

the workers' charter campaign

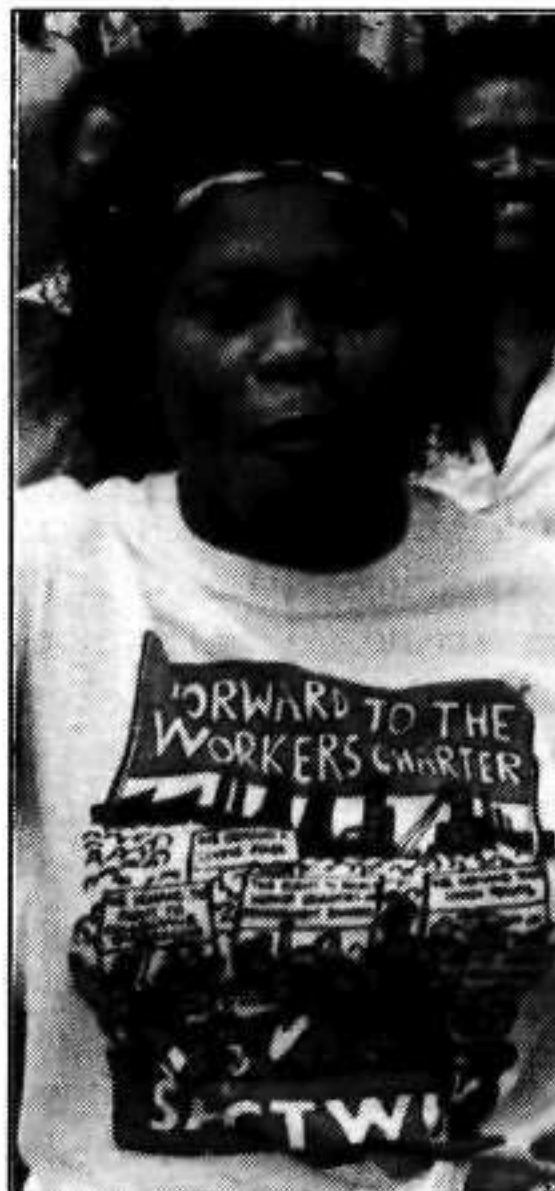
The COSATU Workers' Charter conference, held on 17-18 November 1990, brought together delegates from all affiliates to assess the campaign, and take it forward. DEVAN PILLAY reports that significant progress was made in placing concrete democratic demands on the agenda for a new South Africa.

The focus of the COSATU Workers' Charter conference was to identify and discuss workers' demands which need to feed into the debate about a new constitution for South Africa. It brought together 350 COSATU delegates from all its affiliates, as well as observers from the ANC, SACP and other fraternal organisations.

The conference took place amid increasing concern that the federation needs to be more assertive in the negotiations process between the ANC and the government. It was held two weeks before COSATU's fifth anniversary. The sense of self-confidence and determination which emerged out of the weekend's deliberations was an appropriate testimony to the central place the federation occupies after five years of struggle. This centrality was captured by COSATU's first vice-president, Chris Dlamini, who told the *Saturday Star* on 1

December:

"I think all the liberatory movements of this country are aware that COSATU is powerful, and if COSATU was to go against them, or



SACTWU members in the union's Workers' Charter human chain

Photo: William Matlala/COSATU

maybe become an opposition party, they would be in serious trouble..."

After a period when there was little consultation between the ANC and its alliance partners over the negotiations process, an alliance forum has been formalised, and it will be used to communicate workers' concerns to the ANC, said Dlamini. He focused particular attention on the view amongst workers that "the government is taking the ANC for a ride" in the negotiations process.

COSATU second vice-president John Gomomo told the delegates that the conference was the first occasion that "such a big gathering of COSATU delegates have come together to discuss what kind of future we want". He said that workers need to "assert their demands...and back them up with mass action".

