

# The case for – and against – a constituent assembly

By Victor Munnik

**ALL THE** participants at Idasa's "constituent assembly" conference, held in Johannesburg in January, were agreed about the goal: writing a constitution that would enjoy popular legitimacy.

The question was whether a constituent assembly (CA) would achieve this.

The CA also turned out to be intimately linked to other key questions: how will an all-party conference (proposed as a preliminary to the CA) be organised? What will be the nature of a transitional government? Will the National Party continue playing the dual role of player and referee in the political process, and will there be a neutral security force to guarantee the freedom of political activity during the transition?

The new constitution must be a clear break with the past, said Prof Kader Asmal, visiting constitutional lawyer at the University of the Western Cape, who teaches at Dublin University.

He pointed out that the first general election would really be a referendum about political choices, to determine which ideological representatives must wield power.

Prof André du Toit, political scientist and vice-chairman of Idasa's board of trustees, expressed concern at the possibility that the CA might not be the result of a free and fair election.

He said in the late stages of transition, a deal might be worked out at leadership level and that a founding pact, rather than a founding election, could usher in the new era. This might happen because the political players might not want to take the risk of a founding election. In both cases a CA could have a central place, but it may not be the result of a popular election, and thus not be properly democratic.

Raymond Suttner, head of the ANC's department of political education, immediately reassured the conference that the ANC does not want people to just applaud the brilliance of their leaders after they had formulated a constitution. The new constitution will have to be the result of popular involvement.

The ANC therefore rejects constitution-making by a body where parties are represented that do not have support that has been popularly tested.



Piet Coetzer: one-sided handing over of power.

Mark Shinnars, a member of the PAC's national executive council, said a CA offers virtually unlimited potential as a bridging mechanism. It will mean the end of colonial settler values and the entrenchment of white domination through social, political and economic power.

The CA, where the majority will rule, will tackle the very important tasks of redistribution of land and other resources, meaningfully enshrine individual rights, change the civil service totally and "truly reflect the sovereign legitimacy of our country for the first time in 339 years".

Shinnars suggested that the liberation movement "engage legitimate representatives of the majority disadvantaged, on a united format to negotiate with the representatives of the minority system the modalities of transferring political power through establishing a CA".

The assembly will then appoint a constitutional commission, to produce a constitution which will then be adopted by the CA.

Dr Van Zyl Slabbert, Idasa's director of pol-

icy and planning, later remarked that the PAC's willingness to "negotiate the modalities of the establishment of a constituent assembly" must mean that they intend to participate in an all-party conference.

The Inkatha Freedom Party's Gavin Woods warned against the election of a CA. He said it would lead to bloodshed and a spirit of contest.

**"THE STAKES** are simply so high that elections free from violence and intimidation are virtually impossible. Together with current levels of euphoria, hatred and distrust, the result must be an explosive contest for power that threatens both negotiations and stability. What South Africa needs now is a democratic constitution rather than a contest of power," he said. "Elections must come later".

Dr Denis Worrall of the Democratic Party said he shared some of Inkatha's reservations, were an election for a CA to take place immediately. On the other hand, there has to be a test of public opinion. He said the ANC and the government focused too narrowly on the constitutional aspects.

Piet Coetzer, NP member of parliament and director of information, for the Transvaal, said the NP's aim was to organise a forum as widely inclusive as possible of all parties with a proven support base. This will improve the country's chances of achieving a workable and peaceful new constitution.

Coetzer cautioned politicians not to argue too early about final structures – "let's conceive the baby first and then give it a name".

He said the problems with a CA were technical and legal – involving the sovereignty of the state – and very practical as well. One should be careful not to create potential for conflict afterwards, he said.

One example: if a CA has a majority based on a straightforward election, we run the danger of a perception of a "one-sided handing over of



Mark Shinnars: unlimited potential as a bridging mechanism.



## New hands on deck at Idasa



Ivor Jenkins, regional director in Pretoria



Simon Ntombela, regional co-ordinator in Natal



David Schmidt, regional director in the Western Cape

**IDASA** has seen many comings and goings of late. It's got to the point where we don't know whether to say "hi" at the arrivals terminal or "au revoir" in the departures hall.

The following hi-flyers have arrived safely at their Idasa destinations:

● The Durban office is again back to full strength with the recent appointment of **SIMON NTOMBELA**, who replaces Gary Cullen as regional co-ordinator.

Simon was previously national publicity secretary for the SA Youth Congress, whom he represented at the United Nations on occasion. His lengthy and active political involvement with youth organisations led to his arrest and

detention for six months. He was released as part of a group who had been on a hunger strike.

