

These wire reports on the Court's findings, and on reactions to them, contain some duplications as the story unfolded but give a much more complete account than has appeared in the press. The text has been edited to correct a few transmission errors and headlines have been added by LEGI-LINK.

RULINGS ON THE RSA AND KWAZULU NATAL CONSTITUTIONS

JUDGE ARTHUR CHASKALSON - 9 CHAPTERS AND CLAUSES DO NOT COMPLY

The Constitutional Court on Friday ruled it could not certify the proposed National Constitution.

Constitutional Court president Judge Arthur Chaskalson said nine chapters and clauses of the proposed constitution did not comply with the 34 constitutional principles set out in the interim document.

In order for the Constitutional Court to certify the proposed constitution, the principles must be met.

Chaskalson said the proposed constitution did not recognise and protect the right of employers to engage in collective bargaining as demanded by the constitutional principles.

He said the proposed constitution did not adequately safeguard the independence and impartiality of the public protector and auditor general.

He said the constitution did not adequately safeguard the Public Service Commission and the failure to specify the powers and functions of the commission made it impossible for the Constitutional Court to certify that legitimate provincial autonomy was recognised and promoted.

The constitution also did not provide a framework for the structures of local government or for formal legal procedures to be adhered to by legislatures at local government level.

Chaskalson said the basic structure of the proposed constitution was sound and the overwhelming majority of the requirements had been satisfied.

The instances of non-compliance identified would pose no significant obstacles to the Constitutional Assembly which now has three months to set the constitution to right.

CONSTITUTIONAL COURT - "A MONUMENTAL ACHIEVEMENT"

While the proposed final constitution could not be certified because it failed to comply with a number of the negotiated constitutional principles, the document nonetheless represented a "monumental achievement", the Constitutional Court said in its written judgement handed down on Friday.

Ten of the 11 Constitutional Court judges concurred in their judgement that the constitution, although it complied with the "overwhelming majority" of the constitutional principles, it did not comply with all of them and therefore could not be certified.

Mr Justice Laurie Ackermann was unable to participate in the ruling because he fell ill during the submissions hearings on whether the proposed constitution could be certified as compliant with the 34 constitutional principles enshrined in the interim constitution.

"Constitution-making is a difficult task. Drafting a constitution for South Africa, with its many unique features, is all the more difficult. Having in addition to measure up to a set of predetermined requirements greatly complicates the exercise. Yet, in general and in respect of the overwhelming of its provisions, the Constitutional Assembly has attained that goal," the court ruled.

The constitution has been referred back to the Constitutional Assembly, which took almost two years to draft the document, and the body now has three months to set it right.

Constitutional Assembly executive director Hassen Ebrahim said after the judgement was handed down by Constitutional Court president Arthur Chaskalson that he was "reasonably hopeful" the Constitutional Assembly would meet its new deadline.

"Those provisions which they have referred back to us have been referred back for specific reasons. That makes the task easier. We will know what to look at. The constitutional principles were not always clear, now we have clarity," he told Sapa.

One of the Constitutional Court's major reservations about the constitution was that it did not meet all the interim constitution's requirements regarding provincial government.

The proposed constitution gave provinces substantially less powers than the interim constitution, the court ruled. This was in direct deviance from the demands of one of the principles.

Although an assessment of the ambit of powers given to provinces by the constitution could not be done on an "item-by-item basis", the overall picture led the court to decide that there had been a significant reduction in provincial powers.

The constitutional principles did not contemplate the creation of sovereign and independent provinces, but it was important that provinces be vested with powers which gave them legitimate provincial autonomy, the court ruled.

The court found that the constitution's framework for local government did not make provision for fiscal powers and functions for different categories of local government, and referred only to municipalities, not other categories of local government. This was inadequate, the court ruled.

In addition no provision had been made for appropriate fiscal powers and functions for the different categories of local government.

Another objection to the proposed constitution's chapter on provincial government was that it did not provide for formal legislative procedures to be adhered to. This was demanded by one of the eight constitutional principles dealing with provincial powers.

The proposed constitution also deviated from the interim constitution in its dealings with the Public Service Commission.

It was clear the proposed constitution envisaged only one PSC, while the interim constitution gave provinces the right to establish their own.

The clauses dealing with the PSC were at times vague, and until the PSC's powers and functions had been clarified, the court said it was unable to certify whether the constitutional principle dealing with this had been respected. The court also ruled that the proposed constitution's labour relations provisions did not protect employers' right to collective bargaining – another stumbling block to its certification.

