

3-1994

The SACBC Democracy Charts: A Brief Introduction to the New Constitution

Justice and Peac Commission, Southern African Catholic Bishops Conference

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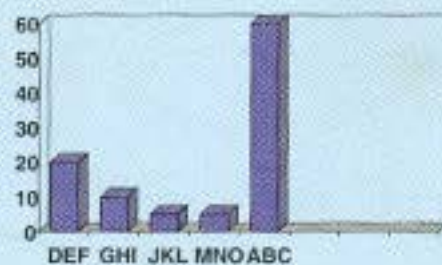
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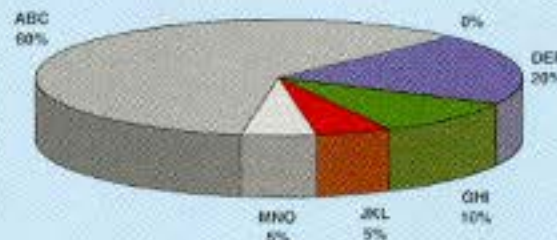
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The SACBC Democracy Charts

Proportional Representation



Where party DEF wins 20% of the votes, party GHI 10%, parties JKL and MNO 5% each, and party ABC 60%, then their representation in Parliament would look something like this :



Party ABC would get 60% of the seats in Parliament, party DEF 20%, party GHI 10%, and parties JKL and MNO 5 % each. Out of 400 seats, that would mean ABC gets 240 seats, DEF 80, GHI 40, and JKL and MNO 20 seats each.

A Brief Introduction to the New Constitution

HOW TO USE

THE SACBC DEMOCRACY CHARTS

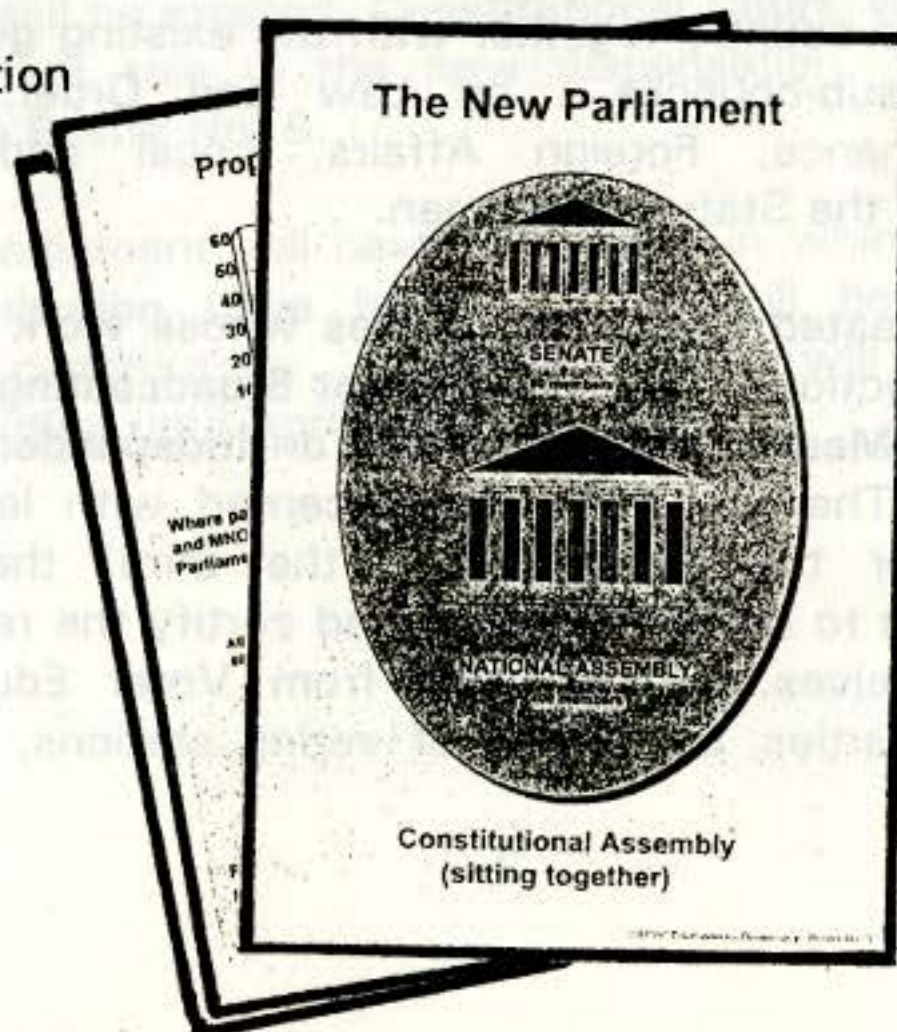
Introduction

The SACBC Democracy charts are an aid to teaching about the forthcoming election, the new system of government and the new Constitution. They are only an aid, and should not substitute for a reading of the Constitution and the Electoral Act themselves. However, for many people these documents will be too lengthy and obscure ; hence these charts which try to explain the main points as briefly as possible.

