vumbiwa leri a va hi lombe. [Va phokotela.] (*Translation of Tsonga paragraphs follows.*)

[In the past they had a difficult time. They were faced with a huge monster that nearly destroyed the nation. They wanted us to live in the darkness and under the veil of ignorance. All the efforts of those who suffered under apartheid would have been in vain.

The constitution which we are discussing today is the constitution which has been written in line with the requirements of all the people of our country: workers, doctors, the educated and the uneducated, all our people have had a say in this constitution.

In the past we were governed by a constitution which was written by others who thought that God had given them the power to tell and dictate to Blacks as to where they should live and with whom, which education was right for them so that they remain hewers of wood and drawers of water.

We are now delighted that the constitution which we are discussing is the constitution in which all the people have had a say. We have no doubt that all the people of the country, the educated and those who are not educated, the rich and the poor, White and Black, all happily accept this constitution.

Those who do not accept this constitution should go to some enemy territory. Those who want to live in the past want us to go back to Egypt where there is too much suffering.

We are aware of what is happening in KwaZulu-Natal, where our people are dying like flies. It is only one day that the Zulu people in Natal will say: "We have had enough, we are no longer interested in what we are seeing." When that day comes, some people will be in trouble.

The issue that still remains to be resolved meticulously is the distribution of land and property to all the people of our country. While most of the property is still in the hands of Whites—and until such time as Blacks have a say in it—nothing will come right.

Workers also have for so long been suffering under the bosses who filled their stomachs through our efforts. We are aware of that. Now the time has come for them to show their dissatisfaction in every way possible with regard to what they want to see in the constitution. Let us not blame the workers.

Many people have suffered in our country. Today, by passing this constitution, we are saying that never again should there be anyone in South Africa who will be made to suffer because of apartheid or in any other way which is intended to make people suffer. We are saying that those who do not want to pass this constitution should leave this country. [Applause.]

Mr M RAMGOBIN: Mr Chairperson, comrades, members of Parliament, ladies and gentlemen, on this occasion, the debate on the constitution, I would have liked to appeal at the outset for us to elevate the debate to such a level that it was not capable of being reduced to the acrimonious exchanges in which we are engaged.

I would like to say something in my mother tongue. When I say “Vande mataram” I am saying “I salute you, my mother South Africa.” When I say “Vande mataram,” I am saying “I owe obeisance to you, my mother South Africa.” However, if my children came here today and said to me “Daddy, you have taught us national consciousness, you have taught us all about national character. We would like to say something to you, father, of which, perhaps, you are not aware,” they would say to me in my mother tongue “Bahut kooch dekka, magar rashtriya charitra nahi dekka”, which means, my fellow South Africans, “We came here and we saw many things, but we have not seen is national character and national consciousness.”

It is a pity that the Minister of Justice and Mr Mfebe are not here. I think when we seek to relate to people whose histories are replete with opportunism, greed, avarice and racism, it comes to us that a constitution that we seek to present was, in the first instance, in the crucible of our inner consciousness. It was not born in opportunism, it

was not born in avarice and greed and it was not born in hate.

I am saying that the effort to build a constitution of this nature began when the first spear was raised by Black people in attacking aggressors in their land, when the first shield was raised by Black people in the defence of their motherland. Since 1652—the ladies and gentlemen on that side should note this—there has been a constant effort towards this day. Now that we have reached this day we want to remind those members that it was the magnanimity of the ANC that drew them into the concept that says South Africa belongs to all who live in it.

Now, we are asking those members to make South Africa livable for all who live in it. On the basis that we drew up the Freedom Charter, thus becoming the architects of South Africa’s destiny, we declare today that if anything comes between the destiny of South Africa and ourselves, we will raise the spear again. [Interjections.]

The adoption of this constitution is not the be-all and end-all. It is part of a process of legitimising the aspirations of our people. This constitution is going to guarantee, for the majority of people in South Africa, freedom from poverty, freedom from disease, freedom from hunger and freedom from subjugation—politically and economically. We will not tolerate for a single moment the calls from a minority who seek, through the constitution, to legitimise monopoly capital, and to legitimise racism all over again in this country, because they know as well as we do that the instruments of production are still in the hands of that minority.

An HON MEMBER: Bua! [Tell them.]

Mr M RAMGOBIN: We have arrived at this position today through the process of representative and participatory democracy. On this basis my mind goes back to 26 years ago, when I was one of those people who said to the world that for as long as the Mandelas, Sisulus, Kathradas and Bram Fischers were in jail, their ideas would be compatible with those of Jesus Christ.

No matter how much one talks about God, we need to reflect on the ideas left to us by Bram Fischer and Oliver Tambo, the ideas that are still being exposed to us by Nelson Mandela and Walter Sisulu. These are the ideas that have formed the basis and genesis of what I believe to be Christianity. I believe they are compatible with

the Sermon on the Mount. We will not tolerate the current sermons here today from certain detractors in this House, whether they be about God or any economic feature.

We say to them, over and over again, please do not test the patience of people who have come from a background of repression. We say to them that this constitution affords us all the opportunity to enter into a covenant, a covenant which Nehru, at the time of the implementation and adoption of the Indian constitution, called a "tryst with destiny". If they do not want to be our partners, it is their choice to be left on the dunghoops of history.

We say that on the basis of a particular kind of confidence and co-operation, the adaptability of the ANC is now converted into a particular kind of hardness. I pray to God that we do not move from this hardness, because apartheid was a fount of a particular kind of spirituality that they, the Nats, boasted about.

We say that this constitution will indeed lead the DP and the White sectors of the NP to their spiritual loneliness. Yes, it must lead them to their spiritual loneliness, because their spirituality was based on apartheid. They will be strangers in South Africa for as long as they do not subscribe to this constitution. Just as the IFP has done, they will exile themselves, from the process and from history. [Interjections.]

In seeking this covenant with each other, we are not saying for a single moment that we in the ANC have the monopoly of truth on our side. We appeal to those members to join us and tell us where we are going wrong. Show us the path. Instead they have given us the path of apartheid and seek to cling to it. [Interjections.]

Indeed, I do not for a single moment confuse their adventurous opportunism with the kind of idealism we are possessed of. We in the ANC are saying: "You may stand on your head, Madam, and get blue in the face, but we will not betray the confidence of the people who asked us to lead the way." [Applause.]

By not betraying this confidence, we are saying to hon members today that we want to build the cohesion of South African unity and we are not going to do it on their terms. [Time expired.] [Applause.]

Mr A FOURIE: Mr Chairperson, I must be quite honest. Listening to Mr Ramgobin, there are a lot of things with which one could differ, but perhaps if more of his colleagues spoke in the spirit in which he spoke, I would not make the speech that I am going to make now.

Before I come to my speech, I want to tell the previous speaker, Mr Mushwana, that he has a cheek. Whilst the comrades that he talked about were involved in the freedom struggle, were locked up or in exile, he was getting fat off apartheid in Gazankulu.

I want to say tonight that nobody can question the bona fides of the NP and our sincere desire to contribute to and work towards an agreed, negotiated, lasting constitution. But one thing is clear, especially after listening to the Dullah Omars of this world: The spirit of reconciliation that I thought was going to be debated in this Chamber is seriously in jeopardy. That is the theme of my speech and that is my concern tonight.

Prof B TUROK: Mr Chairperson, on a point of order!

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I have to entertain you. What is the point of order?

Prof B TUROK: Mr Chairperson, on a point of order: The speaker has repeatedly referred to members of this House by name without the term "hon" as a prefix. That is out of order.

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I am afraid that is not a point of order. We have a free-flowing debate in which we can refer to members as Mr, Miss, etc. Mr Fourie may continue.

Mr A FOURIE: Mr Chairperson, I have reached the stage where I feel that voting for or against this constitution is no longer of such importance. What is important is the spirit in which the ANC majority is going to implement this constitution. That will be the test. What concerns me is that some of the speeches that we have had to listen to during the past two days smack of majoritarianism in its worst form. We are having a taste of the absolute abuse of power of the masses which is going to be the obvious pattern in the future.

Miss I W DIREKO: The hon member abused power in Gazankulu.

Mr A FOURIE: I must confess that I am not overenthusiastic about this constitution. One might ask me why, and I want to answer that.

Miss I W DIREKO: The hon member abused it in Gazankulu.

Mr A FOURIE: Why does the hon member not shut up? I cannot make my speech. Does she have no manners? [Laughter.]

What was the purpose of the process that we entered into? The purpose of the process, to my mind, was the process of reconciliation and of nation-building. [Interjections.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order!

Mrs G N M PANDOR: Mr Chairperson, on a point of order: I have read the Rules and even you will admit that this is certainly unparliamentary. I request that you ask the hon member to withdraw that remark while perhaps at the same time asking members to be less robust in their responses.

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Will the hon member please consider withdrawing that remark?

Mr A FOURIE: Mr Chairperson, I will withdraw it, but as far as I know it is not unparliamentary. [Interjections.]

I want to say that I detect a bias from the ANC regarding the spirit of reconciliation, the spirit of reconciling the needs and aspirations of the so-called deprived on the one hand and the vested rights and the concerns of the so-called privileged on the other hand. Domination is going to prevail in this land if what we have heard in the speeches on the side of the governing party, the majority party, is going to prevail.

Secondly, we thought that we were going to write a constitution which we all believe should live in the hearts and the minds of every single South African, whether one is in the majority or in the minority. Now let me say to hon members that if the NP did anything wrong in the past, then surely there is no reason for the ANC to say that two wrongs make a right, and for it to adopt the same attitude. What is the ANC's example of morality that it is trying to preach to South Africa? Does it want to copy what it is rejecting, what the governments of the past did to South Africa? I question the bona fides of the ANC.

If I listen to one power-hungry ANC speaker after another, it is clear that the previous so-called NP minority regime is going to be replaced, in this country, by a very vicious, very vociferous, and very arrogant ANC majority regime. [Interjections.] Tragically, I would like to say, that that is exactly what we tried to avoid right from the beginning of the process . . .

Prof B TUROK: Mr Chairperson, I want to intervene. I would like to ask the hon member if he would like to take a question. [Interjections.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! No, he will not.

Prof B TUROK: Mr Chairperson, he did not say that he would not take a question.

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! The hon member will not take a question.

Mr A FOURIE: Mr Chairperson, I want to say today that we, as a minority party, came with a bona fide approach to the writing of this constitution. The impression that I get is that minorities only had to accept what the majority put before them and then tried to influence those decisions and lessen the blows that they found themselves subjected to.

In conclusion, my concern is that there is suspicion, on the part of many thousands of South Africans, and many possible investors in South Africa, about what they are going to let themselves in for if they invest in South Africa. One can say that one should forget about investors, as Mr Dullah Omar says, but I want to say that if we do not get investors in South Africa, the jobs will not be created in this land and one would go from poverty to more poverty then to even more poverty. [Interjections.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! I try to introduce one member at a time.

Dr R H DAVIES: Mr Chairperson, in my speech during the First Reading debate I tried to indicate the broad approach which had guided us in preparing Chapter 13, which deals with financial matters. Our point of departure in that chapter was that a constitution, which is intended to last, should not attempt to prescribe the budgetary or economic policy framework in any detail.

A little earlier this evening we heard the hon Willie Botha arguing that he had proposed the insertion of a clause in the constitution requiring the level of State expenditure to be fixed at a certain percentage of GDP, and there were also other proposals suggesting that there should be a constitutional requirement that the Government balance its Budget.

The trouble with such proposals is that while they may reflect some fad or fashion which is currently in vogue in certain circles, they do not provide any basis for a constitution which is intended to last. It is true that balanced budgets are currently in vogue, but there is a great divergence between the proclamation of a principle and the actual implementation of a policy. The US Congress proclaimed its intention to balance its budget, but it has not yet reached that target, and even Newt Gingrich has not attempted to amend the constitution to require this.

The size of the deficit is a matter of policy. Determining what a sustainable deficit is is a complex matter which depends on analysing the interaction between a number of variables, including the size of the public debt, the rate of growth, the nature of the expenditure that the deficit is financing and so on. Rather than attempting to go this route, we have indicated that the constitution should outline general principles of sound financial management within which the progressive development of budgetary and economic policy should be based, and it is this which I believe we have largely achieved in this chapter. We have had to take cognisance of several constitutional principles, namely those in clauses 26, 27 and 29, and have thus provided for each level of the government to receive equitable shares of revenue collected nationally, and for the establishment, as independently functioning entities, of the Finance and Fiscal Commission, the Reserve Bank and the Auditor-General.

We have gone further than we were required to by the principles, by making it a constitutional requirement that measures be prescribed to ensure both transparency and expenditure control in each sphere of government and that budgets promote transparency, accountability and effective financial management. Our constitution in fact goes much further in this regard than many others do, in laying a foundation for sound financial management.

Apart from technical refinement, there is only one clause of this chapter which has undergone significant amendment since the First Reading, and it is to that that I would like to address a few remarks.

Clause 217 of the constitution deals with procurement by organs of state. In drafting this section we took account firstly of the fact that new models of government contracting and procurement were evolving, particularly in some of the most innovative development projects such as the Maputo Corridor Programme. We did not want, therefore, to prescribe a particular model or system of procurement, but wanted to ensure that the system which evolved was fair and equitable, competitive in the sense of allowing access by a number of potential contractors, and cost-effective. From the ANC side in particular, we were also concerned to ensure that the procurement system could be used to promote small business and advance the interests of persons or categories of persons who had been disadvantaged by apartheid discrimination, and thus not retain the situation where tendering was the exclusive preserve of those who had benefited from preference in the past, but were now strong enough not to need it any longer.

After a long debate about the possible insertion of particular words in the list of adjectives describing the system at the end of clause 217(1), we finally opted for the insertion of two new subsections, (2) and (3), which basically allow for the implementation of a procurement policy by organs of state which takes account of categories of preference in the allocation of contracts, and also allows one for account to be taken of the need to protect or advance the interests of persons, or categories of persons, disadvantaged by unfair discrimination.

Section 21(4) of the Transitional Arrangements in Schedule 6 provides for national legislation to be passed within three years, and provides that in the meantime this does not prevent the principles reflected in clause 217(2) from being implemented. I believe that we now have a provision in our constitution that will enable our Government to develop a policy on procurement that, while precluding nepotism or "baantjies vir boeties", will allow those disadvantaged by discrimination the opportunity, for the first time, to bid effectively for Government contracts.

Such policies have been significant in promoting a more equitable ownership structure in other countries such as Malaysia. Our new constitution thus gives us an additional instrument to use in the quest for greater equity, but we will need to be vigilant about certain international developments.

The optional protocol on tendering in the Marrakesh Agreement, which we did not sign, and the proposed Multilateral Investment Agreement which a number of Organisation of Economic Co-operation and Development countries are now putting for inclusion in the new round of multilateral trade negotiations, would both require that foreign investors have treatment equivalent to that of all categories of nationals. We will need to ensure that we are not pushed in directions that will undercut us, and we need to gain a greater understanding internationally for the stance which we have taken in this section of the constitution.

There is one final observation with which I would like to conclude. There is in this constitution, and not least in Chapter 13, much that ought to be good news to the markets. All of this good news has, however, largely been discounted by the markets, which have already taken it into account. The markets are, however, likely to be extremely sensitive to any fallout from a failure to pass this constitution tomorrow. I hope that those who are now gathered in rooms elsewhere in this building are no longer seriously considering the possibility of voting down this constitution tomorrow. If there still are people who are thinking of taking us in this direction, I suggest that they look at the editorial in the *Cape Times* of this morning. The editorial says any vote of this sort -

... will send a clear message that reconciliation and the building of a new democracy since the 1994 elections have not gone very far. It will show that despite Bafana Bafana, the amaBokoBoko, the national cricket team, our new national flag and President Nelson Mandela, South Africa is still essentially racially divided.

We simply cannot afford such a retrogressive step.

I would suggest that this message is unlikely to be lost on the currency markets. If there are people contemplating this course, it is to be hoped that wisdom will prevail and that later on this evening we will receive the message that that possibility has receded. If not, I believe that those who are

contemplating taking us along this course must accept full responsibility for their actions and for the impact thereof on the economy of our country. [Applause.]

Mr P A MATTHEE: Mr Chairperson. Chapter 14 deals with many important provisions in respect of international law, charters of rights, self-determination, funding for political parties, the definition of organs of State and transitional arrangements.

Because of time limits, I will only deal briefly with two matters, namely section 247 of the interim Constitution, which we wanted to retain as part of the transitional arrangements, and item 13 of Annexure A of Schedule 6, which deals with the contents of section 43(b) of the interim Constitution, to the effect that "a person loses membership of a legislature... if that person ceases to be a member of the party which nominated that person as a member of the legislature".

The NP wanted the provisions of section 247 of the interim Constitution to be retained as part of the transitional arrangements in Schedule 6. Section 247 in essence provides for an obligation on the part of the Government to enter into bona fide negotiations before any rights, powers and functions of governing structures of schools, universities and technikons can be altered by national and provincial governments.

This section is the foundation for the negotiation process in education at school and tertiary levels. I can therefore see no reason whatsoever for being opposed to its inclusion as part of the transitional arrangements. A process for the conducting of bona fide negotiations in terms of section 247 has been proposed and accepted by the Cabinet, and we trust that they will carry out their obligations in this regard.

\*I now come to the provisions of section 43(b) of the present Constitution, which is relevant to every member of this Parliament as far as I am concerned. We were of the opinion that it should die a natural death and that a free mandate should be recognised in terms of the new constitution. Any purpose that this could have served in our opinion falls away upon the adoption of the new constitution.

After the adoption of the new constitution a provision such as section 43(b) can definitely no longer be justified from the democratic point of

view. In terms of the theory of a free mandate, which we advocate, each public representative is bound not only to the mandate from his or her particular voters, but also to act according to his or her conscience and in the national interest in performing his or her functions.

The imperative mandate theory, on the other hand, as now contained in item 23(2)(a) of Schedule 6, entails that each one of us acts only in the interest of that section of the community that elected him or her, and that he or she represents them against the rest of the community or the Government, and that they are therefore bound to their mandates.

The free mandate theory is accepted as a democratic principle throughout the world. In certain constitutions, for instance the German and Dutch constitutions, there is even a specific commitment to this principle. The imperative mandate theory is now only recognised formally in a few countries.

In brief, the imperative mandate theory is only recognised in a few countries. The imperative mandate theory is not recognised in the modern democracy. It is definitely not in line with democratic points of departure and it is an insult to the integrity and judgment of all members of Parliament. This definitely should not be included in the South African constitution.

The consequence of this provision is that it formally takes the determination of the membership of Parliament out of the hands of the voters and places it in the hands of parties. This is a serious attack on the democratic principle of representation and is at least *prima facie* in conflict with Constitutional Principle VIII, in which the principle of representative government is entrenched. This is also *prima facie* in conflict with various provisions of the Bill of Rights as contained in Chapter 2 of the new constitution.

Mr Y I CARRIM: Mr Chairperson, comrades, friends, as our fledgling nonracial democracy evolves, people's ethnic, racial and national identities are undergoing change and being reshaped. The transition has given impetus, on the one hand, to the evolution of a broad, nonracial national identity and, on the other hand, to the emergence of ethnic and racial identities in new forms.

Exactly how these two processes are to be reconciled constitutes a major challenge for our transition. While the prospects for national unity and integration have never been better, it is also

clear that the ethnic and racial identities of the apartheid era cannot be attributed solely to social engineering from above and that their resilience, in new forms, is going to pose challenges to the emergence of a broader South African national identity.

Given the social diversity, related material inequalities and history of conflict in our country, it is obvious that a sense of South African nationhood will emerge only very gradually. It cannot be forced from above, but nor will it, on the other hand, emerge spontaneously. It has to be encouraged gradually, sensibly and sensitively. The State, civil society and individuals all have a role to play. It is in this context that the provision in the Constitution for the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities has to be understood.

A nation cannot be built out of thin air. It has to be forged on the basis of the existing ethnic identities that pervade a country. Unlike racial, ie biologically based, identities, ethnic, ie culturally based, identities are not inherently in conflict with nation-building. It is when ethnicity is politicised, ie when it is mobilised as a means of securing economic and political goals, that it is divisive and undermines nation-building.

So a South African nationhood will have to build on the positive and harmonious aspects of the ethnic identities of all our people. It is important to recognise that people have multiple identities and that these identities can be reconciled with each other. One can, for example, be Zulu, African, Black and South African. There is nothing inherently conflictual about this. The challenge before our democracy is, in fact, to provide the space for people to express their multiple identities in a way that fosters the evolution of a South African national identity. It is this challenge that the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities has to confront and adequately respond to.

It has to promote religious, cultural and linguistic expression in a way that enhances, and does not undermine, nation-building. If it approaches its responsibilities appropriately, the commission can be an invaluable mechanism to provide for both national unity and cultural diversity in a mutually reinforcing way. If, on the other hand, it loses sight of the imperatives of national unity and

provides for unbridled expression of cultural diversity, the commission will disunite people and corrode their sense of South Africanness.

No doubt legislation will follow, but perhaps one can raise a few useful issues. One of the functions of the commission is defined, in clause 185(1)(c), as -

to recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa.

We should guard against the creation of separate, independent cultural councils for each community. We should rather have a single council in which the different communities, however they are defined, are represented. By interacting in the same forum the different communities will get to know each other better and will develop mutual respect. They will have the opportunity to mediate their differences. It is hoped that they will also realise that whatever their cultural differences, they share a broad core of values, and in this way a sense of South Africanness can be fostered. It will also, of course, be less costly to have a single council. On the other hand, separate councils will serve to isolate the communities from each other, fossilise their ethnic identities and create unnecessary suspicion and competition amongst them.

No doubt there are other issues that will have to be addressed. How will these ethnic communities be identified? What criteria will be used to decide which communities qualify for participation in a cultural council? A plethora of small, spurious ethnic communities could sprout overnight in all their divisiveness, and the council has to guard strenuously against encouraging this. We have to be very clear. This council should not serve to manufacture these ethnic communities.

No doubt another matter that will have to be addressed is whether the council exists at national level or whether it also has provincial and local structures, and what its precise relationship with government at these levels should be.

It must also be clear that it is ethnic, not racial, communities that will qualify. In fact, by providing appropriate space for the expression of ethnicity, the aim would be to erode racial identities. If Afrikaners were to qualify for participation in a cultural council on linguistic grounds, for example, this would mean that all Afrikaans speakers, irrespective of race, would have to be

represented. Similarly, the Indian community would not qualify on racial grounds, but a Muslim or Hindu community could qualify, irrespective of race.

To the extent that claims for ethnic expression are legitimate, they are often a part of human rights, and so the commission will have to work closely with the Human Rights Commission. The composition of the commission will be crucial. Politicians who have a vested interest in mobilising ethnicity should, as far as possible, be excluded from participation in the commission. We cannot have these ethnic entrepreneurs.

Of course, an overwhelming concern is that however progressive the commission is, it will ultimately serve to entrench ethnic identities and not contribute to the evolution of a broader South African national identity.

Of particular concern is the role of the cultural council. There has to be widespread consultation on this with the public, and very careful consideration should be given to the exact role of both the commission and the council.

Ultimately both the commission and the council should ideally serve to erode racial identities and provide expression for ethnicity in a way that contributes to the evolution of a broader South African national identity. The council in particular should not become a haven for ethnic entrepreneurs who subsist on the entrenchment of a divisive ethnicity that persistently undermines the sense of a South African national identity.

As we build respect and trust amongst ourselves as South Africans, and as we reduce very crucially the material inequalities that divide us, so the role of the commission and the council will recede in significance.

Mr J SELFE: Mr Chairperson, I would like to devote some comments this evening to Chapter 11 of the constitution, which deals with security services. This debate on the constitution takes place against the harrowing backdrop of the evidence that is being given before the Truth and Reconciliation Commission. Day by day we hear accounts of what happened in the past when the security forces were not properly controlled.

The discussions in Theme Committee 6(4) and in the multilaterals which followed focused a great deal on our history and the abuses that we have lived through. All of us, across party lines, who

were engaged in these discussions were united in the determination that similar abuses should never recur.

I would like to pay tribute to those engaged in those discussions for the sense of reality that they brought to bear on the discussions. It is as a result of the agreements that were reached on these forums that the security chapter requires maximum disclosure and accountability to Parliament on the part of the defence and the intelligence services and, in the case of the Police Service, to the provincial legislatures and to the public they serve.

Never again will our Defence Force be allowed to destabilise our subcontinent. Never again will mercenaries be allowed to sully our national reputation. Never again will our security services be committed to set up front organisations with vague mandates to operate as deniable Rambos. Never again will our intelligence services be allowed to spy on and terrorise political opponents of the Government of the day—that is, unless we let them.

In this constitution we have created oversight mechanisms and we have put in place checks and balances. However, these constitutional mechanisms are only as effective as the will to make them succeed and that depends on the collective commitment of parliamentarians to transparency and accountability, not only now when the abuses of the past are fresh in our memories, but also in the future.

Crime continues to be the scourge of our society and one of the biggest destabilising factors in our fledgling democracy. Unless we are able to harness all the law-enforcement resources to the end of combating crime, we will not stamp it out. For this reason we welcome the recognition that the constitution provides of the role that municipal policing can and should play in crime prevention. All over the country municipal law-enforcement officers currently employed chiefly to supervise municipal by-laws could be used creatively in the fight against crime.

We hope that the structures that we have created will allow our security services to operate in the interests of all South Africans in the fight against poverty, against crime and for peace. [Applause.]

Ms E GANDHI: Mr Chairperson, comrades and hon members, I want to congratulate the Chairperson and the Deputy Chairperson of the Consti-

tutional Assembly and their team on the outstanding work done not only in producing an outstanding constitution—which I think we are all going to be very proud of—but also on making it truly a people's constitution.

I am particularly interested in the clause concerning the right to life which I see has been included in the Bill of Rights. I believe that entrenching this clause in our constitution indicates the new ethos. The lack of respect for life in the past is very painstakingly revealed in the testimony being given at this stage before the Truth and Reconciliation Commission.

The respect for life that we are now pledging shows our commitment to transformation. It is an affirmation that never again will there be killing, torture, imprisonment without trial, banishment and discrimination on the grounds of race and gender in this country.

The right to life is also a basic human right, and one which is linked closely to the abolition of the death sentence. While I know that many among us believe that the death sentence should be reintroduced, I believe that, like many other people who have been exposed to literature on this and to the facts about the death penalty, they will change their minds.

I will try this evening to introduce the topic, and I hope that people will later take the trouble to read a book called *When the State Kills*, which has been produced by Amnesty International. Perhaps, as a result of reading this book, we will change our minds. According to studies quoted in this book, it is clear that there is very little correlation between the abolition of capital punishment and the rate of crime. Studies in many countries have proved this. More than 40% of the countries of the world have already abolished capital punishment. Other countries are looking at how to impose controls over its use.

Many countries have even found that the public outcry for the imposition of the death penalty deflects attention from the broader causes of crime. In fact, Bowers and Pierce, criminologists in the USA, have this to say:

The way we have carried out executions historically in the United States appears to have contributed slightly, but significantly, to the increase in homicides.

So in fact, capital punishment is not a deterrent to, but may even be a cause of crime. Studies in Canada, Australia, Jamaica and many other countries substantiate the fact that the rate of crime has nothing to do with the imposition or otherwise of capital punishment.

Let us look at what this does to our own people. The psychosocial effect on the executioners and others who have to carry out the act of killing a human being is devastating.

In Sri Lanka, for instance, a doctor who was required to provide medical care to those on death row and to certify those hanged to be dead, described the horror of his job. He spoke of a person who was hanged and how the body wriggled when the trap door was opened. The heartbeats were rapid and then became steadily slower and slower until they stopped. It took many long minutes before the person could actually be proclaimed dead. The doctor continues to live in guilt and outrage at the brutality of the act of killing.

Interviews with hangmen and other executioners reveal a similar tale of psychosocial devastation. To be a human witness to the horror of taking a person to be killed and actually performing the act leaves a person brutalised. These stories have to be heard by those who clamour for the death penalty to be reintroduced.

The effect on those on death row is also devastating. Many of our own comrades have been exposed to the experience of living for months in the shadow of death—the Sharpeville Six, for instance. They have a sad tale to tell about those who face life in those cells.

I will quote stories of other countries. For instance, the *New York Times* reported on an execution and said the following:

The first two-minute charge of electricity applied at 12:18 am failed to kill the person and he struggled for breath for eight minutes before a second charge was applied.

Let me tell a story from Japan of a person who was released from death row. He related that the nearer the execution date came, the less cheerful the condemned person became. He attended neither exercise nor prayer and kept on crying.

Looking at him closely, I was dragged into the fear of death more and more. So I could neither eat nor sleep. Even when I did my exercises, I

did not feel that my feet stamped on the ground. I felt as if I was a living wax figure.

Capital punishment is inhuman, no matter how it is inflicted. It is the death of a person who knows that he is going to be killed and has to live in the shadow of death. It is a death which is as painful as the most gruesome torture. In fact, Karl Marx, who I believe some people think was a heathen, said this, and I quote:

A state of society is that which knows of no better instrument for its own defence than the hanged man, and which proclaims its own brutality as external law.

Let us look at whether capital punishment is just. Many eminent jurists do not believe that capital punishment is just, because it is so final. An eminent Indian jurist, Justice Bagwathi, has proclaimed that capital punishment is not a just method. [Time expired.]

Dr M E TSHABALALA: Mr Chairperson, it is a proud moment indeed to be given the opportunity to participate in this debate. Few parliamentarians in any era can say that they were party to the creation of the legal and political framework for their countries. Many have described this constitution before us today as the birth certificate of the new South Africa. However, I believe it to be much more. It is the passport for a new society, bestowing a sense of membership, of belonging and of collective security.

This is not an awards ceremony, but it would be remiss of me not to congratulate two bodies of people. The first is the Constitutional Committee, led by the commitment and intelligence of the Chairperson of the Constitutional Assembly. The committee's sleepless nights have been a tribute to its determination to present to this Chamber the best possible version of the constitution. The second is the South African people, some two million of whom rose to the challenge of participating actively in the drafting of this momentous constitution.

I make my comments today as a doctor and as a woman. It gives me great pride that human dignity, the achievement of equality and the advancement of human rights and freedoms should constitute the first clause of the first section of our constitution. In improving the quality of life of all our citizens, lifting people out of poverty and equipping them to attain a state of

wellbeing, there cannot be a more important starting point.

We must make it very clear that human rights are not just a vertical application regulating the relationship between state and citizen. They apply equally to our dealings with each other as fellow South Africans. It is only through rigorous horizontal application of these rights that we can create a rich culture of respect and human decency for all.

No change from the interim Constitution can be more welcome than the expansion of the basic health rights of every citizen. Clause 27 must form the framework within which all of us involved in health services delivery conceptualise and carry out our work.

The obligation of the State to take measures to achieve the realisation of health rights is essential. However, we must remain wary of the subjective term "reasonable measures". Let there be no doubt that different citizens will have varying interpretations of this phrase, on how much is too little, how much is enough, how much is too much, where the floor is and where the ceiling is. Through access to information and consultation, we—that is the South African people as a whole, and not just the markets or bureaucracy—must ensure that we hold Government to account in this regard.

As we know, improving the health of our people and giving them the means to protect their own health is a task which crosses all the boundaries of policy within which we operate. As a health specialist, therefore, I welcome all those clauses of the Bill which will help us to achieve this aim, from children's rights to the rights of access to information, housing, education and to life.

I wish, however, to stress the importance of the specific enshrining of reproductive rights in conjunction with clause 12, which enshrines freedom and security of the person. This makes the constitution a landmark for the women of this country. For the first time bodily and psychological integrity and wellbeing are protected by our State. Security of the person offers women protection against the physical and emotional abuse which so many suffer from. It is incumbent upon all of us, especially on women, to speak out and to use the political processes, the Public Protector and the Commission for Gender Equality, to put a stop to this shameful aspect of our society.

It is in this context that we welcome the increased scope and powers of the committees provided in clauses 56 and 73 and urge women and women's organisations to utilise these provisions to make their voices heard in our Parliament.

One further issue affecting the lives of millions of women deserves particular mention, namely the question of succession and inheritance. Let it be quite clear that the basic equality enshrined in our constitution overrides the details of contractual marriages which subordinate women and make them secondary citizens. Those days are over. We demand equality and respect, and on the basis of the new Bill of Rights we shall fight for them.