The proposed constitution only entrenched the rights of employers' associations to collective bargaining, the judges ruled.

Collective bargaining was based on the need for individual workers to act in concert, to provide them with sufficient power to bargain effectively with employers, the court said.

Individual employers, on the other hand, could engage in collective bargaining with their workers and often did so, but the proposed constitution's failure to protect this right represented a failure to comply with the principle that individual employers' right to bargain collectively should be recognised and protected.

The court also ruled employers' right to lock out striking employees was not unconstitutional, but that it did not need constitutional protection. Implicit in the protection of the right to bargain collectively was the right to

exercise some economic power against partners in collective bargaining, including the lock-out.

Employers had a whole range of "weapons" – dismissal, employment of alternative labour, unilateral implementation of new terms or conditions of employment, and the lock-out.

The court however endorsed the constitution's provision for workers' right to strike.

The proposed final constitution also impermissibly shielded two ordinary statutes, the Labour Relations Act and the Promotion of National Unity and Reconciliation Act, from constitutional review. Another shortcoming of the proposed constitution was found in its attempt to safeguard the independence and impartiality of the civilian "watchdogs" – the public protector and the auditor-general, the court ruled.

The public protector was in effect an ombudsman whose work was vital in ensuring effective, accountable and responsible government. This office inherently entailed the investigation of sensitive and potentially embarrassing government affairs.

The auditor-general was another "watchdog" over government, with the office's focus being on the proper management and use of public money.

The appointment and removal provisions in the constitution for both positions were similar, and did not sufficiently protect either's independence or tenure.

COURT - PUBLIC PROTECTOR, AUDITOR-GENERAL NEED MORE PROTECTION

The proposed final constitution failed at its attempt to safeguard the independence and impartiality of the civilian "watchdogs" – the public protector and the auditor-general, the Constitutional Court ruled on Friday.

While both institutions were provided for in c4 constitutional principles with which a final South African constitution must comply, they were not sufficiently protected.

The public protector was in effect an ombudsman whose work was vital in ensuring effective, accountable and responsible government. This office inherently entailed the investigation of sensitive and potentially embarrassing government affairs.

The auditor-general was another "watchdog" over government, with the office's focus being on the proper management and use of public money. The appointment and removal provisions for both positions were similar, and did not sufficiently protect either official's independence or tenure. This would have to be rectified by the Constitutional Assembly, which drafted the proposed constitution, and now had the task of correcting it within three months, the court ruled.

JUDGE ARTHUR CHASKALSON - PROVINCIAL POWERS MAJOR STUMBLING BLOCK

One of the Constitutional Court's major reservations about the proposed constitution, which it declined to certify on Friday, was that the constitution did not meet all the interim constitution's demands on provincial government.

In handing down judgement Constitutional Court President Arthur Chaskalson said although the basic structure of the proposed constitution was sound, and the majority of the interim constitution's 34 constitutional principles had been met, the Court was unable to certify the constitution.

The proposed constitution gave provinces substantially less powers than the interim constitution, the court ruled.

Chaskalson said the proposed constitution did not comply with the constitutional principle which demanded that provincial powers entrenched in the final constitution could not be substantially more or substantially less than those in the interim constitution.

Although the constitutional principles did not contemplate the creation of sovereign and independent provinces it was important that provinces be vested with powers which gave them legitimate provincial autonomy,

Chaskalson said.

The national government could pass legislation on some areas of provincial jurisdiction for reasons including national security, economic unity, the maintenance of national standards, and to prevent unreasonable action taken by a province which was prejudicial to another province or the country.

This provision of the proposed constitution complied with the constitutional principles.

The national government could also step in where a province was unable to fulfil an executive obligation.

One of the instances where the proposed constitution deviated from the interim constitution was in its dealings with the public service commission.

It was clear that the proposed constitution envisaged only one public service commission, while the interim constitution gave provinces the right to establish their own commissions, the court ruled.

This did not mean the proposed constitution denied provinces the right to employ their own servants. This was implicit in the provincial premiers' powers of executive authority and other provisions in the proposed constitution.

However, the clauses dealing with the PSC ruled that until its powers and functions were clarified it was unable to certify whether the constitutional principle dealing with this had been complied with.

On whether the proposed constitution's framework for local government made provision for fiscal powers and functions for different categories of local government, the court found the constitutional principles had not been met.