Note: These charts are NOT designed for every type of audience, especially not for those who are learning about how to vote for the first time. They are aimed mainly at those who want to more about the shape of our future, and already have some background in Education for democracy.

Second Edition

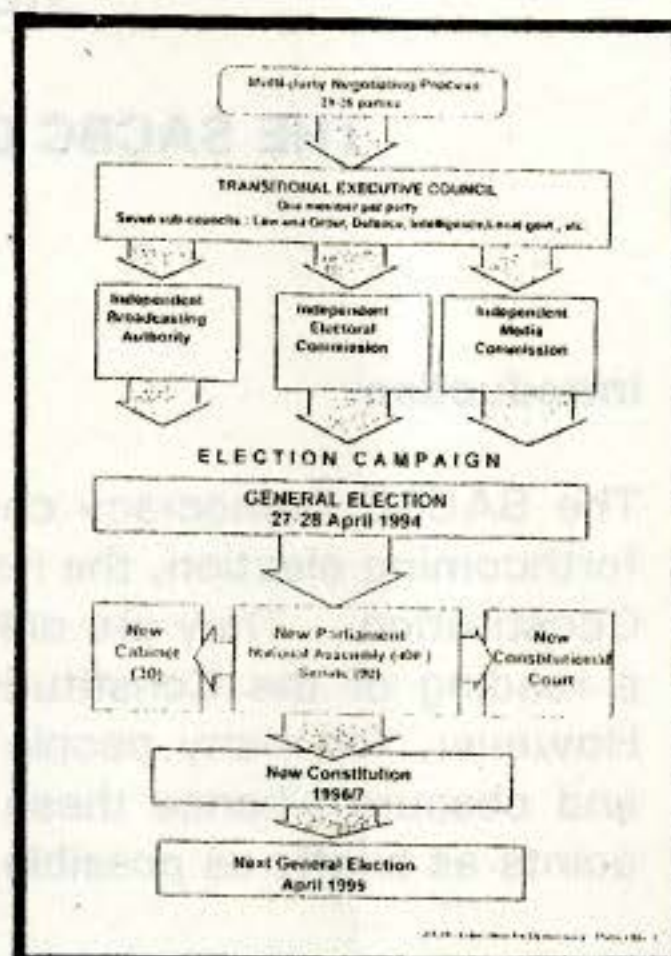
March 1994



Poster No. 1 - The Flowchart

This poster is designed to explain what has been happening over the past year, and what will happen during the next few months and years. This poster will need to be explained in some detail since it is the basis for all the others.

At the top of the page (in the yellow box) is the **Multi-Party Negotiating Process**. This is the rather clumsy name given to the process of talks which were going on at Kempton Park from 1991 until 1993, after the name **Codesa** was dropped.



These talks which finished in November 1993, completed a whole series of new laws which will govern the transition to full democracy. The first and most important body created is the **Transitional Executive Council**, which is a body made up of all those who signed the final agreements at Kempton Park. This body governs the country together with the existing government. It has seven sub-councils : on Law and Order, Defence, Intelligence, Finance, Foreign Affairs, Local and Regional Government and the Status of Women.

This TEC has created three other bodies whose work is directed mainly at the elections : an **Independent Broadcasting Authority**, an **Independent Media Commission** and an **Independent Electoral Commission**. The first two are concerned with levelling the playing field for the elections and the third, the Electoral Commission, has to set up, oversee, and certify the result of the elections themselves. All tasks, from Voter Education, to registration of parties, setting up of voting stations, printing of

ballot papers, the conduct of parties during the campaign, and the actual procedures of voting themselves will come under the control of the IEC, which has already been appointed.

The Election Campaign has already begun and will continue until April 27th and 28th 1994. The election actually begins on the 26th April, which is a special voting day for those unable to get to the polls the following two days. Then the 27th and 28th will be general voting days. In this election, everyone will be able to cast **two ballots**, one for the National Assembly and one for the Provincial Legislatures. The votes will be counted using the system of proportional representation, which will be explained later.

The elections will result in a **New Parliament** (yellow box) consisting of a **National Assembly** of 400 members and a **Senate** of 90 members. The way in which these will be elected will be explained in Posters 4,5 and 6.

From the new Parliament will be appointed a new **Cabinet**, consisting of not more than 30 members in all. The way in which these will be appointed is discussed in Poster No. 7.