We must always remember, of course, that rights are not absolute and must be asserted in a relative context. Nevertheless the call should go out to the women of South Africa that they are now empowered to take control of their lives and their bodies. The status of women in this country rests not only in equality before the law, but in the duty of the State to ensure that all citizens are free to enjoy the rights accorded to them in this constitution. As women it is not enough to state our rights. We must nurture and enforce them as well.

This demands vigilance, especially in monitoring and enforcing affirmative action and nondiscriminatory legislation. Affirmative action is not simply a matter of race, but of addressing need and eliminating subordination of any group. In the light of the need for vigilance I call on the women of South Africa to note clause 59 of our constitution regarding public involvement in the legislative process. There can be few provisions which it is more important to nurture if we are to ensure that the constitution is self-supporting.

Women have fought long and hard for the equality and opportunity which are contained in this constitution. Many of our sisters have suffered untold hardship and today all of us, women and men, should celebrate the new horizon which beckons South African women. I hope that one day when our children's children look back at the process which has occupied us for the past two years, they will sense from the comments made today the excitement that we all feel. I hope too that they will understand that this stems only in part from our history and the sense of a job well done.

Above all else our excitement, pride, determination and joy are born from the anticipation that our

descendants will be looking back from a country based on freedom, equality, individual wellbeing and happiness. We should never forget our colleagues and comrades who died to bring freedom to this country. We remember them with sadness and respect. Today we celebrate the laying of the foundation stone for our new society, happy in the knowledge that their struggle was not in vain.

I wish to end by congratulating all who have played their part in bringing this Bill before us. It is a wonderful new society but it remains on paper. Let us without delay turn the Bill into an Act and words into reality.

Mr L M GREEN: Mr Chairperson, the ACDP supports in principle the inclusion of a justiciable Bill of Rights in the new constitution. To be enforced, every human right must have a corresponding duty. The Bible usually refers to fundamental rights in terms of their corresponding duties. For example the sixth commandment says in Exodus 20:12, "Thou shalt not murder".

An HON MEMBER: No, it says: "Thou shalt not kill."

Mr L M GREEN: Yes, but it means murder, if you read the Bible correctly.

This is saying, in other words, that everyone has the right to life. This is exactly what the Bible is saying. However, the right to life which should be protected by the State becomes meaningless if the State is incapable of reducing the level of violent crime in South Africa.

There is no right to life for 12 000 to 15 000 innocent people who are executed annually in their homes, in places where they work and even in their motorcars while they are being hijacked. When criminals who perpetrate these killings of up to 15 000 people every year are caught and are given a fair trial and found guilty, the constitution guarantees the right to life of those criminals who have no respect for the life of others. The Word of God says, in Numbers 35:32, and I quote:

Do not accept a ransom for the life of a murderer who deserves to die. He must surely be put to death.

Do not pollute the land where you are. Bloodshed pollutes the land, and atonement cannot be made for the land on which blood has been shed, except by the blood of the one who shed it.

The right to life cannot be enforced properly and given to innocent members of society without a mechanism to prevent others from violating it.

The death penalty has not been abolished for 15 000 innocent South Africans who die every year. The only thing that has happened is that the executioners have become the godless criminals who do not fear our judiciary. That is the only thing that has happened. Clause 11, referring to the right to life, as it stands is too vague, in that it fails to address crucial issues relating to abortion, to euthanasia, infanticide and the death penalty. These are left instead for the Constitutional Court to decide. As it stands, the clause is open to subjective secular humanist interpretation based on foreign case law as prescribed by clause 39(1)(c), which deals with the interpretation of the Bill of Rights.

Like Pontius Pilate in the Bible, the negotiating parties are attempting to wash their hands of a crucial moral issue, namely the right to life of the innocent unborn person. In the same way that Pilate avoided his moral responsibility to uphold the right to life of an innocent man and asked the crowd to decide, so some of our political leaders are attempting to evade their responsibility to protect the innocent unborn child by referring those issues to the Constitutional Court. The need to use explicit, detailed wording in defining the right to life has become more important as a result of the conflict between biblical and secular humanist social values.

The Christian viewpoint is that people are made in the image of God. Therefore their lives have value, irrespective of whether they are in or out of the womb, healthy or unhealthy, useful or redundant to society, elderly or young. This right cannot be used to protect criminals who are guilty of serious offences such as murder, from being executed after due process of law.

Clause 12(2)(a), which gives the right to bodily and psychological integrity, read together with clause 27(1)(a), which provides the right to have access to health care services, but with an emphasis on the access to reproductive health care, is an obvious legitimisation of abortion on demand. It is therefore obvious that the Constitutional Court will not protect the life of the unborn child while these clauses remain in the constitution.

Let me now turn to the equality clause, which is clause 9. While the general purpose of subclause 3 is supported by the ACDP, we have strong objections to the inclusion of the words "sexual orientation", which is aimed at giving a lifestyle of homosexuality and lesbianism constitutional recognition. Possible implications must be deduced from foreign case law. An examination of homosexual rights in Canada, America and the Netherlands, which are usually phrased in a similar way to our own law, has shown that such special sexual orientation rights do not simply protect the rights of homosexuals, but are also used to actively promote homosexuality and to discriminate against citizens who do not agree with such behaviour.

A human rights commission in the state of New York in the United States has the power to fine or to jail citizens who display any form of public prejudice against homosexuals. The problem of homosexual organisations using anti-discrimination legislation to advance their own agenda, which is exactly what is being done with clause 9(3), has become so serious that in 1992 the state of Colorado in the United States passed the following constitutional amendment:

Section 30(b). No protected status based on homosexual, lesbian or bisexual orientation.

This is what has happened in the United States.

The Organisation for Lesbian and Gay Activists, which is an organisation called Olga, has lobbied political parties for the inclusion of the words "sexual orientation" in the constitution, and they hope that this clause will lead to the following: Firstly, to legislate in favour of consenting sodomy. Secondly, to legalise homosexual marriages, which will have the same pension, taxation, medical aid, housing and other social and economic benefits as other marriages. Thirdly, to allow homosexuals to adopt children. Fourthly, to include pro-homosexual sex education in State school curricula, even if parents object to it. [Interjections.] Fifthly, to make teachings which label homosexuality as immoral, illegal. Sixthly, to allow homosexual school teachers to be open about their lifestyle. Seventhly, to make speaking against homosexuality illegal in the media, whether one is a Muslim or a Christian. Eighthly, to make it illegal to excommunicate an unrepentant homosexual from a church or a mosque, or to exclude homosexuals from the ministry.

The ninth point is to make it illegal to teach that homosexuality is sinful, and this is exactly the reason why clause 9(3) has been introduced and why the sexual orientation clause is being supported by the gay movement. Clause 9(4) obliges the State to pass legislation to prevent or prohibit unfair discrimination and Clause 9(5) declares all forms of discrimination on grounds listed under 9(3) as being unfair, unless proved to be the contrary; thus the State is required to pass homosexual rights legislation against the wishes of the majority of people who do not want that.

The Bible teaches that homosexuality and lesbianism are sins which people voluntarily choose to commit and that they are not born with sexual orientation. The book of Romans, chapter 1, verse 26 says:

Even their women exchange natural relations for unnatural ones. In the same way the men also abandoned natural relations with women . . .

[Interjections.]

THE DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Does the hon member wish to ask a question or raise a point of order?

Mr M W MFEBE: Mr Chairperson, will the hon member take a question?

Mr L M GREEN: I will give an answer, but not during my speech.

Mr M W MFEBE: It will be quick, Sir.

THE DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: No, the member does not have sufficient time to take questions.

Mr L M GREEN: The Bible also teaches that homosexuality does not have to be a permanent condition but that, like other sins, it can be forgiven and it can be overcome by repentance with faith in Christ. In 1 Corinthians 6:9, it says:

Do you not know that the wicked will not inherit the kingdom of God? Do not be deceived: Neither the sexually immoral nor idolators nor adulterers nor male prostitutes nor homosexual . . . will inherit the kingdom of God. And that is what some of you were. But you were washed, you were sanctified, you were justified in the name of the Lord Jesus Christ . . .

This means that there is a possibility for homosexuals to leave their sinful way of life. [Interjections.] It is not a permanent condition.

In conclusion, our constitution entrenches and condones what the Bible proclaims to be sin. All of us have a choice to make. If we vote for the constitution as it stands, we undermine the word of God and we rebel against the law of God. [Interjections.] There is another option, and it is an option which the ACDP favours. [Interjections.] We want to adopt a constitution. We want to accept a constitution, but it is important that a few clauses in the constitution be brought into line with the word of God, especially the one that has to do with sexual orientation.

As Christians, in conclusion, we have a covenant with God, and any other covenant we make, including accepting this new constitution, can only be undertaken if it does not undermine our existing covenant with God.

Dr T G ALANT: Mr Chairperson, in my short speech I want to draw attention to Chapter 13 of the draft constitution which deals with finance.

I want to say that Chapter 13 is the result of the dedicated effort of four members from three political parties, namely, the ANC, the DP and the NP. On this occasion, I wish to express my appreciation to Minister Alec Erwin and Dr Rob Davies from the ANC and Mr Ken Andrew from the DP for their constructive co-operation in the formulation of this chapter, as well as the sections in other chapters dealing with money Bills and the Auditor-General.

I want to say that the NP is fully satisfied with the contents of Chapter 13. Chapter 13 does not deal with economic policy. That is the privilege of the government of the day. Chapter 13 defines a framework for the financial arrangements in all spheres of government and between these spheres.

Section 214 can be regarded as one of the most important sections in the constitution. Its origin is Constitutional Principle XXVI and the first part deals with the equitable division of revenue raised nationally. Firstly, it provides for the equitable division of this revenue among the three spheres of government. It thereafter deals with the determination of each province's equitable share of the provincial share of the revenue. Lastly, it refers to other allocations to provinces, local government

and municipalities from the national Government's share of the revenue.

The second part of section 214 deals with the role of the Financial and Fiscal Commission and the factors that have to be taken into account in the determination of the equitable share of revenue and any other allocations from the national Government share.

Section 217 deals with the procurement of goods and services by organs of State and specifically makes provision for procurement preferences in favour of persons, or categories of persons, disadvantaged by previous unfair discrimination. Such a provision in a national procurement system should contribute to the economic empowerment of disadvantaged persons. We in the NP strongly support it, in fact we formulated this clause.

Clauses 228 and 229 deal with provincial taxes and municipal rates and taxes respectively. The NP and the DP would have preferred the inclusion of a short list of the exclusive provincial and municipal taxes. However, we eventually agreed to the clauses as they appear in the draft constitution before the Constitutional Assembly.

The draft constitution envisages a new governmental dispensation in the Republic of South Africa in which much more emphasis will be placed on the local government sphere. The chapter on finance describes the intergovernmental fiscal relations aimed at ensuring the viability of local government. It is my sincere hope that the framework for governmental and intergovernmental fiscal relations provided for in Chapter 13 of the draft constitution will contribute to the success of our rainbow nation.

Mr S J LEEUW: Mr Chairperson, I think it is my privilege to be among those given the opportunity to draw up and adopt the supreme law of our country. Many, many years ago our forebears had a vision of a united, nonracial and democratic nation. Despite the difficulties of that time, they tried to share their vision with the forefathers of members on my left, but in vain. Forty-three years later, or forty-one years ago, the same thing was tried, but it could still not succeed. Today, 7 May 1996, our forebears on both sides have once again provided us with an opportunity to share a common vision. It is up to them to make a difference to the past. I am aware that they will make a difference this time. I welcome that.

It has been, and still is, the ANC's approach to adopt a constitution for all, not only for some. After that momentous event, they will now, together with us, be called Africans, Afrikaners, ma-Afrika. The dictionaries must be changed to give a new definition of who we are.

I will not dwell much longer on the constitution as it stands because it satisfies what has been my wish, the wish of my organisation and the wish of the people of South Africa. In the few minutes given to me, I would like to quote Comrade O R Tambo, one of the great leaders of our organisation, who is no more. Addressing a consultative conference in 1990, he said:

We, too, are finally seeing the light at the end of a long and dark tunnel. Yes, we are at the crossroads where the future is fusing with the present. It is us, the generation gathered here in this hall, Black and White that history has singled out to represent the aspirations of generations past and generations still to come. We can uphold and defend their trust in us. This is the magnitude of the task we face, the real challenge that the delegates to this conference must meet without fail.

I fully agree with the words of that great leader who is no more.

In conclusion I would like to highlight a few things which bother me this evening. Under clause 10, Human Dignity, the words that I find missing are: "... respect among the people, unless stipulated somewhere else". In clause 23, Labour Relations, there is ambiguity in subclause (5). Clause 39(4) is an unnecessary provision, because Schedule 6 provides for transitional arrangements.

I remember what my grandmother said in Setswana:

Ke a bona gore rona batho ba Afrika gompieno le rona re motlotlo go ka ipitsa Ma-Afrika. Le gale seo ke sa se itseng ke gore aa moetapele yo o re ntshitseng mo bokgobeng, ebong Nelson Mandela, o a itse kwa madi a diriwang teng?

[I can see that today, we the people of Africa are proud to be called Africans. But what I am not sure of is whether the leader who freed us from slavery, Nelson Mandela, knows where money is made.]

Mr L M MTI: Mr Chairperson, the fielding of Boy Geldenhuys as the NP's first speaker in yesterday's debate has once again demonstrated their political bankruptcy and insensitivity. ANC speakers in the CC debates last week argued that the NP deadlocked on the education, lockout and property clauses because they wanted to hang on to the gains of apartheid and keep the apartheid fires burning. [Interjections.] Those members must not say no.

What better proof could they have given us of the truth of these allegations than to use Mr Geldenhuys as their frontrunner in this debate?

I speak today on behalf of the ANC comrades who worked in Theme Subcommittee 6.4, under the capable chairpersonship of Comrade Jenny Schreiner, who energetically and purposefully steered the process to the end. We pooled our ideas and produced this collective input.

I will concentrate on Chapter 11 of the Bill, the chapter which deals with the security apparatus. We pride ourselves on having charted a way forward, not only for this country, but also for the rest of those democratic countries which want to ensure that the security services operate within set guidelines. Nowhere in the world has a people been bold enough to set out guiding principles for security services in a constitution. We would like to think that future generations will look back on this chapter as an inspired inclusion in the constitution.

For the ANC members in subcommittee 6.4, our starting point was the horrendous role that was played by the security forces of this country in the past. For many of us this was not abstract history, but a history that we lived. It is a history which is at present being related, in all its brutality, to the Truth and Reconciliation Commission. Our mandate and objective was therefore to ensure that our country would never, never again be subjected to security services that are not only above the law, but also above the constitution and the Government.

The ANC's perspective on security, peace and stability that has been presented to the Constitutional Assembly has its roots in our vision of a nonracial, nonsexist and democratic South Africa, free from oppressive colonisers, free from want, and free from the gross inequalities between the rich and the poor that our country has known. We in the ANC have always argued that poverty and the denial of rights to vote and human rights, as

well as basic social needs, lead to instability and insecurity.

The process of the Constitutional Assembly's work has deepened our understanding of this and allowed us to develop this perspective into the framework for democratising civil-military relations that we find in Chapter 11. It has also informed our approach as an organisation that preventing the atrocities of the past from happening again is not merely done through the transformation of the security services. The checks and balances lie in a new system of justice, a new role of active monitoring and accountability to Parliament and the executive, the Bill of Rights, etc. Read as a whole, this new constitution is a package to prevent a return to the past and a vehicle to move South Africa forward to new and democratic heights.

Our objective in relation to Chapter 11 was also influenced by an analysis of threats facing our country, balanced against the priorities of the present Government. The threat that apartheid South Africa faced from its own citizens and the liberation movement has been substantially reduced. Globally, the climate has changed significantly to decrease the potential threats from outside this land. It is hard to believe that the Ministry of Defence under the NP regime had more land at its disposal than the Ministries of Land Affairs and Agriculture combined, while millions of our people remained homeless and landless. The priorities of the RDP and the new Government, read with the constitution's governing principles on security, make this imbalance a thing of the past.

The end to the aggression perpetuated by the security forces of this country against neighbouring countries and the foreign policy of friendship and good neighbourliness, have similarly shifted the terrain of the security services' roles.

The constitution also addresses the extent to which our country had become the main supplier of mercenaries on the whole continent. As a governing principle, it directly limits the participation of citizens in armed conflict, except in the defence force deployed by the President, or in other legitimate manners to be defined in national legislation.

We envisage a South Africa in which there are no private armies, no plethora of security companies

and armed organisations of dubious repute, such as exist currently, and no mercenary organisation recruiting ex-security force members to export violence and bloodshed to other parts of our continent and our world. This, however, requires urgent legislative attention to cover those legitimate areas of external involvement in peacekeeping and solidarity roles, while prohibiting the crimes of mercenaries.

We have, furthermore, to ensure that never again will the security forces be the political instrument of any particular party. Clause 199(7) states that neither the security services nor any of their members may, in the performance of their functions, prejudice a political party interest that is legitimate in terms of the constitution.

Clause 198 commits the executive and Parliament to take full responsibility for national security. The security services are tools of the Government in realising national security, which must reflect the resolve of all South Africans as individuals and as a nation.

The significance of clause 199(5) is that members of the security services will be the only people in the country who are trained specifically in domestic, international and constitutional law, and required to act within those parameters at all times. This should go a long way in equipping the members of the services to refuse to obey manifestly illegal orders, to be able to understand their role in the protection of all the residents of the country, and not to indulge in sycophantic loyalty to the government of the day. Their loyalty is to the constitution, subject to the law and in the service of the people of South Africa. This chapter is rigid in terms of principle but sufficiently flexible to permit policy debate and reviews to continue and develop without closing doors to proper consideration of options.

The final version of the section on police has struck a delicate balance between the need for a single and clear command line within an effective police service and co-operative government to facilitate community policing. We have successfully accommodated extensive liaison and communication between levels of government, adding in a sense another layer of checks and balances over the executive, but without removing the executive responsibility of the Cabinet members, an ultimate accountability for the actions of the police service.

We have also not attempted to have the last say on policing, since community policing is new to South Africa and is an evolving process. We do not want to place brakes on its potential for organic development.

The mandate that we received from the ANC constitutional conference, which is contained in our document entitled *Building a United Nation*, has largely been fulfilled in the contents of this chapter. In the process of debate and negotiations, some proposals have been excluded and others have been modified. Our mandated position to ensure a principled treatment of the security services in the new constitution has been achieved.

Prof D C DU TOIT: Mr Chairperson, I do not think anyone in the Assembly is listening anymore. [Interjections.]

THE DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! You are not allowed to make that statement. I am listening. [Laughter.] You may proceed.

Prof D C DU TOIT: Thank you, Mr Chairperson. Hon members, this morning I sat in a room in which Deputy President Thabo Mbeki was present. We discussed a certain section, and Deputy President Mbeki asked a question on the section which I think we have not asked enough questions on. He just asked this simple question: "What does this section mean politically?" [Interjections.] It was a certain section; hon members are not allowed to know about that. [Interjections.]

We have not asked this question enough about this constitution, the final one that we have written. What does it mean politically? We can only answer that question if we ask: What is this constitution going to do? What will the future hold under this constitution? To answer the question as to where we are headed in the future with this Constitution in our hands—I think we almost have it in our hands—there is only one place that we can go. We always say this country was liberated on 27 April 1974. [Interjections.] In 1994, I am sorry. Yes, it has been liberated. What this constitution must now do for us, is to drive this country to what is called a fundamental liberation.

It is one thing to have been liberated and to formally get into structures and get one's hands on the levers of government, and quite another to

really, fundamentally, liberate the people in this country. I do not think we have succeeded yet. We are working on it, and this constitution is just an instrument. We have a major instrument to really and fundamentally liberate the people at grass-roots level in this country. I really believe that we will succeed with this constitution.

If one looks at the time, the era in which we live now, and try to project into the future, one will see that the diagnosis of this time we live in is not very good.

It is a time of crisis in history, one crisis after another. [Interjections.] [Applause.] Yes, it is true. Go and look at what is going on in KwaZulu-Natal. This constitution should be able to handle crises such as those. We have seemingly become used to crises. Crises are widespread, they are global, they take place throughout the world, and they are ongoing. Sometimes I think they cannot be stabilised any longer.

And the responses to these crises are becoming subjective. People are in a kind of an end-of-the-century mood, as if time is running out. Some people are subdued, others flip out like the hon Jannie Momborg is doing at the moment. [Interjections.] Thanks for that, Jannie. However, what our constitution must do is bring reason. It must bring drive. It must actually create a conversation in this country, a discourse in the ranks of Government, in the different spheres of government and with society at large. I would hope that we could call this constitution a communication constitution, a speak-to-each-other constitution, a great conversation which must drive us forward in South Africa.

What are the requirements for having this constitution successfully implemented? I will just make two observations. [Interjections.]

THE DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! I am still listening.

Prof D C DU TOIT: You are still listening? Thank you, Mr Chairperson. A constitution is just a piece of paper with black and white letters on it. We need two things in order to implement this constitution. [Interjections.] Would members please listen to this because it is very important. [Interjections.]

\*Thanks for the interest. [Interjections.] I am trying my level best.

†Firstly, the constitution needs legitimate people in the Government. The Senate is going to be transformed into the new Council of Provinces. [Interjections.]

\*No, man, give me a chance. Those members must listen to this, then they will know why they have no legitimacy.

†The delegates of our new Council of Provinces must have legitimacy. They will have legitimacy if they are really fully empowered to represent their provinces. However, then they must be used—if I may use that word—in the right way by the provinces, the premiers and the legislatures in the provinces. They must really be ambassadors of their provinces. Legitimacy is the main requirement.

Secondly, what we need for this constitution to work well in the future is good leadership. We need leadership of a high calibre, leadership of a truly collective and democratic nature which will be able to steer this country through these extremely difficult tasks we are facing.

What I am saying is that the context in which this constitution must operate in the future is a very serious one. There is a climate of resentfulness which we must overcome, otherwise the new era into which we are going will be a very daunting one. The first problem which this constitution must solve is that of the constitutional dilemma in KwaZulu-Natal. [Interjections.]

\*I have only spoken for one minute. [Interjections.] I have another two minutes left.

†The constitution will have to deliver under conditions of severe pressure in this country. The pressures to which the new delegates to the Council of Provinces will be subjected are going to be very heavy. [Interjections.]

\*No, not at all. I follow leaders and I follow ideas, and I am faithful to them. [Interjections.] I never followed Verwoerd, thank you! [Laughter.]

†What I am saying is that the constitution must have areas—and it has them—in which we have to work things out. There is a very great deal of legislation that is needed to give effect to this constitution. It will occupy the minds of the members of this Parliament for quite a considerable time, and it is going to be very difficult to complete that task. However, in the end I think this constitution is really the event of our time. It is interwoven with the interests of the whole of

mankind in this country. What we have done, all of us together, will be remembered, because no single person can claim a clause or a word in this constitution. No single person is victorious. This event will be remembered by people in faraway corners of the world, who will also perhaps ask for renewed attempts, in their countries, at devising constitutions of this kind. South Africa may yet inspire others. [Interjections.] [Applause.]

THE DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Thank you very much, Prof Du Toit. Ladies and gentlemen, I have an announcement to make, and in doing so I would like to explain something.

We have completed the speakers' list. However, the speakers engaged in the Constitutional Committee have not, of course, participated in this debate. We cannot adjourn and complete our business until we have received the report of the Constitutional Committee because we cannot continue with our work tomorrow unless we have completed the second stage, which we have to do tonight.

I want to make the following suggestion, ie that we suspend business for 15 minutes. We will resume at say 21:50. This will give me an opportunity to consult with Mr Ramaphosa who is chairing the Constitutional Committee in the Old Assembly Chamber, and I will then report back to hon members. Hopefully they will then have completed their business and will be joining us. [Interjections.] We must conclude our business tonight if we want the constitution to be adopted tomorrow. That is so. [Interjections.] I will report back at 21:50.

Business suspended at 21:32 and resumed at 21:50.

THE DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Ladies and gentlemen, may I have your attention in order to explain what is happening. I know that nobody wants to sit around, not knowing what is happening.

The Constitutional Committee has adjourned, because they are granting the DP a chance to caucus on a specific issue. They will reconvene their business at 22:00. Mr Ramaphosa told me that he expected their business to be finished swiftly after reconvening, because they would be dealing with a report that everybody had agreed to pending this caucus. My suggestion to him then was that the persons who would normally have

made speeches on that report not do so, and that they rather come and make them here.

The public gallery is open to those hon members who would like to follow the proceedings there when they start at 22:00. I am sorry to say that that is the best information I can give hon members at this stage. I have tried to put our case as forcefully as I could by pointing out that we have concluded our business here, and that they should do the same, so that we could all be united again.

Mrs G J FRASER-MOLEKETI: [Inaudible.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: No, I am reluctant to tell you a time, but Mr Ramaphosa's words were that the report would not take long. I tried to speed things up by asking them to deliver their speeches here. Hon members can join them in the public gallery at 22:00, to see what they are doing. If they do not react properly and swiftly, we can interject from the gallery! [Laughter.]

Business suspended at 21:50 and resumed at 00:25 on 8 May 1996.

*Evening Sitting*

Dr B E NZIMANDE: Mr Chairperson, ladies and gentlemen, and comrades, Hector Petersen was the first to be shot and killed on Wednesday, 16 June 1976. I am sure that sometime this afternoon Hector Petersen was turning in his grave, as we were facing a situation in which we seemed to be about to reintroduce what he died fighting.

I can say that tonight we can really claim a victory.

An HON MEMBER: This morning!

Dr B E NZIMANDE: It does not matter. [Laughter.] This morning we can claim a victory because we are closing the chapter on apartheid education in this country once and for all. [Applause.] May Hector Petersen rest in peace.

I just wish to make a few comments. Firstly, I would like to start by setting the record straight with regard to the manner in which this issue of education has been presented by sections of the media. The ANC fully subscribes to the principle of mother-tongue education. The ANC also firmly believes in the promotion and protection of all 11 South African languages, none at the expense of others. Because of this position, the ANC is fully

committed to the entrenchment of language rights and the right to education in the mother tongue.

I have been saying this because *Die Burger*, amongst others, attacked me yesterday for not agreeing to securing mother-tongue education. I would like to say that it is a shame for a newspaper that has such status to simply rush into writing something without checking its facts. In fact, it is the ANC which says that every child or learner has the right to be taught in his or her mother tongue or language of choice. In their rush to try to garner support for the NP, they then lied to the people of the Western Cape.

Secondly, they attacked me for being a fossilised communist. [Interjections.] By calling me a communist, *Die Burger* thought that it was insulting me, but I would like to say that I am a proud member of the SACP. [Applause.] I am saying this in the presence of my general secretary in the gallery. I would also like to say that the SACP has been part of the struggle to bring about democracy in this country while *Die Burger* was trying to defend apartheid. [Applause.]

I would also like to say more about the NP. The NP has been trying all these weeks to have the constitution entrenching what they present as single-medium institutions. In essence, what they wanted us to preserve was White, Christian-national education in exclusive Afrikaner schools. [Interjections.] I am happy to say this morning that we have defeated the NP. The democratic forces and the entire liberation movement can claim as a victory that there shall be no entrenchment of exclusivist schools in this country. [Applause.]

An HON MEMBER: That is why you are a communist!

Dr B E NZIMANDE: Yes, that is why I am a communist. I agree with the hon member.

I would also like to say that I was phoned by Premier Mathews Phosa. He told me that at a particular school in Bethel, Mpumalanga, 109 African students who had been registered at this school by the name of Hoogenhoudt were told this week that their admission was temporarily suspended until Monday. The reason they gave for that suspension was that they were waiting for the outcome of the constitutional negotiations. In other words, they are waiting for us to entrench White exclusivist Afrikaner schools so that that school can actually chuck out those 109 African

students. [Interjections.] We want to say to those 109 students that Hoogenhout School is their school from today onwards. [Applause.] They will also be taught in the language of their choice. It is these kinds of schools, such as those in Potgietersrus, Groblersdal, etc, that the NP has wanted us to entrench.

In concluding I would like to give the NP some advice. It is time that they forget about apartheid and realise that the only way they can ensure the protection of cultural and language rights is in the context of the rights of all South Africans in a democratic and nonracial dispensation.

I also want to say that the NP wants Coloured votes, but it does not want Coloureds in their schools. [Interjections.] I am sorry to say that the Black members of the NP today must thank the ANC, because we have defended the education of the Black members of the NP tonight. [Applause.] It is time that they ask themselves whether they really belong to that party. Forward to a nonracial democratic education, forward!

HON MEMBERS: Forward! [Applause.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Thank you very much. Before I call on Mr Renier Schoeman, I want to say that I am allowing this enthusiasm because members had to curtail themselves during the negotiating process, but I would like us to finish this debate before daybreak.

Mr R S SCHOEMAN: Mr Chairperson, this is a great pity. We have just come from the meeting of the Constitutional Committee where a different Blade Nzimande spoke. [Interjections.] I must say I prefer that one. He is the equivalent of a Dr Jekyll and Mr Hyde. As far as the accusation of being a fossilised communist is concerned, if the shoe fits, he should wear it.

Despite the steps that were taken to make this whole process of constitution-writing an exercise in transparency, it was impossible to externalise more than a small percentage of the intensive activities and negotiations that took place. Unfortunately these circumstances have had one negative, potentially destructive side effect in that they have lent themselves to misinterpretation and misleading allegations, specifically in the debate about the provision for education in the Bill of Rights, clause 29. We have heard and seen that again here tonight in the words of Dr Nzimande. He knows as well as anybody who is truthful with

himself that making the accusation that the NP has any truck with the kind of thing that was done in Potgietersrus is a lie. [Interjections.] That is not true. [Interjections.] He can take the lesson from Dr Goebbels and think that if one repeats a lie often enough, eventually people will believe it, but that will not happen in this country. [Interjections.]

I believe it is very necessary to set the record straight in this House, once and for all, about the alleged motives of the NP in its stand concerning single-medium institutions. I can do this by quoting directly from one of the proposals tabled by my party during the current negotiations. In that proposal, the NP stated the following categorically:

Single-medium institutions shall not

- (1) discriminate on the basis of race
- (2) refuse admission only on the grounds that a person's mother tongue differs from the medium of education at such an institution, as long as that person accepts education in that medium
- (3) be maintained where the number of learners in such institution does not warrant the continued use of the existing facilities concerned as a single-medium institution.

What could possibly be clearer? One has to be blind not to see that. No racial discrimination, no use of language on its own to exclude, no utilisation of facilities by an unjustifiably low number of learners. To suggest, therefore, that the NP is advocating either a return to apartheid or the preservation of White Afrikaner privilege is devoid of all truth. It is a blatant untruth. In fact, it is a lie. [Interjections.] It will not stand any test of fact. Unfortunately, all that this type of false propaganda does is confuse the issue and heighten the emotion in a debate which is of crucial importance to the future of this country.

All that the NP argued in the negotiations was that there were firm educational grounds for a single-medium learning environment, with provision for the teaching of other languages, for reasons which did not run counter to the ideals of nation-building, nonracism, access and multilingualism. This ideal is not unique to South Africa, and it is recognised and provided for in many other countries, but this fact was deliberately obscured

in the debate for the purpose of political argumentation. [Interjections.]

Having dealt with this less than edifying run-up to where we are today, I wish to say that the NP welcomes the fact that a broad consensus, recognising the inalienable right to mother-tongue education, has emerged.

\*It is a good thing that recognition is now being given to this inalienable right, namely mother-tongue education. Assailing this right has the potential to rip any further attempt at nation-building in this country to shreds and to unleash an unprecedented rebelliousness and radicalisation among decent people who feel strongly about one of their most basic social rights.

Against this background it was essential for the final provision on education to give thorough, full-fledged recognition to the right to mother-tongue education, and for it to make provision for the continued existence of nonracial single-medium schools, where this is justified, as is now indeed the case. We would have liked to formulate this differently, but we are convinced that, taking other associated provisions into account, we have succeeded in our negotiating objective regarding this matter.

†Mr Chairperson, this recognition of the right to education and the official language or languages of choice is to be exercised within the clear context of public educational institutions, subject to the test of reasonable practicability, and I believe that this will be seen by communities as pointing the way to a potentially acceptable accommodation of many of their basic ideals for their children. I must warn, however, that for many communities the proof of the pudding will be in the eating.

