

Edging closer to Union Buildings?

Only a few weeks ago, the ANC and the rest of the democratic movement were the only organisations talking about an Interim Government and an elected Constituent Assembly. From almost all sides of the political spectrum they were ridiculed for "baying at the moon".

Look at the finer print of most parties' positions in Codesa today, and a different picture emerges. All the parties agree on the need for an interim government, under whatever name. Most of them, including Rajbansi's Solidarity Party, acknowledge the need for an elected Constituent Assembly.

However, the most impressive convert to these positions is the National Party. In his parliamentary opening speech, De Klerk talked of an elected interim parliament which would appoint a comprehensive transitional government and act as a legislature. It would also have the task of drawing up a new constitution.

REGIME'S CONCESSIONS

In other words, the regime has all but conceded the demands for a Constituent Assembly and an Interim Government. But its concessions on most issues are accompanied by counter-measures aimed at undermining the demands of the democratic movement.

This is characteristic. A few years ago, the ANC and others called for the unbanning of organisations, release of prisoners and other measures. By the time the regime succumbed to pressure, it had already worked out counter-strategies to thwart this advance. A campaign of massive propaganda

Some weeks into Codesa's Working Groups, areas of agreement and divergence among the participants are becoming clearer. What is the possible route for the transition? In this article

MAYIBUYE brings the strands together.



Photo: T J Lemon

*SADF at the opening of parliament
All security forces should fall under the control of
the Interim Government*

against the ANC and vigilante violence had been put in place.

If the liberation movement had been aware of this, should it then have refused to be unbanned and rejected the release of political prisoners? Or should it have taken advantage of this victory and worked out its own measures to deal with the regime's strategy? Herein lies the crux of the matter.

CONSTITUENT ASSEMBLY

The regime has conceded the demand for a Constituent Assembly. But they prefer that the interim parliament (as they call it), should be bogged down in legislative work at the expense of constitution-making. If the NP's constitutional principles are anything to go by, they also want veto powers over constitutional negotiations.

The regime has conceded the demand for an interim government. But such a transitional executive would be appointed by the elected interim parliament. The question of who supervises the elections is therefore not addressed. This leaves the current regime to act both as player and referee.



The people opening their own parliament on 24 January in Cape Town

The National Party is desperate to reach the stage where a parliament and a cabinet with some legitimacy – and in which they have effective control – are set up. This would relieve them of much of the pressure from the people and the international community. Therefore, at the centre of their proposals is an attempt to prolong the transition as much as possible.

How should the democratic movement respond to this?

It is not the principles but the dangers in the regime's proposals that need to be tackled. For the essential principles originate from the democratic movement itself.

Issues that need attention in mass action and negotiations are:

- structures to supervise elections for a Constituent Assembly;
 - primary tasks of the assembly; and
 - time frames for the interim period.
- As the ANC, Cosatu and the SACP declared at their meeting on 20 February, the interim period has a number of phases, each with its own tasks and requiring appropriate transitional structures.

PROPORTIONAL REPRESENTATION

Phase One ends with elections for a Constituent Assembly.

In this phase it will be necessary to level the playing field and ensure free and fair elections. Agreement has been reached on the principle of one-person, one-vote and the system of proportional representation. Issues such as the rights of people in the TBVC territories, a one-chamber assembly and simple methods for identifying voters still need to be resolved.

What interim governmental structures would be suitable for this period? Certainly, it should be structures best placed to ensure freedom and fairness in the elections (See box). This phase requires not more than six months to complete.

Phase Two is the period when the Constituent Assembly will be in session.

Will the interim structures tailored for the first phase be suitable

for this period? Definitely not. The tasks that they will be required to carry out will be different. In considering the NP proposal for an elected interim government, two other crucial factors need to be kept in mind.

Firstly, the democratic movement cannot, as a matter of principle, be against an interim executive appointed by an elected body.

Secondly, the interim structures before elections will be assembled from Codesa. After elections it will not make any sense to continue with the same parties, given that the people will have chosen their representatives. Fewer parties, with proven support, will have seats in the Constituent Assembly. An interim executive formed by these parties will be better than the Codesa arrangement.