Also there will be created **Constitutional Court**, which will play a very important role in the new dispensation. This will be explained in Poster No. 8.

The new Parliament will have two years in which to draw up a **New Constitution** (blue box). This will be the final and permanent constitution. However, there will not be another **General Election** until April 1999.

Poster No. 2 - Proportional Representation

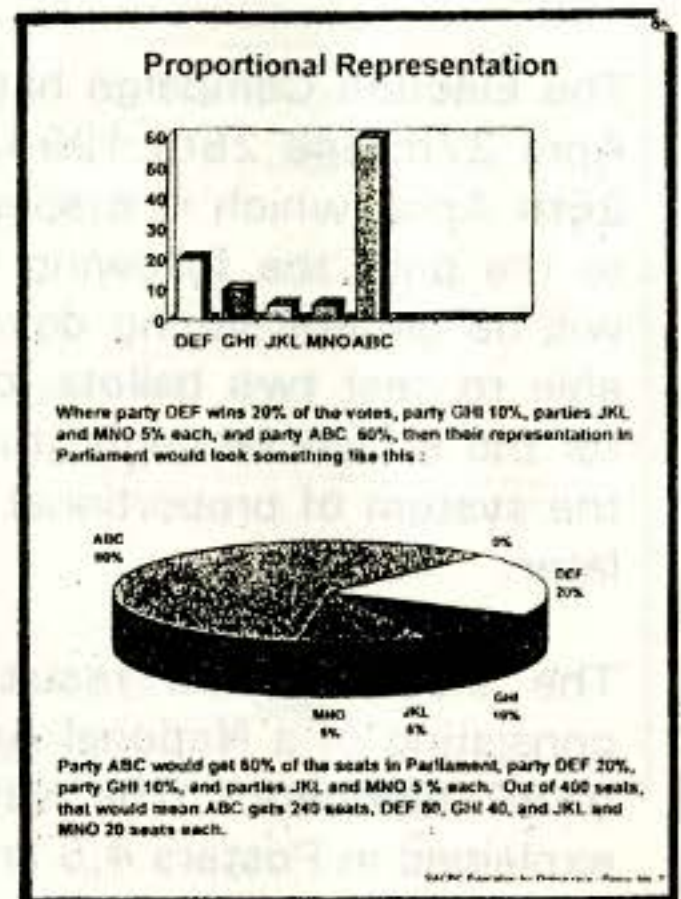
Now we start to explain some of the boxes on the first poster. The second poster is an explanation of the system which will be used to count the votes cast in the **General Election** of April 1994. It is called **Proportional Representation**, and is a system never before used in South Africa.

In this system, the country is not divided up into districts or constituencies, and there are no candidates for local seats. The whole country is taken as one large constituency, and the voters cast their ballots for parties, not candidates. They can therefore vote anywhere, since there are no voters' rolls.

In this election therefore, each voter will receive a ballot paper with a list of parties. He or she will be able to mark one party only with a cross or some other sign. The votes will then all be totalled for each party in turn. The totals are then compared with the total number of votes cast and the percentage for each worked out.

In the example given here, party ABC gets 60% of the votes, party DEF 20%, party GHI 10% and parties JKL and MNO 5 % each. Then, in the National Assembly, party ABC will get 240 out of 400 seats, party DEF will get 80 seats, party GHI 40, and parties JKL and MNO 20 seats each.

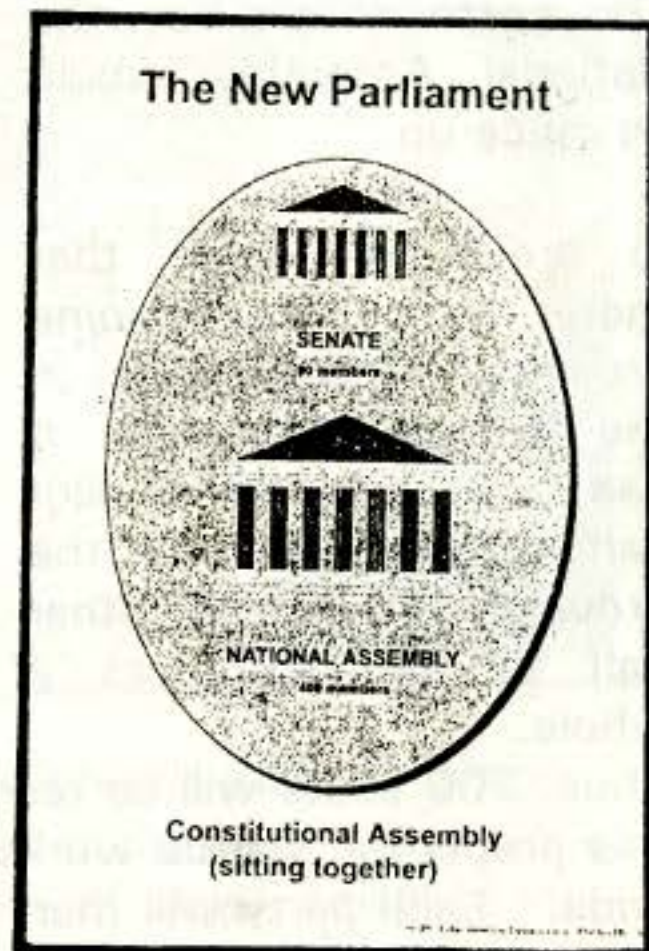
This would be proportional representation at its simplest , but as we shall see our system will be more complex.