At the very least the requirement for this framework necessitated the setting out in the final constitution of the different local government categories in a way that provided a framework for their structures.

The proposed constitution referred only to municipalities. This was inadequate, the court ruled. In addition no provision had been made for appropriate fiscal powers and functions for the different categories of local government.

Another objection to the proposed constitution's chapter on provincial government was that it did not provide for formal legislative procedures to be adhered to by local government legislatures. This was demanded by one of the eight constitutional principles dealing with provincial powers.

During July's submissions on whether the constitution could be certified the National Party, the Democratic Party, the Inkatha Freedom Party and Western Cape safety and security MEC Gerald Morkel opposed certification on the grounds that the constitutional principles dealing with provincial government had not been met. They gave different reasons.

CONSTITUTIONAL COURT - LABOUR RELATIONS PROVISIONS DO NOT PROTECT INDIVIDUAL EMPLOYERS

The Constitutional Court on Friday ruled that the proposed constitution's labour relations provisions did not protect employers' right to collective bargaining.

The court ruled that the proposed constitution only entrenched the rights of employers' associations to collective bargaining.

This meant the proposed constitution did not comply with one of the 34 constitutional principles entrenched in the interim constitution.

Although there were other objections to the proposed constitution's dealings with labour relations, this was the one that succeeded.

Collective bargaining was based on the need for individual workers to act in concert, to provide them with

sufficient power to bargain effectively with employers, the court said in its written judgement.

Individual employers can engage in collective bargaining with their workers and often did so.

The proposed constitution's failure to protect such a right represented a failure to comply with the language of constitutional principle, which specifically stated that individual employers' right to bargain collectively should be recognised and protected.

On employers' rights to lock out, the court ruled it was not unconstitutional, but it did not need constitutional protection.

Implicit in the protection of the right to bargain collectively was the right to exercise some economic power against partners in collective bargaining.

Workers' rights to strike were entrenched in the proposed constitution.

Employers had a whole range of weapons – dismissal, employment of alternative labour, unilateral implementation of new terms or conditions of employment, and the exclusion of workers from the workplace: the lock out.

The proposed final constitution also impermissibly shielded two ordinary statutes – the Labour Relations Act and the Promotion of National Unity and Reconciliation Act – from constitutional review, the court ruled.

REACTIONS

PRESIDENT NELSON MANDELA - AMENDMENTS SHOULD NOT POSE DIFFICULTY

President Nelson Mandela on Friday welcomed the Constitutional Court's judgement on the draft constitution.

As indicated by Court President Arthur Chaskalson, the constitution's substance complied with the requirements of the Constitutional Principles, and the areas that needed amendment should not pose any difficulty, Mandela said in a statement.

"The Court judgement helps to clarify issues that were vaguely formulated in the Constitutional Principles adopted at multi-party negotiations in 1993; and it will ensure that the final draft strictly adheres to both the letter and the spirit of those principles."

The draft as adopted by the Constitutional Assembly was the property of all the parties who were engaged in negotiations.

Mandela said he was confident that the spirit of co-operation which characterised negotiations in the CA would prevail to ensure the constitution was finalised.

BUSINESS SA - LABOUR RELATIONS DECISION WELCOMED

Business South Africa on Friday welcomed the Constitutional Court's rejection of the Constitutional Assembly's proposed final constitution.

BSA in particular welcomed the fact that the Constitutional Court specifically declined to certify the proposed constitution where it touched on the issue of labour relations.

During July this year BSA made submissions on the proposed constitution's provisions regarding the right of individual employers to bargain collectively, the shielding of the Labour Relations Act from constitutional review, and the absence in the constitutional text of an express right of employers to lock striking employees out of their premises.

In regard to the right to lock out, BSA was satisfied the court ruled that the constitutional right to bargain collectively implied within it the right to exercise some economic power against partners in collective bargaining.

The court also ruled that the right to lock out conferred by the Labour Relations Act was not unconstitutional.

MR BERTUS DE VILLIERS, HSRC - COURT REAFFIRMED ITS INDEPENDENCE

The Constitutional Court had reaffirmed its independence by refusing to certify the draft constitution, the Human Sciences Research Council said in Pretoria on Friday.

Head of the HSRC's centre for constitutional analysis Bertus de Villiers welcomed the verdict, which he said had been made despite overwhelming support for draft constitution in the Constitutional Assembly.