The conference noted that, with the exception of SACTWU, which staged three

Proportional representation and accountability

Proportional representation is contrasted with a constituency-based election (which operates in Britain and South Africa at the moment). In this arrangement, parties put up candidates in specific constituencies (for example central Johannesburg) and they compete with candidates of other parties for the seat of that constituency. The candidate with the most votes against all the other candidates wins, even if s/he gets less than half of the votes cast. For example, if A gets 40%, B gets 39% and C gets 21%, then A wins the seat. Therefore if party B just missed winning each seat, it could end up getting 39% of all the votes nationwide, but no seats at all in the assembly! (In Britain Thatcher's Conservative Party won the last election with a great majority of seats, even though only 42% of those who voted, voted for them.)

The advantages of the constituency-based system is that delegates are directly accountable to a specific geographical constituency, and will have to report back to that constituency. The disadvantage is that the total number of votes cast nationwide do not correspond with the number of seats each party gets. The conference felt that there should be regular report-backs during intervals of the assembly, and there should be mandating forums operating all the time (unlike what happened in the Namibian Constituent Assembly). All proceedings should be public.

To achieve proper accountability, a system of proportional representation will have to incorporate elements of the constituency-based system. The details of the system to be used have yet to be discussed. There are many variations which can be adopted.

One that does not facilitate direct accountability is the simple system of proportional representation, in which each

party submits a list of names, and those at the top of the list get elected, according to the percentage the party wins. Thus if the ANC won 70% of the votes

cast, the first 70 names out of a list of one hundred would be elected. Because each voter votes for one party at a national level, there is no direct relationship between voters in a specific area and a specific candidate. Thus all those on the list could be 'experts' with no popular constituency of their own. This facilitates control from the centre.

An alternative is to have constituency-based elections, but each party's number of seats is increased to correspond with the total number of votes cast. For example if, through such an election, the ANC only won 55 out of a hundred seats, but actually won 70% of the total number of votes cast, then it would be given an additional 15 seats. Thus 55 of the ANC's delegates to the Constituent Assembly would be accountable to a particular constituency, and only 15 would be 'free floating' (although they could come from geographical constituencies they lost, or from organisational constituencies like COSATU, the Youth League or Women's League etc).

There are many other variations which could be considered. For example, COSATU and other allied groups of the ANC could demand a certain proportion of seats which an ANC-led alliance would campaign for. Thus delegates would be organisationally accountable, or there could be a mix between organisationally-based accountability and geographically-based accountability. There is clearly much thought and discussion that needs to take place if, as the conference felt, there is to be both accountability and proportional representation. ❖

massive worker chains this year to popularise the campaign, many affiliates were not taking it as seriously as they should. Very few demands had come in from the factory floor. The conference was designed to reinvigorate the campaign with a renewed sense of purpose.

The conference was not a decision-making forum - it only has recommending powers, and issues will be taken back to the membership for further discussion. Furthermore, for most of the conference delegates divided into commissions to address specific issues. The commissions then reported back in plenary, but there was not enough time to discuss the reports in depth. This means that the positions discussed in this article are by and large the views of the commissions rather than the conference as a whole. Nonetheless, it seems there was significant agreement on a range of issues, the most noteworthy being the Constituent Assembly.

Forward to a Constituent Assembly

COSATU, at its last congress in July 1989, placed the demand for a Constituent Assembly firmly on the agenda. This radical demand is seen as the only democratic way to draw up a new constitution for South Africa. It is a central demand that has been adopted by the broader liberation movement, including the ANC, PAC, AZAPO, WOSA

and Unity Movement.

The Constituent Assembly demand differs radically from the proposals of the government and other groups like the Democratic Party. Their idea is to have as many groups as possible sitting around a negotiating table behind closed doors, to thrash out a constitution. These groups would all have equal status, no matter what their size. At the end of that process, a new constitution would emerge, and be rubber-stamped by a referendum (non-racial or segregated). The masses would play no part in drawing up that new constitution.

The conference agreed that, by contrast, a new constitution has to be drawn up by parties which have the proven support of the people. This can only be tested through a one-person-one-vote non-racial election for a Constituent Assembly, where those elected would sit down and draw up a new constitution.