South Africans of all persuasions will watch critically as access to and implementation of this right unfolds against the backdrop of the reality of our multilingual and multicultural land. Ultimately the test of the various constitutional provisions which can have an impact on education, will be how they are experienced by the broad community, by parents and by learners.

The touchstone will be the capacity of this country to ensure increased access so that the

undisputed commitment to basic quality education for all, which the NP supports fully, not only as an obligation, but primarily as an honouring of a promise to all its citizens, is met.

Another touchstone will remain the extent to which this country is seen to provide reasonable education alternatives to accommodate the rich diversity which is characteristic of South Africa, something we ignore at our peril.

In conclusion, it is essential that the constitution be given further form in practice. This will require genuine commitment, resolve, flexibility and the watchful eye of all South Africans. The NP will be playing a key role in that regard, in the interests of education for all in this country, but also in the interests of South Africa.

Mr R K SIZANI: Mr Chairperson, I do not want to detain this Assembly for very long this evening, or rather this morning. I just want to place a few matters on record.

The first thing I wish to do on behalf of my organisation, is to thank the Chairperson and his Deputy for having driven this process in a fair and democratic manner. [Applause.]

Secondly, as negotiators of the PAC, Comrade Patricia and I would like to thank all the other parties, especially the majority party, for having listened to us and for accommodating us when they were able to do so. [Applause.]

We would also like to thank the CA staff for being very helpful to all parties, including the PAC. [Applause.]

I want to deal with four matters this evening, just to place them on record. I think our position has been clear throughout the process. We want to emphasise that the PAC rejects clause 25 of this new constitution, the property clause, in toto.

Secondly, the PAC does not accept the special amendment in the education clause, clause 29(2), which provides for the possibility of single-medium institutions, funded by the State, as an alternative, although we agree with most of what is contained in the education clause.

Thirdly, as far as clause 23(3) is concerned, which deals with the lockout issue, I wish to state that we support it fully in that it does not entrench in the constitution the so-called the right of employers to lock out workers.

The final clause that I want to deal with is clause 35(1)(e) which deals with the rights of arrested or detained persons.

In so far as that clause seems to allow fishing expeditions by the police and speculative arrests including, to a certain extent, limited detention without trial, we find that clause totally incompatible with our approach to the issue of the fight against crime in which we emphasise that crime, in a democratic country, must occur within a human rights context. We want to state categorically that we reject that clause.

On that note, the full statement of my organisation on this new constitution will be put before this House by my leader tomorrow. So I will not be speaking on what standpoint we are going to adopt. [Interjections.] I was just saying that the full statement of our position on this constitution will be stated by my leader later today. [Applause.]

Mr R P MEYER: Mr Chairperson, it seems as if we have developed this habit of not ending our business before twelve o'clock in the evening. However, I believe this is the very last evening or night of this kind—forever, I hope—in so far as constitution-making is concerned. We have done it before, when things took place at the World Trade Centre in Kempton Park, and we also continued with this habit during this constitution-making process in the Constitutional Assembly.

I think one can reflect on a lot of things if one thinks about the fact that this is really the final moment of the constitution-making process that we have been involved in for quite a long time in recent South African history. Of course, it fills one with some pleasure if one thinks about the fact that one has had the opportunity to be engaged in all of this so intensely and deeply over this period.

\*Obviously there is also the issue of the somewhat subjective emotional response when one comes to realise these are the final moments of this era and that we are indeed beginning a new phase. Not only are we starting a new phase of constitutionality in South Africa, but also a new phase of democracy. Therefore I believe we are indeed heralding a new phase with the conclusion of this constitution-making process. It has to be dealt with properly, and parties should approach it in such a way that we make this a living constitution by means of a true multiparty democracy in South Africa. In the long run it is probably

the best way to ensure that this constitution is maintained and implemented in a dynamic way in South African constitutional and political life.

†When one analyses the constitution as it has evolved, of course it is difficult within the spectrum of a few minutes to give a full reflection of what position the NP, or any other party for that matter, would hold as far as this constitution is concerned in the process of evaluating its contents. I would like to think that, on the whole, one can express support for the constitution on the basis of what we have before us and in terms of the goals we set ourselves in relation to what we wanted to attain in the constitution-making process.

If one looks at the overall perspective—and various speakers on the side of the NP have, of course, indicated our positions on various chapters of this constitution and stated where we were either totally happy with the contents, satisfied with the compromise reached or unhappy with the end result—and if one puts all those in a basket and weighs them in terms of a profit and loss account or a balance sheet, so to speak, then I think one can say that the overall impression is that we have effectively achieved the goals that we have set for ourselves in terms of this process. [Applause.]

I want to reflect briefly specifically on the results of the negotiations of the past few days. We all know that during the past two weeks four specific outstanding issues have been addressed, namely property, the lockout, language and education. Those issues remained the core of negotiations during the past week to ten days, particularly between the NP and the ANC on a bilateral basis, but also through interaction with the DP and the FF. I must express appreciation for the fact that the parties were constantly willing and constructively working towards finding solutions to these outstanding matters.

I think in that regard one must take the spirit and the approach that prevailed throughout this process as one of great significance, namely that at all stages one had the impression that parties were really seriously intending to achieve general consensus on the constitution. It was surely in that spirit that it was possible to look for solutions all the time.

Regarding the outstanding matters that I have referred to, it was already possible during the

- (2) the Technical Refinement Team be instructed to carry out whatever editorial changes are required to correct errors, including errors of omission, spelling, grammar, punctuation and inconsistency.

Agreed to.

Prof A K ASMAL: Mr Chairperson, dames en here [ladies and gentlemen], comrades, maqabane [comrades], it is a signal honour to be the last speaker as we come to the end of our proceedings. Tomorrow the captains and the kings will be addressing us. Tonight it is the culmination of our own process.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Which captains and kings?

Prof A K ASMAL: The captains and the kings—our betters.

It is now time for the tying up of all the ends of a process that began for many of us in 1912. So I, as the last speaker, will dedicate my contribution on behalf of my movement to the very great heroes and heroines who made this process possible. These were people who believed in the principle of inclusiveness and participation—Sol T Plaatje, Albert Luthuli. I conjure and I hope that they will look kindly on our deliberations, particularly Oliver Tambo and Helen Joseph.

In a few hours' time this Assembly—which means South Africa—with the captains and the kings officiating, will adopt the final constitution. We thus place the seal on the new social compact of our nation. The lives and futures of all our people will be made more secure, more hopeful and more meaningful than in our past, because of the certainty of our social compact.

And so future generations will look back on 8 May 1996 as a very special day. It marks the high point of our march, through struggle and through war, to liberation and democracy. It will augur well as we try to usher in an era of deepened democracy, of economic hope, social stability and constitutional order in our country.

In the elections of April 1994, we the elected representatives of South Africa gave our people a promissory note. We promised that by 8 May 1996 we would deliver a bank-guaranteed cheque for their future—the final constitution. The constitution is therefore a means through which the

people can cash in their rights. They can use it to hold the State and other interests to account. We must say very clearly that this cheque can never be allowed to bounce. [Interjections.]

After two years of toil, some pain, a lot of boredom, and after much dispute and many times of uncertainty, the members of the Constitutional Assembly, with some regrettable and notable exceptions, will see the totality of the work agreed to tomorrow. The constitution might not be perfect for all of us, and occasionally there was an air of grudging acceptance about aspects of it. It may lack the sparkle of a constitution drafted by André Brink, or Antjie Krog or Mazisi Kunene. It may sadly lack the contribution of those who chose to boycott the process, because such people are still unprepared to take part in the feast. For the South African caravan moves on and tomorrow we reach the most exciting constitutional moment in our history. Nothing will deny our nation that celebration, because we are celebrating ourselves.

So, the real test of the constitution is not how many political organisations are party to the drafting, or whether it reflects the interests and commands the support of ordinary citizens. It is a dynamic, creative document, particularly on notions such as co-operative governance, with the capacity to move with changing times and encompass new realities, while holding firm to fundamentals. It is a categorical assurance that never again will any person presume to be superior to another simply because of race, skin colour, gender, religion, sexual orientation or physical ability. In this it is a most decisive break with our past. So, our final constitution is the people's shield against such horrors.

There has, of course, been intense negotiation, particularly in the past week or so, right up to the last moment, over issues that are viewed as important to some constituencies. In the accommodating spirit of the remarkable times in which we live in South Africa, we in the ANC have tried hard to meet the reasonable and legitimate fears and desires of others, and sometimes even illegitimate ones.

There had been helpful gestures from other sides and there is ground for hoping that the matters at issue that we will face in the future will be solved in the same spirit. So, we are saying to all the representatives of the nation gathered here: Come and tread the final mile of this exciting journey

with us. Our country's future stability, its economy, the very fabric of our society, depend on our reaching not only this final constitutional milestone, even though this milestone reflects belief in the capacity of our country not only to get it right, but also to do it well.

Then there are the vast tasks that still lie ahead of us, the tasks of reconstruction, of deepening our hard-won democracy, of building one nation, recognising the extraordinary variety of our cultures, languages, religions, and of completing the final jigsaw of local government elections that can be tackled then with the determination that brings success.

The dull drudgery of the past two years is now coming to an end. The inflexible positions adopted in public negotiations have of necessity had to be modified in the interests of seeking agreement.

Whatever postures they may have adopted, all parties involved in the process have had to be mindful of their constituencies. Yet, since the constitution is a *modus vivendi*, a means of living together for a whole nation, and not a party manifesto, there is a need to avoid triumphalism on the one hand, and a demand for total surrender on the other.

Let no party, tonight or tomorrow in the celebrations, claim victory over the making of this constitution, because there has been no final victory in that sense. The victory is our country's. The victory is South Africa's. We all should claim victory. The social compact that emerges must work for the entire nation. It is not the exclusive property of one or the other party.

This is therefore a distinctively South African contribution to a distinctively South African constitution. We have not been a copycat. We have relied on our own capacities, though we have adapted the experience of other countries to our conditions. It has been forged therefore over many long months by South Africans for South Africans. It is possibly an over-detailed document. There is an extensive diffusion of power. There is the new concept of co-operative government, with national, provincial and local government seen as uniquely distinctive, interdependent and interrelated in a way that should effectively end the silly unitary-versus-federal debate.

In many respects, the constitution leads the world—and we should acknowledge that. There

are particularly wide powers for the Constitutional Court, very wide powers of access to the Constitutional Court. This is the jewel in the crown of the constitution, and will shoulder much responsibility.

Then we have the recognition of language, cultural and religious rights being exercised collectively, which again is a recognition of the special experiences of our country. There is an in-built flexibility in many respects in the constitution. There is a guarantee for economic and social rights within the bounds of what is practicable. There is the novel and essential concept of just administrative action. There is effective access to information. There is a provision for the declaration of a state of emergency, temporary and rigorously controlled, possibly the most advanced provision relating to a state of emergency in any modern constitution. The presidency is limited to two full terms only. There are a number of State institutions supporting constitutional democracy, not least of which is the Independent Electoral Commission, which we look forward to. The role and scope of the security forces are specified, possibly for the first time in a modern constitution, in some detail. The most detailed arrangements are laid down for general financial matters.

What is more, the constitution is written in a language that everyone can read, and is organised in a way that all can follow. It comes from, and therefore belongs to, the people, and we must therefore ensure that it does not become the exclusive playpen of lawyers or academics. For the first time ordinary South Africans can read and digest the basic law that determines their lives.

Now therefore, as we end formally, let us praise some men and some women. A word of warm praise is due, not only to the corporate body of this Assembly, the panels of hard-working experts and the staff, but to a special group of people whose hand is so apparent in this work. Perhaps one of the most remarkable, and yet the least remarked-on, features of this constitution is the role of women in its construction. Probably never before in history has such a high proportion of women been involved in writing a constitution. [Applause.]

I think not only of the enormous contributions made by fellow comrades such as Baleka, Naledi, Mavivi, Jenny, Janet, as well as women from other political parties such as Dene, Sheila and

Patricia, but also those women who have worked tirelessly in the backrooms, at the very coalface, those unsung heroines, women like Vivienne Smith and Kate Savage without whom the work would not and could not have been completed. [Applause.]

These women, like all of us, were inspired by the older women who are here and who raised the issue of gender in our movements and in our constitution-making process. It is a special tribute to them, because they inspired us and have produced the quality of women that I have mentioned.

Having women so solidly involved in all the processes of the Constitutional Assembly has given genuine depth to and a far better expression of the needs of our people in our constitution because of its exclusiveness, not just on the gender issue, but on all issues.

Finally, our praise and thanks go to the remarkable person who stands at the apex of the Constitutional Assembly, the Chairperson, Comrade Cyril, not totally forgetting, of course, the untiring efforts . . . [Applause] . . . of his NP counterpart and his Deputy in the CA, the hon Leon Wessels. [Applause.]

In the informality of this final constitution-making hour I use first names by design. Comrade Cyril, our "man for all seasons", has achieved exquisite success against all odds. His grasp of the nub of issues, his negotiating skills, his carefully hooded menace that comes at the right time . . . [Laughter] . . . his singleness of purpose, his charm and indeed his buoying and almost outrageous wit have combined to make him an indispensable part of the whole nation's constitutional triumph. [Applause.]

The darkness of our lives has been removed, so we may utter with William Wordsworth:

Bliss was it in that dawn to be alive,  
But to be young was very heaven!

So let us savour this choice moment in history with a spring in our step and hasten to seal the social compact of our new nation and say: "Hamba kahle South Africa. Go well my country!" [Applause.]

Debate interrupted.

The meeting adjourned at 01:20 on Wednesday, 8 May 1996.

## Annexure "A"

### Errata to

#### Constitution of the Republic of South Africa Bill as amended by the Constitutional Committee

6 May 1996

Section	Correction
1(c)	Replace "Constitution" with "constitution"
6(1)	Replace "siSiswati" with "siSwati"
7(1)	Second sentence, replace "The Bill" with "it"
8(3)(a)	Replace "must apply or," with "must apply, or"
8(3)(a)	Replace "develop the common law" with "develop, the common law"
21(3)	Replace "anywhere in the Republic" with "anywhere in, the Republic"
25(2)(b)	Replace "manner of which" with "manner of payment of which"
25(3)	Replace "manner of compensation" with "manner of payment of compensation"
25(3)(d)	Replace "extent of state" with "extent of direct state"
37(2)(b)	Replace "a resolution adopted by" with "a resolution supported by"
42(3)	Replace "scrutinising" with "scrutinizing"
43(c)	Replace "municipal councils" with "Municipal Councils"
44(1)(a)(iii)	Replace "legislature" with "legislative body"
45	Replace "concerning the business of" with "concerning the joint business of"

Section	Correction
45(b)	Replace "sections 75 and 76 with "sections 74 and 75"
58(1)(b)(i)	Replace "submitted to the Assembly" with "submitted to, the Assembly"
58(1)(b)(ii)	Replace "submitted to the Assembly" with "submitted to, the Assembly"
61(3)	Replace "the Legislature" with "the legislature"
64(2)	Delete comma in this section.
71(1)(b)(i)	Replace "submitted to the Council" with "submitted to, the Council"
71(1)(b)(ii)	Replace "submitted to the Council" with "submitted to, the Council"
73(2)	Replace "in the Assembly but" with "in the Assembly; but"
76(1)	Replace "Schedule 4 Bill" with "Schedule 4, the Bill"
76(1)(c)	Replace "an amended Bill the" with "an amended Bill, the"
76(3)(c)	Delete "(1),(2) and (5)"
76(3)(d)	Change "section 195(3);" to "section 195(3) and (4);"
76(3)(e)	Delete "(4)"
76(3)(f)	Change "section 199(1) and (2)." to "section 197."
79(4)(b)	Replace "decision of its" with "decision on its"
79(4)	Replace "if a Bill after reconsideration" with "If, after reconsideration, a Bill"
79(5)	Replace "is constitutional the" with "is constitutional, the"
89(1)	Replace "resolution adopted by" with "resolution supported by"
100(1)	Replace "fulfill executive obligation" with "fulfil an executive obligation"

Section	Correction
100(2)(b)	Replace "must be approved" with "must end unless it is approved"
110(2)	Replace "urgent" with "special"
117(1)(b)(i)	Replace "submitted to the legislature" with "submitted to, the legislature"
117(1)(b)(ii)	Replace "submitted to the legislature" with "submitted to, the legislature"
121(2)	Replace "if a Bill after reconsideration" with "if, after reconsideration, a Bill"
121(3)	Replace "is constitutional the" with "is constitutional, the"
124	SECTION TITLE: Replace "Provincial" with "provincial"
125(2)(a)	Replace "administering" with "implementing"
125(2)(b)	Replace "administering" with "implementing"
125(5)	Replace "administration" with "implementation"
131(1)	Replace "acts as the Premier -" with "acts as the Premier:"
131(1)(a)	Replace "the Premier;" with "the Premier."
131(1)(a)	Replace "a member" with "A member"
131(1)(b)	Replace "Council;" with "Council."
131(1)(b)	Replace "a member" with "A member"
131(1)(c)	Replace "the Speaker" with "The Speaker"
138	SECTION TITLE: Delete "powers and"
139(2)(a)	Replace "must be approved" with "must end unless it is approved"

Section	Correction
139(2)(c)	Replace "musts be approved" with "must end unless it is approved"
145(2)	Replace "takes effect on a date" with "takes effect on publication or on a later date"
146(7)	Replace "(6)" with "(6)(a)"
157(3)	Replace "of this section" with "of subsection (2)"
158(1)(b)	Replace "service of the State, in another sphere" with "service of, the state in another sphere"
158(1)(b)	Replace "Council, in" with "Council in"
158(1)(e)	Replace "council" with "Council"
158(2)	Replace "council" with "Council"
163	Delete "(1)"
163(a)	Replace "municipalities;" with "municipalities; and"
172(2)(a)	Replace "but any order" with "but an order"
175	SECTION TITLE: Replace with "Acting judges"
179(1)(a)	Replace "executive, and" with "executive; and"
179(5)(d)(iii)	Replace "other person whom" with "other person or party whom"
180(c)	Replace "in decisions" with "in court decisions"
179(5)(a)	Replace "with concurrence" with "with the concurrence"
201(2)	Replace "fulfilment" with "fulfilment"
221(1)(c)	Replace "155(2)" with "163"
238(a)	Following "other organs of state" insert " provided that the delegation is consistent with the legislation in terms of

Section	Correction
	which the function is performed"
Schedule 4 Part A	Replace "Provincial cultural matters" with "Cultural matters"
Schedule 5 Part B	Insert "Billboards and the display of advertisements in public places" after "Beaches and amusement facilities"
Schedule 5 Part B	Replace "Control of public nuisance" with "Control of public nuisances"
Schedule 5 Part B	Replace "Local Amenities" with "Local amenities"

#### ANNEXURE "B"

##### Amendments to

#### Constitution of the Republic of South Africa Bill as amended by the Constitutional Committee 6 May 1996

The Constitution of the Republic of South Africa Bill, as amended 6 May 1996, is amended as follows:

1. Section 25 is amended by replacing subsection (8) with the following amended subsection (8):
  - (8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).
2. Section 29 is amended by replacing subsection (2) with the following amended subsection (2):
  - (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider

all reasonable educational alternatives, including single medium institutions, taking into account -

- (a) equity;
  - (b) practicability; and
  - (c) the need to redress the results of past racially discriminatory law and practice.
3. Section 29 is further amended by the addition of the following subsection (4):
    - (4) Subsection (3) does not preclude state subsidies to independent educational institutions.
  4. Section 35 is amended by the replacing subsection (1)(e) with the following:
    - (1) (e) at the first court appearance after being arrested, to be charged or informed of the reason for the detention to continue, or to be released; and
  5. Section 39 is amended by the deletion of subsection (4).
  6. Section 42(6) is amended by replacing paragraph (a) with the following:
    - (6) (a) The seat of Parliament is Cape Town, but an Act of Parliament, enacted in accordance with subsections 76(1) and (5), may determine that the seat of Parliament is elsewhere.
  7. Section 42(6) is further amended by deleting paragraph (b).
  8. Section 51 is amended by the addition of the following subsection (3):
    - (3) Sittings of the National Assembly are permitted at places other than the seat of Parliament only on the grounds of public interest, security or convenience, and if provided for in the rules and orders of the Assembly.
  9. Section 55 is amended by deleting from subsection (2)(b)(ii) the words "other than a court".
  10. Section 63 is amended by the addition of the following subsection (3):
    - (3) Sittings of the National Council of Provinces are permitted at places other than the seat of Parliament only on the grounds of public interest, security or convenience, and if provided for in the rules and orders of the Council.
  11. Section 76(4)(a) is replaced by the following:
    - (4) (a) envisaged in section 44(2) or 220(3); or
  12. Section 76 is further amended by the addition of subsection (5) as follows:
    - (5) A Bill envisaged in section 42(6) must be dealt with in accordance with the procedure established in subsection (1), except that—
      - (a) when the National Assembly votes on the Bill, the provisions of section 53(1) do not apply; instead, the Bill may be passed only if a majority of the members of the Assembly vote in favour of it; and
      - (b) if the Bill is referred to the Mediation Committee, the following rules apply:
        - (i) If the National Assembly considers a Bill as envisaged in subsection (1)(g) or (h), that Bill may be passed only if a majority of the members of the Assembly vote in favour of it.
        - (ii) If the National Assembly considers or reconsiders a Bill as envisaged in subsection (1)(e), (i) of (j), that Bill may be passed only if at least two-thirds of the members of the Assembly vote in favour of it.
  13. Section 104 is amended by the deletion of subsection (4), and the renumbering of the remaining subsections.
  14. Section 114 is amended by deleting from subsection (2)(b)(ii) the words "including a provincial statutory body".
  15. Section 155 is amended by the replacement of subsection (3) with the following subsection (3):
    - (3) Subject to the provisions of sections 44, 151 and 154—

- (a) a provincial government has the legislative and executive power to monitor the local government matters listed in Schedules 4 and 5; and
- (b) national and provincial governments have the legislative and executive power to see to the effective performance by municipalities of their functions in respect of those matters, by regulating the exercise of municipalities' executive authority referred to in section 156(1).
16. Section 156 is amended by the deletion of subsection (2), and the renumbering of the remaining subsections.
17. Section 157 is amended by the addition of the following subsection (6):
- (6) The national legislation referred to in section 157(1)(b) must establish a system of appointment that allows for parties and interests reflected within the Municipal Council and making appointments, to be fairly represented.
18. Section 181 is amended by replacing subsection (3) with the following:
- (3) Other organs of state, through legislation and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.
19. Section 196 is amended by replacing subsections (3) and (4) with the following:
- (3) Each of the provinces may nominate a person to be appointed to the commission.
- (4) Members of the Commission nominated by provinces may exercise the powers and perform the functions of the Commission in their provinces, as prescribed by national legislation.
20. Section 217 is amended by replacing subsections (1) and (2) with the following:
- (1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified by national legislation, contracts for goods and services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.
- (2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection implementing a procurement policy providing for -
- (a) categories of preference in the allocation of contracts; and
- (b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.
21. Section 239 is replaced by the following amended section 239:
239. (1) In the Constitution, unless the context indicates otherwise, "organs of state" means—
- (a) any department of state or administration in the national, provincial or local sphere of government; and
- (b) any other functionary or institution—
- (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or
- (ii) exercising a public power or performing a public function in terms of legislation.
- (2) Despite subsection (1), "organ of state" does not include judicial officers or courts.
22. Section 242 and 243 are deleted and section 241 is renumbered as section 242.
23. The following new section is inserted as section 241:
- Labour Relations Act, 1995**
- 241 (1) A provision of the Labour Relations Act, 1995 (Act No 66 of 1995) remains valid, notwithstanding the provisions of the Constitution, until the provision is amended or repealed.
- (2) A Bill to amend or repeal a provision of the Labour Relations Act may be intro-

duced in Parliament only after consultation with national federations of trade unions, and employer organisations.

- (3) The consultation referred to in subsection (2), including the identification of the federations to be consulted, must be in accordance with an Act of Parliament.

24. The following is inserted as section 243:

**Repeal of laws**

243. The laws mentioned in Schedule 7 are repealed, subject to section 244(4) and Schedule 6.

25. The following is inserted as section 244:

**Short title and commencement**

244.(1) This Act is called the Constitution of the Republic of South Africa Act, 1996, and comes into effect on a date set by the President by proclamation not later than 1 January 1997.

- (2) Different dates before the date referred to in subsection (1) may be fixed in respect of different provisions of the Constitution.

(3) Unless the context otherwise indicates, a reference in a provision of the Constitution to a time when the Constitution took effect must be construed as a reference to the time when that provision took effect.

(4) If a different date is fixed for any particular provision of the Constitution in terms of subsection (2), any corresponding provision of the Constitution of the Republic of South Africa, 1993, mentioned in the proclamation, is repealed with effect from the same date.

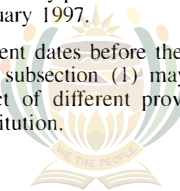
26. Schedule 4 is amended by the addition of the following items to Part A of the Schedule:

Vehicle licensing

Property transfer fee

27. Schedule 6 is amended by the addition of the following words to the end of Item 20(4):

“when the members referred to in section 178(1)(i) of the new Constitution are appointed.”



PARLIAMENT  
OF THE REPUBLIC OF SOUTH AFRICA

**PROCEEDINGS OF THE  
CONSTITUTIONAL ASSEMBLY**

Members assembled in the Chamber of the National Assembly at 09:05.

The Deputy Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.

**CONSTITUTION OF THE REPUBLIC OF  
SOUTH AFRICA BILL**

(Second Reading debate resumed)

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr President, Deputy President Mbeki, Deputy President De Klerk, honourable colleagues of the Constitutional Assembly, ladies and gentlemen, visitors, this is a special day in the constitutional history of our country. It heralds the end of an era and the dawn of a new day. Different routes have brought us here. Our leaders will soon guide us and tell us how they see the future.

\*Today is not just another day on the calendar of the Constitutional Assembly. It is a day for which we have worked for two years.

†I call upon the hon Mr Ramaphosa to address us. [Applause.]

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Deputy Chairperson of the Constitutional Assembly, Comrade President, Deputy Presidents Thabo Mbeki and F W de Klerk, leaders of all political parties represented here, your majesties, your excellencies, Speaker of the National Assembly, Deputy Speaker, President of the Senate, Deputy President of the Senate, members of the National Assembly and the Senate, I would like to welcome you all as the Deputy Chairperson of the Constitutional Assembly has. I would also like to say today is a day of joy. It is a day of celebration. They have just brought me some water here, and I would like to do what the hon the President often does as he addresses us, because it is a day to say cheers! [Applause.]

It is indeed a historic day. It is the birthday of the South African rainbow nation. This is the day when South Africa is truly born.

As we begin this joyous and solemn occasion, I would like to reveal a part of myself and to dedicate my address to three great South Africans who would have been here with us today if time and tide had been kinder: Oliver Reginald Tambo, Chris Hani and Joe Slovo. [Applause.]

There are many others one could have cited, but these are the three leaders whom I personally sorely missed during the process of constitution-making. I missed them, because I related to all of them in different ways. All of them were there when we started the negotiation process, and they contributed a great deal to me personally, in enabling me and many others to negotiate the transition process and emerge with an interim Constitution.

I do wish they were here. I am grieved that they cannot be with us to share this occasion, an occasion that they worked for and died to make possible. May their memory live long in our minds.

Today we are gathered here to make history. We South Africans have adapted so easily to our role as initiators and witnesses to events which number among the most significant of this century.

We often forget or lose sight of just how historic and profound some of these events are. When we vote today to adopt the constitution before us, we will indeed be giving life to a new nation, a nation of free and equal people. Our country, our people, will indeed have come of age when we vote for this constitution. Today is the culmination of a process of consultation, discussion and negotiation which began almost two years ago in this very Assembly.

In truth, the constitution-making process began long before that. It began when the people of this country, deprived of their birthright, dreamt of a country in which all would be free. Indeed, we can say that through this constitution we confirm that we are a free people. Over the years this dream has been articulated by many South Africans. The call for freedom resonated across the length and the breadth of the country and around the world.

South Africans, in their millions, have fought for this freedom, the freedom which we are crowning on this historic day. Hundreds of thousands died, were tortured, detained, jailed, banned, silenced and exiled in order to write this constitution.

Today we are here to celebrate the culmination of that struggle. The constitution before us today is a product of a collective effort by many people.

Since we embarked on the formal constitution-making process 24 months ago, South Africans from across the country have embraced the process as their own. It is no exaggeration when we say that a team of 43 million people worked on this constitution. In that team there are a number of people who deserve special mention, and one is the team leader, the one and only team leader, President Nelson Rolihlahla Mandela ... [Applause.] ... whose guidance, inspiration and leadership strengthened our endeavours over the past two years. We have had to draft the constitution in many forms, and it was always a joy for me to take the big-print version to the President. When we gave them the small-print version he said: "I am not going to read this. I want the big print, because I want to make sure that there are no small-print bits in which you might be making mistakes."

The support that the CA received from the Deputy Presidents added to the impetus of our work. Whenever Leon Wessels and I met Deputy President F W de Klerk, he always spared a moment to encourage us. [Applause.] The insistence, on the part of Deputy President Mbeki, that we do everything possible to meet the deadline strengthened our resolve. [Applause.] I recall that one evening when we as a management committee had doubts whether we would meet the deadline, I shared my doubts with him; there were just the two of us. I said that we might have to go to November. He gave me the most steely-eyed look I have ever seen him give anyone. [Laughter.]

He said: "Chief, that is not possible, that is not doable, that will not happen." That, in a way, had a bonding effect between me and him, and I knew then that we had to meet the deadline. Two days thereafter I said to him: "You were right. Once again, you were right." I would like to thank you for your insistence, Deputy President T M Mbeki. [Applause.]

Members of the Cabinet had to try to do the impossible by attending to matters of governance and constitution-making. Their attention to constitution-making added to the wisdom we needed in the Assembly. We missed them sorely when they were not here. There was an occasion when one of the members of the Assembly said:

"Where are they?" We all knew that they were working on matters of government. However, whenever they were able to join us—there were a few of them who joined us from time to time—they added a great deal of value and wisdom to our discussions, and I thank them all. [Applause.]

I wish to thank the leaders of all political parties. As the president of the ANC, our President, is not a member of this Assembly and cannot vote—fortunately—I extend my deep gratitude once again to Deputy President Mbeki for the leadership he provided to the ANC and the ANC negotiators during this two-year period.

Deputy President De Klerk also provided leadership to members of the NP. I wish to thank Gen Viljoen too. He participated in meetings of the Constitutional Assembly and management committee, and I thank him too for providing leadership to members of his party. I wish to thank Mr Tony Leon. [Applause.] I thank Mr Leon. We had many differences. Some of the differences were played out in the meetings of the Constitutional Committee, and they added spice to the proceedings of the Constitutional Committee.

I wish to thank Mr Clarence Makwetu for providing leadership to the PAC members who participated on an ongoing basis in the proceedings of the Constitutional Assembly. [Applause.] I wish to thank Rev Meshoe as well. [Applause.] More importantly, I wish to thank all the members of the Assembly for the commitment and hard work, patience and good humour that all of us have demonstrated throughout this process. I would especially like to thank members of the theme committees, who have become constitutional experts of the first order.

We would never have finished our work without the active support of the presiding officers of the National Assembly and the Senate, as well as the Whips. I give special thanks to the Speaker of the National Assembly, Dr Frene Ginwala, and the Deputy Speaker, Dr Ranchod, the President of the Senate, Mr Coetsee, and the Deputy President of the Senate, Mr Govan Mbeki. [Applause.] I also thank the Leader of the House—the former Leader of the House, our Minister of Finance, and the present leader of the House, Mr Steve Tshwete—for all the support that they gave us throughout this process. They went out of their way to give us time and accommodate us. We do thank them most sincerely.

Behind the scenes the technical advisers, the panel of experts and the law advisers have all worked flawlessly to ensure that the large and the small cogs of this constitution are in place. I thank them, all of them—the panel of experts, the advisers and the technical experts. We would not have this type of document if they had not worked the many hours that they did. [Applause.]