"The court has acknowledged that there are certain values that are so fundamental to our society that no constitution may infringe on, even if it was supported by a majority," de Villiers said in a statement.

He added the judgement had created an opportunity for the Inkatha Freedom Party, which earlier withdrew from the CA, to return to the negotiating table.

The views of the IFP could now be attended to, which would raise the legitimacy and credibility of the final constitution, de Villiers said.

COSATU - SATISFIED WITH RULING ON LOCK-OUT CLAUSE

Cosatu on Friday expressed overall satisfaction at the ruling of the Constitutional Court on South Africa's final constitution, in particular the ruling on the lock out clause.

At a media briefing in Johannesburg, Cosatu boss, Sam Shilowa said: "The Constitutional Court's finding that there is no need to entrench the right to lock out in the constitution is a great victory for South Africa's working people. Cosatu's struggle to exclude the lock out was justified".

He said since the Constitutional Court had found there was no universally-accepted fundamental right to lock out, Cosatu would urged opposing parties not to argue the matter any further.

The Cosatu leader, however, was concerned at the implications of the court's ruling in respect of collective bargaining.

Shilowa said the ruling should not be understood to remove Parliament's right to determine the levels of collective bargaining.

"The realities of collective bargaining in South Africa are that centralised bargaining is the preferred level of bargaining," added Shilowa.

He warned employers that attempts to use the opportunity the constitution-making process to undermine hard-won structures would be met with fierce resistance.

He noted the court's ruling on provincial powers and called on political parties to act responsibly – they must seek a resolution to those specific issues raised by the Constitutional Court.

Shilowa said he hoped the Constitutional Assembly would respond appropriately and ensure the constitution was certified by the end of the year.

He also called on workers to remain vigilant, to ensure that opportunists did not abuse the constitution-making process to undermine hard-won battles.

DR CORNE MULDER, FF - COURT DID NOT REJECT PROVISIONS ON SELF-DETERMINATION

It was important that the Constitutional Court had not rejected any of the constitutional provisions on self-determination negotiated by the Freedom Front, FF spokesman Corne Mulder said on Friday.

It was clear that the continuation of the Volksraad Council, the recognition of collective rights, and the commission for protecting cultural communities, were regarded as constitutional.

The fact that the court had referred the whole of chapter seven back was also of major importance.

It was clear the court required more detail on the structure, fiscal powers, competencies and functions of local authorities.

This level of government was of serious importance to the FF and the party would use the opportunity to make new inputs on it.

MS CHERYL CAROLUS, ANC - RIGOROUS AND POSITIVE JUDGEMENT

The African National Congress on Friday welcomed the Constitutional Court's judgement the constitution adopted by the Constitutional Assembly on May 8, saying the court confirmed the validity of the general structure and content of the document.

The ANC welcomed the rigorous and generally positive judgement, which acknowledged that the more than 2000 sub-clauses were substantially within the requirements of the constitutional principles, ANC deputy secretary general Cheryl Carolus told a media briefing in Johannesburg.

This was a tremendous tribute to all the political parties that co-operated in the nation-building effort to produce a constitution that would launch the country into a fully democratic future, she said.

The matters referred back to the Constitutional Assembly would require the renewed application of the spirit of co-operation and goodwill that characterised the earlier process.

All parties now had to get down to seeking new formulations in an efficient and effective way with a singular determination to deliver to the country a final and certified constitution before the end of the year.

Carolus said the ANC was of the view that the parties in the CA should immediately focus their minds on the matters referred to them by the Court.

"It is our view that it would be counter-productive and retrogressive to begin to open for debate on those provisions of the constitution that have passed the test of the court. It would not help the country or the spirit of co-operation achieved in the CA to re-examine these provisions".

The ANC extended its compliments to the court for its intense scrutiny of the constitution, saying it reinforced the transparent and participatory culture that had characterised the constitution-making process.

The referral of the constitution to the CA also afforded parties the opportunity to correct a number of inadvertent errors that had crept into the draft, said Carolus.

SACOB - DISAPPOINTED WITH RULING ON LOCK-OUT CLAUSE

The South African Chamber of Business on Friday expressed satisfaction with the majority of findings of the Constitutional Court.

It said in a statement the ruling marked another important step in the process of finalising a new constitution for South Africa.

Sacob however said it was disappointed that the court had rejected the business argument that the right of employers to lock striking employees out should be afforded the same constitutional protection as the right to

strike.