Poster No. 3 - The New Parliament

The General election of April 1994 will result in a New Parliament. This new Parliament will consist of an upper house or **Senate** of 90 members, and a lower house or **National Assembly** of 400 members. The way in which these members will be elected to their seats will be described in the next few posters.

This new Parliament, which will sit in Cape Town, will have two main functions : 1) to pass ordinary legislation, and 2) to write the final and permanent Constitution.



When the Parliament is writing the final Constitution, both houses will have to sit together, and this will be known as the **Constitutional Assembly**. Special rules and procedures will apply and the Constitutional Assembly will elect its own President etc. In order to pass the final Constitution, a two-thirds majority of both houses sitting together will be required.

Parliament has two years in which to write this final Constitution.

Now we will look at the way in which the National assembly and the Senate are elected.

Poster No. 4 - Makeup of the National Assembly

This poster shows how the National Assembly would be made up.

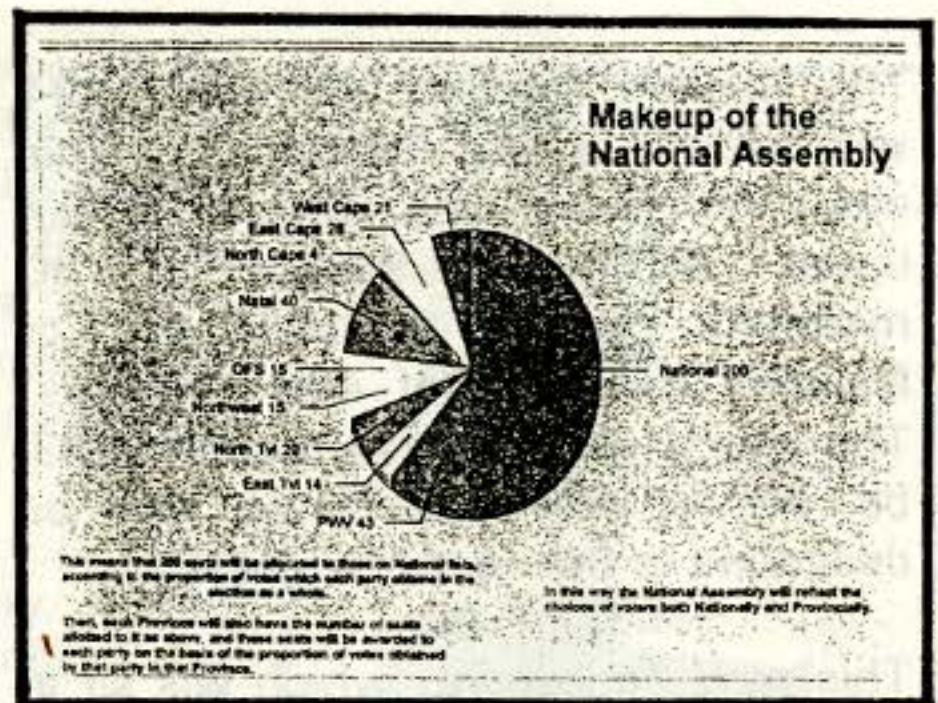
In order to ensure that there is at least some Provincial representation in the National Assembly, it has been decided to allot half of the seats to the Provinces, and the other half to the nation as a whole.

Thus, 200 seats will be reserved for those on National lists, and this proportion will be worked out from all the votes cast Nationwide. Each party will then get a number of seats from this 200, depending on its proportion of the total votes cast in the whole country.

Then, the other 200 seats are divided between the Provinces according to population as indicated, and in each province the parties will get seats on the basis of proportional representation. In other words, the votes will be counted again, this time in each Province, and each party will then get a share of the Provincial seats according to the proportion of votes it obtained in that Province. Thus the National Assembly should reflect the choices of voters both Nationally and Provincially.