There was a feeling at the conference that such an election should be conducted on the basis of *proportional representation*, where the percentage votes cast for a particular party determine the number of seats allocated. Thus for example if the ANC received 70% of all the votes cast nationwide, it would get 70% of the seats (see facing page).

The climate for negotiations

Another crucial element of the Constituent Assembly de-

mand is the climate within which the elections are held, and in which the assembly sits. The conference agreed there should be no political trials; political prisoners must all be released and all exiles returned; state violence must be curbed; and there must be free political activity.

Specific mention was made of the neutrality of the security forces and media - neither should be left in the hands of the government. There should be some sort of 'interim arrangement or mechanism' to deal with this situation. The conference considered whether outside forces, such as the UN or OAU, were needed, but this is clearly an area which needs further discussion.

The role of COSATU

While there is agreement that COSATU should be involved in the constitutional process with its allies, COSATU's precise role in negotiations and the Constituent Assembly still needs further debate and discussion. COSATU may either participate in the process as an entity in its own right, or as part of the alliance with the ANC and SACP. According to COSATU general-secretary Jay Naidoo the NUMSA position, adopted earlier this year (see *Labour Bulletin* Vol 15 No 3), reflects the consensus view within COSATU as to how the alliance should operate during the phase of negotiations. NUMSA's pro-

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posal is that all COSATU delegates involved in the negotiations process should be accountable to COSATU, and that COSATU should first formulate its own position before meeting its alliance partners, which would then formulate an alliance position.

Naidoo feels that what was agreed at the conference has "key implications" for the alliance. While there was a common approach to the constitutional question, there were different areas of emphasis - COSATU as "a trade union body stresses the rights of workers", he said. He added that there was a need for COSATU to "feed more cohesively and vigorously into the alliance and the negotiations process." The conference had adopted a firm position that "on major policy issues, there must be consultation with COSATU".

The conference proposed that there should be full cooperation between COSATU and the ANC's legal and constitutional committee.

Trade union rights

The conference felt that a new constitution should include the right of shop stewards to carry out their duties, and the right to:

- stop order facilities
- information
- collective bargaining
- education, training and literacy for shop stewards and members
- participate in decision-

making

- belong to or form a trade union without victimisation or interference
- publish and distribute media without restriction
- hold meetings without restriction
- organise freely

pickets; whether lock-outs by management during industrial action should be prohibited; whether the constitution should include a clause legalising unprocedural strike action when it is provoked by management; and whether there should be



The right to strike: key clause in a new constitution

Photo: Cedric Nunn/Afrapix

The conference endorsed the principle of freedom of association. It saw no conflict between this principle and the right of trade unions to negotiate a closed shop. Individual rights should not preclude collective rights such as the closed shop, which should also be enshrined in the constitution.

Agreement was also reached that the right to strike on all issues should be included in a constitution, if the unions are to be independent and vibrant. However, further discussion is needed on whether 'essential services' should be defined in the constitution or be subject to collective bargaining; on the rights of

a duty to bargain.

With regard to procedural strikes, it was agreed that a constitution should include the right of access to company premises and facilities, and the right to:

- picket
- no scabs
- no dismissals
- no interdicts or other legal action
- strike funds
- no evictions from company accommodation
- call consumer boycotts
- hold sympathy strikes
- hold ballots on company premises
- no state intervention during strike action
- simple and quick procedures for legal strike action.

Trade union independence

While it was agreed that unions should remain independent and democratic, the conference considered to what extent participation in state structures in a democratic South Africa affects this independence.

There was consensus that trade unions should be able to directly influence state policy on issues of concern to their membership, and that certain key issues, such as human resources and social security, should be identified.

Further discussion is needed on whether there ought to be direct participation by unions in certain decision-making structures; whether there should merely be consultation with such structures before decisions are taken; whether unions should act completely outside these structures, as a pressure group; or a combination of all these.