Special thanks have to go to the staff of the Constitutional Assembly . . . [Applause.] . . . and in this regard I would like to single out four people, Hassan Ebrahim, Louisa Zondo, Peter Lilienfeld and Marion Sparg. [Applause.] They deserve the highest of medals in recognition. They started an administration from scratch and did everything excellently, efficiently, cost-effectively and with a great sense of passion. I thank them from the depth of my heart. We would not have done this without them. [Applause.]

I also thank members of the Constitutional Committee and to members of the management committee I extend my thanks and gratitude too. Members of the Constitutional Committee argued, differed and fought, but I also saw them embracing. I saw them embracing at 03:00 when they reached an agreement on a matter which most of us thought we would never reach agreement on. I saw tears in their eyes, and I knew that they were a group of people who would indeed deliver a constitution to this country. I thank them most sincerely. [Applause.]

I wish to say a special thank you to Roelf Meyer. I thank him for being a negotiating partner, and for negotiating not only the transitional or interim Constitution but also this constitution. I extend my deep-felt gratitude to him. [Applause.] Leon Wessels and I still have to have a bilateral, the two of us. At that bilateral we are going to speak at a very personal level. We have worked very well over the past two years, and a friendship has emerged between us. Unfortunately we both leave this Assembly to go to other careers, but we have promised each other that from time to time we would visit each other, have a cup of tea . . . [Laughter.] . . . and talk about this constitution. [Applause.]

Mr Deputy Chairperson, there are a number of other people and institutions that I need to thank. I am thinking, of course, of the numerous governments, international organisations and institutions which have provided generous support to the Constitutional Assembly and our public-

participation programme. I would like to note, in particular, the governments of the United Kingdom, France, Norway, Denmark, Sweden, Germany and Switzerland. Special mention should also be made of the Danish Centre for Human Rights, USaid, the Commonwealth Secretariat and the European Union.

I am thinking also of all the sponsors in the private sector who decided that the future of this nation was a sound investment and that it would pay substantial dividends for the entire nation. I want to mention, in particular, the support we received from Liberty Life, Sappi, Mondi, IBM, Appleton, Stellenbosch Farmers' Winery . . . [Laughter.] . . . Telkom, HNR Computers, Sony and BMD Textiles. It is to these people that South Africa owes a debt of gratitude. Through their support and hard work, we have been able to achieve so much. [Applause.]

I would also like to thank all the people of our country who participated in this process, all those people who gave us submissions by post, by fax, by telephone and by e-mail, those who sent us petitions and who attended our public meetings and sectoral hearings. We say: Thank you all for the effort that you put in to ensure that we have a constitution.

People will ask what can be said about this constitution. This constitution, with its Bill of Rights, is the mirror of South African society. It reflects both the history from which we have emerged, and the values we now cherish—human dignity, equality and freedom. It proclaims to the world that we are a society committed to democracy, to the rule of law and the protection of human rights. It proclaims to all South Africans, the landless, the homeless, the women, the workers and the children of this country, that their basic needs and aspirations matter enough to be included in the country's constitution.

It celebrates the richness of the diversity of cultures, religions and beliefs of South Africans, and affirms that all belong as equals in our one nation. It commits the State to respecting, protecting, promoting and to fulfilling the rights in the Bill of Rights and acknowledges that it is not enough for the Government simply to refrain from violating people's rights. It is also necessary for the Government to take positive measures to ensure the full and equal enjoyment of human rights by all South Africans. Through this constitution, we hope to transform our society from one

that is based on injustice and strife to one based on justice and peace.

This constitution also creates a framework for sound and effective government in South Africa. It is good for investors, and it is also good for the rand. [Laughter.] Co-operation, accountability, responsiveness and openness are entrenched as the principles of government at all levels in South Africa. To deepen the culture of democracy and human rights in South Africa, the constitution establishes a number of important institutions such as the Public Protector, the Human Rights Commission, the Commission for Gender Equality and also, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. These bodies are charged with the vital task of ensuring that the Government remains committed to the values of this constitution.

This constitution is the subject of a rather fortunate paradox. It is no one's constitution, and yet it is everyone's constitution. Just as no one party sees its constitutional proposals reproduced in their entirety in this Bill, so no one person can claim exclusive ownership of this constitution. It belongs to everyone in the Constitutional Assembly, and it is a reflection of our collective will for a new, united and democratic nation. This constitution belongs to South Africans.

The constitution contained in the Bill before us is the product of negotiation and compromise. Yet the central tenets of a democratic, just and equitable society remain uncompromised, because freedom is non-negotiable. The achievements of this Assembly are, therefore, remarkable. The provisions of this constitution are sound. The expectations of our nation are great.

The other thing which our constitution does for us is to make our country the new mecca of constitution-makers. Constitution-makers from all over the world will come to this country to study how we drafted our constitution and to study the constitution itself. We welcome them all. We invite them to South Africa to come and study how democracy really functions. [Applause.]

Today we will vote on this constitution. We will be exercising an awesome responsibility. It is my duty as Chairperson to urge all of us in this Assembly, even those who may have some reservations, to vote today for a democratic and

free South Africa. Let us all give our country its true birth certificate. The people of our country expect no less of us. [Applause.]

Mr T M MBEKI: Mr Chairperson, esteemed President of the democratic Republic, hon members of the Constitutional Assembly, our domestic and foreign guests, friends, on an occasion such as this we should perhaps start from the beginning. So let me begin. [Laughter.]

I am an African. [Applause.] I owe my being to the hills and the valleys, the mountains and the glades, the rivers, the deserts, the trees, the flowers, the seas and the ever-changing seasons that define the face of our native land. [Applause.] My body has frozen in our frosts and in our latter-day snows. It has thawed in the warmth of our sunshine and melted in the heat of the midday sun. The crack and the rumble of the summer thunders, lashed by startling lightning have been a cause both of trembling and of hope. The fragrances of nature have been as pleasant to us as the sight of the wild blooms of the citizens of the veld.

The dramatic shapes of the Drakensberg, the soil-coloured waters of the Ligwa, iQili and uThukela and the sands of the Kalahari have all been panels of the set on the natural stage on which we act out the foolish deeds of the theatre of the day. At times, and in fear, I have wondered whether I should concede equal citizenship of our country to the leopard and the lion, the elephant and the springbuck, the hyena, the black mamba and the pestilential mosquito. [Laughter.]

As a human presence among all of these, a feature on the face of our native land as it has just been defined, I know that none dare challenge me when I say I am an African. [Applause.]

I owe my being to the Khoi and the San, whose desolate souls haunt the great expanses of the beautiful Cape—they who fell victim to the most merciless genocide our native land has ever seen, they who were the first to lose their lives in the struggle to defend our freedom and independence, and they who as a people perished in the result. Today, as a country, we keep an audible silence about these ancestors of the generations that live, fearful to admit the horror of the former deed, seeking to obliterate from our memories a cruel occurrence which, in its remembering, should teach us not and never to be inhuman again. [Applause.]

I am formed of the migrants who left Europe to find a new home in our native land. Whatever their own actions, they remain, still, part of me.

In my veins courses the blood of the Malay slaves who came from the East. Their proud dignity informs my bearing, their culture a part of my essence. The stripes they bore on their bodies from the lash of the slavemaster are a reminder embossed on my consciousness of what should not be done. [Applause.]

I am the grandchild of the warrior men and women that Hintsá and Sekhukhune led, the patriots that Cetshwayo and Mphephu took to battle, the soldiers whom Moshoeshe and Ngugunyane taught never to dishonour the cause of freedom.

My mind and my knowledge of myself are formed by the victories that are the jewels in our African crown, the victories we earned from Isandhlwana to Khartoum, as Ethiopians, as the Ashanti of Ghana, as the Berbers of the desert.

I am the grandchild who lays flowers on the Boer graves at St Helena, the Bahamas and the Vroue Monument, who sees in the mind's eye and suffers the suffering of a simple peasant folk—death, concentration camps, destroyed homesteads, a dream in ruins.

I am the child of Nongqause. I am he who made it possible to trade in the world markets in diamonds, in gold, in the same food for which our stomachs yearn.

I come of those who were transported from India and China, whose being resided in the fact, solely, that they were able to provide physical labour, who taught me that we could both be at home and be foreign, who taught me that human existence itself demanded that freedom was a necessary condition for that human existence.

Being part of all of these people, and in the knowledge that none dares contest that assertion, I shall claim that I am an African! [Applause.]

I have seen our country torn asunder as these, all of whom are my people, engaged one another in a titanic battle, the one to redress a wrong that had been caused by one to another, and the other to defend the indefensible.

I have seen what happens when one person has superiority of force over another, when the stronger appropriate to themselves the preroga-

tive even to annul the injunction that God created all men and women in His image.

I know what it signifies when race and colour are used to determine who is human and who subhuman.

I have seen the destruction of all sense of self-esteem, the consequent striving to be what one is not, simply to acquire some of the benefits which those who had imposed themselves as masters had ensured that they enjoyed. I have experience of the situation in which race and colour are used to enrich some and impoverish the rest. I have seen the corruption of minds and souls as a result of the pursuit of an ignoble effort to perpetrate a veritable crime against humanity. I have seen concrete expression of the denial of the dignity of a human being emanating from the conscious, systemic and systematic oppressive and repressive activities of other human beings.

There the victims parade with no mask to hide the brutish reality—the beggars, the prostitutes, the street children, those who seek solace in substance abuse, those who have to steal to assuage hunger, those who have to lose their sanity because to be sane is to invite pain.

Perhaps the worst among these, who are my people, are those who have learnt to kill for a wage. To these, the extent of death is directly proportional to their personal welfare, and so, like pawns in the service of demented souls, they kill in furtherance of the political violence in KwaZulu-Natal. They murder the innocent in the taxi wars. They kill slowly or quickly in order to make profits from the illegal trade in narcotics. They are available for hire when husband wants to murder wife and wife, husband.

Among us prowl the products of our immoral and amoral past, killers who have no sense of the worth of human life, rapists who have absolute disdain for the women of our country, animals who would seek to benefit from the vulnerability of the children, the disabled and the old, the rapacious who brook no obstacle in their quest for self-enrichment.

All this I know and I know to be true because I am an African! Because of that, I am also able to state this fundamental truth, that I am born of a people who are heroes and heroines. I am born of a people who would not tolerate oppression. I am of a nation that would not allow that fear of death, of

torture, of imprisonment, of exile or of persecution should result in the perpetuation of injustice.

The great masses, who are our mother and father, will not permit that the behaviour of the few results in the description of our country and people as barbaric. Patient because history is on their side, these masses do not despair because today the weather is bad. Nor do they turn triumphalist when tomorrow the sun shines. Whatever the circumstances they have lived through, and because of that experience, they are determined to define for themselves who they are and who they should be.

We are assembled here today to mark their victory in acquiring and exercising their right to formulate their own definition of what it means to be African.

The constitution, whose adoption we celebrate, constitutes an unequivocal statement that we refuse to accept that our Africanness shall be defined by our race, our colour, our gender or our historical origins. [Applause.]

It is a firm assertion made by us that South Africa belongs to all who live in it, Black and White. [Applause.] It gives concrete expression to the sentiment we share as Africans, and will defend to the death, that the people shall govern. [Applause.]

It recognises the fact that the dignity of the individual is both an objective which society must pursue, and a goal which cannot be separated from the material wellbeing of that individual. It seeks to create a situation in which all our people shall be free from fear, including the fear of the oppression of one national group by another, the fear of the disempowerment of one social echelon by another, the fear of the use of State power to deny anybody his or her fundamental human rights, and the fear of tyranny.

It aims to open the doors so that those who were disadvantaged can assume their place in society as equals with their fellow human beings without regard to colour, race, gender, age or geographic dispersal. It provides the opportunity to enable each and all to state their views, promote them, strive for their implementation in the process of governance, without fear that a contrary view will be met with repression.

It creates a law-governed society which shall be inimical to arbitrary rule. It enables the resolution

of conflicts by peaceful means rather than resort to force. It rejoices in the diversity of our people and creates the space for all of us voluntarily to define ourselves as one people. As an African, this is an achievement of which I am proud, proud without reservation and proud without any feeling of conceit.

Our sense of elevation at this moment also derives from the fact that this magnificent product is the unique creation of African hands and African minds. But it also constitutes a tribute to our loss of vanity that despite the temptation to treat ourselves as an exceptional fragment of humanity, we could draw on the accumulated experience and wisdom of all humankind to define for ourselves what we want to be.

Together with the best in the world, we are also prone to pettiness, petulance, selfishness and short-sightedness. But it seems to have happened that we looked at ourselves and said that the time had come for us to make a superhuman effort to be other than human, to respond to the call to create for ourselves a glorious future, to remind ourselves of the Latin saying: *Gloria est consequenda*—glory must be sought.

Today it feels good to be an African. It feels good that I can stand here as a South African and as a foot soldier of a titanic African army, the ANC, to say to all the parties represented here, to the millions who made an input into the processes we are concluding, to our outstanding compatriots who have presided over the birth of our founding document, to the negotiators who pitted their wits one against the other, to the unseen stars who shone unseen, as the management and administration of the Constitutional Assembly—the advisers, the experts, the publicists—to the mass communications media, to our friends across the globe: Congratulations and well done! [Applause.]

I am an African. I am born of the peoples of the continent of Africa. The pain of the violent conflict that the peoples of Liberia and of Somalia, of the Sudan, of Burundi and Nigeria feel, is a pain that I also bear. The dismal shame of poverty, suffering and human degradation on my continent is a blight that we share. The blight on our happiness that derives from this, and from our drift to the periphery of the ordering of human affairs, leaves us in a persistent shadow of despair. This is a savage road to which nobody should be condemned.

This thing that we have done today in this small corner of a great continent that has contributed so decisively to the evolution of humanity, says that Africa reaffirms that she is continuing her rise from the ashes. [Applause.]

Whatever the setbacks of the moment, nothing can stop us now. Whatever the difficulties, Africa shall be at peace. However improbable it may sound to the sceptics, Africa will prosper. [Applause.] Whoever we may be, whatever our immediate interests, however much we are carrying baggage from our past, however much we have been caught by the fashion of cynicism and loss of faith in the capacity of the people, let us err today and say: Nothing can stop us now! [Applause.]

Mr F W DE KLERK: Mr Chairperson, Mr President, my colleague Mr Mbeki and hon members of the CA, my colleague started by defining himself. I am also an African. [Applause.] Although my people came from Europe more than 300 years ago, I became an African through the blood of my forebears which drenched our soil in fighting for freedom. I became an African through the dedication and hard work of my forebears in helping to build South Africa into the wonderful country it is: A modern, developed country which can compare with the best in the world. [Applause.]

For years, the many peoples of this country have been at each other's throats. On 27 April 1994, that struggle was resolved. Today we stand at the beginning of a new chapter in our country's history.

\*Today all of us in this Assembly have reached the end of a long and difficult road. We worked extremely hard, fought and clashed in this Constitutional Assembly. Negotiations often got bogged down. It was tough.

†However, it was also a creative path that we travelled. There was method in what often seemed to be madness. Slowly but surely the CA crafted a constitution that is unique to some extent, here and there a contradiction in terms, but nonetheless, a final starting point for the new South Africa.

The trial run is over. We are now ready to begin the real race to our destination. We are, generally speaking, united in our definition of what that destination should be—a vibrant, nonracial, multiparty democracy, a prosperous country con-

stantly offering new opportunities and opening new horizons to all its people, and a nation at peace with itself, reconciled with its past.

We are divided in our convictions as to the exact route we should follow to reach that destination. These differences will henceforth be the subject matter of our democratic contest in a fully democratic society. Within the framework of the freedoms which our new constitution guarantees, political parties, cultural communities, civil organisations, churches, universities, business and trade unions will be able to advance their cause to maintain their identity, spread their message, teach, trade, negotiate or whatever.

Within the framework of this constitution, we face the challenge of continuously normalising our society, of turning our backs on the bitterness of the past, of building, of developing, and of bringing a better life to all our people.

It is not a perfect constitution, but it is a reasonable starting point. The NP will, therefore, vote for this constitution . . . [Applause] . . . irrespective of its many shortcomings from our vantage point. We will vote for it, because we have succeeded through our inputs in achieving many positive provisions, provisions offering security for our cultural diversity and opportunities for all our people, provisions offering balance as well as a reasonable restriction of the misuse of power.

We will vote for this constitution, because it contains and enshrines many important principles with which we fully identify. We will vote for this constitution, because in the majority of its many provisions we have succeeded in improving the original proposals through our inputs.

Nonetheless, it was a difficult decision. There is much in the constitution with which we are not satisfied. In fact, we are in total disagreement with quite a number of provisions. In the final analysis, the decision to vote for this constitution was motivated by the following factors.

Firstly, in respect of the most fundamental issues related to my party's basic values and principles, we can truthfully say that they are sustained in a reasonable way and contained in this constitution.

Secondly, a vote against this constitution would carry a serious risk, in that much of that which is positive might be placed in serious jeopardy by a negative vote from the NP. [Applause.]

Thirdly, a long-drawn-out period of uncertainty and an inevitable confrontational referendum could damage the interests of our country irreparably. [Interjections.]

Let me stress that, irrespective of the last two factors, we in the NP would have voted no if we were not satisfied, in respect of the first, that by voting yes, we would not be violating any of the fundamental and basic principles of our party. [Applause.]

\*Today I do not want to concentrate on the negative. I will therefore confine myself to a few important issues, issues which made us seriously consider whether we should vote against the constitution.

The first of these is the fact that the new constitution sounds the death knell for multiparty participation in decision-making at the level of executive authority. Not even a very moderate proposal with regard to a multiparty consultation body was accepted by the majority party. I believe that in future South Africa will pay a heavy price for this in the form of a loss of confidence. South Africa is going to be in transition for many more years to come. The complexity of our population and economic composition, as well as the built-in conflict potential, can best be managed by means of a consensus-seeking model. This is now taboo. Instead of this, we now once again have a majority dominance model, and that is a mistake.

†The federal council of the NP will meet against this background next week to consider the implications of this situation, as well as to consider certain other provisions in the constitution.

\*Secondly, the constitution contains provisions with regard to the right to life which are worded in such a way that the NP is drastically opposed to them. Instead of accommodating the majority of all South Africans' opposition to abortion on demand, the constitution in fact lays a foundation for it. Instead of making the reintroduction of the death penalty possible in our violence-ridden country, the constitution closes the door on it. This is a mistake and furthermore, I believe that it disregards the opinion of the majority of South Africans.

A final example of what is totally unacceptable, is the entire issue of employers' right to lock out workers. For the NP's part and for other parties' part, we negotiated fairly reasonably on the basis that the lockout clause did not have to be included

by name. All we asked for was a reasonable balance between the definition of trade union rights and employers' rights. What is now contained in the constitution has been described by some as pathetic. I think it is unreasonable and indefensible.

I do not want to spoil a lovely day, but ... [Interjections.] I would be violating my conscience if I did not say that the handling of this matter was scandalous. The decision on this matter was forced by Cosatu, and members of the ANC who knew better, yielded. [Interjections.]

†I also want to refer to the hon member Mr Leon in this regard. According to the press he is creating the impression that the NP supported the ANC in its position on this. I want to say that this is not true and that, if he is guilty of that, it is a political trick unworthy of a leader of a party. [Interjections.]

\*The NP believes that the current provisions with regard to labour issues do not comply with Constitutional Principle XXVIII, and asks that the Constitutional Court will look closely at the matter during the certification process.

I could mention other issues which offer a basis for a no-vote, but time does not allow me to do so. With regard to the issues I have referred to and the other provisions with which we do not agree, I would just like to say the following. The NP will strive for the improvement of the constitution. From now on the amendments of those important provisions will form part of the NP's policy proposals in each future election.

Against this background, everyone must know that, when the NP presently votes for the constitution, it is not voting for the shortcomings and mistakes in that constitution. We placed the positive and negative points on a scale and decided that the positive outweighed the negative. Therefore, in accordance with parliamentary tradition, we are voting in favour of the constitution. Eventually we are voting yes because we can say that, by standing firm, we negotiated a constitution that we can live with. In this way, for example, we are convinced that the final provision with regard to education does indeed give full recognition to the right to mother-tongue education and that it ensures the continued existence of nonracial single-medium schools where this is justified.

We would have wanted a different and better formulation, but we are convinced that, also considering other provisions in the constitution, we also succeeded in our negotiating objective with regard to this matter.

†The same applies to the property clause. If one traces the history of this clause and compares it to the final clause, then it is apparent that it has been vastly improved, improved in the sense that, as it now stands, it offers effective assurance to property owners of all sorts. Also here we would have preferred to phrase it differently. However, what we have before us allows me to say that we have essentially succeeded in achieving our negotiating goal.

In a lighter vein, I therefore claim, in Bafana Bafana terminology, a two-one score on the last three crucial issues of the negotiating process. [Laughter.] [Applause.]

I could mention numerous other provisions where we feel proud that we contributed to a better constitution, and so all the parties could do with justification.

In conclusion, therefore, I lift my proverbial hat to all the negotiators, to the high-profile ones such as Mr Cyril Ramaphosa, Mr Leon Wessels and Mr Roelf Meyer. But I also do so to the scores of members of Parliament and senators who have worked through many nights. I also salute the experts and staff who worked so tirelessly. They have, through their combined efforts, delivered a constitution complete and on time.

No doubt mistakes have been made and many technical amendments will be placed before us in the months to come.

\*However, this does not detract from the enormous amount of work done, and for that we pay tribute to the entire constitutional team.

And now a new chapter begins. The rules of the game have been determined. Our charter creates a safety net for all South Africans. It offers them protection and opportunities across a broad spectrum. Our constitution creates the channels along which all South Africans can assert themselves in a democratic manner. It creates institutions and mechanisms to maintain democracy, to fight corruption, to correct the injustice of the past, to counter discrimination, to enforce the administration of justice, and to accommodate our cultural diversity. Within this framework the NP today

states that it will make its full contribution to make South Africa a winning nation. We will do this by fearless opposition when necessary. We will do it by co-operating loyally when we believe that South Africa asks that of us. We will remain true to our motto: South Africa first. [Applause.]

Gen C L VILJOEN: Mr Chairperson, hon President Mandela, ladies and gentleman, I have to be fashionable. Everybody claims to be an African and, of course, I am an African too! [Laughter.] [Applause.]

In 1994 my party chose the way of negotiations. We opted for peace, and we opted to be a part of constitution making, because we believed that nobody else could serve the interests of our people better than representatives elected by our people.

We had many problems in this regard. We were small in number. In fact, we have only one real constitutional expert in our party. We found it difficult because we had entered into a specific new direction, that of self-determination. It was also done within an era of a very strong anti-apartheid feeling. The majority of this Parliament therefore often found this idea unacceptable. They talked about balkanisation, and the dangers of reviving ethnicity. Even within their own ranks, there was not always clarity on exactly what was meant by this idea of self-determination.

We had opposition from the left, from the NP which housed some Afrikaners who said they wanted to be more anti-apartheid than the ANC themselves. [Laughter.] In this way they often opposed us with regard to very valuable suggestions. Also, the CP fought us from the right, because they said we had moved the goal posts.

One of the most important problems we experienced was the fact that the concept of self-determination, as applied for the solution of problems in a multicultural society such as ours, is a concept that is still developing in the international world. This is something that we found difficult to apply fundamentally to the situation in South Africa. There needs to be more development in this direction.

The historical background against which we had to undertake this was also a difficult issue, or complicating factor. Somehow, our position was unique and it was often very stressful. On the whole, however, we can say today that it was a worthwhile effort and we have been very satisfied

to be part of this process of constitution-making. We feel that the constitution we have today is a constitution, written by the majority, of course, for the majority of the people. [Applause.] We often wondered whether this was not going to be a constitution of revenge of the majority, because we were at times worried about whether some form of minority rights for groups would be included. Today I must say that we are happy to claim that at least we have included in this constitution the very basic requirements for this protection.

Although the constitution is not perfect, and there can certainly be problems with it, it was written by all the people of the country and is therefore legitimate. Therefore we are happy to be part of this whole process. [Applause.]

Our mandate was to pursue Afrikaner self-determination. The question that we had to face was: From a position of disempowerment, from a psychologically disadvantaged situation, what is the best for the Afrikaner people in the new South Africa? How do we fit into the new South African situation? This is the one victory we had very early in our existence, namely to realise that the Afrikaner people are connected to the whole of South Africa, as the whole of South Africa is connected to the Afrikaner people. [Applause.]

\*Therefore, as far as self-determination is concerned, I want to start by conveying my sincere appreciation to all the parties, keeping in mind the trilateral discussions that took place before the 1994 election. I am thinking of the inclusion of the very important Constitutional Principle XXXIV in particular. I am grateful for the Volkstaat Council, which was established and carried by the State and could help us carry out this important research. I am very grateful for the work that they have done, and for the important contribution, particularly the last usable conference where international experts informed us about trends in self-determination elsewhere in the world.

I am very grateful to President Mandela and all the parties in this Assembly for the extremely sensitive way in which everyone dealt with this matter. I also owe a debt of gratitude to the Chairperson of the Constitutional Assembly and the staff of the CA for the way in which they have accommodated us here. If we had dealt with this sensitive issue in an insensitive manner we would not have achieved anything.

For us the principle of self-determination is internal self-determination. It has two legs. Firstly it has a leg of cultural self-determination, and secondly it has a leg of territorial autonomy. As far as the second leg is concerned, we naturally have to admit that we could not in the time available reach sufficient consensus to pass it at this stage. However, it remains an ideal which we will continue to pursue, because we believe that that is the way in which we will really ensure peace in South Africa. However, we need a greater measure of Afrikaner unity in order to achieve that. The division amongst Afrikaners as far as this matter is concerned—I am not talking about political division—is an issue that has to be resolved before progress can be made in this regard.

We are therefore grateful that Constitutional Principle XXXIV has been included in the new section 235 of the constitution. The time to come will prove that we were right. We are grateful to be able to say we believe this important aspect will become more acceptable as times goes by, because Afrikaner self-determination is not an issue that concerns Afrikaners only; it concerns the entire country, and we are part of this country.

As far as cultural self-determination is concerned, we achieved full constitutional provision. Firstly we have the commission for national groups that has been introduced in terms of Chapter 9. This is a commission, of which we have been the instrument, that will be available to not only Afrikaners, but also to all the groups in the country. It is very gratifying for me to be able to say we think that in this way we have made a modest contribution that will also be useful to the rest of the country in the future.

We are also reminded of clause 235, to which I have already made reference. This is the principle of self-determination that has been included. I am thinking about the issue of the Bill of Rights and the idea of collective rights contained in clause 31. What more could we have wished for? We are grateful to everyone who has taken part in the process, also for the way in which the constitutional process has taken place, so that this sensitive issue could be finalised so pleasantly—I wanted to say in a dramatic fashion—during the early morning hours of the negotiations. We thank everyone for that.

We have a tremendous responsibility now. As the majority the ANC should handle this matter

correctly, and as a minority we should be responsible in our demands with regard to what is now in the Statute Book.

Of course there are also negative aspects of the constitution. We have a problem with the clause on education and the preamble to the constitution in particular. We initially hoped that Almighty God would be given greater recognition in the preamble than is at present the case. We spoke about it, and said in the Constitutional Committee that the people whom we represented felt very strongly about that. However, as a nation and a party we will not vote against the entire constitution because of that.

However, we feel that we have sufficient reason for taking a strong stand as far as the clause on education is concerned. I want to state this reason clearly today, to prevent my being misunderstood. We do not want apartheid schools, but if we want to protect and promote our culture, in which case the time that a child is at school is of crucial importance. It is with this purpose in mind that we would have liked to have a greater measure of control over Afrikaans single-medium schools.

Why, then, are we not part of the compromise that has been reached? I must be honest and say that I do not think it was a compromise. I think it was playing with words to circumvent a deadlock. We are a party with fundamental convictions. We believe that what is right, is right. We also vote for what is right and against what we think is not right. We do not want to play with words; it is not suitable for a constitution. The FF has a responsibility to give effect to the mandate that our people have given us. The mandate relating to issues associated with education not only comes from our party, but from the entire Afrikaner community. We therefore had an immense problem in this respect, and this morning, during the early morning hours, until just before four o'clock, held discussions with our executive in order to establish what we were to say in this regard.

The FF is honest and candid, and for that deserves respect. We believe that when we agree, we agree. [Applause.] In that case we do not only agree, however, but we also act in unison. When we differ, we differ. I am very grateful for the exceptional understanding that the President showed when I called him this morning to inform him beforehand of the standpoint of the FF.

†Now the question is: Where do we stand on the whole of the constitution? The fact is that there are so many positive aspects in this constitution which we have achieved, and we are so thankful for that, that it is impossible to vote against the constitution. [Applause.] However, before hon members come to the wrong conclusion... [Laughter]... I would like to say that we also have this very urgent and very serious issue, our main mission, which is to protect our culture. We have considered this, and we have realised that it is such a serious matter that we also will not be able to vote for the constitution. So we have decided to abstain because of the education clause.

We will respect the constitution. [Interjections.] We will work together through our principle of constructive engagement. We will carry on working together towards finding a way to make this constitution work. We are prepared now to say that this is the time for us to stop talking. We are prepared to put our shoulder to the wheel and start working so that we can create jobs and improve quality of life, because this is what our country requires most from the constitution at this stage. [Applause.]

**Mr A. J. LEON:** Mr Chairperson, I too am an African—an African by birth, but also an African by choice. This is the most exciting country in the world today and I would not want to live anywhere else. [Applause.]

The previous speakers have spoken eloquently and movingly about their roots in this country. I briefly want to touch on my own: Four generations ago, my great-grandparents fled the oppression of a distant country on another continent. But the land they came to was not free. While it conferred rights on some, it denied them to many. I am therefore proud and humbled to be part of a process of rectifying that wrong by extending those rights.

In standing here today, I am also conscious of the privilege conferred upon few people, a chance to speak to South Africa about a new dawn and about the ties that bind us all to a new democratic destination and, specifically, to make a judgment call on the constitutional road map we have drawn to guide us on this long and never-ending journey.

The completion of a constitution today, institutionalising the rule of law, the highest law in the land, marks our most significant contribu-

tion to effecting the dream of a democratic nation. This day must be dedicated to all those South Africans who gave their lives so that our country could one day call itself peaceful, just and democratic. [Applause.]

I would also wish to use this opportunity to pay special tribute to those people on whose shoulders I stand in particular, as does my party. Thirty-five years ago people like Helen Suzman, Colin Eglin and Zach de Beer broke the mould of White baasskap in a previous parliament, and formed a small party which said, in those dark and distant times, the following:

No state must ever again be so powerful that it can crush its opponents and remove at its whim the rights of its citizens.

● On the contrary, it saw each South African as a unique individual, whose rights do not lie in the gift of government, to be given as a favour, and to be removed by caprice. It said:

We reject the delusion that a collective aim justifies all means and repudiate the demand that the individual should be subordinated or sacrificed to the community.

Fourthly, they said:

You tame power with power and you distribute it best in a federation and check it with a Bill of Rights safeguarded by independent judges.

This constitution today is certainly the culmination of an exhaustive process. In part, but not completely, it is also a justification of the efforts of my predecessors. I have been given this opportunity to tell the supporters, and also the one or two detractors of my party in this Chamber, whether the DP will endorse this constitution as it is written.

My party asks a fundamental question: Is this constitution democratic? [Interjections.] In many aspects the answer is affirmative. It entrenches, most importantly, a true separation of power and it provides the guarantee of three levels of government. For the first time in our history the executive is to be checked by a democratically elected legislature and by an independent judiciary. Representativeness, accountability, transparency and public participation—words never previously associated with the South African Government—are sprinkled throughout this document. Its Bill of Rights is one of the most liberal in the world. [Applause.]

However, we ask a further question: Is this constitution appropriate to the demands of a deeply divided society, a young democracy not yet characterised by political tolerance and a country which has wary international partners? We therefore have several reservations with regard to the Bill of Rights and we shall be obliged to draw these exceptions to the attention of the Constitutional Court.

We question the constitutionality and the propriety of the limitations clause, the property clause and especially the labour relations clause as they now stand. Granting an unfettered right to strike, unchecked by the right to lockout, gives trade unions in this country extraordinary power. [Interjections.] Cumulatively viewed, the labour relations provisions place organised labour in a privileged position above the reach of the legislature and of economic constraints. [Interjections.]