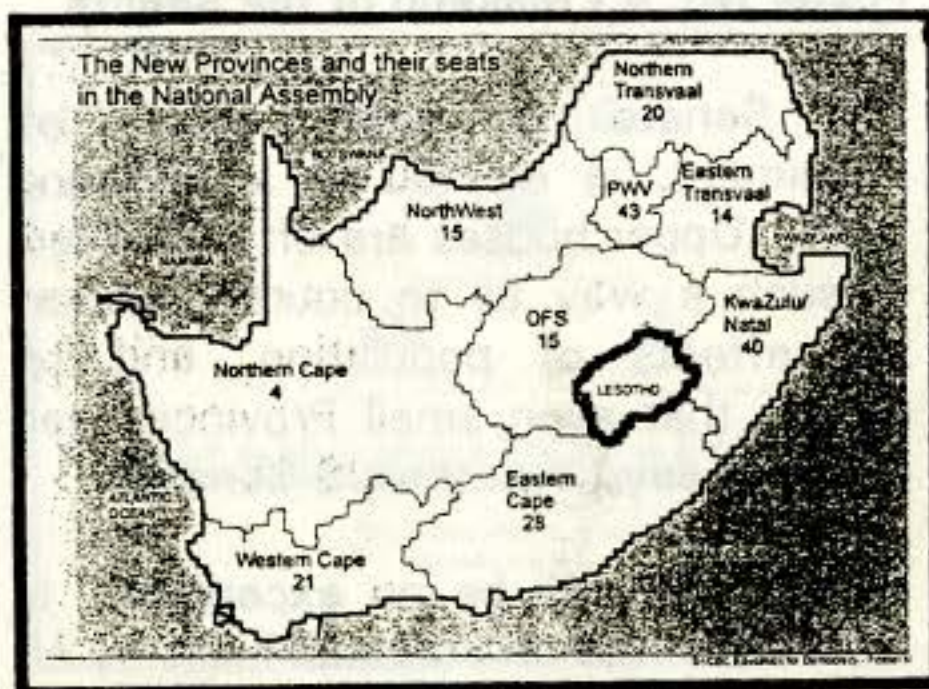
Of course, once candidates are elected to Parliament, they join up with other candidates from their own party from other Provinces or from the National lists, so that a party's total number of candidates will consist of all the seats it has won Nationally and in each Province.

For more information on this, see Schedule 2 of the Constitution.



Poster No. 5 - The New provinces and their Seats in the National Assembly

Everybody now knows that there will be nine new Provinces in the New South Africa. Some of the boundaries of the new Provinces will have to be finalised after the elections by means of referenda, but the elections will be held using these new Provinces as shown here.



In this poster we see the new provinces which will take the place of the existing Provinces and homelands at midnight on April 26 1994. Each Province will have the number of seats indicated in the **National Assembly**, as indicated in the previous poster.

However, the election on April 27-28 will also be an election for new **Provincial Legislatures**. This means that on the election days we will also be electing new Parliaments in each of the nine new provinces. This will be done by means of the **second ballot**.

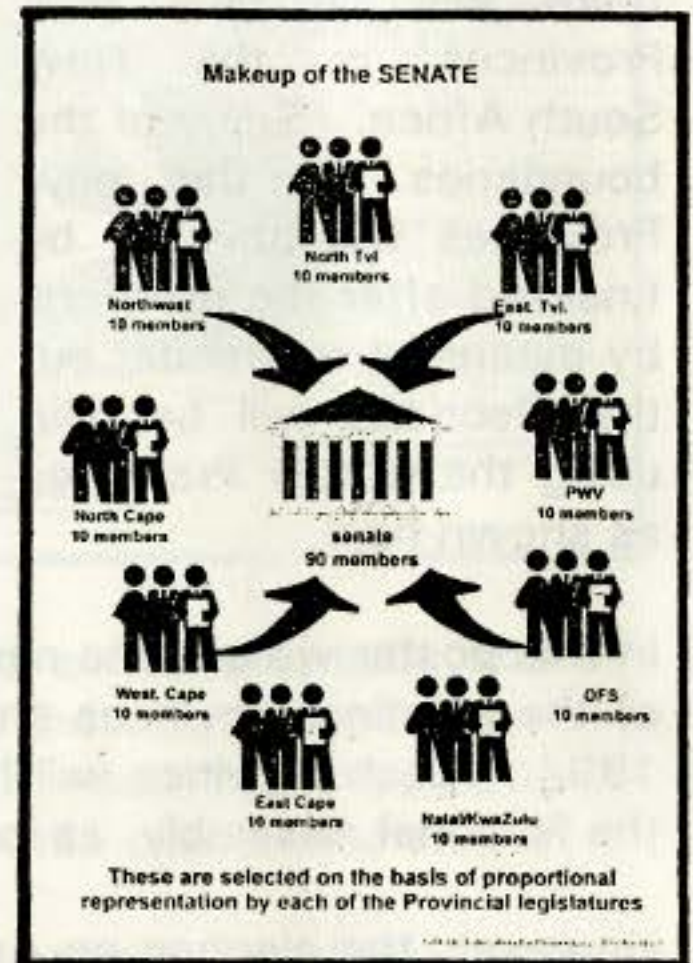
The new Legislative Assemblies of the Provinces will be unequal in size, for example the PWV Province will have 86 seats, KwaZulu /Natal 81 seats, the Western Cape 42 etc. Each provincial Legislature will also elect a Premier for each province and a Cabinet of not more than 10 members to run the Province. The powers of the new provinces are spelt out in Schedule 6.