There is also a need for more debate around the nature of participation in forums such as the National Manpower Commission and the Unemployment Insurance Fund.

Trade union registration

While there was no agreement on whether a trade union ought to register its constitution with the state, some delegates proposed a system of registration whereby unions would receive certain benefits if they:

- were non-racist

- had financial control by their members
- had democratic structures and constitutions
- represented clear and substantial constituencies.

The benefits would include stop order facilities; access to negotiating forums; and the use of certain provisions under the new labour legislation.

Wearing two hats

After sharp debate, the conference could not agree on whether union officials or office-bearers could simultaneously hold office in a government, or occupy top positions in a political party, as individuals or as representatives of political parties.

Three positions emerged, which need to be further debated. The first argues that union leaders should be able to simultaneously hold positions in government or political parties, in order to advance working class interests in those structures.

The second position states that, during a certain transitional period, union leaders should be able to assist in building political party structures. However, in the longer term union independence would be protected if union leaders did not participate in the leadership of political parties.

The third position argued that trade union leaders should not simultaneously hold office in government or political parties. Trade unions are independent organisations, and their

leadership is democratically accountable to trade union structures.

For further discussion, it was also felt that the *level* of leadership affected should be considered, as well as whether participation in government and political parties ought to be seen the same way.

Democratic rights in the constitution

Democratic participation and accountability has to be ensured after the Constituent Assembly has met, and drawn up a constitution. It was with this in mind that the conference agreed that a new constitution should have a clause which provides for referendums on issues of national concern (for example on trade union rights). A referendum could be held either with the intention of abolishing an existing law, or for establish a new law. A certain number of signatures would be needed before a referendum is held (a figure of 500 000 was mentioned, but this still needs further discussion). Once a referendum on an issue is held, at least two years must pass before another referendum on the same issue may be held.

Such referendums should be conducted by a constitutional court, as a neutral body, and not the same government which wants to pass a law that is being objected to. There was a suggestion that the trade union move-

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ment be allowed to nominate representatives or judges to such a court (although its full composition requires further debate).

Further discussion is needed on whether all laws should be subject to recall in a referendum, or whether certain ones, such as tax laws or international treaties, are exempted.

Certain clauses in the constitution, such as those protecting worker rights, should be **entrenched** clauses, that is they should not be capable of suspension even in a state of emergency (given that some countries, like Zimbabwe, have had states of emergency lasting up to ten years or more).

It was also felt that one person could not be state president for more than ten years (two terms of office of five years each). This is presumably aimed at preventing a cult of personality from emerging.

The right to information

Another crucial area of democratic participation is access to information. It was agreed that the government should have the duty to reply to questions put to it in parliament, and that public organisations should have the right to table questions. State documentation should be available to the public, with a limited time period before security-related information is released.

All Bills should be presented to the public for discussion before being

passed as laws - in particular, organisations which are directly affected should be consulted before laws are passed. The right to privacy has to be qualified by the right of the public to information which affects them.

The freedom of the press has to be extended, the conference felt, to include greater access by organisations to have their views reflected, and a right of reply. There should be no state monopoly on radio or television, and all public media should be independently controlled. There needs to be more discussion on the private ownership of newspapers, and state subsidies of organisational media.

Economic rights

The conference agreed on a number of basic socio-economic demands, such as a living wage, free education, job security etc, but further debate is needed on whether these should be incorporated into a new constitution or elsewhere. It was felt that all economic demands be in a Workers' Charter, and these should be linked to discussion about COSATU's view on the economy and on ANC economic policy.