DUAL ROLE

This then raises the question of the dual role of a Constituent Assembly. Again, as a matter of principle, the democratic movement cannot be averse to a situation in which an elected body, even in the transition, acts as the sovereign legislature. The manner of decision-making when it operates as a constitution-making body and when it operates as a legislative authority will differ. (See box)

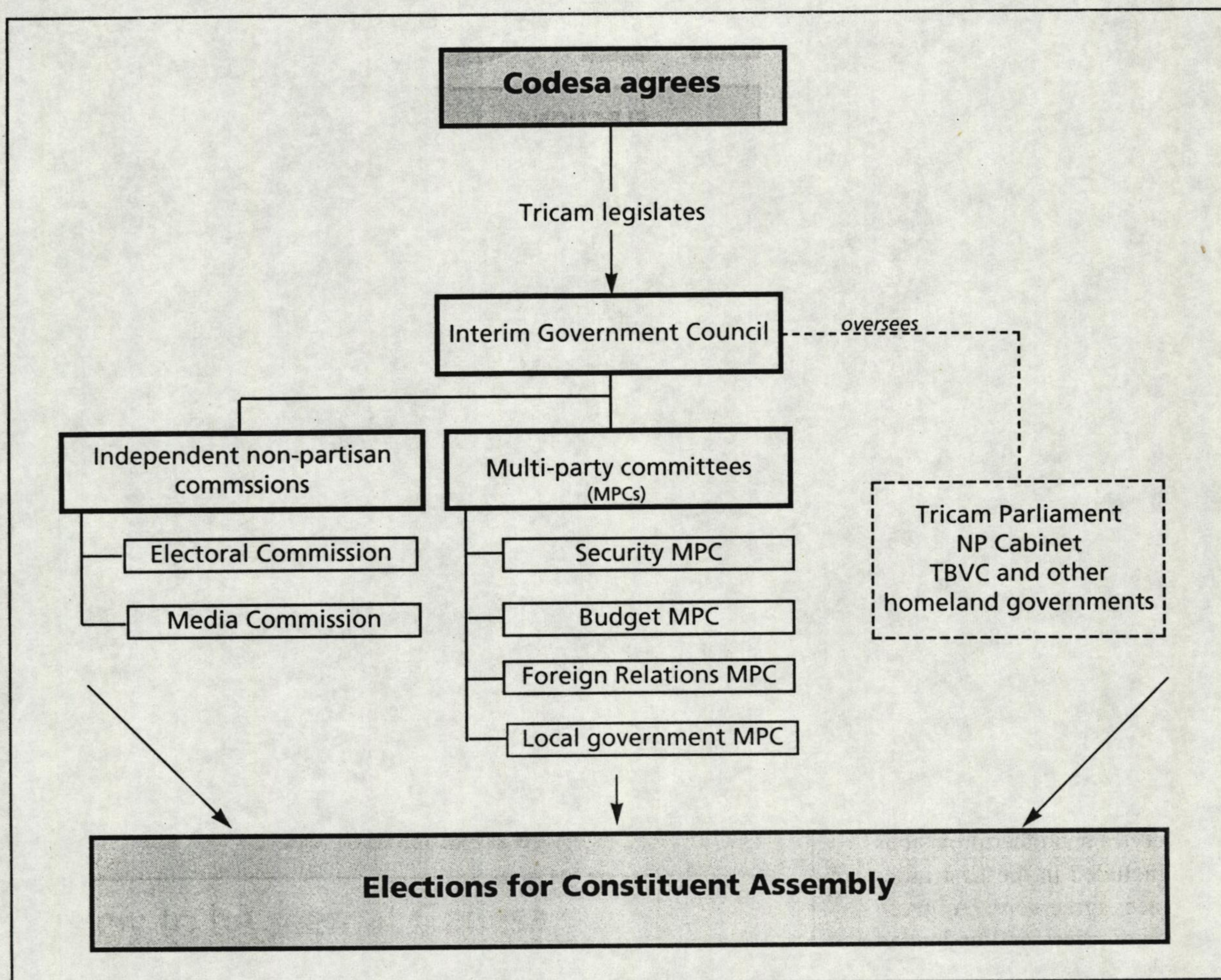
The issue of time frames is crucial for this phase too. It would be foolhardy, as the NP proposes, to leave this question to the Constituent Assembly and the interim cabinet. De Klerk in his parliamentary speech further suggests that the pace of constitution-making should depend on such factors as the level of violence. A reasonable observation on the surface. But in reality this could amount to giving licence to those who are opposed to the process to wreak havoc.