For this to work properly, parties have to compile National lists of their candidates for the 200 "National" seats, Provincial lists for the National Assembly, and Provincial lists for each Provincial Assembly for which they wish to stand.

Poster No. 6 - Makeup of the Senate

The Senate, or Upper House of Parliament, is elected in a different way. Upper houses are often elected in such a way as to counterbalance the effects of population, and to ensure that even small Provinces get an equal say (e.g. the US Senate).

Our Senate will be no exception. It will be elected on an equal basis by all of the Provinces, from their Provincial legislatures. One of the first functions of these new provincial Legislatures will be to elect members to the Senate. Ten members will be elected from each Province no matter how big or small. These elections must be on the basis of proportional representation as well.



In other words, if Party A gets 40 % of the votes in the Northern Transvaal, then four of their senators must come from that party. They will then go to Cape Town to form the Senate, and their places in the Provincial legislatures will be taken up by those next on the party lists, so that the proportion of seats for each party remains the same.

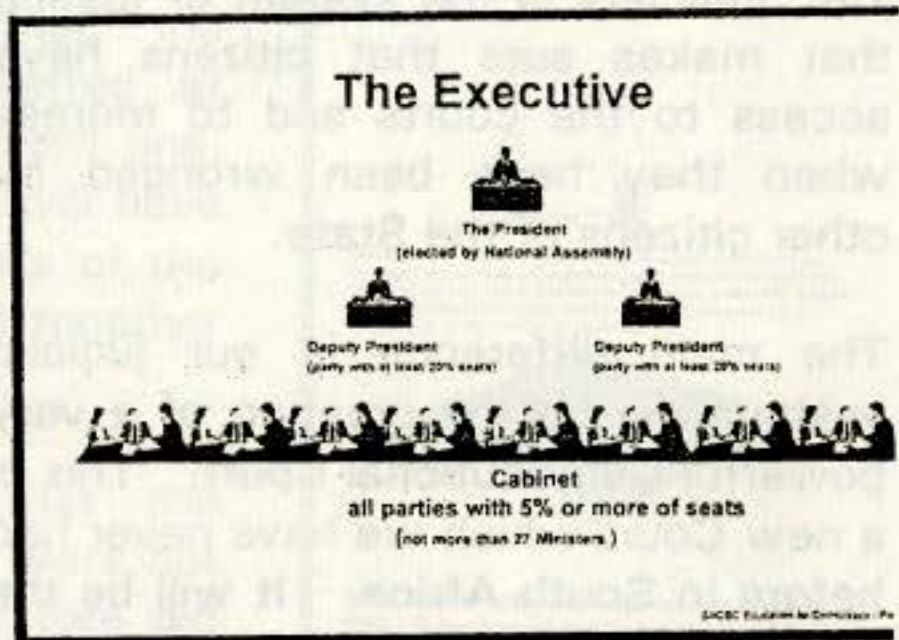
The function of the Senate therefore would seem to be to represent the interests of the Provinces, no matter how small. For any bill to become law, it must be adopted by each House of Parliament.

For more information, see Chapter 4 of the Constitution.

Poster No. 7 - The Executive

Now we must look at how the actual government, or the Executive will be formed. This has been a very controversial subject during the negotiations.

It has been decided that after our first fully democratic election, we will have a "Government of National Unity". What does this mean?



It means that instead of the winning party in the election taking all the Cabinet positions and therefore running the whole of government, the Cabinet will be shared out among the parties on the basis of proportional representation. This means that any party obtaining more than 5 % of the seats in Parliament, i.e. 20 seats, will be entitled to one or more Cabinet ministers, on the basis of their proportion of the seats in Parliament.

There will be a President who will be head of Government and he will be elected by the National Assembly shortly after it meets for the first time. There will also be two Executive Deputy Presidents, for those parties which obtain 20 % or more of the seats in Parliament. Should only one party obtain 20% or more, then the second Deputy President will be taken by the next biggest party.