There was agreement on the broad objective of worker ownership and control of the economy in a socialist state. Issues identified for discussion were:

- forms of collective owner-

ship of industry, including nationalisation;

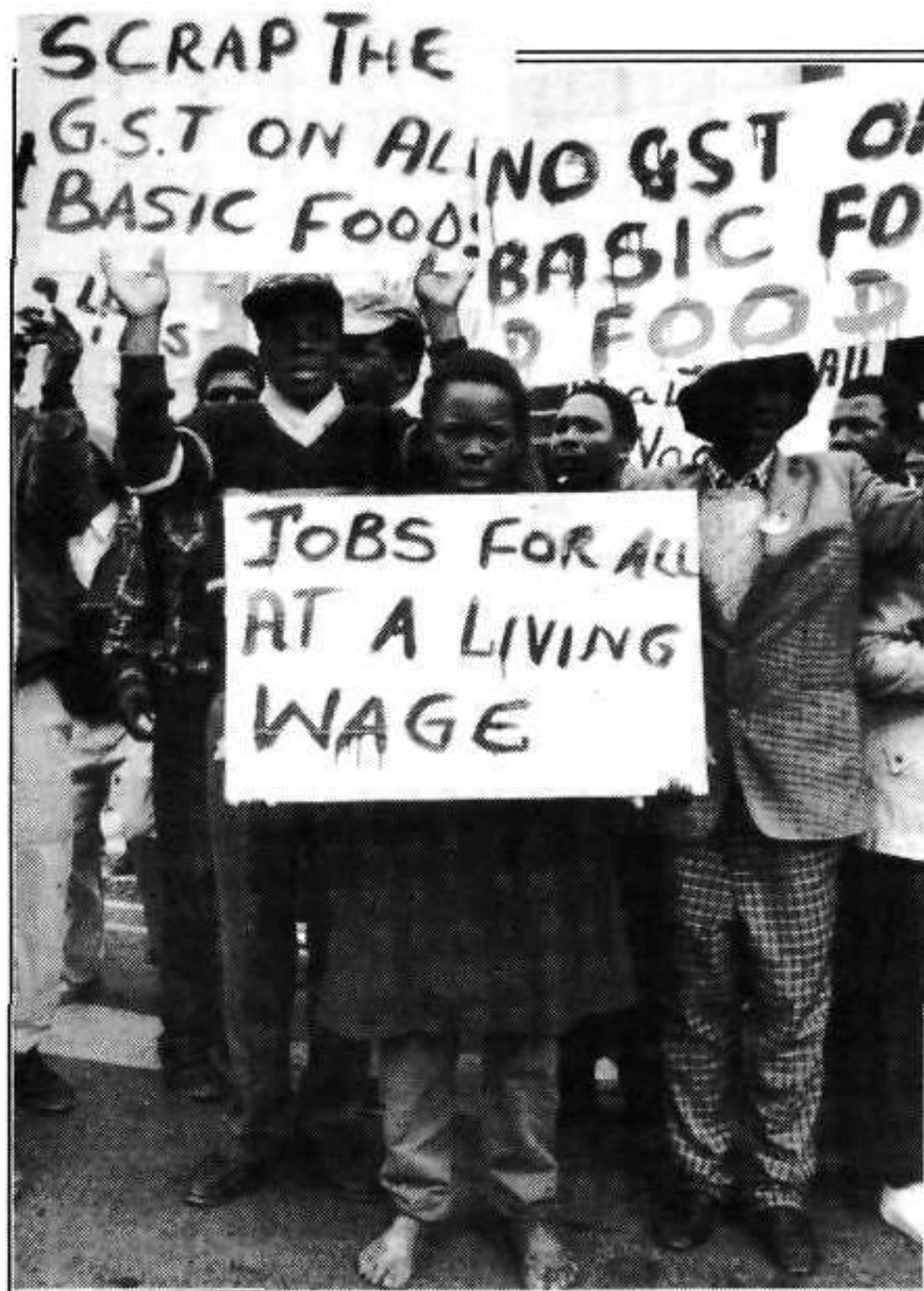
- trade union participation in economic planning;
- democratic planning of the economy by the State, involving producers and consumers through the organs of civil society;
- relations of co-operation between our country and other fraternal countries;
- the redistribution of wealth;
- land reform;
- access to full information on the economy;
- a full employment economy.

There was no consensus on state control and regulation of the market.