Indeed, it could be said that this Cosatu . . . this constitution . . . [Interjections.] [Applause.] That was a Freudian slip. I have got Cosatu on the brain, you see. It could be said that this constitution confers on Cosatu enough power to make or unmake future governments and to break the economy. [Interjections.] That is why we are going to the Constitutional Court—we believe that those clauses negate the promise of the constitutional principles of equal protection and parity for business and labour.

We also campaigned for many months to remove the undemocratic clause in the interim Constitution which prevents members of Parliament from crossing the floor on matters of conscience and principle. We are deeply disappointed that this section remains intact.

Furthermore, we believe that proportional representation is inadequate to meet the standards of accountability that direct constituencies would impose on Government representatives. We are certainly content with the instruments for promoting democracy and accountability such as the Auditor-General, the Public Protector, the Human Rights Commission and the Independent Electoral Commission. We are unhappy, however, with the mechanisms for their appointment which, in effect, allows the majority party to appoint its own watchdogs. [Interjections.]

One of the fundamental principles of my party has been to advance the devolution of power and the creation of the prospects of a federal state in South

Africa. Often in the Constitutional Assembly we were the lone voice countering the natural inclination of others towards strong central government. We stood alone sometimes in representing the views of many South Africans who share this desire. [Interjections.] I believe that the federalist elements of this constitution represent a substantial contribution by my party and those who have that belief. Despite our size and in the face of many odds, we have certainly carried that torch. While this constitution may not be as federal as we would have wished, hoping as we were for more exclusive provincial powers and fewer concurrent powers with the number of national overrides much more limited, it meets—barely—our test.

We have to ask ourselves a fundamental question: Does this constitution redeem the pledge of the Old Testament: "Justice, justice shalt thou seek"? We believe that substantially it does.

A constitution must be judged within the context of its capacity to protect and promote the interests of minorities. It has been said that government is free in proportion to the rights it guarantees the minorities.

Drafting another constitution, Thomas Jefferson said:

All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which law must protect, and to violate would be oppression.

Whether or not our constitution in fact and in future will meet that test has to be open to question, but we must act in good faith.

Having mentioned these reservations, there are certain specific contributions to be claimed. Certainly, where federalism succeeds, particularly in terms of local powers and local autonomy, we can claim much credit.

The Bill of Rights, though not perfect, is a graceful contribution to basic civil liberties, particularly in the rights to life, security of person, privacy and administrative justice. We do have the serious reservations I have mentioned, but we are proud of the human rights that are protected and the institutions of democracy that are established.

Of concern to all South Africans is our endemic and epidemic crime rate, and I am pleased to say

that this constitution at last, and after some struggle on our and other people's part, ensures the prospect of municipal and provincial policing.

Most fundamentally, with regard to the chapters dealing with security, we have written into this constitution the requirement that the President, whoever he or she might be, will never again be allowed to deploy troops in a foreign country without parliamentary oversight. There will be no more secret wars in Angola.

This constitution shines a bright light in dark places. It allows our citizens access to information previously denied to us.

Finally, in the chapters on government financial management, we improved the interim Constitution substantially and send a message of fiscal responsibility and innovation to the international community.

Our decision to support or oppose this constitution was fundamentally based on our deepest commitment to South Africa and its people. We want South Africa to succeed. We want our people to prosper. We want our democracy to take root. We want our currency to stabilise and investor confidence to improve. We want to leave a legacy that is worth its name for the children of the new South Africa. We want South Africans to walk the road ahead with a common purpose, a common road map under a common flag.

Despite our misgivings, some of them fundamental, we support this constitution and all it represents. [Applause.] In the final analysis, this constitution will succeed if it provides a shield behind which ordinary South Africans can be secured in the fastness of their rights. However, it will fail if it is used as a battering ram to invade the fundamental freedoms of our citizens in pursuit of political ideology or social engineering or an egalitarianism which forsakes justice and liberty.

For this constitution to bind the wounds of the past, we require bold independent judges, statesmanlike politicians and independent citizens. No constitution in the world, however good, bad or indifferent, can guarantee these qualities. Only our people can.

Our new constitution is not the end of the journey towards the new South Africa. It is an important milestone on a never-ending road. It holds the promise and the potential of lifting our sights

beyond the valley of the shadow where we have dwelt for too long. May God guide us on this journey and may God bless South Africa. Nkosi sikelel' iAfrica. [Applause.]

Mr C M MAKWETU: Mr Chairperson, hon President of the Republic, hon Deputy Presidents, ladies and gentlemen, I have refrained from defining myself, seeing that each and every speaker before me has accepted the PAC definition. This brings us to the question of whether it is wise for us to continue calling ourselves a rainbow nation, seeing that everybody today has become an African. [Applause.]

The PAC would like to thank all those who sacrificed everything to make this document possible. Let me at the outset assert a few fundamentals. South Africa is emerging from a national liberation struggle for the restoration of the country to its rightful owners. This is why the PAC official slogan is "Izwe Lethu!" [Our country!]

An HON MEMBER: One settler, one bullet! [Laughter.]

Mr C M MAKWETU: That one is unofficial.

This scenario imposes certain expectations on a constitution which is said to be democratic. One such expectation is the solution of the national land question on a democratic basis. In this regard the PAC is pleased to see that the notion of an enforced coalition in Government has been dropped. The majority party will rule outright. However, it is disappointing that the Government of National Unity, which is now a farce, is still being maintained until 1999. [Laughter.]

The PAC supports the notion of co-operative governance. This has attempted as much as possible to centralise policy formulation at national level, with provinces involved on the whole in policy implementation. This is good for national unity and development. However, we feel that the late introduction of exclusive powers for provinces has given them too much.

We are concerned that the number of provinces was not reviewed, as we do not believe that the country needs or can afford nine provinces. The PAC has submitted the criteria which can be used to delimit new provincial boundaries based on a need to ensure economic viability, administrative efficiency, closeness of government to the people and the undermining of ethnicity. We are absolutely delighted that the redundant Senate has

been abolished. The new National Council of Provinces... [Interjections.] May I proceed, please?

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Makwetu, from one African to another, you may proceed. [Laughter.]

Mr C M MAKWETU: The new National Council of Provinces is an interesting creation which has our qualified support. We will watch its performance very closely.

This constitution breaks new ground in defining human rights, as our Bill of Rights includes not only civil and political rights, but also socioeconomic rights such as the right to education, housing, health, water and land. Although these rights are not enforceable in the courts, our constitution obligates the State to realise them progressively. In addition, the Human Rights Commission has been given the power to request information from the Government annually about measures it has taken to realise the socioeconomic rights.

We must express our concern that certain fundamental rights have been watered down in the flawed belief that this will contribute significantly to the fight against crime. These rights include the right of accused persons to a fair trial, the right of access to information, the right to bail and, more importantly, the limitations clause. We concede that crime prevention or control is important, but it should be done as part and parcel of the creation of a human rights culture, and not at its expense. The PAC would humbly submit that while we should be tough on criminal offenders, we should be tougher on the socioeconomic causes of such offences, such as unemployment, illiteracy, poverty and apartheid injustices.

Allow me to come to our major areas of concern in this constitution. We said earlier that the PAC would like to see the solution of the national question on a democratic basis.

When our constitution entrenches property rights, this immediately sends wrong signals. It means that we are dishing out rewards for theft. Most of the land was taken through theft, robbery, conquest and forced removals. It is still in the hands of the White minority. Africans, the rightful owners, are landless and are squatters in the land of their birth.

In a free South Africa the Minister of Land Affairs pays a White farmer R4 million for a farm that belongs to indigenous people, and was bought from another settler for a mere R37 in 1960. [Laughter.] In one weekend in April, owing to the fall of the rand, foreigners bought property, land and houses to the tune of R40 million. What about the landless masses of our people? Who owns this country?

While we agree that the present clause is far better than the one in the interim Constitution, it still legitimises land conquest and colonial property relations. The possibility that even the so-called access to land may exclude mineral resources is frightening.

This is aggravated by the fact that the constitution does not tell us what is going to happen to our national anthem. This will be proclaimed later by the President.

Our constitution retains a flag that was imposed by an undemocratic World Trade Centre process . . . [Laughter] . . . and has no real meaning to our people. This constitution, instead of rewriting our history and reasserting the true character of South Africa as an African country, perpetuates the historical lie in its preamble by declaring that South Africa belongs to all who live in it. [Laughter.]

We in the PAC are saying that it does not. It belongs to Africans. If one wants to be generous, one can say it belongs to all its citizens. These flaws and fundamental concessions make one wonder whether we still remember the sacrifices many of our people made in order that we might be in this CA today. Is the national question still relevant? The PAC has always maintained, even during the liberation struggle, that land wars are labour wars.

We have been concerned by the fallacy of trying to equate workers with employers, as if the two were equals. Workers need more protection. The employers' wealth and ownership of the means of production afford them an unfair advantage. We are pleased to see that the so-called right to lock-out has not been entrenched in this constitution. [Applause.] Our constitution must send a clear message to investors and captains of industry that slavery was abolished in the 18th century and it has no place in our democratic dispensation. [Applause.]

Education is critical to the development of our people and country. This country can ill afford to waste its meagre resources in pursuit of a Verwoerdian model of education. Public-funded education must be accessible to all in multilingual public institutions. Private schools and other fantasies of the privileged must be at their own expense and without any discrimination. Our constitution cannot afford to equivocate on this matter.

The PAC is concerned by the marginalisation of traditional leaders, traditional institutions and customary law in our constitution. Chapter 12 is vague, scanty and insufficient. More importantly, it does not comply with Constitutional Principle XIII. The PAC has suggested that in the medium term we should retain the provisions of the interim Constitution. Alas, our constitution writers are bent on a Western liberal definition of democracy. We think this is a mistake. We do understand, as the PAC, that some of the unpalatable compromises are due to the fact that the liberation movements in the Constitutional Assembly do not have a two-thirds majority. We hope our people will correct this in 1999.

Finally, we do believe that this constitution, despite the serious flaws we have highlighted, is a marked improvement on the interim Constitution. The PAC will, of course, continue to fight for the rectification of all these shortcomings. However, we must say that this constitution does seem to create a fair constitutional order, a constitutional state and a working system of government. My organisation, the PAC, will therefore give this constitution the benefit of the doubt by voting for its adoption. [Applause.]

Rev K R MESHOE: Mr Chairperson, Mr President, hon Deputy Presidents, distinguished guests, hon members, ladies and gentlemen, the past two years have been very hectic for the ACDP members especially, as we were thinly spread between the Constitutional Assembly meetings and our many other parliamentary duties and commitments. It was our sincere hope and desire that the constitution we worked so hard to help put together would be a lasting document that would be arrived at by general agreement of all parties.

We have shifted positions on a number of issues in order to reach consensus with other political parties without compromising our principles. The

process was a great learning experience for us, which we will treasure for many years to come.

The constitution we have before us this morning has failed to accommodate many submissions from the public that were highlighted by two marches to Parliament by the Christian Voice that took place on 30 May 1995 and 3 May 1996. Everything that they requested and all the concerns raised in their memoranda were swept under the carpet. As a result, the objective of drafting a final constitution that was legitimate, credible and could be accepted by all South Africans was not reached.

During my first speech in this House on 26 May 1994 on behalf of the ACDP, I promised our President our loyal support in all matters that did not violate the principles of the will of God. I am glad to say to all South Africans that we have managed to keep that promise. As we debated and negotiated different clauses in our constitution, we co-operated, compromised and promoted consensus on matters that did not violate biblical principles.

A number of clauses that were promoted and endorsed by other political parties, which we as the ACDP feel undermine biblical principles, have been included in this document. Consequently we are forced to vote against it. I am going to highlight only two of them. Firstly the ACDP finds the subjection of biblical law to this constitution totally unacceptable. We believe that the Bible, that took more than a thousand years to put together, should have the supremacy over this constitution, which has been drafted by mortal and fallible men over a period of 24 months. [Interjections.] I cannot imagine being told . . .

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! May I just say that freedom of expression is entrenched in this constitution. [Applause.]

Rev K R MESHOE: Thank you!

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: However, that does not mean that members must exercise that right simultaneously. [Laughter.] We grant Rev Meshoe the opportunity to exercise his right now.

Rev K R MESHOE: I cannot imagine that a South African court would tell me I was being unconstitutional if I promoted a biblical principle that has stood the test of time. We believe that the word of

the Lord is right and true as stated in Psalm 33:4. Therefore, all clauses in this constitution that undermine biblical law are not right or true and would therefore be rejected by all committed Christians.

The second reason the ACDP will vote against this constitution is that it undermines family values. The ACDP believes in promoting and protecting family values. We cannot build a healthy society while at the same time destroying its family and moral values. The family is the most important building block of any society. This constitution has protected criminals and those involved in sinful and unnatural lifestyles and behaviour, but it has failed dismally to protect South African families. With the high level of divorce in our country, the ACDP finds it regrettable that a constitution that contains nothing as a remedy or as a safeguard for families, which are the building blocks of any society, is being hailed as a major breakthrough by some elements.

The anti-family clauses in this constitution are going to contribute significantly to the already high divorce rate that we have in this country and, as a consequence, lead to an increase in the many homeless and street children. I can assure hon members that we are concerned about the future of the street children who come from homes that have disintegrated.

Because of our love for all the people of South Africa, we are going to do everything in our power to bring amendments to this constitution over the next four years. [Interjections.] This constitution will not last until the necessary changes have been made. We must promote family values and build our constitution and democracy on biblical principles. Until that is done, we shall not have started to build the nation.

Debate concluded.

## CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA BILL

(Decision of Question on Second Reading)

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Before I put the question that the Bill now be read a second time, I would like to draw the attention of members to section 73(2) of the current Constitution, which provides as follows:

For the passing of the new constitutional text by the Constitutional Assembly, a majority of at

least two thirds of all the members of the Constitutional Assembly shall be required: Provided that provisions of such text relating to the boundaries, powers and functions of provinces shall not be considered passed by the Constitutional Assembly unless approved also by a majority of two thirds of all the members of the Senate.

In order to comply with this requirement a vote on the approval of the relevant provisions relating to the provinces will first be taken by Senators alone. Thereafter, on the attaining of a two-thirds majority among members of the Senate, the Constitutional Assembly as a whole will vote on the Second Reading of the constitution. Because a special majority is required in both instances, it will be necessary for members to record their votes using the electronic voting system, whether or not a division is called for.

\*Mr J CHIOLÉ: Mr Chairperson . . .

\*The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Mr Chiolé, may I assist you? I am of the opinion that your party's abstention from participating in this voting must be noted. There was a technical problem and I am going to give you the opportunity to explain your party's position. [Interjections.] Calm down, calm down in the back-benches! We have co-operated well for two years. Remain calm. [Laughter.]

\*Mr J CHIOLÉ: Mr Chairperson, the microphone is working now, thank you.

I would just like to point out to you that the FF officially abstained, and it is my submission that these votes were counted with the votes of those who voted for the Constitution. I want to ensure you that we did not press our buttons, and I therefore submit that the result that was announced was not correct. I request that we arrange the corrections with you later if the electronic apparatus is out of order. [Interjections.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! May I have your attention, please? I am being advised by many people, but not formally. So, if anybody would like to address me as far as the procedure is concerned, he will now have the opportunity to do so formally.

\*Mr J R DE VILLE: Mr Chairperson, can the names of those persons in the Senate who also abstained, be noted?

\*The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I have a formal motion from the Chief Whip of the FF.

†I would submit that, since we have had a wonderful day and it has been a wonderful occasion, and in order to place this result beyond any question of doubt, we should go through the whole voting procedure again. [Applause.]

Mr J A JOOSTE: Mr Chairperson, as far the Senate is concerned, I suggest that we also have a revote on the first question, seeing that we also had a problem with the abstention votes in the Senate.

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I will accede to this request, simply because we are engaged in the process of making history. The result is beyond question of doubt. We simply also want to get it correct technically.

I therefore approach the Senators. They know the issue before them. They should remove their cards, put them in the slots, and if they are in favour of the question, they should press the red button . . . [Interjections.] Sorry, those in favour must press the blue button, and those against must press the red button. Those who abstain must leave their cards in the slots and we will record their abstention.

Mr H A SMIT: Mr Chairperson, on a point of order: Some members left the Chamber after the previous voting procedure. I therefore suggest that the bells be rung in order to allow them to return to the Chamber. [Interjections.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: I will request the Secretary to ring the bells again. The bells will be rung for one minute. As a matter of interest, Mr Ramaphosa's vote is recorded manually. I am told that, as chairperson, I am not allowed to vote. I will have to do something to register my opinion. [Laughter.]

The Deputy Chairperson announced that in accordance with section 73(2) of the Constitution, a vote on the provisions of the Bill relating to the boundaries, powers and functions of provinces would first be taken by senators alone. In the

event of a division not being demanded, the votes of senators in favour of the Question would be recorded in the Minutes.

The result of the vote was as follows:

AYES—80: Ackermann, C; Balie, A; Beesham, A K; Bhabha, M; Bloem, D V; Bogacwi, K A; Botha, Y R; Chiwayo, L L L; Coetsee, H J; Cwele, S C; Diale, N L; Direko, I W; Fenyane, S L E; Fisher, S D; Foster, J A; Gamndana, T; Gillwald, C E; Grové, S P; Hendrickse, H J A; Jooste, J A; Kgoali, J L; Khobe, O N; Koornhof, G W; Lamani, N E; Lebona, H J P; Losabe, L K; Lubidla, E N; Lubisi, S W; Madondo, M I; Mahlangu, J L; Makgothi, H G; Malatsi, D M; Marais, A; Marais, G; Maserumule, F; Mashamba, T G G; Mashile, N L; Mbeki, G A M; Mduyana, S N N; Metele, A T; Mkwai, Z W; Mnisi, W F; 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; Mshwana, M L; Mutsila, I; Naidoo, E N I; Ndzanga, R A; Ngcuka, B T; Nobunga, B J; Nogumla, R Z; Radue, R J; Rasmeni, S M; Redcliffe, C R; Saloojee, R A M; Selve, J; Sifora, T V; Sosibo, J E; Sulliman, M A; Surty, M E; Swanepoel, L J; Taunyane, D P; Tinto, C F; Tolo, L J; Tonjeni, T L; Tshivhase, M P K; Tyobeka, V M; Van Breda, A; Van Niekerk, A E; Van Niekerk, A I; Wiley, M G E; Williams, A J.

ABSTENTIONS—3: De Ville, J R; Groenewald, P H; Van der Walt, B J.

The relevant provisions having been approved by senators in accordance with section 73(2) of the Constitution, the Assembly proceeded to vote on the Second Reading of the Bill.

The Deputy Chairperson announced that in the event of a division not being demanded, the votes of members in favour of the Question would be recorded in the Minutes.

The result of the vote was as follows:

AYES—421: Abrahams, L A; Ackermann, C; Alant, T G; Albertyn, J T; Andrew, K M; Appelgryn, M S; Arendse, J D; Asmal, A K; Badenhorst, M J; Bakker, D M; Balie, A; Baloyi, S F; Bam, N J; Beesham, A K; Bengu, S M E; Bester, B C; Beyers, A S; Bhabha, M; Bhengu, F; Bikitsha, P I; Blaas, A; Bloem, D V; Bogacwi, K A; Booi, M S; Botha, R F; Botha, Y R; Bunting, B P; Cachalia, I M; Camerer, S M;

Carelse, G M E; Carrim, Y I; Chabane, O C; Chait, E J; Chalmers, J; Chauke, P; Chiba, L; Chikane, M M; Chiwayo, L L L; Chohan, F; Chuenyane, L D; Coetsee, H J; Coetzee, M P; Coetzer, P W; 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 Klerk, F W; De Lange, J H; De Lille, P; De Villiers, D J; Dexter, P D; Diale, N L; Didiza, A T; Dingani, Z A; Direko, I W; Dlamini, B O; Dlamini, C; Doidge, G Q; Dowry, J J; Duna, M W; Du Toit, D C; Dyani, M M Z; Ebrahim, A G; Ebrahim, E I; Eglin, C W; Ellis, M J; Erwin, A; Fani, L M; Fankomo, F C; Farisani, T S; Fazzie, E; Fazzie, H M; Fenyane, S L E; Ferguson, J; Fihla, N B; Fisher, S D; Fisser, C L; Foster, J A; Fourie, A; Fraser-Moleketi, G J; Fredericks, G A; Gamndana, T; Gandhi, E; Gcabashe, S J; Gcina, C I; Geldenhuys, B L; George, C M; George, M E; Gibson, D H M; Gillwald, C E; Gininda, M S; Ginwala, F N; Gogotya, N J; Golding, M J; Goniwe, T M; Goosen, A D; Gordhan, P J; Govender, D; Govender, P; Graaff, D d V; Groenewald, R H; Grové, S P; Gumede, A J; Gumede, D M; Gxowa, N B; Hajaj, F; Hamman, M v S; Hanekom, D A; Hangana, N E; Hani, L; Hendrickse, P A C; Hendrickse, H J A; Hofmeyr, W A; Hogan, B A; Holomisa, B H; Holomisa, S P; Jana, D P; Janse van Rensburg, A P; Jassat, E; Jooste, J A; Jordaan, D A; Jordaan, J A; Jordan, P; Kasrils, R; Kathrada, A M; Kekana, N N; Kgauwe, Q J; Kgoali, J L; Kgositsile, B; Khasu, M J; Khobe, O N; King, T J; Kondlo, N; Koornhof, G W; Koornhof, N J v R; Kota, Z A; Kuzwayo, N E K; Lamani, N E; Landers, L T; Lebona, H J P; Lee, T D; Leeuw, S J; Leggoro, M K; Leon, A J; Le Roux, J W; Ligege, M G; Lockey, D; Loots, H G; Losabe, L K; Louw, S K; Love, J Y; Lubidla, E N; Lubisi, S W; Mabandla, B S; Mabudafhasi, R T; Mabude, N M; Mabuza, M C; Madikizela, P; Madondo, M I; Maduna, P M; Mafolo, M T; Maharaj, S R; Mahlalela, A F; Mahlangu, G L; Mahlangu, J L; Mahlangu, M J; Mahlangu, N J; Maine, M S; Makgothi, H G; Makhanya, D W; Makume, N J; Makwetla, S P; Makweta, C M; Malan, T J; Malatsi, D M; Malebo, S M; Maloney, L; Malumise, M M; Mandela, N W; Mangaliso, Z K; Manie, M S; Manuel, T A; Mapisa-Nqakula, N N; Marais, A; Marais, G; Marais, J A; Marais, P G; Marcus, G; Maree, J W; Marsh, D W; Marshoff, F B; Martins, B A D; Maserumule, F; Mashamba, H J; Mashamba, T G G; Masher, M G; Mashile, N L; Mashimbye, J N; Mathebe, P; Matthee, P A;

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requiring that if something did go wrong, the Constitutional Assembly would reconvene and begin to address what was wrong. That triad is made up of the Constitutional Assembly itself, the Constitutional Principles in terms of which the new constitution had to be drafted and which the new text had to comply with, and the Constitutional Court, which had to ensure that the new constitution indeed complied with the Constitutional Principles.

I think it is also appropriate that, as the Constitutional Assembly, we pay tribute to the Constitutional Court for the rigorous and systematic way in which it went about its business in assessing the new constitutional text which we had put to it. The court was fair, open and transparent. It was inclusive and, above all, principled in its own right. What was sent back to us was a group of issues, very clearly defined, and enunciated in a very helpful way in order to assist us in focusing our minds.

I think it is also appropriate for us to have a global assessment of what it is that we are dealing with. The constitutional text which we submitted to the Constitutional Court had some 3 000 subclauses, and what came back to us were 12 elements from amongst those 3 000 subclauses.

The court insisted, both in its opening remarks and in the closing remarks of its judgment, that the basic structure and philosophy underlying the constitutional text were perfectly in order and consistent with the Constitutional Principles. The court also stressed that the issues referred to us required minor adjustments which, if undertaken, would ensure that the constitutional text would, in fact, be certified by the Constitutional Court.

I think we in the Constitutional Assembly need to ratify the recommendations of the management committee today. The two subcommittees will ensure that we get down to the work of correcting the defects that we have before us in a focused and businesslike way. If we apply our minds between 25 September 1996 and 7 October 1996, and if the various parties apply themselves in the same spirit and with the same determination which they had shown before 8 May 1996, it should be possible to complete the task that we have before us in good time.

On behalf of the ANC I would like to urge our members and all the parties to continue in the spirit of co-operation and give-and-take that

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characterised the period before 8 May 1996. We on our side are ready with proposals concerning the way in which we would like to see the rectification of the defects which the Constitutional Court has identified. We hope that, not too long after 25 September 1996, we will be able to come back to the Constitutional Assembly and the Constitutional Court with a definite report on progress and, hopefully, the conclusion of our work. I also want to indicate that if we do not do this, it would mean that the Constitutional Court will only certify the constitution in February next year, and that is not something that any of us would actually like to see.

Mr P G MARAIS: Mr Chairperson, hardly a day goes by without people wanting to know from me whether I still have faith in our country's future. My reply invariably is: Yes, I do. I do have faith in our potential to make a success of our future. My faith has, in fact, been strengthened by the recent Constitutional Court judgment which brought us back here today. In that document, which is lengthier than the constitution itself, the members of the court demonstrated convincingly that South Africa was now a constitutional state and that they were determined to protect that feature of our new democracy. Anywhere else in the world that would be hailed as a priceless asset. A country with such a foundation cannot be without hope for the future.

The members of the court were not unimpressed by, or overcritical of, the work that had been done by the constitution writers. They referred to the text as a monumental achievement and emphasised, more than once, that the text complied with the overwhelming majority of the requirements of the Constitutional Principles.

\*The text of the pronouncement is presently still being analysed and considered in detail by ourselves and our advisors. The position that the NP will adopt during the upcoming negotiations, can therefore not be anticipated. I can, however, say that we will not adopt a too narrow view of the pronouncement. Every argument and referral is being judged individually and in context with others. We believe that it must also be done in this way in the negotiations.

‡We believe, for example, that the following reference to the provincial policing powers cannot be ignored. I quote paragraph 401 of the judgment:

A global assessment as to whether Constitutional Principle XVIII.2 has been violated cannot be made on an item-by-item basis. The overall picture has to be taken into account, regard being had to the weight to be attached to the individual components that form part of the evaluation. However, as far as this particular item is concerned, it is our view that there has been a significant reduction in the powers and functions of the provinces.

This statement is as unambiguous as it is important. We should not avoid taking it on board during the coming negotiations.

\*The NP will, as before, participate constructively in the negotiations. We will definitely not cause unnecessary delays. The new constitution must be implemented as soon as possible, as it is in the interests of the country. We will therefore keep our eye on the provisional target date of 7 October 1996. That date is, however, not cast in stone. It is not more important than a good end result. The content and quality of what we have achieved by 7 October will have to determine whether it is going to be the end of negotiations or not. No other test will be good enough.

My wish is that the following days and weeks will result in fruitful negotiations. May the results be widely accepted, and may all political parties who are entitled to participate, indeed do so.

Maj Gen P H GROENEWALD: Mr Chairperson, I believe it should now be quite clear to both you and the Deputy Chairperson that it is not quite that easy to rid yourselves of us. It is nice to have you both back, and we trust that this time your stay will be very pleasant, but short. We also hope that it will not be necessary for this Assembly to recall you a second time.

\*The findings of the Constitutional Court are in reality a feather in the cap of the Constitutional Assembly. The thorough manner in which the Constitutional Court considered the constitution gives the average citizen in South Africa a degree of confidence in this court. The FF is happy with every finding of the court.

We foresee that the first subcommittee's work will be relatively simple and that they will be able to dispose of it easily. The work of the second subcommittee is not really that easy. I am referring specifically to the powers of the provinces and the different categories of local authorities and their powers. It is our opinion that these

two aspects require a considerable amount of work. The FF, however, welcomes the opportunity specifically to look at this again. During the constitution-making process we were reasonably convinced that not enough attention was being given to local authorities in particular.

The FF will lend its full co-operation and assistance to expedite and finalise the process. However, we do foresee one problem. The subcommittees commence their proceedings on 25 September and have to finish their work by 7 October. In reality, that is a matter of seven working days. For this reason we feel that the second subcommittee will most probably have to divide into two groups in order to finish off the work in the short space of time available.

We ask that we should not make the same mistake as in the past by placing the process under pressure. I do not believe this is necessary. Let us finish the work properly this time. The FF supports this proposal and the proposed manner in which the process should take place.

Mr D H M GIBSON: Mr Chairperson, coming back to do our work again, as it were, has certain disadvantages and some advantages. One of these is the fact that we are happy to welcome back our friend Mr Leon Wessels and you as well. I know that it is tough on the big-business gravy train outside, but their loss is our temporary gain. [Laughter.] In fact, if you do your job too well this time we might decide to keep you. But since we had such a happy post-constitution party last time, I think that when we are absolutely sure that we are getting rid of both of you finally and for ever, we should perhaps have another celebration party at Fernwood. I would certainly support a proposal to that effect. [Laughter.]

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Will the DP pay for it?

Mr D H M GIBSON: To the DP, a poor party, the ANC appears to have sources of income that we only dream of. [Laughter.]

I had hoped to be able to welcome the IFP back in our midst today, but unfortunately their national council will only be taking a decision this weekend. I would like to appeal to Minister Buthelezi and his party to rejoin the process, because an all-inclusive process, with the whole of the Constitutional Assembly involved, can only add legitimacy to the constitution. They have a

role to play, a contribution to make, and I for one would certainly like to see them back.

Then I would like to deal briefly with the headline in *Constitutional Talk* which has been distributed on our desks. It reads: "Three weeks to crack the Constitution". In my book "cracking" is the precursor to "breaking", and that is the last thing that we want to do. One of the reasons that we only have three weeks in which to do this is that the poor judges of the Constitutional Court are tired because they have worked hard this year and have to have their recess. To me it is quite extraordinary that the politicians who had to sit month after month, over weekends and at night, are not entitled to have their parliamentary recess so that we can save the judges, but then, of course, perhaps the reason is that they are all old and far senior to us and we are young and vigorous and can stand the pace.

Talking about standing the pace, I want to point out that the judgment of the Constitutional Court has, in many respects, been a vindication of the views expressed by several parties during the constitutional negotiations, and particularly the views expressed by the DP.

We believe that many of the submissions we made have been vindicated by the court, and foremost among these were our objections to the diminution of the powers of the provinces, the lack of adequate protection for the impartiality and independence of the Auditor-General and the Public Prosecutor, the inadequate entrenchment of the Bill of Rights and the defects in respect of labour legislation. We feel that the decision which we took to support the constitution—which we did, we voted for it, but we expressed reservations about certain aspects and decided to argue them in the Constitutional Court—has been vindicated by the court's decision.

This whole process is momentous. The DP is absolutely determined to play a constructive role. We are going to concentrate on fixing that which needs fixing and doing our best to play a part in what is really something almost unique in the constitutional history of the world. The court decision has brought it home again to the people of South Africa that Parliament is not supreme. The court is, and the Constitution is, supreme, and Parliament cannot do what it likes, and that, of course, is the best protection for the individual liberty of the human beings who inhabit our country.

The DP is very proud to be part of making history in South Africa, and we will do everything we can in order to resolve the problems that there are as soon and as efficiently and effectively as possible. I therefore have pleasure in supporting the resolution which is before this Constitutional Assembly.

Mrs P DE LILLE: Mr Chairperson, I will be very brief. On behalf of the PAC I rise to support the proposal of the management committee with regard to the timeframes. The PAC will cooperate with all other parties in order to have the final constitution certified by the end of 1996.

Mr L M GREEN: Mr Chairperson, the ACDP supports the proposal and welcomes the Constitutional Court's judgement not to certify the constitution owing to noncompliance with certain principles. The Constitutional Court has proven once again its integrity and its independence, and the judgement has not, in any way, caused a constitutional crisis. In fact, what the judgement has done is to increase our confidence in the Constitutional Court.

Although we welcome the Constitutional Court's judgment, right at the beginning of the process we raised the concern that when the 36 principles were drawn up, the ACDP, amongst other parties, was not there to give its opinion and make an input. Because of that, we came into a process in terms of which we had to accept the 36 principles. We would have preferred an election process first, and thereafter a drawing up of the Constitutional Principles. That is the process we would have preferred. History, however, wanted it otherwise, and we were drawn in after the elections.