Besides, political structures have an inherent tendency to perpetuate themselves. This should not be encouraged. After all, the major task in the transition is to move with deliberate speed to democracy.

Given that Codesa will have worked out the principles on which the new constitution will be based, a

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Phase I: An impartial referee



Interim structures in this phase will be charged with the task of levelling the playing field. They should ensure equal treatment for all organisations, especially in the election campaign.

Three categories of structures will be needed:

1. Independent commissions appointed by Codesa and non-partisan in their composition:
 - Electoral Commission – made up of South Africans of integrity to organise and supervise elections. It will have sole and exclusive control of the electoral process, with powers to validate or invalidate election results.
 - Media Commission – made up South Africans of high standing to ensure fair and balanced reporting. Emphasis will be on an Independent Communications Authority which will take charge of all state broadcasters and appoint new boards. This will also cover the TBVC territories. (See page 45)
2. Multi-party Committees to take charge of the most important areas: security, the bud-

get, foreign relations and others such as local government. They will have complete control over these areas.

3. Interim Government Council: A body made up of parties in Codesa which oversees the tri-cameral parliament, the NP cabinet and structures in the TBVC and self-governing territories. It can veto as well as initiate legislation. Tri-cameral parliament to dissolve either when elections are declared or when the Constituent Assembly is elected.

The international community should be intimately involved at various levels. In particular, organisations which were represented at Codesa 1 should help supervise elections. Preferably, they should be integrated into at least the Electoral Commission.

Attention needs to be paid to the place and role of socio-economic forums. (See page 29)

The period between the legislation of Codesa decisions and elections should not exceed six months. ♦

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period of nine months for the Constituent Assembly will be more than sufficient. Incentives or penalties need to be built into this time frame to discourage delays.

What happens after a constitution is adopted?

Firstly, it will be necessary to elect a new parliament – or the second House if the Constituent Assembly converts itself into a national assembly. National, regional and local government bodies will also have to be formed.

SUNSET CLAUSES

Secondly, should the constitution contain clauses that will help ease the country into unqualified democracy: that is “sunset” clauses which will lapse after a certain period?

In Zimbabwe, there were entrenched seats for whites out of proportion with their actual numbers, limitations on land redistribution and so on.

In Ghana, regulations inhibiting the complete overhaul of the civil service and other provisions were included in the first independence agreement. A given number of years and/or loaded majorities were required to abolish these regulations.