● The Pretoria office recently acquired the services of **IVOR JENKINS** to replace André Zaaïman as regional director. André is currently in Senegal doing the groundwork for the establishment of the Institute for Democracy and Development in Africa there.

Ivor was previously the national director of the Christian contact group, Koinonia. A Baptist minister, his involvement in the causes of justice and reconciliation has earned him wide respect and admiration.

● Western Cape regional co-ordinator **DAVID SCHMIDT** has succeeded Nic Borain in the position of regional director, Nic having decided shortly before Christmas to make a career of garlic farming in the southern Cape!

David, a former national organiser for the End Conscriptio Campaign, has taught English at high school and was also involved in research for the Carnegie Inquiry into Poverty.

Towards the end of 1990, and in January this year, a number of staff members, some of whom have been with Idasa since its inception, also moved to other pastures.

They are:

- Thaabit Albertus, national administrator at head office.
- Marianne Holscher, regional co-ordinator in Johannesburg.
- Ian Liebenberg, research and resource director at head office.
- Sylvia Mitchell, regional administrator in Port Elizabeth.
- Monde Mtanga, regional co-ordinator in Port Elizabeth.
- Liesel Naudé, regional director at our office in Johannesburg.
- Shauna Westcott, a part-time assistant in the media department at head office.

We wish them all well - their contributions to Idasa's work will be missed.

From Page 15

power". One only has to look to Mozambique and Angola to realise the destructive forces that such a situation can unleash in a country.

As far as the idea of an interim government is concerned, the government agrees that there cannot be "one-sided" administration during the transition period. This is also an issue that should be taken to the all-party conference.

**FINALLY** a note of caution was sounded by Dugard, Wits law professor, when he said that a legitimate constitution must meet two requirements. It must enjoy overwhelming majority support, and it must be deserving of respect by reason of its content. Majoritarianism is not equivalent to democracy.

Prof Dugard suggested that an all-party conference should establish the basic democratic principles in the first place. The parties should in fact decide about the rules of the game before the extent of their own support is clear.

Issues such as that of a unitary or federal state, a bill of rights, independent judiciary, universal franchise, proportional or simple constituency member representation and the principle of no discrimination should be settled there.

If this is not done, we run the risk that the constitution might enjoy majority support but not be democratic in the full sense of the word. □

Victor Munnik is a freelance journalist based in Johannesburg

## LETTERS

From Page 3

Begrip vir mekaar se selfkonsep, hetsy as persoon of groep, is myns insiens een van die voorvereistes vir vrede en harmonie.

Selfkonsep sluit ook die visie vir die toekoms in, persoonlik en as groep. Ongelukkig kan 'n selfkonsep wat met vrese, vooroordele en angs gelaai is nie 'n volledige en betekenisvolle visie ontwikkel nie; daarom dat u doelstelling en hierdie aspek aan te spreek so belangrik is. Sukses daarmee, en as ek kan help, laat gerus weet. Dit is my bedde dan ons in Suid-Afrika in 1991 sukses en vooruitgang na vrede, geluk en voorspoed vir almal sal bereik.

Dr Daniel Laubscher  
Hennopsmeer

## What it means to be human

**I WAS** very interested in the article "Controversy over Bill of Rights" that appeared in the December issue of your magazine. The unusual ideas contained therein, gave much food for thought!

I have studied the International Declaration of Human Rights and, although I consider it an important and useful document, it really represents an ideal to strive for and many countries that ratified it 42 years ago have done little to implement it!

I noticed that, except for the preamble and the first section of Article 29, there is little demand made on the individual to realise that s/he has duties and obligations, as well as rights! Indeed, if a balance of human interaction is to be reached, between the governed and those in power, then measures must be taken to impress on the mind of people that something is required of them, in return for their right to be considered human!

If a new South Africa is to be built, the people should accept some responsibility for the quality of life in the country and not leave everything to their leaders or make unrealistic demands of the future.

There is talk of a bill of rights for South Africa. I feel, very strongly, that there should also be a "Declaration of Human Responsibility" - something that would stress the need for interaction between the government and the governed.

While it is undoubtedly true that, on a universal scale, much misery has been caused through failure to observe human rights, in the microcosm of everyday life, more misery has been caused by humanity's failure to live up to personal responsibilities and commitments. No government has been responsible for the spread of Aids, over population, soil erosion, pollution of air and water, rape and petty theft, neglect and abuse of children, divorce or ignorance of the law.

L Wilson  
Towerby, Johannesburg