Demands at the plant, mine or shop level include the election of supervisors; negotiations over investment; the right to full information; and control over managerial staff. There was discussion on whether managers should be elected or not. The point was made that workers need to have some control over the production process.

Gender rights

Significant advances were made on the question of gender rights, considering the level of debate at the last COSATU congress (see *Labour Bulletin* Vol 14 No 6 and *Work In Progress* No 61). Women's oppression is increasingly being seen in terms of the problem of **gender** rather than the problem of women. In other words, just as racial oppression is of con-



The right to work and a Living Wage: should they be guaranteed in the constitution?

Photo: Benny Gool/Afrapix

cern to black and white, so should women's oppression be of concern to both men and women. It should not be 'ghettoised' as a 'women's issue'.

The commission on gender rights, to many unionists' surprise, reached consensus on a number of far-reaching gender demands, without much disagreement. These demands, it felt, should be included in a new constitution as general clauses as well as through a Family Code (which focuses more specifically on marriage, private

relationships, domestic work, child care and domestic violence). The demands were that:

- **Marriage** laws should give women equal rights before marriage, in marriage and when there is a divorce. Further discussion is needed on customary law relating to polygamy and lobola.
- **Domestic work** should be the responsibility of both men and women.
- **Child-care** should be the responsibility of the state, and there should be adequ-

ate paternity and maternity leave.

- **Health-care** should be safe and accessible, and provided by the state. Abortion should be legalised, and an affirmative health care programme is needed, especially on issues like contraception.
 - **Working conditions** should not discriminate between men and women - there should be equal pay for equal work, and equal opportunities for promotion, training and recruitment.
 - **Protection from violence** is a basic human right, and there should be active non-tolerance of rape, battery and abuse.
 - **Education** should be non-sexist at all levels.
 - **Cultural values** which reinforce gender oppression, particularly in popular culture, religion and beauty contests, should be corrected.
 - **Media**, especially advertising, often promote sexism, and should instead promote non-sexism.
 - **Gay people** should not be regarded as criminals - a person's sexual orientation should be his or her personal choice.
- The conference proposed that, to ensure that these demands are realised, constructive action needs to be taken in areas like education and training, and the reservation of seats for women in key state structures. An Equal Opportunities Commission



Special attention was paid to gender issues and the rights of women workers

Photo: Gill de Vlieg/Afrapix

should be set up to initiate anti-sexist legislation; take up cases of discrimination; develop equal opportunities programmes; and monitor laws which affect gender. In addition, research needs to be done on constitutions of other countries to look at how they dealt with gender issues.

Some of the principles on creche facilities and affirmative action can be implemented now - there is no need to wait for a progressive state to come into being.

COSATU's voice cannot be ignored

While the workers' charter campaign is much broader than the constitutional issues which this conference focussed on, it was decided to narrow the short-term focus of the campaign in recognition of the accelerating pace of the negotiations process. COSATU is determined to make its considerable presence felt in the debate about a new constitution for South Africa.

The conference, said COSATU general-secretary Jay Naidoo, "threw up issues for debate", which will be further discussed by affiliates, and taken to a Central Executive Committee (CEC) meeting in February, where final decisions will be taken. COSATU also hopes to draw in as broad a range of organisations as possible into the process. This includes NACTU (they were invited to the conference, but did not attend). Both COSATU and NACTU have supported the idea of a third Workers' Summit where the workers' charter could be discussed (see *Labour Bulletin* Vol 15 No 4).

The intention is to make the issues raised at the conference acceptable to a much wider constituency than COSATU's 1,2 million members.

The Workers' Charter Campaign co-ordinator, SACTWU's Ebrahim Patel, stated that "COSATU is calling for civil society to play a more important role in determining the new constitution. Constitution-making should not be confined to parliament and political parties."

But debate and agreement is one step. The liberation movement has to find ways of ensuring that the powers that be give in to these demands. This, the conference heard, can only happen through mass struggle. As Gomomo put it:

"Comrades, we cannot put napkins on you in the struggle - you have to fight for these demands." ☆