All decisions in the Cabinet will be taken " according to the consensus-seeking spirit of a government of national unity"

For more information, see the Constitution Chapter 6.

Poster No. 8 - The Judiciary

The Judiciary is the system of justice that makes sure that citizens have access to the courts and to redress when they have been wronged by other citizens or the State.

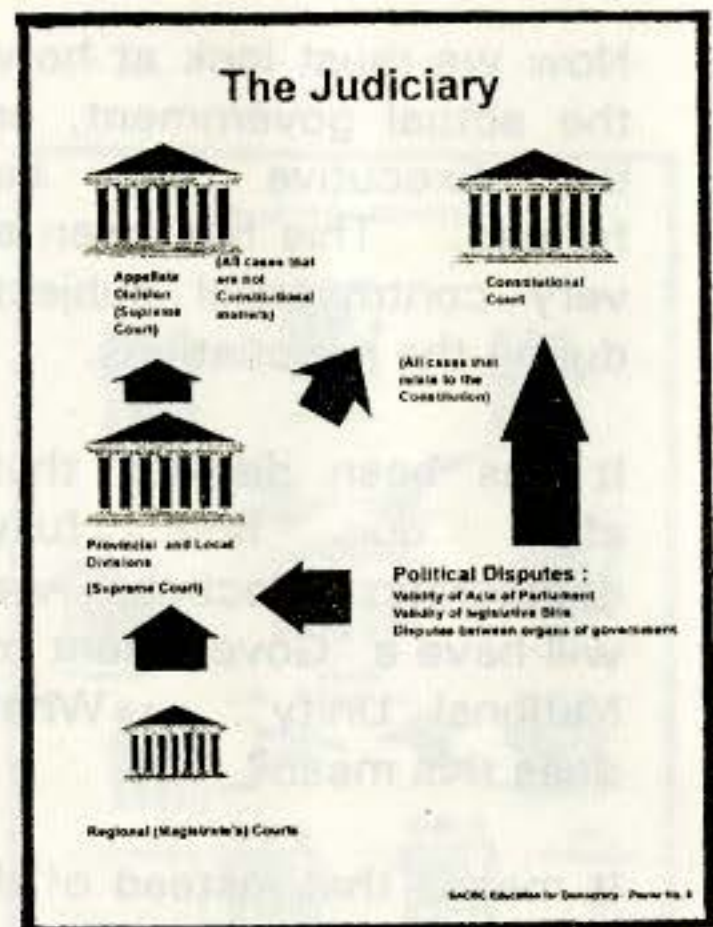
The main difference in our judicial system will be the creation of a very powerful **Constitutional Court**. This is a new Court which we have never had before in South Africa. It will be the highest court in the land in regard to Constitutional matters, where it can overrule even Parliament. It will be the guardian of the Constitution, and especially of the Bill of Rights contained in it.

The normal courts will continue to exist, at regional, provincial and Local levels. However, anyone who feels that his case touches upon a Constitutional right, may ask that this case be referred to the Constitutional Court.

The judges of the Constitutional Court will be appointed by the President in this way : **four** from judges of the Supreme Court after consulting the Chief Justice and the Cabinet, and **six** , from a list compiled by the Judicial Service Commission, after consulting the President of the Constitutional Court and the cabinet.

The Constitutional Court will sit in Johannesburg.

For more information see the Constitution Chapter 7.



Poster No. 9 - The Constitution

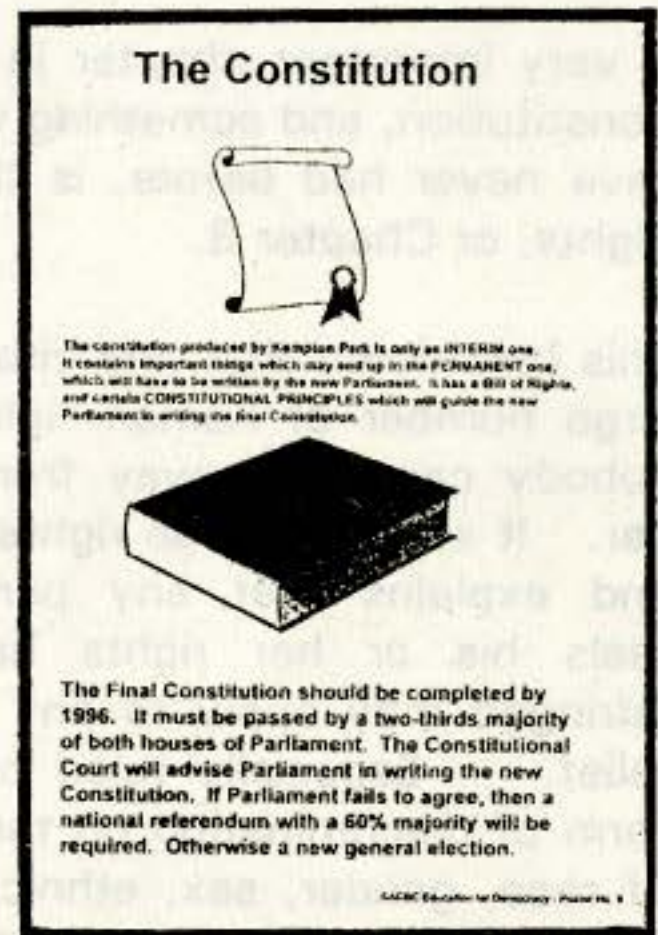
This poster explains itself. Its purpose is to explain that the Constitution which was crafted at Kempton Park is only an interim one, and that the permanent one will have to be written by the members of the New Parliament when sitting together as a Constitutional Assembly.