"The implications of this finding for labour relations would need further consideration by employers," the statement said.

"A positive aspect was the fact that the court had declared as invalid, the failure to recognise and protect the rights of individual employers to engage in collective bargaining."

Sacob said it was pleased with the emphasis on safeguarding the independence and impartiality of the offices of the Auditor-General, Public Protector and the Public Service Commission.

It also welcomed the importance attached by the Constitutional Court to entrenching the powers, duties and functions of local government.

MR PIETER AUCAMP, CP - CONSTITUTION WOULD NOT HAVE STOOD THE TEST OF TIME

The Constitutional Court's rejection of the proposed final constitution was evidence that the constitution could not have stood the test of time and that the Conservative Party was right in rejecting it, CP spokesman Pieter Aucamp said on Friday.

The court on Friday ruled that the proposed national constitution and the KwaZulu-Natal constitution could not be certified.

On the KwaZulu-Natal constitution, Aucamp the court's judgement confirmed the CP's view that central government would be the seat of all power and there would not be any talk of strong provincial powers.

Only when the basic rights of peoples to freedom and self-determination were respected would there be a permanent solution to South Africa's problems. The CP would continue to fight to this end, Aucamp said.

ASSOCIATION OF LAW SOCIETIES - DECISION A VICTORY FOR INDEPENDENT JUDICIARY

The Constitutional Court's refusal to certify the draft constitution was a victory for the independence of the judiciary, the Association of Law Societies said on Friday.

In a statement in Pretoria it said this verdict had vindicated the ALS' earlier reservations about the draft constitution.

The society had, among others, objected to the lack of independence of the Public Prosecutor, the Auditor-General and the Public Service Commission.

"The Constitutional Court's finding that such institutions must be put beyond the reach of transient majorities in Parliament has emphasised the important path on which we have now embarked under our new constitutional order," the ALS said.

MR COLIN EGLIN, DP - DEFECTS SHOULD BE REMEDIED AS SOON AS POSSIBLE

The Constitutional Court judgement vindicated the stance taken by the Democratic Party throughout the Constitutional Assembly process, chief DP negotiator Colin Eglin said on Friday.

The defects in the constitutional text should be remedied as soon as possible to remove the negative effects of constitutional uncertainty, he said in a statement reacting to the court's findings released on Friday.

"Although the constitutional text as a whole has been referred back to the Constitutional Assembly, the DP intends to limit its input ... to the defects identified by the ... court."

Among the objections raised repeatedly by the DP were:

-- The diminution in the powers of the provinces;

-- The lack of adequate protection for the impartiality and independence of the Public Protector and the Auditor General;

-- The inadequate entrenchment of the Bill of Rights;

-- The defects in labour relations.

"All these were addressed in the court's findings," Eglin said.

STATEMENTS

PRESIDENT NELSON MANDELA - SUBSTANCE COMPLIES WITH REQUIREMENTS OF CONSTITUTIONAL PRINCIPLES

President Nelson Mandela has welcomed the pronouncement of the Constitutional Court on the draft constitution.

As the Constitutional Court President indicated, the substance of the draft constitution complies with the requirements of the Constitutional Principles, and the areas that need amendment should not pose any difficulty.

The Court judgement helps to clarify issues that were vaguely formulated in the Constitutional Principles adopted at multi-party negotiations in 1993; and it will ensure that the final draft strictly adheres to both the letter and the spirit of those principles.

The draft as adopted by the Constitutional Assembly is the property of all the parties who were engaged in negotiations; and the President is confident that the spirit of co-operation which characterised negotiations in the CA will prevail, to ensure that the constitution is finalised in the shortest possible time.

ANC - JUDGEMENT A TREMENDOUS TRIBUTE TO ALL POLITICAL PARTIES

The ANC welcomes the rigorous and generally positive judgement of the Constitutional Court on the 1996 constitution adopted by the Constitutional Assembly on 8 May by virtual consensus.

The Court has acknowledged that the over two thousand sub-clauses are substantially within constitutional principles. This is a tremendous tribute to all the political parties that co-operated in the nation building effort to produce a constitution that will launch into a fully democratic future. The Court has confirmed the validity of the general structure and content of the constitution.

Those matters which have been referred back to the CA require the renewed application of the spirit of co-operation and goodwill that characterised the earlier process. We must all get down to seeking new formulations in an efficient and effective way with a singular determination to deliver to the country a final and certified constitution before the end of the year. This is vital for the creation of a stable and certain environment in which to pursue the development and transformation of South Africa.