The one concern that we have raised, and intend to raise again, is the issue of the supremacy of the Constitution. We have stated that section 2 of the new constitution refers to the supremacy of the Constitution. It states that any law or conduct which is inconsistent with it is invalid and that the duties imposed by it must be performed. This is one of the issues we have raised and have consistently debated.

In conclusion, the ACDP accepts the timeframes proposed by Mr Wessels, despite the severe strain this would place on us as a small party. We would also like to call on the IFP to return to the constitutional process in order to make the final step as inclusive as possible.

\*Mr S J SCHOEMAN: Mr Chairperson, I am not going to repeat what has already been said by other colleagues and my colleague the hon member Piet Marais. I just want to make the following few remarks. Firstly, I think we can say to each other that the process whereby we decided to make a constitution in South Africa was a good process. Secondly, I think it was the right thing to participate in it, because the judgement delivered by the Constitutional Court has proved that the process has eventually developed to where the court has not certified certain of the aspects, and I think we owe the Constitutional Court a debt of gratitude for the comprehensive and well-considered delivery of their judgement.

As far as the NP's point of view is concerned, I just want to repeat what has already been said, namely that the NP will be focusing on those aspects and matters which were referred back by the Constitutional Court. We will do everything in our power to co-operate and, if possible then, to complete the process by 7 October, because that will be quite in order and it will fetch the first prize. If the committees that have now been constituted should report back that this is not possible, we will have to accept that as such, because a constitution is a matter which should not be amended regularly.

We have seen with the transitional Constitution that we had to amend it regularly. All of us together now have the opportunity to pay thorough attention to those aspects which have been referred back by the Constitutional Court. I think we owe it to the country to make a constitution for which we do not have to return in two, three or four months' time in order to change it. So it will be the NP's point of departure to co-operate and to see if we can complete it then, but to do so thoroughly, studying all of the aspects which have been referred back thoroughly and making our suggestions regarding them.

Debate concluded.

Question agreed to.

THE CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: This brings us to the conclusion of this debate. We will most probably next meet on 11 October 1996, once the two subcommittees have concluded their work and have reported to the Constitutional Assembly.

We hope that in the intervening period, the IFP will see its way clear to join the constitution-

making process. We hope and trust that their meeting goes well over the weekend and that they take the right decisions. Thank you very much, ladies and gentlemen.

The meeting adjourned at 15:02.

## **ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS**

### **REPUBLIC OF SOUTH AFRICA**

### **CONSTITUTIONAL ASSEMBLY**

## **ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS**

### **TUESDAY, 17TH SEPTEMBER 1996**

#### **CHAIRPERSON'S REPORT:**

#### **INTRODUCTION**

1. The Constitutional Court ruled that it could not certify that the constitutional text adopted by the Constitutional Assembly on 8 May, 1996 was in compliance with the Constitutional Principles set out in schedule 4 of the interim Constitution. Judgement of the court was delivered on 6 September, 1996. The Management Committee was reconvened on 12 September to consider the process of addressing those issues which failed to comply with the Constitutional Principles.

#### **REPORT ON PROCESS OF CERTIFICATION OF CONSTITUTIONAL TEXT ADOPTED ON 8 MAY 1996.**

2. The Constitutional Assembly adopted the text of the Constitution in terms of section 73 of the interim Constitution on 8 May 1996. Two days later the Chairperson, acting in accordance with rule 15 of the Rules of the Constitutional Court, transmitted the text to the Constitutional Court and requested the Court to perform its certification functions in terms of section 71(2) of the interim Constitution.
3. A team of counsel were appointed to represent the Constitutional Assembly at the hearing of the Constitutional Court. The team consisted of advocates G Bizos SC, W H Trengove SC, M T K Moerane SC, N Gozo and K Moroka-Motlana.
4. The President of the Court, considering it to be in the national interest to deal with the matter as thoroughly yet expeditiously as possible, determined that both written and oral representations would be received and fixed 1 July 1996 as the date for the commencement of oral argument. On Monday 13 May 1996 he issued detailed directions, including a timetable, for its disposal. The directions included provision for written argument on behalf of the Constitutional Assembly to be lodged with the Court and invited the political parties represented in the Constitutional Assembly that wished to submit oral argument to notify the Court and to lodge their written grounds of objection. Although there was no legal provision for anyone else to make representations, because of the importance and unique nature of the matter, the directions also invited any other body or person wishing to object to the certification of the text to submit a written objection. The Court, with the assistance of the Constitutional Assembly, also published notices (in all official languages) inviting objections and explaining the procedure to be followed by prospective objectors. Each written objection was studied and, if it raised an issue germane to the certification exercise which had not yet been raised, detailed written argument was invited.
5. Thereafter the President issued further directions from time to time for the orderly conduct of the proceedings. In particular a detailed timetable was issued, allocating specific times on particular days for oral submissions. Because of the relatively tight timetable and the importance of the issues at stake, the Court condoned non-compliance by members of the public with the dates fixed in the directions and considered all relevant representations, however belatedly lodged.
6. Notices of objection, written representations and oral argument were submitted on behalf of five political parties. Objections were also lodged by or on behalf of a further 84 private parties. The political parties and the Constitutional Assembly as well as 27 of the other bodies or persons were afforded a right of audience. Interest groups and individuals propounding a particular contention were permitted to submit argument jointly not-

withstanding the absence of a formal link between them.

7. Hearings commenced on Monday 1 July 1996 and continued until Thursday 11 July 1996. Individual objectors were heard in person; otherwise representation was permitted through persons ordinarily entitled to appear before the Court or through a duly authorised member of the organisation concerned.
8. Judgement was delivered on 6 September, 1996. All members of the Constitutional Assembly have been provided with a copy of the judgement. The Court concluded its judgement with two observations. "The first is to reiterate that the Constitutional Assembly has drafted a constitutional text which complies with the overwhelming majority of the requirements of the CPs. The second is that the instances of non-compliance which we have listed in the preceding paragraph, although singly and collectively important, should present no significant obstacle to the formulation of a text which complies fully with those requirements."

A copy of the Court's conclusions and order is attached and marked as Annexure A.

#### Process

9. The Management Committee met on 12 September, 1996. It was reported that unless the Constitutional Court was provided with the amended constitutional text by early October, the Court would only be in a position to consider its certification by February, 1997. The Management Committee confirmed the desirability of finalising the text at the earliest possible convenience. It accordingly agreed to the following process to address the issues on which the adopted text was found not to comply with the constitutional principles:-

- (a) To mandate the Executive Director to reconvene the technical experts previously engaged in the finalisation of the adopted text to consider the judgement and prepare formulations for consideration by the political parties.
- (b) To reconvene two sub-committees to consider the issues requiring attention in the context of the judgement. Each sub-committee would consist of 3

representatives from the ANC, 2 from the NP and 1 each from the IFP, FF, DP, PAC and ACDP.

- (c) To invite parties to submit to the Executive Director the names and contact details of their representatives by 18 September, 1996. The sub-committees would be convened on 25 September, 1996 to commence work.
- (d) The sub-committees should seek to complete their work and table a progress report with the Constitutional Committee by 7 October. The Constitutional Committee will then table its report and submit an amended text for approval by the Constitutional Assembly in terms of Sec 73 (2) and 73A (2) of the interim Constitution on 11 October, 1996.

#### ANNEXURE A

### CHAPTER VIII. CONCLUSION AND ORDER

#### CONCLUSION

It is therefore our conclusion that the following provisions of the New Text do not comply with the CPs:

Sec 23, which fails to comply with the provisions of CP XXVIII in that the right of individual employers to engage in collective bargaining is not recognised and protected.

Sec 241(1), which fails to comply with the provisions of CP IV and CP VII in that it impermissibly shields an ordinary statute from constitutional review.

Sec 6 sec 22(1)(b), which fails to comply with the provisions of CP IV and CP VII in that it impermissibly shields an ordinary statute from constitutional review.

Sec 74, which fails to comply with—

CP XV in that amendments of the Sec do not require special procedures involving special majorities : and

CP II in that the fundamental rights, freedoms and civil liberties protected in the Sec are not entrenched .

Sec 194, which fails in respect of the Public Protector and the Auditor-General to comply with

CP XXIX in that it does not adequately provide for and safeguard the independence and impartiality of these institutions.

Sec 196, which fails to comply with—

CP XXIX in that the independence and impartiality of the PSC is not adequately provided for and safeguarded; and

CP XX in that the failure to specify the powers and functions of the Public Service Commission renders it impossible to certify that legitimate provincial autonomy has been recognised and promoted.

Sec ch 7, which fails to comply with—

CP XXIV in that it does not provide a framework for the structures of local government;

CP XXV in that it does not provide for appropriate fiscal powers and functions for LG;

and CP X in that it does not provide for formal legislative procedures to be adhered to by legislatures at LG level.

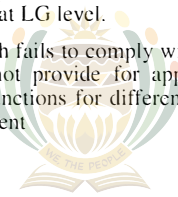
Sec 229, which fails to comply with CP XXV in that it does not provide for appropriate fiscal powers and functions for different categories of local government

To the extent set out in this judgment the provisions relating to the powers and functions of the provinces fail to comply with CP XVIII.2 in that such powers and functions are substantially less than and inferior to the powers and functions of the provinces in the IC.

We wish to conclude this judgment with two observations. The first is to reiterate that the Constitutional Assembly has drafted a constitutional text which complies with the overwhelming majority of the requirements of the CPs. The second is that the instances of non-compliance which we have listed in the preceding paragraph, although singly and collectively important, should present no significant obstacle to the formulation of a text which complies fully with those requirements.

#### B. ORDER

We are unable to and therefore do not certify that all of the provisions of the Constitution of the Republic of South Africa, 1996 comply with the Constitutional Principles contained in schedule 4 to the Constitution of the Republic of South Africa Act 200 of 1993.



PARLIAMENT  
OF THE REPUBLIC OF SOUTH AFRICA

**PROCEEDINGS OF THE  
CONSTITUTIONAL ASSEMBLY**

Members assembled in the Chamber of the National Assembly at 09:06.

The Deputy Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.

**ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS**—see col 526.

**ADOPTION OF AMENDED  
CONSTITUTIONAL TEXT**

(Draft Resolution)

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Good morning, ladies and gentlemen. On 6 September 1996 the justices of the Constitutional Court had their say. The judgment did us all proud. Today we are responding to that judgment, and I ask Mr Cyril Ramaphosa, the Chairperson of the Constitutional Assembly, to tell us more about that.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, Deputy President Thabo Mbeki, Ministers and hon members, once again the Constitutional Assembly meets, and I hope that this time we are meeting for the last time. We are meeting once again to consider one of the most important pieces of legislation in our country's history, the new Constitution that will become the law of our nation. Once again, before it can become a reality, it must pass the test of the Constitutional Court to ensure that it fully meets the requirements of the Constitutional Principles.

The return of the Constitution, which we adopted on 8 May 1996, to this body by the Constitutional Court has strengthened not only the final product which is now before hon members, but also the foundations of democracy in our country. The principle of the separation of powers, in terms of which the judiciary acts to check the powers of the legislature, and of course the executive, could not have been more clearly demonstrated.

The fact that the overwhelming majority of the clauses complied fully with the Constitutional Principles, and the high praise the Constitutional Court judges had for what they called "a magnifi-

cent piece of work", should not be overlooked. But the return of a few issues that needed our further attention gave our country an important lesson in what a constitutional democracy is all about. The fact that the proceedings of the court were open to everyone, every South African, as an individual or an organisation, including those parties that did not see their way clear to participate in the work of the Constitutional Assembly, entitled all South Africans to make their objections to the court, and that is a demonstration of participatory democracy.

That even nonlawyers could present oral argument before the court sets a new standard in accessibility to the courts. The past three weeks have been hectic ones, although, unlike the previous round of negotiations, there have only been a few late nights. We have achieved our goals, and in doing so all the negotiators have once again displayed a constructive approach and, may I add, political maturity that bodes well for the future of democracy in our country.

When the Constitutional Assembly met to receive a report-back on the judgment a few weeks ago, it was agreed that we would confine our attention to those areas which the court required us to amend, while at the same time allowing stakeholders to make an input and retaining some flexibility. The issues referred back to us were divided between two multiparty subcommittees under the wise and capable leadership of Mr Pravin Gordhan and Ms Mavivi Myakayaka-Manzini . . . [Applause] . . . both of whom have been given accolades stating that they were some of the best chairpersons around. That started Mr Wessels and me getting a bit worried, and may I add that a few chairpersons of parliamentary committees also got worried when they heard that Pravin Gordhan and Mavivi Myakayaka-Manzini were some of the best around. I can indeed testify that they are some of the best around, but they must keep trying harder. [Laughter.]

Work began immediately, in an extremely positive spirit, with all parties putting their positions constructively. The openness and transparency that have been a hallmark of the constitution-making process continued. Yesterday when the Constitutional Committee met for what we believe was the last time, we even had an unprecedented and historic intervention by members of the media who advised the Constitutional Com-

mittee on the quality of the English that we were using in the Constitution, and we applauded them for that. We happened to be dealing with a clause which dealt with the openness of a democratic society, and members of the media hastened to add that that society must also be accountable to the media. When we asked them to add that the media must also be accountable to politicians, they did not agree immediately.

It was with great delight that all political negotiators welcomed the return of the IFP to the structures of the Constitutional Assembly, albeit on a "now-you-see-us, now-you-do-not" basis. At times I even thought that it was on a hide-and-peek type of basis. At all times the input of the IFP negotiators was, I must say, helpful and realistic. In both the subcommittees the IFP was afforded the opportunity of putting its positions and of participating in the debates around the issues. I am also aware that political parties engaged in many hours of bilateral talks with the IFP. Mr Gordhan was able to tell me that they met with the IFP until three o'clock one morning, trying to reach agreement with them. All this was done in an effort to make the Constitution as inclusive as possible.

It is a great disappointment both for me personally, as Chairperson of the Constitutional Assembly, and for our fellow CA members, to note that on this important occasion the IFP benches are once again empty. What a positive message it would have given the people of this country to have had all seven political parties in the Constitutional Assembly today.

The history books will, however, relate how many of us tried to include the IFP in the constitution-making process. I hope that political parties will continue in their efforts to bring the IFP on board in the constitutional development process, even after the adoption of the Constitution today.

I am not going to give an account of how we dealt with the issues over the past few weeks. Those issues are before hon members in the amended texts, and have been discussed extensively in the party caucuses. While the process has meant that the final document has reached members rather late, CA members have been kept up to date with all developments in the various committees.

I would like to extend a special thank you to the few remaining staff members of the Constitutional Assembly for their hard work and their efficient logistical support. [Applause.] Once

again, a special word of thank you to the executive director, Hassan Ebrahim, who remains almost alone, after the other two executive deputy directors have left, to finalise this work and make sure that the Constitutional Assembly concludes its mandate.

The new draft before members is the result of broad-based consensus amongst the parties. I believe that after we have voted to adopt the amendments as improved, the new text will be returned to the Constitutional Court. Once again all South Africans will be given the opportunity to object to those sections that they have problems with, and they will have an opportunity of putting their case before the court. The Constitutional Court has undertaken to give us their judgment as soon as is practically possible. If all goes well, the implementation of this Constitution will begin within a few short months from now.

But this is not the end of our work. A great task awaits our nation, the task of building an appreciation for the values enshrined in this Constitution in the minds of all our people. Ultimately, this is their Constitution. It belongs not to politicians and lawyers, but to every man, woman and child in this country. In order to become a reality, the Constitution, with its noble ideals of freedom, democracy and respect for every individual's dignity, must be more than a piece of paper. I call this Constitution the birth certificate of our nation. Now it is the responsibility of all of us in this country to ensure that it goes from strength to strength as our democracy matures. It must be a force for good in our society, a guarantee for human rights, fair play and accountable government.

To achieve this, people must know what is in the Constitution. I \*am happy to report that several newspaper groups in this country have undertaken to publish the amended text and distribute it with their newspapers as a public service to the whole nation. [Applause.]

This publication of over a million copies, starting next week, will go a long way towards making the Constitution accessible to all our people. There are also plans for the Constitutional Assembly to print and distribute several million copies of the certified texts, free of charge, in various formats and in all 11 languages. [Applause.]

The formats include a pocket-book Constitution and an educational guide in all official languages, as well as a limited version educating people

about the Bill of Rights. However, even this will not be enough. All stakeholders will have to make a conscious effort to educate our people about this Constitution. This includes, in particular, the Human Rights Commission, the Department of Provincial Affairs and Constitutional Development, the Department of Justice and the Department of Education, but also civil society organs at large.

Ideally, every child at school should learn to understand the system of government and the rights and freedoms that are enshrined in our Constitution. Let us not underestimate the magnitude of our achievement. We have negotiated a wonderful document, and this we did in spite of deep ideological differences in a way that is a lesson to ourselves, our fellow South Africans and the whole world. We now have our Constitution. We have done it in record time, and once again we have done it under budget. Let us make it work, for it is a document that belongs to all our people; it is a document that is meant to enhance democracy in country. We put it before hon members and hope and trust that all parties will see their way clear to voting overwhelmingly in favour of this Constitution. [Applause.]

THE DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Hon members of the Constitutional Assembly, I would like to latch onto one statement Mr Ramaphosa made and draw members' attention to the fact that this document has been placed three times before all members during the course of this work.

The final print of this document started at three o'clock this morning. It was agreed at the management committee that we would follow this procedure, and in addition make available to members what we refer to as a road map, to draw their attention to the amendments that are being brought about in this document. Some of them are of a technical nature; all the i's have been dotted and the t's crossed. The technical changes were placed before the management committee and were dealt with and discussed at technical level. The substantive issues are indicated in the guide. These are matters that were finalised last night. We offer this road map to assist everyone in digesting this document, but we tried to keep everyone informed as we proceeded with the document.

Finally, printed on the Agenda is a resolution in the name of the Chairperson of the Constitutional Assembly, indicating how we will vote. Once

again we will have to vote twice. We will vote on the document as amended.

MS G N M PANDOR: Mr Chairperson, as has already been said, the Constitutional Assembly is meeting once more for the purpose of adopting a redrafted text of the document that was referred to the Constitutional Court.

Recently some commentators have viewed the return of the draft of 8 May in an unnecessarily triumphalist light. They fail to recognise that the process of certification was and is the most stringent test of South Africa's young democracy. We are practising what is a unique first in this regard. No country has exposed its constitution-making process to such a test.

In the eyes of the highest court in our land, we passed the test with flying colours. The judges asserted this in their own words. They said that the draft national text, which was submitted to them, represented a monumental achievement. In their view, drafting a constitution is a difficult task, made even more difficult by the unique circumstances of South Africa.

The exercise that the Constitutional Assembly has engaged in since May 1994 has testified to the correctness of the position that was adopted by the parties that negotiated at the World Trade Centre. The belief of those parties and particularly of my own organisation, the ANC, that a final and lasting constitution required democratic sanction, and the view of the parties that there should be values and principles which would allow for the testing of the content of a new document, were certainly wise viewpoints which have produced a democratic constitution that is certainly going to rank among the best in the world.

Subcommittee 1 had five issues to revisit and redraft. None of them posed a significant dilemma for the negotiators, and it is our belief that they have been adequately addressed. We hope that we have had the final say, but, of course, we are once more at the tender mercy—we hope it will be tender—of the judges.

The first issue we addressed concerned section 23, which deals with labour relations. We believe that it is important to point out that the task of the court was to receive challenges to various provisions, to consider these challenges in the light of the overall text, and to measure the objections and the text against the Constitutional Principles.

The objections on the exclusion of the right to lock out were not upheld by the court. In fact, the words of one of the paragraphs that are relevant to this issue are well worth repeating. The judges indicate that the objectors attempted to argue that the right to lock out and the right to strike were equivalent. The judges stated categorically and very clearly that this view could not be accepted, as the ANC had asserted all along. However, the judges did find that the full intent of Constitutional Principle XVIII had not been met. The subcommittee has arrived at a formulation on the employer's right to collective bargaining that we believe is responsive to the requirements as stipulated by the relevant principle.

The second issue related to the table of nonderogable rights found under section 37 of the text. The text of this section, according to the judges, did not rationally and thoughtfully draw a distinction between rights that are derogable in a national emergency. Once more Subcommittee 1 has tabled formulations in this regard, and we hope that they are responsive to the judges' finding.

The third aspect which we addressed concerned the dismissal mechanisms for the Auditor-General and the Public Protector. In the process of deliberating these, we also re-examined the appointment mechanism, a task that was not required by the judgment, but which parties eventually agreed to look at. In order to provide for the high level of independence and impartiality that these bodies are said to require, the relevant mechanisms have been adjusted. It is our hope that this change adds to the stature of the two bodies and does not make them vulnerable to political trade-offs, which would perhaps have been avoided if a simple majority requirement had been accepted. Of course, the brief we had was to address the dictates of the principles, and we have done so.

The fourth aspect concerned the inclusion of greater detail in the section that addresses the Public Service Commission. Its functions and powers have been spelt out, as well as its provincial status and the role it has with regard to the National Assembly and, for provincial commissioners, with regard to provincial legislatures. Furthermore, the role of the commission in appointments, dismissals and other aspects of funding have been provided for, thus addressing the demands of Constitutional Principle XXIX.

The final issue concerned the impermissible

insulation of a piece of legislation. The redrafted formulation responds to the need to ensure that all legislation is open to constitutional review, while also clearly addressing the specific elements that the constitution-makers seek to protect.

With these amendments, the drafters have sought painstakingly to complete the task they were elected to perform, and it is our belief that they should be congratulated, as the Chairperson has done, on a job well done.

If we had, with the first text, as the judges said, achieved a monumental task, our contribution this time must surely be judged to be outstanding and without fault. [Applause.]

Mr S J DE BEER: Mr Chairperson and Deputy President Mbeki, the interim Constitution in its postamble referred to a historic bridge which would assist in the creation of a new South Africa. The eminent Prof Etienne Mureinik, whom we lost so tragically earlier this year, posed the question: "A bridge to where?"

I am sure that were he here today, he would, to some extent, be satisfied with what has been achieved during this process of constitution-making. Significant parts of this constitutional text must stand as a monument to him and others who have worked hard at creating a just and democratic dispensation in this country. When we ask ourselves what has been achieved, we may note the following: South Africa has created a homegrown product which was achieved, in all senses, by the people for the people. It has served as a powerful reminder that a peaceful transition to democracy has been achieved. The belief that this can be achieved in terms of the Constitution sends out a powerful message to the world at large and, in particular, to institutions considering investment in our country and in our people. It serves to emphasise the status and the legitimacy of the Constitution, as well as the legitimacy of the constitution-making process.

Although it may be appropriate for us here today to give ourselves a small pat on the back, it is clear, however, that the adoption of the text does not allow us to rest on our laurels. The adoption of this Constitution should motivate all our people to work hard at solving the very pressing problems this country is faced with. We must now fly with the wings which this Constitution has given us. If we were able to surmount the seemingly unresolvable issues we faced during the process, I

am sure that other problems can also be solved for the benefit of all South Africans.

This Constitution, with any deficiencies which we may discover from time to time, will serve as a unifying force in the fabric of South African society. The judgment of the Constitutional Court, and the ensuing efforts of the subcommittees of the Constitutional Assembly to meet the requirements of the court's judgment, are indeed a significant step in South Africa's negotiated transition to full constitutional democracy. These developments should indeed be an inspiration to all peace-seeking South Africans who have faith in the future of our country.

We in the NP are certainly convinced that this process has left us with a much improved text of the Constitution. So, for instance, during the whole process of negotiating State institutions supporting constitutional democracy, it was the viewpoint of the NP that in the light of Constitutional Principle XXIX the provisions governing appointment, tenure and removal had to ensure the independence and impartiality of these institutions.

The finding of the court, in the case of the Public Protector and the Auditor-General, that the provisions governing their removal from office do not meet the standards of Constitutional Principle XXIX, paved the way for determining that a two-thirds majority is necessary in the National Assembly, that parties after this could find consensus and that a 60% majority in the National Assembly is required for the appointment of the Public Protector and the Auditor-General. We believe that this is a major step towards a more democratic dispensation.

\*In Chapter 10, which deals with public administration, the major criticism of the Constitutional Court was that the powers and functions of the Public Service Commission have not been explained satisfactorily. I believe that in Subcommittee 1, in support of colleague Pandor, we have now succeeded in overcoming the criticism of the court. The province will be responsible for the appointment, promotion, transfer and removal of members of the Public Service in their administrations, within the framework of the uniform norms and standards that are valid for the Public Service.

I believe that in this manner the independence and impartiality of the commission has been ensured, as required in Constitutional Principle XXIX, and

I have the assurance that the requirement of Constitutional Principle XVIII(2) has been complied with, so that the powers and functions of the provinces will not be essentially inferior.

It has been a unique privilege for me to be part of the process of creating a new Constitution. In the first place I would like to thank my colleagues in the NP for the privilege of being part of such a team. We have done our utmost, but if we felt today that we have been 100% successful, the principle of negotiation would most certainly not have come into its own in this process.

\*I want to thank my colleagues from all the other political parties. To me it was a wonderfully educational experience to work with them in producing something of value for our people. To our chairperson, Ms Myakayaka-Manzini, our thanks and appreciation for the manner in which she conducted the meetings. Her accommodating style certainly contributed significantly to the success of the subcommittee.

\*We are really here today to take our leave of our Chairperson and our Deputy Chairperson. I would like to say that the leadership of these two will always be a highlight of the process. We pay tribute to them for their leadership and the way in which they have undertaken it: the way in which they inspired us, also by way of their sense of humour. It is a loss for South Africa that they will not grace Parliament with their presence in the near future. I think that I am speaking on behalf of all the members, however, when we wish both of them every success in the future, because we believe that this will also be in the interest of South Africa. [Applause.]

Mr C WEGLIN: Mr Chairperson, the fact that we can meet here today with the documents before us in itself is a significant achievement, taking the time factor and the scope of the importance of the work that we have had to do into account. Like my colleague Sam de Beer, I would like to thank those people who have been primarily responsible: the executive director and his staff, our many technical advisers, the members of the panel of experts, and last but not least, the members of all the political parties in the Constitutional Assembly. Each one, from the Chairperson and his deputy downwards, has had a role to play.

While the parties did not always agree with one another, I believe that the differences that were revealed were no greater than one should expect

to find in a vigorous, developing democratic society, because that is what democracy is about. What was important was that all parties applied themselves seriously and constructively to the task they were set by the judges of the Constitutional Court. The result of that collective effort is what we have before us today.

If I must express a word of regret, it is about the nonparticipation of the IFP. I think it is important for South Africa to have a constitution that is fully inclusive, and to that extent it is regrettable. I also believe that the IFP could have made a positive contribution to the shaping of the Constitution and, by not being there, I really do believe, while they might have played up to their constituency, they generally failed the people of South Africa in this regard.

We are coming to the end—we hope it is the end—of a long road, the last lap of which started with the judgment of the Constitutional Court on the issue of certification. I would just like to say a word on that. I believe that the judgment of the court some two months ago was an absolute landmark judgment in the history of South Africa. It enhanced the status and confirmed the authority of the Constitutional Court as a critically important component of our new constitutional system. That judgment places South Africa firmly on the road of constitutionalism based on the paramouncy of the Constitution and the predominance of the rule of law.

From the DP point of view—we would all like to score points—we believe that the court judgment was a vindication of a number of specific issues which the DP argued before the court and which we had raised in the committees during the negotiating process. [Interjections.] No, no, not on the lockout!

The CA has attempted seriously to put right the matters identified by the Constitutional Court. We in the DP would have preferred us to have used the opportunity provided by the referral back to try to improve the text in areas not identified by the court. However, taking the constitutional process as a whole into account, we agreed with the CA that we should limit our effort to putting right what I call the offending clauses. That was the parameter of the debate which took place.

In dealing with these offending clauses the DP would have tried to achieve what I would call a generous adjustment of those clauses in order to ensure certification next time round, because I am

quite sure we do not want any more egg on the face of the Constitutional Assembly. However, our generous approach towards the adjustment was met with what I call the minimalist approach, largely adopted by the ANC. While it is possible that the revised text will qualify for certification—this is by no means certain—any more than it was last time, when it was not certified. That lies in the hands of the judges.

In this particular regard I think even Justice Trengove, who was asked to comment on the new text, indicated certain warning signals in respect of clause 74 which deals with the overrides. He says:

The new requirements introduced (in the text) are rather weak . . . We are, however, on balance of the view that the new requirements probably pass muster and meet the objection raised by the court.

This is not a very convincing or convinced statement. Elsewhere, on another clause, he says:

The removal of the two offensive features in the new text's clause 146 should tip the balance back to compliance with Constitutional Principle XV111(2).

These are not very convincing or forthright statements coming from the CA's consultant. We would have liked to have seen certain changes made in the process of putting right the defective clauses. We would have liked to see the provinces get more powers. We would have liked to see the Constitution as a whole, and in particular the Bill of Rights, more effectively entrenched. We would have liked to see greater independence for the Auditor-General and the Public Protector, and the protection of that independence extended to the Independent Electoral Commission. However, we accept that in the process of negotiation consensus on these matters is not always possible.

There remains one clause with which the DP still has a very real problem, and that is the proposed clause 23(5) which deals with collective bargaining. Our problem with that clause does not lie in the essential core which says:

Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

Our problem arises because certain other sentences have been added, a second and third

sentence, which we have a fear might dilute that clause to the extent that it is not certifiable.

We have wrestled with this and in the end, we too have got legal opinion from counsel—also directly involved in this negotiating process. His view is this:

As the Constitution already makes provision for the legislative regulation of rights subject to the limitations clause, the Constitutional Court would have to establish some other, different meaning for the inclusion of the contentious second and third sentences . . . to the extent that such an interpretation would imply that the right to engage in collective bargaining is to be treated differently and less favourably than the other rights, the additional wording would render this clause uncertifiable, as it would not comply with the Constitutional Court's directive that the right of employers to bargain collectively be properly recognised and protected . . .

This is merely another learned opinion, but it is a learned opinion of which we have had to take notice. Therefore, last evening at the Constitutional Committee, we had to vote against this clause because, on the opinion given to us, it would not pass the test of certification. Had that clause been put on its own to us today, we regret we would have had to vote against it again today. But what has been put to us today is not a single clause. What has been put to us today, is the amended constitutional text as a whole. It is against this background that we have to decide on our attitude.

We recognise that the final decision as to whether a specific clause complies with the principles, does not lie with political parties; it does not lie with the CA; it does not lie with learned counsel. It is going to lie with the 11 judges of the Constitutional Court.

We are satisfied that when, in due course, our new Constitution is certified, we will have a constitution for South Africa that measures up to all the basic requirements for democracy, the basic requirements of representivity, of accountability and of openness, and a constitution which is designed to protect the fundamental rights of all its people.

We believe that when certification finally takes place, we will be able to say proudly that we have a constitution of which all South Africans can be

proud. It is in this context that the DP will vote for the adoption of the amended text before us. [Applause.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Ladies and gentlemen, I would like to ask a favour of you. I can see that you are enthusiastic about starting to live this Constitution. However, we have to listen to a few more speakers. May I ask you to lower your voices, please.

Secondly, I call on the speakers to discipline themselves. I have a clock, but I am also watching their clocks. I do know that our clocks are in complete harmony with one another's. So when they extend their time limits, I know that they know that they are then using somebody else's time. So I ask speakers please to discipline themselves. [Laughter.]

Mr M BHABHA: Mr Chairperson, Mr Deputy President, the amendments before us today are an effort to meet the requirements as identified by the Constitutional Court. The Constitutional Court in the main identified three areas in Chapter 7 which required detailing. The overall categories of local government, a procedure by means of which local government takes decisions, and appropriate fiscal powers and functions for the different categories. With these amendments, there is now a degree of certainty about the nature of municipal structures and the form they will take, whilst allowing sufficient room for the organic development of this critical sphere of government.

Admittedly, as members may well have noticed, it may have appeared in the course of the past two weeks that the negotiators of this chapter vacillated from one radical position to another. Perhaps this may even have amazed and frustrated our colleagues, but one must be mindful of the fact that Chapter 7 is required to replace an existing regime that has clearly become an anachronism with one that reflects the will of the people and is in line with the principles of co-operative governance.

One must also be mindful of the fact that a system has to be established that will accommodate the aspirations of cities that have budgets that exceed those of neighbouring countries such as Namibia, whilst at the same time addressing the fears of little hamlets such as Pofadder.