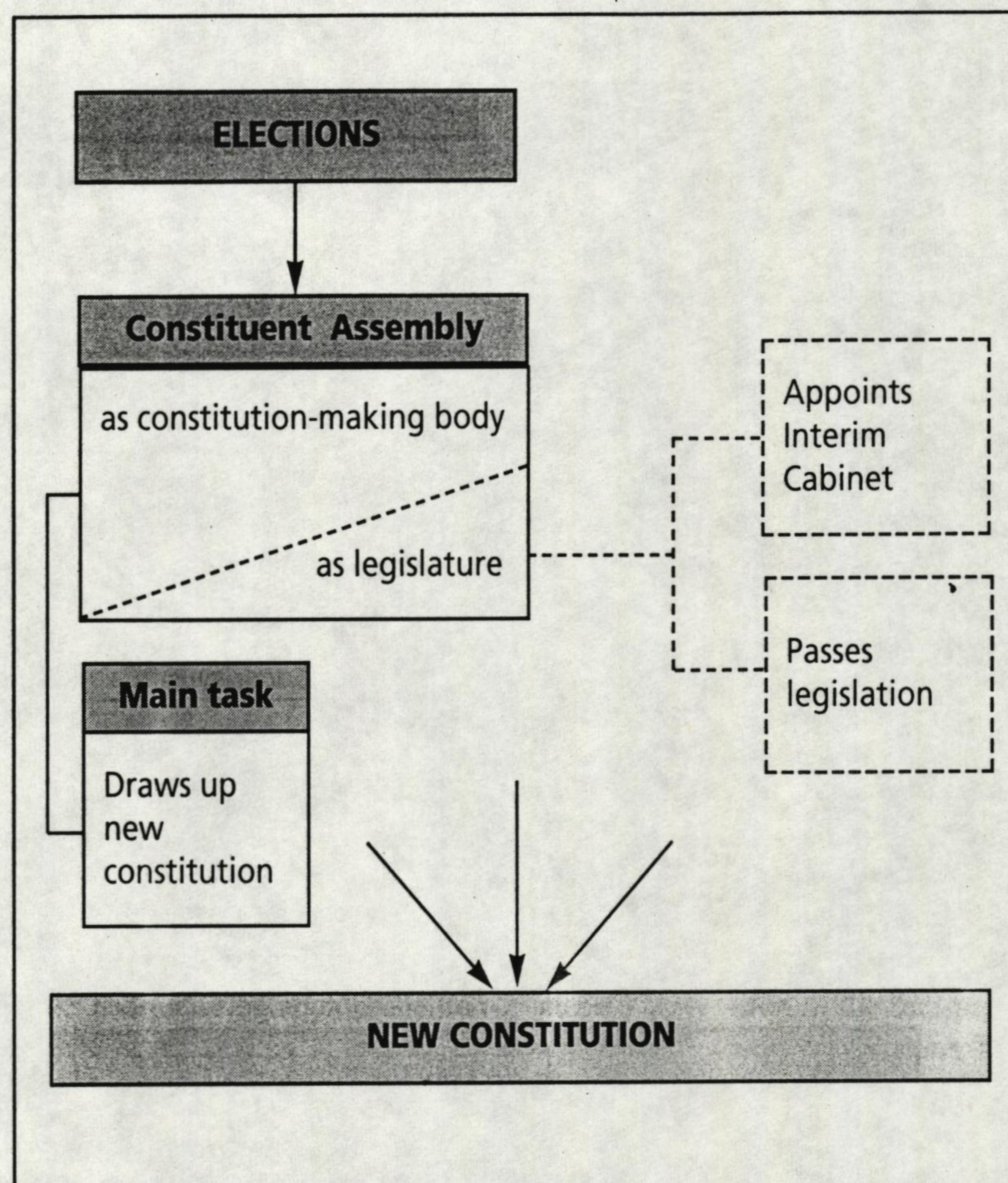
Do we need such measures in South Africa? How will they help to address “white fears”? Should they be entrenched in the constitution or take the form of pacts among the stronger political parties?

In other words, do we need a transitional phase after the adoption of the new constitution? How long should it be?

DEFENDING DEMOCRACY

Discussion on these issues cannot be postponed: the democratic movement must ensure that the achievements of the people are not fatally undermined by those who are in strategic positions. Democracy must not only be won. It must also be skilfully defended. ♦

Phase II: Sovereign structures



1. The Constituent Assembly (CA) will be elected on the basis of proportional representation. All South Africans 18 years-old and above will be eligible to vote. Some form of identification will need to be agreed upon. Parties which receive 5 per cent and more of the vote will have seats on a proportional basis in the CA.
2. The CA will operate both as a constitution-making body and as a legislative assembly.
 - When it operates as a constitution-making body (the main task) it will take decisions by a two-thirds majority.
 - As a legislative body it will pass legislation relevant to the transition and operate on the basis of consensus. It will also appoint an interim cabinet, preferably from all the parties in the CA. The interim cabinet will also strive to operate by consensus.
3. The constitution-making process should not exceed nine months. Incentives/penalties should be worked out to ensure that this is adhered to. This should apply to all parties.
6. The constitution could include “sunset” clauses to help ease the country into full-blooded democracy. ♦