The ANC extends its compliments to the court for the rigorous and intense judicial scrutiny to which it subjected the constitution. The Court has reinforced the transparent and participatory culture that has characterised the manner in which the constitution was drafted in an open and inclusive way.

The ANC is of the view that the parties in the CA should immediately focus their minds on the matters referred to them by the CA. It is our view that it would be counter-productive and retrogressive to begin to open for debate on those provisions of the constitution that has passed the test of the court. It would not help the country not the spirit of co-operation achieved in the CA to re-examine these provisions.

The referral of the constitution to the CA also affords us the opportunity to correct a number of inadvertent errors that had crept into the draft.

BUSINESS SOUTH AFRICA - JUDGEMENT WELCOMED

Business South Africa (BSA) welcomes the judgement of the Constitutional Court and particularly those parts which concern the objections raised by business to the certification of the constitutional text.

These are:

1. The right of individual firms to bargain collectively.
2. The shielding of the LRA from constitutional review.
3. The absence in the constitutional text of an express right to lock-out

In respect of the first two points, the Constitutional Court has unequivocally upheld business' objections.

In regard to the right to lock-out, BSA is satisfied that the Court has ruled that:

- * the constitutional right to bargain collectively implies within it "the right to exercise some economic power against partners in collective bargaining", and
- * the right to lock-out conferred by the LRA is not unconstitutional.

Business looks forward both to making its contribution to the debate that lies ahead and to the speedy finalisation of the Constitution.

KWAZULU NATAL CONSTITUTION

JUDGE ARTHUR CHASKALSON - UNABLE TO CERTIFY TEXT IS NOT INCONSISTENT WITH CONSTITUTIONAL PRINCIPLES

The Constitutional Court on Friday refused to certify the KwaZulu-Natal constitution, saying some of its provisions were inconsistent with the country's interim constitution and with constitutional principles agreed on in multiparty talks at Kempton Park.

In a unanimous judgement handed down in Johannesburg by court President Judge Arthur Chaskalson, the court said: "We are unable to, and therefore decline to, certify that the text of the constitution of the province of KwaZulu-Natal 1996, adopted on March 15 1996 by the KwaZulu-Natal legislature, is not inconsistent with the provisions of the constitution of the Republic of South Africa, Act 200 of 1993, and the constitutional principles which constitute Schedule 4 to the said constitution."

The court said it was apparent that the province's constitution was "fatally flawed".

"Our analysis has been directed to the flaws relating to what we have categorised as the usurpation of national powers," the court said.

In an explanatory note issued with the judgement, the court pointed out KwaZulu-Natal was not an independent state and had no original legislative or executive powers.

"The only legislative and executive powers it has are those given to it by the interim constitution."

The major flaw in the province's constitution was that it claimed to give powers to the provincial legislature above and beyond those allowed by the interim constitution.

"Examples of such provisions are those which enact that the province is a self-governing province; which regulate the relationship between the province and the national government; which provide for a constitutional court; and which grant certain exclusive legislative powers to the province and confer on it executive powers.

"The court found that these were attempts to usurp the powers of the national government."

On the provincial constitution's bill of rights, the court said in its explanatory note: "The court decided that a province was permitted to pass a bill of rights provided that it was limited to dealing with matters in respect whereof the province had legislative and executive power, and that its provisions did not conflict with those of the bill of rights in the interim constitution.

"The court came to the conclusion, however, that certain of the provisions of the KwaZulu-Natal bill of rights fell outside its legislative or executive powers, or were inconsistent with the provisions of the bill of rights in the interim constitution.

"These included provisions relating to fair criminal trial rights, labour relations, and declarations of states of emergency."

In its 33-page judgement, the court elaborated on KwaZulu-Natal's attempt to usurp national powers and the functions of parliament.

"This process begins in Chapter One, dealing with fundamental principles."

"Clause 1(1), for example, provides that: 'The province of KwaZulu-Natal is a self-governing province within the republic of South Africa.'

"That purports to be an operative provision of the provincial constitution and not a record of a fact or an aspiration.

"It is clearly beyond the capacity of the provincial legislature to pass constitutional provisions concerning the

status of a province within the republic. After all, the provinces are the recipients and not the source of power."

The court added: "There is no provision in the interim constitution which empowers a province to regulate its own status."