The product before us attempts to achieve all this in a coherent, logical and integrated way. The

most remarkable thing about this process was the manner in which every role-player in local government was able to participate. This chapter is certainly not the brainchild of some academics, lawyers or philosophers who sat in a secluded and smoke-filled room trying to solve the problems. It is literally the work of practitioners who actually live and eat local government.

However, most importantly, this chapter is the manifestation of one of the most important principles of our struggle, our quest for meaningful grass-roots participation in the democratic process. The participation of organised local government in the National Council of Provinces will not only ensure that the voice on the ground will be heard at the highest possible level, but also that through this process the abundance of talent which exists at local government level will be able to express itself to produce our leaders of tomorrow.

The noncertification of the text had one unintended yet pleasant consequence. We were able once again to rekindle the kind of interaction that only a negotiation process can conjure. We are also once again privileged to be able to be led by leadership of the highest calibre that vests in both the Chairperson and the Deputy Chairperson of the Constitutional Assembly.

In the same vein I would like to thank Mr Jaco Maree, Mr Watson and Senator Selfe for the amicable and constructive way in which they approached this entire exercise. I thank Comrade Jomo, Comrade Sekgopi, Comrade Melanie, Comrade Pravin, Comrade Rudolph, Comrade Bulelani and Minister Moosa and his department for their commitment and conviction. Without their efforts we would not have seen the light at the end of the tunnel.

Finally, I wish the Chairperson of the Constitutional Assembly good luck in his new venture. Go out there and "nail" the business world! With regard to the Deputy Chairperson of the Constitutional Assembly, our loss is the Department of Justice's gain.

\*I am sorry for those people!

†To all of us here today, Chapter 7 has established the structures of what is a unique and most important regime. The responsibility now falls squarely on our shoulders to accord it the respect it deserves and give it the necessary life. [Applause.]

Mr A G EBRAHIM: Mr Chairperson, Deputy President, comrades and friends, the PAC of Azania participated in the election with two very clear objectives in mind. The first objective was to remove a minority dispensation in the country and usher in a democratic dispensation. That objective, by and large, has been realised.

The second major objective of the PAC was the establishment of a Constitutional Assembly that would draw up the Constitution for the country. That process we are now about to complete. The PAC supports the amendments that are being introduced here. Although there have been some 40 amendments which were referred to us by the Constitutional Court, it can be seen from the paper we have before us that only fourteen of the 40 required substantive changes. The majority of them, in fact, required technical assistance. That is what has been done.

The PAC, of course, supports these amendments. We realise that on the question of collective bargaining there has been a compromise, one that we would go along with at the moment, after having discussed this with our trade union wings.

The PAC also strongly supports the move to give independence and impartiality to overseeing institutions in our country, especially the appointment and removal procedures for the Public Protector and the Auditor-General. We believe this is extremely important. But the most important element from the point of view of the PAC is the amendment to Annexure D with regard to the amendment of section 224 of the previous Constitution. I would like to quote:

The amendment of section 224 of the previous Constitution by replacing the proviso to subsection (2) with the following proviso:

"Provided that this subsection shall also apply to members of any armed force which submitted its personnel list after the commencement of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), but before the adoption of the new constitutional text as envisaged in section 73 of that Constitution, if the political organisation under whose authority and control it stands or with which it is associated and whose objectives it promotes did participate in the Transitional Executive Council or did take part in the first election of the National Assembly and the provincial legislatures under the said Constitution."

This is viewed as very significant by members of the PAC because it now makes the Azanian People's Liberation Army a statutory force, and we believe that as a result of this our people will be integrated into a national defence force for which we have been fighting in our country.

We would also like to take this opportunity to say that the provincial powers that have now been defined in the new Constitution, as well as the powers for local governments, go a long way towards giving us guidance as to what is required with regard to the three tiers of government in our country.

In conclusion, the PAC will vote for this Constitution, but I would like to take this opportunity to thank the Chairperson and the Deputy Chairperson of the Constitutional Assembly for bringing this matter to finality. I would also like to take the opportunity to thank the chairperson of the committee for the manner in which he handled the whole process. I also want to take this opportunity, on behalf of the PAC, to thank Mr Hassan Ebrahim and his very able and hard-working staff. With that I want to say that the PAC will vote for the new Constitution. [Applause.]

Mr L M GREEN: Mr Chairperson and hon members, I wish to thank the Chairperson, the Deputy Chairperson and all the . . .

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Mr Green, may I take a second of your time? I know this Constitution was built on negotiations, but never whilst members were standing. They were always seated when they negotiated, so will those members who are now negotiating in a standing position please take their seats. Mr Green, you may continue.

Mr L M GREEN: I wish to thank the Chairperson, Deputy Chairperson and all the technical experts and the staff of the Constitutional Assembly for their hard work and valuable input.

We, the ACDP, understand that the certification of the amended constitutional text is a technical process, and the strict legal test applied is whether the amended text complies with the 34 principles or not. It is the view of the ACDP that when a new constitution is written, it should be built on sound principles, but the question that we raise today is a fundamental one. That is, when a nation writes a new constitution based on 34 principles, what higher law do we use to test those principles to

ensure that they comply with the higher or supreme law?

When the 34 principles were drawn up during the negotiation process at Codesa, nobody questioned whether those principles complied with a superior moral law. We believe that such a higher law does exist, and when we observed a moment of silent prayer this morning, it was to this higher authority that I committed myself. All law is enacted morality and presupposes a moral system. A moral law and all morality presuppose a religion as their foundation. Whenever we weaken the religious foundations of a nation we also weaken the morality, and then we take away the foundations of its law.

The ACDP participated in the constitutional process because we believed in our positive contribution throughout this process. Our involvement was a learning experience, and all the amendments that were made, both the substantive amendments and those that were technical, have our support. However, the fundamental objections that we raised when the first new text was passed still basically exist. None of those concerns were addressed. Allow me to raise just a few of those concerns which we raised the first time.

Firstly, clause 11 of the Bill of Rights of the new amended text says: "Everyone has the right to life." It became quite clear to us when we saw the Termination of Pregnancy Bill being introduced by Government that the amended text would in no way protect the children who are alive, but not yet born. [Interjections.] That is a major problem for the ACDP. If we as a party accept this Constitution today, then we accept that it is the supreme law of our land. But if this Constitution refuses to offer sufficient protection of the rights of unborn children, then our party has no other option than to appeal to a higher law which we believe cannot be ignored, and that is the law of God.

We believe in the sanctity of life and we maintain that human life cannot be terminated simply because it is unwanted or deformed. [Interjections.] If hon members could just allow me to finish! In terms of clause 2(1)(c) of the Termination of Pregnancy Bill an abortion can be performed up to the last day of pregnancy if medical practitioners are of the opinion either that the mother's life is in danger or that the baby would be malformed. The Constitution would, in fact, support this Bill. We have serious doubts about taking the Termination of Pregnancy Bill to the

Constitutional Court, because, in testing the constitutionality of the Bill, the court will not consider any higher moral law. [Interjections.] The court will consider the 34 principles and will only consider the text. On that basis the Termination of Pregnancy Bill, we believe, will not stand a sufficient chance of rejection.

Secondly, the equality clause . . . [Interjections.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! I ask those members who are so keen to participate in the debate to negotiate that with their Whips. [Laughter.]

Mr L M GREEN: Thank you, Mr Chairperson. I will be brief. Secondly, the equality clause, as it stands now, will ultimately lead to the legalisation of gay marriages because it gives them equal status. As a party we believe that this will be immoral and wrong. We believe that the Constitutional Principles and the text itself will not be sufficient to stop this.

In conclusion, we want to say that section 27(1)(a) grants everyone the right to reproductive health care services. We accept health care services. We want to support that, but we do not support the inclusion of abortion clinics. We believe that that is going to undermine the integrity and the soul of this nation.

Therefore, we want to say that although we have enjoyed the process, we are unfortunately unable to vote in favour of this Constitution because of the principles and opinions we have raised this morning. However, we will commit ourselves to a continual process to try to amend the Constitution until . . . [Interjections] . . . it satisfies the conditions that we have set. [Interjections.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Ladies and gentlemen, may I ask Mr Rabie to address us. [Interjections.]

An HON MEMBER: From the bottom of the ghetto! [Interjections.]

\*The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! No, come on chaps!

\*Mr J A RABIE: Mr Chairperson, the subcommittee had to deal with the amendment to the Constitution, provincial powers, the fiscal powers of local authorities and, of course, local govern-

ment in itself. Let us see what the situation looked like before the last round of negotiations started, and what it looked like at their conclusion.

As regards the amendment to the Constitution which the Constitutional Court scrutinised, the ANC wanted to push all of the parties into a minimalist corner. They were ceaselessly threatening to do so. The ANC reasoned that parties could not vote against an improvement, no matter how slight, of the original text, otherwise they would be nailed to the cross.

However, the NP wanted to avail itself fully of the golden opportunity presented by the Constitutional Court to effect improvements amply within the judgement. That is why we never gave in. But the ANC was hesitant to use this opportunity to the full. However, we did not accept this attitude then and there and we insisted on improvements.

The ANC is as scared as a wild buck of bird-shot when it concerns an increased majority for the amendment of the Constitution. Compared to the other parties they stuck out like a sore thumb in this regard.

However, it is an ironic fact that when voting power is needed in the legislative process, the ANC unashamedly flexes its muscles. In the majority of cases it amounts to blatant blackmail and lies when the ANC shies away from agreements.

We wanted Chapter 2, which deals with human rights, to be amended only by a 75% majority, and that where matters affect a province or provinces it should be agreed upon by a two-thirds majority of the legislature involved. About this the ANC dug in its heels. In the firstmentioned instance the end result was that a two-thirds majority now applies in the National Assembly and in the latter a normal majority, but in the National Council of Provinces the approval of six out of nine provinces is needed.

Even so, we accept the amendments that have been effected. It is an improvement on what went before.

\*The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Mr Moosa?

Mr J A RABIE: This is not the National Assembly!

Mr M W MOOSA: It does not matter. Will the hon member take a question?

Mr J A RABIE: No!

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! The hon member Mr Rabie will not take a question. Thank you, Mr Moosa.

Mr M W MOOSA: Why not? [Interjections.]

\*Mr J A RABIE: The National Council of Provinces is being included by the amendment to clause 1 with a two-thirds majority, and this is a good improvement.

As far as the procedure is concerned, 30 days have to elapse before a constitutional amendment can be proposed. Then public reaction is awaited. An amendment is not voted upon in the National Assembly within 30 days; firstly, if it is proposed while the National Assembly is in session, or secondly, if it is proposed while the National Assembly is in recess. A constitutional amending Bill should only contain constitutional amendments and nothing else. Only the Constitutional Court may rule on constitutional amendments. This creates certainty and other courts will not be able to have other interpretations.

The sections relating to the provincial powers of policing would have been worded differently if only the NP was involved. The fact is that the new text is an improvement on the one which served before the Constitutional Court and that elements are contained in it which offer provinces the opportunity to exercise considerable influence over the drawing up of a national policy on policing.

As far as local government is concerned, the new text of Chapter 7 is, in accordance with the court's order, in our opinion also a great improvement. The categories of municipalities are now restricted to three which are clearly defined and make provision for various types within the categories. The provision for an outright majority of votes by all councillors in the event of certain decisions is a victory for democracy and the NP welcomes the fact that the ANC at last could be persuaded to relinquish their demand for an executive mayor.

The NP is satisfied with the new clause on the fiscal powers and functions of municipalities. It is to be welcomed that two municipalities in the same area cannot levy the same taxes. Of particular importance is the fact that all owners must pay

property tax. We believe this to include the authorities and owners of communal land.

Finally, allow me to thank our chairperson, Mr Pravin Gordhan, for the manner in which he managed the meeting. It was truly inspiring. A word of thanks also goes to the Chairperson, Mr Cyril Ramaphosa, and Deputy Chairperson, Mr Leon Wessels. From the beginning, during all of the negotiations in the Constitutional Assembly, they ensured that we did not go for one another, as we did at Codesa, thereby sometimes forcing the process to a standstill. I think we have written a good constitution which the Constitutional Court can take pleasure in approving and certifying.

Mr J H DE LANGE: Mr Deputy Chairperson, Mr Chairperson, Deputy President, hon members, I am not going to address you one the contents of what we have been discussing over the past few days. I have chosen to do something much more difficult and that is to thank a few people.

I was hoping that after the NP speaker I would be able to say that it was an absolute pleasure to follow on the NP speaker. But I had hoped that the speaker would not have done what the hon Jac Rabie has done, namely to take what happened in the committee and completely twist it around. I thought one of the easiest things we solved during our negotiations was the constitutional amendment process. I never thought that there was any antagonism nor did I fight with any NP member or anyone else on the issue. We sat down together and we came to an agreement. That is not the version Jac Rabie has placed before us. I know it is very important sometimes to talk to the gallery as well. That is all part of politics. I must, however, tell members that that is not what happened in our committee. We worked very amicably, very well together and I cannot remember a single fight that we had at any stage.

Let me say that we gave ourselves a very tight schedule to finish the task that the court had asked us to fulfil. I think we can congratulate ourselves on a job excellently done. Firstly, I must say that I am of the view that after making these amendments to the Constitution, we have a better Constitution than we had before. I am very proud to be a South African at this time, and particularly to have the kind of Constitution we have. I think it is one of the most progressive, creative and innovative constitutions in the world. I trust that we will be able to take this Constitution and implement and translate it into reality to make

sure that our people who have struggled so hard and have waited so long for the kind of results we wanted, will achieve those results, and make sure that we do change everyone's life for the better. I believe that this Constitution creates the cornerstone which will enable us to do so.

Secondly, I would like to say that I am honoured and very humbled to have been part of this process. I have met many tremendous people from all parties. People I know are completely committed to our country and are prepared to make compromises even on things they hold dear. I would like to thank everyone for making it possible for us to do so. I believe that in years to come we will see that what we have done was the right thing to do.

I would like to thank a few people. When we adopted the Constitution the last time, I spoke a bit about the Chairperson and the Deputy Chairperson of the Constitutional Assembly. I want to reiterate that to me Cyril Ramaphosa is one of the great sons of Africa. [Applause.] I think that if we did not have him in this country, particularly in the beginning when we started our negotiation process here in this Chamber, we would not have been able to achieve what we have achieved, and we definitely would not have had the Constitution we have before us.

I realise that there is a much broader and bigger team behind him, but his intellect, his charm and the manner in which he deals with people have been the glue that has held us together. I think we should thank him. I know losing him is a great loss to Parliament, but we all know that where he is going he will achieve even greater heights. On behalf of all of us I would like to say: Thank you very much, Cyril. [Applause.]

To our Deputy Chairperson, a man of tremendous intellect and one who often works behind the scenes, but who was also part of that glue holding us together, I want to say that although he is not a member of my party, I think that Leon Wessels' leaving Parliament is a tremendous loss for all of us. I do know that he is going to achieve great heights where he is going, but if he ever wants to come back, there will always be a place for him. [Applause.] That is not an indication of which party list Leon will then be on. [Laughter.]

With regard to the Executive Director of the Constitutional Assembly, Mr Hassan Ebrahim, I think he is an absolute administrative genius, as

was proved by the manner in which he was able to hold this process together, particularly with the skeleton staff he had at times. I think we should all congratulate and thank him and his staff. [Applause.]

To the great ANC negotiating team that I was part of, which was ably led by Cyril Ramaphosa and the hon Minister Valli Moosa, and which included Pravin Gordhan, Bulelani Ngcuka, Mavivi Myakayaka-Manzini, Comrade Naledi Pandor, Willie Hofmeyr—there are too many to mention—Dirk du Toit and others . . .

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: And Johnny de Lange!

Mr J H DE LANGE: Mr Chairperson, thank you very much. I was part of that team. I think that they were able to bring to bear tremendous ability, intellect and skill, individually and collectively, and at all times this was done in the interests of our country. I must say that I never felt that we were looking narrowly at the interests of a particular party. We always put the interests of our country first. We were always ready to try to find a compromise. Now I just want to say thank you to my party for giving me the opportunity to form part of such a team.

There are also, of course, the opposition parties. Without their assistance and without their being part of the process and being prepared to play their role and to compromise even on matters that they held dear, we would not have been able to reach the successes we have.

In particular, I want to mention Roelf Meyer, because I think he has played a tremendous role. He has, at all times, stuck to the principles he believes in, but at the same time he has been very flexible in making sure that we move the process forward. So I personally—and I am sure I do so on behalf of everyone—want to thank Roelf Meyer, and also in particular Sam de Beer, Piet Marais and the others who were the leaders of their particular groups on this occasion. I think we had a tremendous working relationship and I think those hon members, without them we would have had tremendous difficulties.

Then I come to the experts, of whom there are many: Adv Zac Yacoob, Prof Christina Murray, Prof Johan van der Westhuizen and all the others. I wish members could see the amount of time these experts have spent, day and night, trying to make sure that we move this process forward.

Sometimes we gave them the impossible task of having drafts available the next day and they were able to do so. So I say thank you very, very much to them. I am sure that what is good and what is honourable in our Constitution can be attributed in large measure to their hard work. [Applause.]

On a personal note, I want to say a very special thank you to someone I think is one of the great constitutional lawyers in our country, and that is Prof Nicholas (Fink) Haysom. I think that much of what is good, and much of what is creative and innovative in our Constitution, can be attributed to Fink and the amount of hard work that he has put in. I think the measure of the respect and esteem in which we all hold him is that I can say quite honestly here that every single party in this House has made extensive use of Fink and his advice and has asked him to assist with various matters.

Just as an example, only last week we were negotiating a particular document with another party. When we had finished with that document, a member of the other party asked: "Would you mind if we called Fink Haysom to have a look at this document? We would like to know what his views are." I think this is a measure of the esteem and respect in which he is held by everyone. From the ANC's side, and I am sure on behalf of everyone, I would like to say a very special thank you to Fink Haysom.

May I just reiterate that I think we should be very happy as South Africans with our new Constitution that we have drafted. We can be proud of this Constitution and I truly believe it is a Constitution that can take us into the 21st century, as a great nation.

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Ladies and gentlemen, we conclude this portion of the debate this morning, and we now enter into a stage in which we will grant political parties an opportunity to make final statements before Mr Ramaphosa explains the resolution printed in his name.

\*Mr F W DE KLERK: Mr Deputy Chairperson and Mr Chairperson, colleagues and members of the Constitutional Assembly, I should like to start off by expressing a word of gratitude to everyone who has brought us to this point and this milestone in the process in this second round of constitution-making after the finding of the Con-

stitutional Court. My thanks also go to all the negotiators, but in particular to the NP's team of negotiators, to all the advisers who assisted us and other parties, to the officials who made everything run smoothly, to the advocates of so many people who made representations, who assisted the Constitutional Court in drawing their conclusions, and in particular to the team of advocates who put forward on behalf of the NP those matters which we submitted. Then my thanks also go to the president and the members of the Constitutional Court, who devoted their attention to the important task with great care and urgency.

The NP extends its best wishes to the Chairperson and the Deputy Chairperson, who now wish to alter the recipe of the gravy which they like and who will, in future receive private sector gravy instead of this gravy. We want to wish them everything of the best when the time comes for them to enter the private sector completely.

†The very fact that we are, once again, debating our new Constitution is, in itself, visible proof of an all-important reality of the new South Africa: The Republic of South Africa has become and will remain a constitutional state, a "regstaat". Parliament is no longer supreme. Governments can no longer do as they like. All of us are now subject to a value system and a set of rules of which our nation and our country may be justly proud.

We have already rejoiced about all this, in May this year, and rightly so. Today, a little more humility seems to be indicated. After all, we did not get it absolutely right the first time. However, I believe that this time round, we will succeed. We all look forward to the next momentous events—certification and then promulgation. When that happens, we shall have come to the end of the first phase of our constitutional development, initiated by the first tentative negotiations in the early 1990s. Although we will be entitled to look back on this first phase with reasonable satisfaction, we will not be able to enjoy the luxury of sitting back and relaxing.

There will be a number of important tasks at hand. The implementation of a number of aspects will require immediate attention. Consequential legislation and parliamentary Rules will have to be adopted. Provincial constitutions will move to the top of the agenda, at least in some provinces. With regard to these and many other tasks, the NP can

be relied upon for constructive co-operation and honest continued negotiation.

More important than the immediate practical tasks at hand will be the challenge to uphold our new Constitution, not only to the letter, but also in its spirit and its ethos, and to make it a living document. As it is now formulated, our new Constitution reflects numerous compromises. None of the parties in this Assembly would have written it as it stands. None of us is entirely happy. All of us hold strong views on important issues which are either not contained in the new final text or not accommodated to our full satisfaction.

The question of how the various parties would like to deal with their dissatisfactions will therefore arise inevitably. How each of us finally deals with this question could have a profound effect on our country's future. I believe that there are a few fundamental guidelines on which we need to agree in this regard. To my mind, they would include the following.

It is the inalienable right of each and every party to advocate amendment of the Constitution and also to seek voters' support for such proposals. Nobody wants a stagnant constitution. Nonetheless, I believe all parties should refrain from undermining the Constitution as it now stands or as it may be amended from time to time. Parties in power particularly—whether it be the NP in the Western Cape, the IFP in KwaZulu-Natal and the ANC in the other provinces and centrally—may all easily fall into this trap of giving our interpretation, from a subjective point of view, to the Constitution. This could happen through narrow and biased interpretations reflected in executive decisions and legislative proposals to suit our own subjective viewpoints.

The mere fact that individuals and organisations have the right of recourse to the Constitutional Court does not exonerate those in power from upholding everybody's constitutional rights in a fair and objective manner. In the final analysis, I believe that there is one overriding principle to which our future actions in respect of and in terms of the Constitution should be made subject. That is the need to honour fundamental agreements and not to disturb the delicate balance which we have achieved in our negotiated Constitution.

These fundamental agreements form the very foundation not only of the Constitution, but also of the whole process of reconciliation. These

agreements unlock the door to the new dispensation. Time does not allow me to identify all of them. Some of them relate to emotive issues such as education, language and culture, others to the counterbalancing mechanisms for preventing the misuse of power. Some relate to the need to close the book on the bitterness of the past, and others relate to the need for inclusivity in decision-making processes. All these fundamentals need to be honoured at all times. Any effort to disregard them may have catastrophic consequences.

Today I renew my party's commitment to upholding our Constitution and to honouring at all times the fundamental agreements which have brought us to this milestone in our history. I also renew my party's commitment to making our new Constitution the foundation of our new South Africa. If we implement and uphold the many noble sentiments and proven principles included in our Constitution, then it will achieve its deeper purpose of bringing a better life to all our people, of making our country a winning country.

We will once again vote the Constitution. [Applause.]

Gen C L VILJOEN: Mr Chairperson, I would like to join all the previous speakers in the thanks they expressed towards everyone who helped shape this Constitution, particularly for the sincere co-operation that existed between all the parties.

I think that today we must be honest when we say that writing this Constitution not only brought us a new Constitution, but was a bridge-building operation which to a large extent succeeded in creating working relationships between people who previously did not know one another at all. I would therefore like to express the hope that these bridges that were built and the friendships and working relationships that originated in this manner will last as long as the Constitution does in the future.

The proposal as a whole is before us. As far as the basic aspects are concerned, the FF's position as it was on 8 May remains unchanged. On that day I expressed appreciation for the sensitive manner in which all the parties accepted the new school of thought of a principle of self-determination and eventually ensured basic provision for it in this Constitution. I am referring to clauses 30, 31, 185 and 235. We are very grateful for that.

On 8 May we had a problem with clause 29, which deals with education. Single-medium schools are the issue here. We had a mandate and could unfortunately not support the vague provision made for it in the Constitution. At that stage we therefore abstained from voting. The State eventually received the right to be able to decide whether there will be single-medium Afrikaans schools for our people.

At that stage we could not consult the people from whom we received the mandate in time to determine whether the compromise struck between the NP and the ANC would possibly be acceptable to them. At that stage we could not deviate from our mandate, and for that reason we abstained from voting.

None of the positive or negative aspects that I mentioned during that discussion on 8 May was referred back to us by the Constitutional Court, and they were therefore not discussed again. The FF's position therefore remains unchanged, apart from the fact that we have had an opportunity to test the mandate with regard to clause 29.

In this regard I would merely like to mention three issues. Firstly, the united group from the Afrikaner ranks that deals with education, is still together. Secondly, seriousness with regard to education is increasing. People are still as serious about the matter. Thirdly, there have already been clear developments that support or confirm the concern we expressed on 8 May.

This is a real danger if we listen to the discussions on education legislation and to what was said in the House during the past week with regard to the removal of language ethnicity in our tertiary institutions. If that is the case, it is clear to me that our fears concerning clause 29 are being realised. It is also clear that if that provision is not correctly applied, the new South Africa will not be in line with world trends with regard to the right to education of minority groups. Today, 11 October, the situation is therefore stronger than it was on 8 May. The FF will therefore maintain its previous standpoint.

†Now I would like to talk about the amendments. Having gone through this negotiating exercise on the amendments, we must admit today that the Constitutional Court has forced us to improve the Constitution and we are very happy with the way we have gone about it. We agree with Mr Colin Eglin that we have not really gone far enough in

liberally correcting what has been pointed out to us by the Constitutional Court.

The Constitutional Court has expressed certain criticisms about the local government factor. This is the one point that I want to single out today as a criticism from the FF. We want to put on record our disappointment at the fact that we have not gone far enough on the issue of local government. We have missed an opportunity to have a tailor-made local government system close to the people, the way the people of each community prefer it to be. If we look today at the unhappy incident at the Marconi Beam squatter camp, which was destroyed by fire some time ago, leaving 400 unfortunate people homeless, then we realise the importance of a local government system that is close to the people and that has the confidence of the people, a local government system that not only speaks on their behalf, but also exercises discipline within such a community in order to prevent disasters of this nature.

Whether one goes to the more organised built-up townships, the rich areas of Houghton or Waterkloof, the vast and sparsely populated areas of the former homelands or the intensively cultivated agricultural areas of the Free State, one today realises that what the Constitutional Court gave back to us was the chance to provide for more categories of local government, and I maintain that we have failed to do that. Claud Ake has said that Africa is still a communal society, and it is this communalism which defines the people's perception of self-interest, their freedom and their location in the social whole. My people and I share this notion of communality with our fellow Africans, and we warn today that we are not happy with the amendments as they stand at the moment, and we do not feel that we have gone far enough in bringing government closer to the people so that it can be applied more directly at local government level.

Mr Z I NCINANE: Wawukhe wahlala eskwatini wena? [Have you ever stayed in a squatter camp?]

Gen C L VILJOEN: We would also like to say that that we are not quite happy with the municipal fiscal powers in clause 229. The FF would like to have its objection recorded to the fact that district councils might acquire the right through national legislation to levy property tax on agricultural land. If all the land in the country were privately owned, this would be possible, but how are we going to deal with the communal situation?

I would also like to say that the way in which the issue of traditional leaders is dealt with in clause 212(1) is not satisfactory at the moment. The position of traditional leaders in local government should be much clearer than it is at the moment. In fact it is clear that there is no position for traditional leaders in local government. I think this is exactly what we ought to have dealt with. As the court has put it very clearly, we need some infusion into local government systems of the traditional leader system without affecting the basic democratic characteristics of our Constitution.

In conclusion, I would like to say that a constitution is a solemn agreement. It is an agreement that we all have to keep. We feel that inclusivity is a problem. We therefore call on the ANC and on the IFP to settle their differences so that, in future, we can have a unanimous view of the Constitution in this country.

This Constitution, at the moment, is only democracy in theory. The FF offers, firstly, a responsible approach in the application of this theory. Secondly, we offer constructiveness in seeking the real formula for the new South Africa. Thirdly, we offer our preparedness to improve and to keep amending, if necessary, the Constitution, in order to ensure the best possible Constitution for our circumstances. On the other hand, the FF demands speedy and honest progress in the application of what has been put into this Constitution, especially regarding what we are mandated to pursue, which is the issue of self-determination, so that we can coexist peacefully.

Thank you, Mr Chairperson, for the opportunity to participate in this constitution-making process. I wish you as Chairperson and the Deputy Chairperson the best of luck in your new directions. May we all work together, now that we have written the Constitution, to make it a living Constitution for all of us, so that this country will be a happy place for everybody to live in. [Applause.]

THE DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Colleagues, the DP had prepared two speeches for this slot. Mr Tony Leon was the victim of a lockout, because of the SAA strike, and Mr James Selfe was prepared to stand in for him. He will no longer be delivering that speech, and I believe that we can ask him to circulate it amongst members for

reading. I now call upon Mr Leon to address us. [Interjections.]

Mr A J LEON: Mr Chairperson, there is a certain irony in being a victim of a lockout which was instituted by the Government of the Republic of South Africa against a trade union which is overwhelmingly white . . . [Interjections] . . . because they had to deal with the realities, contrary to the arguments given earlier on about what the lockout was intended for.

Of the 10 major issues on which we, as a party, contested certification, the Constitutional Court upheld six of our central arguments and contentions.

Mr J H DE LANGE: Oh, nonsense!

Mr A J LEON: I suggest that that member read the judgment.

Undoubtedly the final Constitution is a far better document because of the certification process than it would have been without it. While the amendments and refinements contained in today's Bill do not, in our view, go far enough to create the steel girders and iron barriers necessary to protect the hard-won rights and freedoms enshrined in this Constitution, they certainly are far better than certain previous provisions which were too often constructed of little more than paper-mâché.

There is, however, as was indicated last night by my colleague Mr Eglin, one issue that still continues to bedevil this Constitution. I refer, in fact, to two clauses which relate to labour relations. It is a case, I am afraid, of the ANC—and now, unfortunately, the NP as well—seeing the Constitution's purpose as little more than being, on certain occasions, the legal arm of one group, in this case Cosatu.

Neither the Government nor the Constitution should be the political arm of any faction, group or vested interest, except the people of South Africa as a whole. That is why we took those labour relations issues to the Constitutional Court and were directly vindicated on two of them and indirectly vindicated on a third. That is also why we are so vehement in our opposition to the new formulations in clause 23(5) and (6), and must reserve our rights to pursue this matter later on in the appropriate forum.

However, that being said, my party celebrates the completion by the Constitutional Assembly of this

monumental task. As a minority party, we have sufficient faith and trust in the very process and the very Constitution which we have helped to create. That the majority in this Chamber and in Parliament will be as bound to the spirit and purpose of this Constitution and the historic compromises reflected by this document is also our profound hope. That is something that we have to take on trust.

It is also as well to remind ourselves of the question—and it is an important question which is not answered by a constitution itself: Why should a democratically elected majority government or parliament need the constraint of a constitution at all, since it enjoys a direct mandate from the people themselves? This question is central to what we do in the time hereafter. It is answered, in one part, by the great American James Madison, who spoke nearly 200 years ago, so hon members must bear in mind that the sexist language does not apply to us, but the message does. He said:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed, and in the next place oblige it to control itself.

I hope, and it is our profound wish, that this Constitution does precisely that. But getting the balance right cannot be thrust onto the Constitution alone. It requires a spirit of moderation, self-restraint and continual compromise which cannot, at all times, be left to courts of law or to bills of rights, but depends on the political will reflected in this Chamber itself.

The consequence of the adoption of this constitutional Bill will mean that after today South Africa no longer enjoys the choice of deciding whether to go forward or to go backwards to a preconstitutional phase. There are now only different routes to one constitutional destination, and we look forward with vigour to participating in that journey.

Mnu C M MAKWETU: Mhlalingaphambili, okokuqalanda ithanda ukuthi ndlela-ntle kuMhlalini gaphambili neSekela lakhe. Ngaphezulu ndibanqwenelela okuhle apho baya khona. Ngaphezulu ndithi, xa kwakhiwa indlu ngumfazi nendoda baye baxabane bade babethane. kanti ekugqityweni kwayo loo ndlu baza kumbam-

bazelana imihlana. Nathi ke siyayigqiba le ndlu namhlanje. Siyababulela ke ngenxaxheba abathe bayithatha ekuyakheni le ndlu.

Okwesibini siyi-PAC siye saxhalaba xa kuthiwa lo Mgaqo-siseko ubuyiselwa kwakuthi, ngakumbi nangakumbi xa ububuyiselwa kusithiwa maku-thiwe chatha amagunya kumaphondo, ekubeni thina sasinenkolo yokuba sele benikwe kakhulu. Kuthe ke kuba singabantu abaqhele ukusithobela isininzi sathi masibe nxamnye nani ekwenzeni le nguqulelo.