The reason for this is that the negotiators at Kempton Park were not elected by anyone, and therefore did not feel that they had a mandate to write the final constitution. Only a democratically elected body has such a right.

The New parliament will have to set about writing the new Constitution soon after they meet. They may appoint technical committees to help them, and they must abide by the Chapter on Constitutional Principles which were written into the interim Constitution. If they do not, the Constitutional Court can declare their work invalid and send them back to the drawing board.

To pass the new Constitution requires a two-thirds majority of both houses sitting together within two years of its first sitting. Failing this, various mechanisms come into play involving first a referendum, and finally, if no agreement is reached, another general election.

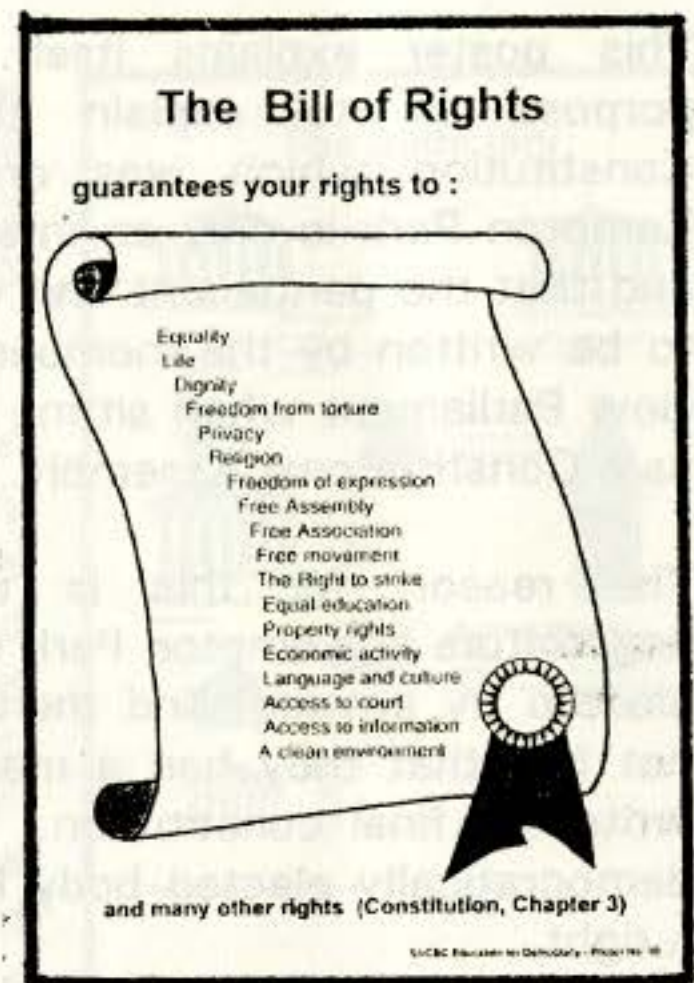
For more information, see Chapter 5 of the Constitution,



Poster No. 10 - The Bill of Rights

A very important chapter in the new Constitution, and something which we have never had before, is the Bill of Rights, or Chapter 3.

This lays down that any citizen has a large number of human rights which nobody can take away from him or her. It sets out these rights in detail, and explains that any person who feels his or her rights have been infringed may apply to any court for relief. Especially ruled out is any form of discrimination on the grounds of race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.



Chapter 3 contains first, second and third generation rights, and many of these are sure to prove controversial. The courts will have to break new ground in defining the exact nature and limits of many of these rights, which are present for the first time in South African Law. There is sure to be a Bill of Rights in the Final Constitution, which will be based on the experience of this Bill of Rights and the Court's interpretation of it.

For more information, see the Constitution Chapter 3.

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