It said clause 1(1) and others "would appear to have been passed by the KwaZulu-Natal legislature under a misapprehension that it enjoyed a relationship of co-supremacy with the national legislature, and even the Constitutional Assembly".

"Clause 1(5) of Chapter One purports to arrange the relationship between the province and the national government. Clause 1(6) purports to confer autonomous powers in respect of local government. Clause 1(8) states that the provincial constitution sets out the basis of the interaction between the province and the rest of the republic.

"The provincial constitution is replete with other examples of this attempted usurpation of power."

Elaborating on its rejection of the province's bill of rights, contained in Chapter Three, the court said certain provisions were attempts to usurp national powers or the functions of parliament.

"The contents of a right to a fair trial are, for instance, referred to in some detail in clause 19(3). Similarly, in clause 21, labour relations are dealt with in some detail. In clause 31 one finds detailed provisions for states of emergency and their suspension.

"These are all examples of areas falling patently outside the domain of competence of provincial legislatures.

"Another attempt to usurp national power is the provision in clause 30(3) where, among others, it is asserted that the entrenchment of rights in terms of the provincial constitution shall not be construed as 'denying the existence of any other rights or freedoms recognised or conferred by the constitution of the republic of South Africa ... to the extent that they are not inconsistent with this constitution'.

"This bears all the hallmarks of hierarchical inversion. The provincial constitution is presented as the supreme law recognising what is or is not valid in the national constitution. It has no power to do so."

The court added: "The bill of rights in the provincial constitution is deeply flawed in the many respects already mentioned and will have to be thoroughly redrafted."

The court also said the interim constitution did not grant provinces the authority to confer any legislative or executive authority on themselves, as clause 1(2) and clause 1(4) of Chapter Five purported to do.

"All such power emanates exclusively from the interim constitution," the court said.

"A related and equally serious attempted usurpation of power is the provision made in Chapter Eight for the establishment of a constitutional court for KwaZulu-Natal.

..."The interim constitution nowhere confers any power on a province to establish courts of law, whatever their jurisdiction may be."

The court also said: "Clause 2(1) of Chapter Five proclaims that 'this constitution recognises' the exclusive legislative and executive authority of the 'national government' over certain matters, and clause 2(2) similarly purports to recognise the 'competence' of the 'national parliament' in certain respects.

"These assertions of recognition purport to be the constitutional acts of a sovereign state.

"They are inconsistent with the interim constitution because KwaZulu-Natal is not a sovereign state and it simply has no power tititutional 'recognition' to what the national government may or may not do."

REACTION

MAJOR POLITICAL PARTIES - KWAZULU NATAL CONSTITUTION DECISION EXPECTED

KwaZulu-Natal's major political parties were not surprised by the Constitutional Court's decision not to certify the provincial constitution and had expected it to be referred back, it emerged on Friday afternoon.

African National Congress constitutional affairs spokesman John Jeffrey told Sapa: "We are not surprised by the result. We had said there were significant portions of the KwaZulu-Natal constitution that were unconstitutional... that was also the advice of the constitutional advisors to the constitutional committee of the legislature. P (Inkatha Freedom Party) would not accept that (at the time) and it was clear to us that the only way of resolving these points was to go to the constitutional court," Jeffrey said.

The ANC would have to study the judgement before deciding what to do next.

The Constitutional Court refused to certify the provincial constitution, saying inconsistent with the country's interim constitution and with constitutional principles agreed on in multiparty talks at Kempton Park.

The court said the province's constitution was "fatally flawed".

The IFP reacted cautiously on Friday, with spokesman Walter Felgate saying the matter would be put before the party's national council.

Felgate said the council would have to study the details of the court's findings and assess the situation from there.

The findings did not come as a surprise and the matter was expected to be referred back to the constitutional negotiating team, Felgate said.

National Party constitutional spokesman Tino Volker said: "The NP welcomes the fact that there is now a decision by the Constitutional Court which will enable the KwaZulu-Natal constitutional committee to focus its urgent further attention to reviewing those clauses which, according to the Constitutional Court, go beyond the provisions of the interim constitution."

Volker said the findings came as "absolutely no surprise... we knew it could not be finalised as it was presented".

The KwaZulu-Natal constitutional committee had already been appointed and would begin its work as soon as it received the necessary documentation from the court.

The committee hoped to have the donee, Volker said.

KwaZulu-Natal Democratic Party MPL Roger Burrows said: "In the light of the judgement we will be suggesting that the KwaZulu-Natal legislature await a final acceptance of the national constitution so that a provincial constitution can fall four-square within its parameters.