Okwesithathu sinenkolo kwakhona yokuba, ukuze ucombuluke kakuhle umcimbi wamakhosi mawungagqitywa calanye. Amakhosi makan-gagqityelwa engekho kwaye nawo awanalo ilungelo lokugqiba abanye bengekho. Makadityaniswe la macala obupolitika, uxoxwe lo mcimbi ngokuzelelo, kuba sekucacile ukuba ubukhosi asingekhe sibungele nje into yokuba buza kuphela. Buya kusoloko bukho bukunye nathi. Ukuba ke asiyilungisi le nyewe, iza kuhamba ihambe isixake. (*Translation of Xhosa paragraphs follows.*)

[Mr C M MAKWETU: Mr Chairperson, firstly I would like to bid the Chairperson and his Deputy farewell. Furthermore, I wish them the best wherever they are going. I would like to say that when a man and his wife are building a house they usually quarrel, sometimes to the point of becoming physical. However, when the building of the house is complete, they start patting each other on the back. Today we too have finished building this house. We are very grateful to them for the part they played in the building of this house.

Secondly, we in the PAC were quite worried when this Constitution was returned to us, especially when we heard that it was being returned with an instruction that more powers should be given to the provinces, while we were of the opinion that they had already been given too much. However, because we are people who are used to respecting the decision of the majority, we decided to support you in making this change.

Thirdly, we believe also that the issue of traditional leaders can only be finalised when it is not unilaterally decided upon. The traditional leaders should not be decided for, and they, too, have no right to decide in the absence of other parties. These two must be brought together so that this matter can be discussed fully, because it is clear that chieftainship cannot be wished away. It will

always be there. If we do not settle this matter, it will create problems for us in the future.]

Having said that, I would like to add that the PAC of Azania, from the very beginning, called for the establishment of an elected constituent assembly to draw up a new nonracial democratic constitution.

This Constitution must safeguard and protect the legitimate rights of all citizens without discrimination in any form. Given our past, it must be a constitution which entrenches human rights and ensures their implementation. In the process of drawing up the new Constitution, which hopefully will be certified by the Constitutional Court, the PAC was guided by the principle that it must not only guarantee human rights and entrench democracy, but, more importantly, must pave the way for redressing the consequences of the discriminatory policies of the past and correcting the imbalances.

In the view of the PAC, the Constitution before us does address some of these issues, but leaves a lot to be desired, especially on the basic question of land. The new Constitution is not what we would have liked it to be. However, it is what we have before us. It is the best we could get under the circumstances, given that the form of transformation required a give-and-take situation. In the coming years we will debate whether we gave more than we got, or vice versa. Despite these obvious shortcomings we will hopefully have a new democratic Constitution which will apply to all of us on an equal basis.

The PAC will therefore vote for the Constitution and pledge to uphold it. [Applause.]

Mr L M GREEN: Mr Chairperson . . . [Interjections.]

\*The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! [Interjections.] One minute, please, Louis.

†May I just draw hon members' attention to the fact that there is freedom of speech, and in spite of the limitations clause, Mr Green is entitled to speak. [Interjections.]

Mr L M GREEN: Thank you, Mr Chairperson. I will be brief. I wish to take this opportunity once again . . .

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Mr Green,

will you please take your seat. May I appeal to those members constantly making interjections to refrain from doing so now.

Mr L M GREEN: I wish to take this opportunity once again to thank you, the Deputy Chairperson, and all the party leaders for a friendly and consultative constitutional process.

Our party supports the principle of a constitutional State based on a supreme moral law written by God. We will lobby for the support of the nation to amend the sections in the Constitution which we find objectionable, and we hope that the 1999 elections will provide us with this opportunity.

We will subject ourselves to the highest law of the land, that is this Constitution, to the extent that it subjects itself to the law of God, which is our final authority. Our allegiance to God takes precedence over all other allegiances. It is the basic function of the law to restrain, and when the function of law is changed from the restraint of evil to the reformation of man and society, then the law itself begins to break down, because an impossible burden is placed upon it.

In conclusion, I wish to quote from the book of Psalms. I want to leave this Assembly with these words from Psalm 127:1:

Except the Lord build the house, they labour in vain that build it.

Rev M A STOFLE: Mr Deputy Chairperson, hon Deputy President and hon members of both Houses of this Parliament . . . [Applause] . . . this is a very momentous occasion in the history of our country, and a very proud moment for every one of us who has participated in the process that has brought us to this very historic day.

Can I say at the very outset, on a personal note, that this is the proudest moment of my life, to be granted by my organisation, the ANC, the opportunity to speak on this occasion when the Parliament elected by all the people of South Africa is giving birth to a new constitution, a constitution which is the envy of the whole world. We have looked at constitutions from the rest of the world. We have learnt some things from them, and we have improved upon them, and today we have come out with a new constitution which, we believe, is a better constitution from which the rest of the world has a lot to learn.

Ours is a constitution which defines the rights and responsibilities of the citizens of this country, and safeguards those human rights. The Bill of Rights is the cornerstone of our democracy. It creates respect for and protects human dignity, and makes everyone equal before the law. It makes sure that no one can again be discriminated against on the grounds of their race, gender, sex, sexual orientation or marital status, or on the basis of their ethnic or social origin, the colour of their skin, their age, their physical ability or disability, and that they shall not be discriminated against on the basis of their religion or conscience. The citizens of this country will no longer be discriminated against on the basis of their beliefs, culture, language or birth, and indeed, no woman can be discriminated against if she falls pregnant. Instead of marginalising the minorities of our society, the Bill of Rights ensures that we celebrate and protect our cultural, historical and linguistic diversity. Where else are such fundamental and far-reaching rights enshrined than in such a constitution and Bill of Rights?

Our Constitution enshrines and guarantees the most comprehensive socioeconomic rights in the democratic world: the right to have access to adequate housing, the right to work opportunities and the right to have access to adequate food and water and to health care and social security. It enshrines rights to freedom of speech and access to information. Indeed, the Bill of Rights guarantees the protection not just of those now living, but also of many generations to come through the right to have the environment protected against pollution and degradation.

The new Constitution clearly defines the roles, powers and limitations of Parliament, and indeed of government at every level. Government must be open, it must be transparent and it must be co-operative, and our new Constitution creates a National Council of Provinces which gives provincial legislatures a direct say in legislation affecting provincial legislation.

Ours is a constitution which guarantees fair and impartial justice, one which safeguards the impartiality of the police and brings the police and the defence services under civilian administration. It also recognises the role of traditional leaders, something which certain members seem not to have recognised this morning. It gives them a role within the justice system and the system of government.

This Constitution enshrines a brand-new democracy and provides powers and institutions to protect that democracy. The Public Protector, the Auditor-General, the Electoral Commission, the Human Rights Commission, the Commission for Gender Equality and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities—these are the champions of our democracy and the guarantors of our freedom. Our Constitution not only defines our rights as South Africans. Indeed, it defines South Africa itself.

I am very proud to be part of this Constitution. This is also a very proud occasion for every South African, because it is not only a constitution of members of the ANC, but one that takes into account the interests of all South Africans.

There will be many commentators on the Constitution, as well as judgments of the Constitutional Court, for many years to come. Already, this morning, we have heard commentaries on Justice Trengove's statement and about the meaning of the judgment of the Constitutional Court. What seems to have been overlooked is that lawyers never speak in imperative terms. And perhaps that is also a lesson we should learn: to be very careful in how we pronounce on constitutions when we make them.

It is not a perfect constitution, and no such document exists in the whole world. It is also not a Christian catechistical directive. It is a constitution to give guidance on how this country should be ruled. The churches and religious groupings should resist the temptation to ask parliament to do what they themselves have failed to do in our societies. For indeed, our successes and failures as religious communities can only be measured by the extent to which Parliaments are rendered obsolete in having to pronounce and legislate on the moral decay of a given society. Let us go back and do our homework and hope that by 1999, having transformed the moral fabric of South Africa and having convinced the populace of this country, the ACDP will indeed become a majority party. We look forward to that.

All the political parties who worked night and day for months must concede that this is directly a product of their own energies and an unyielding resolve to get this work properly done. We pay homage to them, especially for the services rendered in the past few weeks, against the tightest of deadlines, in debating, drafting and

redrafting the Constitution. All parties are now seeing the fruits of their labours. We warned them, of course, that if they failed to meet the deadlines, they would have to sit here throughout the Christmas period, until the work was done, and we are proud that we have beaten the deadline by many months. The parties will now know that they have engraved a piece of history onto the heart of our country for which all of those who come after us will thank and remember us.

We in this Chamber today and the rest of the country thank Comrade Cyril. Mr Leon Wessels and everyone who tirelessly worked with them. We thank them without qualification, and we congratulate them on their fine achievement. I think hon members will agree that this a moment of pride for Parliament in general, which has the historic honour of approving this new Constitution. As parliamentarians, we can leave this Chamber this afternoon and say that democracy has truly come of age in South Africa. Most of all, it is an occasion in which all South Africans should take pride, because every single person in this country helped to bring us up to the point we have reached today.

Everyone who voted in that first democratic election on 27 April 1994, everyone who negotiated in the many months and years that led up to that election, indeed all patriots and democrats who looked into the abyss of war and further bloodshed and chose the path of peace, everyone who spoke out against injustice and the inhumanity of decades of apartheid and oppression, everyone who was sent to prison for their beliefs and their activities in fighting apartheid, everyone who was in exile garnering support for the cause of a free and democratic South Africa, everyone who worked underground to undermine and oppose a system of injustice, all the workers who refused to accept that they were powerless to fight for change, teachers who refused to teach the propaganda of apartheid to their children and ours, the children who refused to learn the language of apartheid and who resisted so bravely when the full force of the oppressive system was brought down upon them, all the women who cared for their children and their children's children when their families were torn apart, and all those brave men, women and children who laid down their lives for this day to be realised, who stood up said, "This is not the way it will be" and died with defiance on their lips and the flame of freedom burning in their hearts, all of us today

and those who have passed away, all played their part. Again, we can all take pride in this.

Although there are still a few months before the Constitution can be promulgated, we and the Government would like the Constitution to take effect as soon as possible. The National Council of Provinces should be in place early in the coming year and should already commence its work in 1997. In the light of this, we should expect the Constitution to be promulgated before Parliament convenes in 1997.

There is one final plaudit that we have. We would like to thank the Constitutional Court for its wisdom, its patience and its care in deliberating on the Constitution. It had a difficult task to perform, but it performed that task with great integrity and dignity. Those few matters which it referred back to our Constitutional Assembly for further consideration have helped us to craft a final constitution which provides even more clarity and even stronger safeguards for our new democracy. For this, we thank them all.

We look forward to that time, in just a few days, when the Constitutional Court will give its final blessing to this Constitution, and our President, in his own time, will take his seat in his presidential office, will take up his pen and, with a moment to reflect upon the centuries of our country's history, will write his signature of assent on the new Constitution for all of South Africa. [Applause.]

THE DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Ladies and gentlemen, I now ask Mr Ramaphosa to conclude this debate and explain the motion that we will be voting on.

THE CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, during the course of this debate, someone seemed to suggest that we should have a party once again to celebrate the adoption of the Constitution.

HON MEMBERS: Hear, hear! [Applause.]

THE CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: We had a party when we adopted the Constitution on 8 May. We could have had a party today. We should consider having a party when the Constitutional Court certifies the Constitution.

I think we should definitely have a party when the President signs the Constitution and promulgates it as the law of the land. [Applause.] So there are

a number of occasions on which we could have had a party. We just got a little worried that if the CA went ahead and organised all these parties, we would be exposing ourselves to criticism, not so much from the DP any more, but from the ANC as well, the NP, the PAC and others. So we have refrained, but we have said that when the President signs the Constitution, we will definitely have the mother of all celebrations. [Laughter.]

I would like to thank all parties and everyone who spoke in this debate, and particularly those who thanked us, the staff of the CA and everyone who participated in this process. I would particularly like to thank all the parties for the co-operative manner in which we negotiated this document we are about to adopt. It does indeed represent the collective views and will of our people.

This Constitution does represent a compromise, compromises that all parties have had to make. The compromises we made remind me of what one eminent negotiator once said in the middle of a long and involved argument on legal technicalities. This eminent negotiator said:

There comes a time when we all have to rise above our principles.

I believe that in many ways we, like all the parties here, like all the negotiators here, did rise above our principles. We also went beyond our abilities in the manner in which we negotiated. We simply excelled. We did shine and we were simply the best.

If the Constitutional Court does certify this Constitution—we obviously hope that it will—this will possibly be the last time that I will stand before hon members in this Chamber, as a member.

An HON MEMBER: Of the ANC?

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Not of the ANC, no. That is something which that hon member will never be able to take away from me. [Applause.]

I am tempted to say goodbye, but how does one say goodbye when the Constitutional Court can refer us back again? But also, how does one say goodbye to all the members here? It is indeed very difficult. There are a lot of things that I will personally miss. I will miss the warmth that I experienced here, notwithstanding the heckling, sometimes the antagonism that I seemed to perceive or that exists, but I will certainly miss the

warmth that I found in this institution, the camaraderie that I also found here, and I will also miss the comradeship.

An HON MEMBER: But not Fourie!

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Yes, I will also miss Mr Fourie. [Laughter.] [Applause.] If for no other reason than that he comes from the north, I will miss him for that.

Therefore I am not going to say goodbye, because we might be referred back, but I hope that we are not referred back. I will also miss not only the leadership that I found in the party that I am a member of, but also the leadership that I found generally in this place.

I would like to say, from the depth of my heart, thank you very much to hon members for allowing me and Mr Wessels to work with them in this whole process. Today we can say that we have done our job, we have achieved the goal that we all set out to achieve, and I think we have done our country and our people proud. Thank you very much. [Applause.]

I wish to deal with just a few procedural matters. The Standing Rules for the Constitutional Assembly do not make provision for a procedure for passing the new constitutional text when the text, having been passed by the Constitutional Assembly, as we did on 8 May, is referred back to the Assembly by the Constitutional Court. There is no procedure for this.

However, Standing Rule 1 provides that the chairperson may give a ruling in respect of any eventuality for which the Rules do not provide. Accordingly, with the concurrence of the management committee, I have decided that the Assembly will be asked to vote on a resolution that the amended constitutional text be passed. In this way, the provisions of the interim Constitution regarding adoption of the text will be complied with.

Before I move the resolution appearing in my name on the Order Paper, I would like to put forward to hon members an amendment for adoption by the Constitutional Assembly of one of the provisions in the Constitution. This amendment is being put before hon members after discussion amongst the various parties represented here, and after they have given their consent. This arises from an oversight and re-

volves around clause 196(4)(b). Since there is subsequent uncertainty about the text, and following discussions amongst the various parties and agreements that were reached yesterday by all parties, clause 196(4)(b) should be changed in the text to read "personnel practices". However, clause 196 4(d) is currently incorrect as it stands in the text. It should read "personnel procedures" and not "personnel practices".

I therefore move:

That—

(1) clause 196(4)(d) of the new constitutional text, as amended (B 34B—96) be altered to read as follows:

To give directions aimed at ensuring that personnel procedures relating to recruitment, appointment, promotion, transfer and dismissals comply with the values and principles set out in section 195: and

(2) clause 197(4) of the same text be altered to read as follows:

Provincial governments are responsible for the recruitment, appointment, promotion, transfer and dismissal of members of the public service in their administrations within a framework of uniform norms and standards applying to the public service.

[Interjections.] Those are the amendments which are being proposed, which have been carefully canvassed with various parties here, and which were to a large extent an oversight.

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Ladies and gentlemen, I would like to deal with the amendment first. Can I take it that because this was a negotiated amendment, there are no objections? Are there any objections to this amendment? There seem to be none.

Agreed to.

The CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Mr Chairperson, I move:

THAT WHEREAS the Constitutional Assembly, on 8 May 1996, passed the draft of the new constitutional text in terms of section 73(2) of the *Constitution of the Republic of South Africa, 1993* (Act No 200 of 1993); and

WHEREAS the Constitutional Court has, in terms of section 73A(1) of the Constitution,

referred the draft of the new constitutional text back to the Constitutional Assembly; and

WHEREAS amendments to that draft of the new constitutional text are incorporated in the draft text (B 34B—96) before the Constitutional Assembly;

NOW THEREFORE the Constitutional Assembly resolves to pass the amended text.

Debate concluded.

The Deputy Chairperson announced that in accordance with section 73(2) of the Constitution, a vote on the provisions of the Bill relating to the boundaries, powers and functions of the provinces would first be taken by senators alone. In the event of a division not being demanded, the votes of senators in favour of the Question would be recorded in the Minutes.

The result of the vote was as follows:

AYES—71: Ackermann, C; Balie, A; Bhabha, M; Bloem, D V; Bogacwi, K A; Botha, Y R; Coetsee, H J; Cwele, S C; Fenyane, S L E; Fisher, S D; Foster, J A; Gamndana, T; Gillwald, C E; Grové, S P; Hendrickse, H J A; Henry, M; Jooste, J A; Kgoali, J L; Khobe, O N; Koornhof, G W; Lamani, N E; Lebona, H J P; Lubidla, E N; Lubisi, S W; Madondo, M I; Mahlangu, J L; Makgothi, H G; Makwela, I; Malatsi, D M; Marais, A; Marais, G; Maserumule, F; Mashamba, T G G; Mashile, N L; Mayisela, E M; Meteke, A T; Mkwai, Z W; Mohamed, M; Mongwaketse, S J; Moorcroft, E K; Moosa, M W; Mothoagae, P K; Motshabi, C H; Mthembu, J M; Mudau, N W; Mukhuba, T T; Mutsila, I; Naidoo, E N I; Ndzanga, R A; Ngcuka, B T; Nobunga, B J; Nogumla, R Z; Rasmeni, S M; Redcliffe, C R; Saloojee, R A M; Selfe, J; Sifora, T V; Snyders, F E; Sosibo, J E; Sulliman, M A; Surty, M E; Swanepoel, L J; Taunyane, D P; Tinto, C F; Tolo, L J; Tonjeni, T L; Tshivhase, M P K; Tyobeka, V M; Van Breda, A; Van Niekerk, A E; Wiley, M G E.

NOES—0

ABSTENTIONS—2: Bruwer, A A B; Van der Walt, B J.

The relevant provisions having been approved by senators in accordance with section 73(2) of the Constitution, the Assembly proceeded to vote on the adoption of the Resolution.

The Deputy Chairperson announced that in the event of a division not being demanded, the votes of members in favour of the Question would be recorded in the Minutes.

The result of the vote was as follows:

AYES—370: Abrahams, L A; Ackermann, C; Alant, T G; Albertyn, J T; Andrew, K M; Asmal, A K; Badenhorst, M J; Bakker, D M; Balie, A; Baloyi, S F; Bam, N J; Beesham, A K; Bengu, S M E; Beyers, A S; Bhabha, M; Bhengu, F; Bikitsha, P I; Biyela, N T; Blaas, A; Bloem, D V; Bogacwi, K A; Booi, M S; Botha, Y R; Bunting, B P; Cachalia, I M; Camerer, S M; Carelse, G M E; Carrim, Y I; Chabane, O C; Chait, E J; Chalmers, J; Chauke, P; Chiba, L; Chikane, M M; Chohan, F; Chuenyane, L D; Coetsee, H J; Coetzee, M P; Coetzer, P W; 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 Klerk, F W; De Lange, J H; De Villiers, D J; Dexter, P D; Didiza, A T; Dingani, Z A; Dlamini, B O; Dlamini, C; Dowry, J J; Duna, M W; Du Toit, D C; Ebrahim, A G; Ebrahim, E I; Eglin, C W; Ellis, M J; Fani, L M; Fankomo, F C; Farisani, T S; Fazzie, E; Fenyane, S L E; Ferguson, J; Fihla, N B; Fisher, S D; Foster, J A; Fourie, A; Fourie, W L; Fraser-Moleketi, G J; Fredericks, G A; Gamdana, T; Gandhi, E; Geabashe, S J; Gcina, C I; Geldenhuys, B L; George, C M; Gillwald, C E; Ginwala, F N; Gogotya, N J; Golding, M J; Goniwe, T M; Goosen, A D; Gordhan, P J; Gous, S J; Govender, D; Govender, P; Graaff, D V; Groenewald, R H; Grové, S P; Gumede, D M; Gxowa, N B; Hajajj, F; Hanekom, D A; Hangana, N E; Hani, L; Hendrickse, H J A; Hendrickse, P A C; Henry, M; Hlangwana, N L; Hofmeyr, W A; Hogan, B A; Holomisa, S P; Jana, D P; Janse van Rensburg, A P; Jassat, E E; Jooste, J A; Jordaan, D A; Jordan, P; Kathrada, A M; Kgauwe, Q J; Kgoali, J L; Kgositsile, B; Khasu, M J; Khobe, O N; Kondlo, N; Koornhof, G W; Koornhof, N J V R; Kota, Z A; Kuzwayo, N E K; Lamani, N E; Landers, L T; Lebona, H J P; Leeuw, S J; Lektgoro, M K; Leon, A J; Ligege, M G; Lockey, D; Loots, H G; Louw, S K; Love, J Y; Lubidla, E N; Lubisi, S W; Mabudafhasi, R T; Mabude, N; Mabuza, M C; Madikizela, P; Madondo, M I; Maduna, P M; Mafolo, M T; Maharaj, S R; Mahlalela, A F; Mahlangu, G L; Mahlangu, J L; Mahlangu, M J; Mahlangu, N J; Mahomed, F; Maine, M S; Makgothi, H G; Makhanya, D W; Makume, N

J; Makwela, I; Makwetla, S P; Makwetu, C M; Malatsi, D M; Malebo, S M; Maloney, L; Malumise, M M; Mangaliso, Z K; Manie, M S; Mapisa-Nqakula, N N; Marais, A; Marais, G; Marais, J A; Marais, P G; Marcus, G; Maree, J W; Marivate, C T D; Marsh, D W; Marshoff, F B; Martins, B A D; Maserumule, F; Mashamba, H J; Mashamba, T G G; Mashile, N L; Mashimbye, J N; Mathebe, P; Matthee, P A; Maunye, M M; Mavuso, J S A; Mayimele, H W; Mayisela, E M; Mbeki, T M; Mckenzie, P C; Mdladlana, M M S; Metele, A T; Mfebe, M W; Mgidi, J S; Mkhathshwa, S; Mkhize, B R; Mkwai, Z W; Mlambo-Ngcuka, P L; Mlangeni, A; Mngomezulu, G P; Mnguni, L L A; Mnguni, Z D; Moatshe, P; Modise, K J; Modisenyane, L J; Modise, T R; Moeti, S E; Mohamed, A G; Mohamed, I J; Mohamed, M; Mohlamonyane, G M; Mokaba, P R; Mokgalong, M R V; Mokoena, D A; Mokoena, M L; Molekane, R S; Molewa, B G; Momberg, J H; Mongwaketse, S J; Montsitsi, S D; Moorcroft, E K; Moosa, M V; Moosa, M W; Mothoaga, P K; Motshabi, C H; Mpahlwa, M B; Mpehle, M; Mthembu, J M; Mtsweni, N S; Mudau, N W; Mufamadi, F S; Mukhuba, T T; Mushwana, G M; Mutsila, I; Myakayaka-Manzini, Y L; Naidoo, E N I; Naidoo, J; Nair, B; Nash, J H; Ncinane, Z I; Ncube, N Z; Ndawonde, D; Ndlovu, M C; Ndou, J A; Ndou, R S; Ndzanga, R A; Nel, A C; Nel, A H; Netshimbupfe, M A; Ngcuka, B T; Ngwane, L B; Ngwenya, M L; Nhlanhla, J M; Nhleko, N P; Niehaus, C G; Niemann, J J; Njobe, M A A; Nkomo, S A; Nkosi, D M; Nobunga, B J; Nogumla, R Z; Ntaopane, T E; Ntsizi, T C; Ntuli, B M; Nwedamutswu, M J; Nxumalo, S D; Nyembe, N D; Nzimande, B E; Olifant, D A A; Oliphant, G G; Oliphant, R; Omar, A M; Oosthuizen, G C; Padiachey, D K; Pahad, A G H; Pahad, E G; Pandor, G N M; Peters, E D; Phakathi, N E; Phenethi, M M; Phohlela, S; Pretorius, I J; Rabie, J A; Radebe, J T; Ramabulana, V E; Ramaphosa, C; Ramaremisa, N G; Ramgobin, M; Rantho, M M; Rasmieni, S M; Ratshidanga, R; Redcliffe, C R; Reeves, A E; Rhoda, R T; Richards, I; Ripinga, S S; Rockman, G; Routledge, N C; Saloojee, C; Saloojee, R A M; Schoeman, R S; Schoeman, S J; Schreiner, J A; Selfe, J; Seperepere, M S; September, R K; Serote, M W; Shabangu, S; Shilubana, T P; Shope, N G; Shope, N R; SiFora, T V; Sigcau, S; Sikakane, M R; Simmons, S; Sisulu, L; Sisulu, N A; Skosana, W M; Skweyiya, Z S T; Smuts, M;

Snyders, F E; Solomon, G; Sosibo, J E; Steenkamp, P J; Stofile, M A; Streicher, D M; Sulliman, M A; Surty, M E; Suttner, R S; Swanepoel, L J; Tambo, A F; Taunyane, D P; Thabethe, E; Thomson, B; Tinto, C F; Tiry, M; Tolo, L J; Tonjeni, T L; Tsenoli, S L; Tshabalala, M E; Tsheole, N M; Tshivhase, M P K; Tshivhase, T J; Tshwete, S V; Turok, B; Turok, M E; Tyobeka, V M; Vadi, I; Van Breda, A; Van den Heever, R P Z; Van Der Merwe, S; Van Deventer, F J; Van Heerden, F J; Van Niekerk, A E; Van Schalkwyk, M C J; Van Wyk, A; Van Zyl, I D; Verwoerd, M; Vilakazi, B H; Vilakazi, M I; Viljoen, V; Watson, A; Waugh, J C N; Wiley, M G E; Williams, A; Wyngaard, C A; Xingwana, L M; Yengeni, T S; Zitha, D A; Zondo, P; Zulu, M I; Zuma, N C D.

NOES—1: Green, L M.

ABSTENTIONS—8: Bruwer, A A B; Chiolé, J; Groenewald, P J; Louw, L; Mulder, C P; Mulder, P W A; Van der Walt, B J; Viljoen, C L.

*After announcement of result of voting:*

Mr J CHIOLÉ: Mr Chairperson, on a point of order: I just wish to bring to your attention that the abstentions should be eight because the FF abstained. You did not mention whether we should press the black button if we wished to abstain. So we did not press any buttons. [Interjections.]

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! Thank you, Mr Chiolé. We will record the statement which you have just made.

Question accordingly agreed to in accordance with section 73(2) of the Constitution.

The DEPUTY CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY: Order! The Constitutional Assembly has now passed the new constitutional text, as amended.

Before we close the proceedings of the day may I just draw attention to the fact that we have been honoured with visitors from abroad in our public gallery. We have also been honoured with the presence of the Deputy President of the Constitutional Court, Justice Mahomed, who participated from the public gallery. I trust that this will not be the last time I have the opportunity and privilege to address him. [Applause.]

\*Ladies and gentlemen, in the spirit of a pronouncement made by Mr Makwetu on a previous occasion, I want to say a few words in Afrikaans. He must therefore by no means deduce that I am distancing myself from my Afrikanership when I quote an American president later in my speech.

When I look at South African politicians, I see that they are not different from other politicians, namely, sometimes learned people. They are often criticised by the critics. I want to assure them that on their behalf I would like to get hold of these armchair critics in the early hours of the morning around the negotiating table and show them that being a politician is no mean feat.

I want to say to hon members, in the words of Theodore Roosevelt, to be steadfast. He said:

It is not the critic who counts. It is not the man . . .

†I concede that this is still old language. It is not politically correct language nor is it gender sensitive, but I will stick to his original words.

It is not the man who points out how the strong man stumbles, or whether the doer of deeds could have done better. The credit belongs to the man who is actually in the arena; whose face is marked by dust, sweat and blood; who strives valiantly; who errs and comes short again and again because there is no effort without error and shortcoming, but who does actually strive to do the deeds; who knows the great enthusiasms, the great devotions; who spends himself in a worthy cause; who, at best, knows in the end of the triumphs of high achievement and who, at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat.

I wish you well. [Applause.]

The meeting adjourned at 11:44.

## ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

### CHAIRPERSON'S REPORT:

#### INTRODUCTION

1. The Constitutional Assembly sitting of 17 September, 1996 directed the Constitutional Committee and two sub-committees to meet for purposes of preparing amendments to the

constitutional text adopted by this Assembly on 8 May, 1996. The Constitutional Committee was instructed to table its report and submit an amended text for approval by the Constitutional Assembly in terms of Sec 73 (2) and 73A (2) of the interim Constitution on 11 October, 1996.

## REPORT OF THE CONSTITUTIONAL COMMITTEE

2. The members of the sub-committees met jointly on 25 September before dividing into two groups under the chairpersonship of Ms Mavivi Myakayaka-Manzini and Mr Pravin Gordhan. Each sub-committee was directed to consider specific issues which in terms of the Constitutional Court judgment required further attention.
3. The sub-committees met on various occasions between 25 September and 3 October to consider amendments. On 7 October the Constitutional Committee met to receive a report from the sub-committees. The Constitutional Committee accepted the amend-

ments proposed by the sub-committees. It also requested counsel to provide a legal opinion on various issues. Legal opinions were received on 9 October and were tabled at the Management Committee meeting on 10 October. As a result, the Constitutional Committee met on 10 October to consider further amendments.

4. The amendments to the text adopted by the Constitutional Assembly on 8 May fall into three categories. These are—
  - (a) editorial changes,
  - (b) technical changes requiring political approval; and
  - (c) changes required for compliance with the Constitutional Principles.
5. The amendments, agreed to by the Constitutional Committee on 10 October, are contained in the table below which lists those in categories (b) and (c) only, and indicates into which category each of the amendments falls.

### Index Of Amendments To The Text

No	Sec	Issue	Formulation
1	23(5) & (6)	Collective Bargaining	Substantive
2	37(5)	State of Emergency—table of non-derogable rights	Substantive
3	45(1) & (2)	Joint committees	Technical
4	57(2)(b) & (d)	Internal Arrangements (minority parties)	Technical
5	59, 72 & 118	Openness of Committees—new formulation	Technical
6	61(2) & (3)	Allocation of delegates	Technical
7	64(7)	Presiding officers	Technical
8	65(2)	NCOP voting procedure	Technical
9	70(2)(c)	Internal Arrangements (minority parties)	Technical
10	74	Constitutional amendments	Substantive
11	77	Money bills	Technical
12	79(3)(b)	Passing of Bills—consequential to change in sec 74	Technical
13	81	Retrospective legislation	Technical
14	101(1) & 140	Executive written decisions	Technical
15	104(1)(b)	Provincial legislative competence	Technical
16	116(2)	Allocation of delegates	Technical
17	120	Money Bills	Technical
18	123	Retrospective legislation—see item 13 above	Technical
19	130	Removal of Premier	Technical
20	146(2) & (4)	National Override	Substantive
21	154	Municipalities—co-operative government	Technical
22	155, 157 & 160	Local Government	Substantive
23	166(e)	Judicial system	Technical
24	167 (d)	Exclusive jurisdiction of Constitutional Court	Substantive
25	193 & 194	Public Protector and Auditor-General	Substantive
26	196 & 197	Public Service Commission	Substantive

27	199(3)	Municipal Police—consequential change	Technical
28	206, 207	Provincial Police powers	Substantive
29	229	Municipal fiscal powers and functions	Substantive
30	239	Definitions	Technical
31	241(old)	LRA deleted	Substantive
32	243	Commencement date of Constitution	Substantive
34	Sch 6—21(5)	NCOP voting procedure	Technical
35	Sch 6—21(6)	Municipal tax and levies	Technical
36	Sch 6—22	National Unity and Reconciliation	Substantive
37	Sch 6 Item 26	Local Government Transition	Substantive
38	Sch 6—29	Registration of immovable property	Technical
39	Sch 6 Annex B (1) (g)	GNU—signing of international agreements	Technical
40	Sch 6 Item 3 Annex D	Armed forces	Technical



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