"We would hope the Constitutional Assembly will meet as soon as possible to amend the draft national constitution," Burrows said.

Minority Front leader and MPL Amichand Rajbansi said his party had questioned the need for a provincial constitution before its drafting and adoption on March 15.

"Well, it means we will have to go back to the drawing board and do amendments where necessary," said the MF leader.

Rajbansi said the party had expected the Constitutional Court decision on the KwaZulu-Natal constitution.

"Well, it means we will have to go back to the drawing board and do amendments where necessary," said the

MF leader.

The African Christian Democratic Party in KwaZulu-Natal said it was disappointed at the non-certification of the provincial constitution.

ACDP MPL Rev Alex Fakude told Sapa it was disheartening that the constitution had been rejected in its entirety.

"The least I expected would have been the identification of those chapters and clauses which were deemed to be inconsistent with the interim constitution," said Fakude.

He said the decision was disappointing after so much effort had been put in.

The Pan Africanist Congress said the constitutional court had taken a fair look at the provincial constitution.

PAC leader and MPL Joe Mkhwanazi said his organisation had expected the court's decision because there were obvious chapters and clauses which were not consistent with the interim constitution.

"This will give us a chance to do the necessary amendments, which will result in a near-perfect constitution," he said.

Earlier on Friday the Constitutional Court refused to certify the KwaZulu-Natal constitution.

The court said the major flaw in the constitution was that it claimed to give powers to the provincial legislature and executive above and beyond those allowed by the interim constitution.

The province's constitution will be referred back to the legislature for amendments.

IFP - REJECTION OF CLAUSES COULD DERAIL PEACE

The Inkatha Freedom Party on Saturday said it believed the rejection of certain clauses of KwaZulu-Natal's draft constitution by the Constitutional Court on Friday could destabilise peace initiatives in the province.

The IFP's national council met behind closed doors in Ulundi on Saturday but this matter was not on the agenda, SABC TV news reported.

IFP president Mangosuthu Buthelezi said the matter would be discussed during the next routine meeting of the council.

Buthelezi reiterated his call on President Nelson Mandela to fulfil his promise, which he said Mandela made in 1994 before the general election, of granting provinces additional powers.

Countering the IFP's remarks, African National Congress KwaZulu-Natal leader Jacob Zuma on Saturday said he did not think vigorous debate on the constitution could cause political tension in the province.

Zuma was addressing an ANC rally in Hambanati on the north coast. People were awaiting word from the IFP on whether they would return to the Constitutional Assembly to re-draft the clauses of KwaZulu-Natal's draft constitution rejected by the Constitutional Court.

MR WALTER FELGATE, IFP - KWAZULU NATAL DECISION WILL BE REFERRED TO NATIONAL COUNCIL

The Constitutional Court's refusal on Friday to certify the KwaZulu-Natal constitution would be referred to the Inkatha Freedom Party's national council for a decision, IFP constitutional committee member Walter Felgate said.

Felgate told Sapa on Friday the council would have to study the details of the court's findings and assess the situation from there.

The court's findings did not come as a surprise and the matter was expected to be referred back to the constitutional negotiating

MR TINO VOLKER, NP - COMMITTEE ENABLED TO FOCUS ON REJECTED CLAUSES

The National Party in KwaZulu-Natal said the Constitutional Court's refusal to certify the province's proposed constitution came as no surprise.

NP constitutional affairs spokesman Tino Volker told Sapa: "The NP welcomes the fact that there is now a decision by the Constitutional Court which will enable the KwaZulu-Natal constitutional committee to focus its urgent further attention to reviewing those clauses which according to the Constitutional Court go beyond the provisions of the interim constitution."

Volker said the court's findings came as "absolutely no surprise... we knew it could not be finalised as it was presented."

The KwaZulu-Natal constitutional committee had already been appointed and would begin its work as soon as it received the necessary documentation from the court.

The committee hoped to have the documentation by early next week, Volker said.

KwaZulu-Natal Democratic Party MP Roger Burrows said: "The DP is not surprised that significant sections of the KwaZulu-Natal proposed constitution have been rejected.

"In the light of the judgement we will be suggesting that the KwaZulu-Natal legislature await a final acceptance of the national constitution so that a provincial constitution can fall four-square within its parameters.

"We would hope that the constitutional assembly will meet as soon as possible to amend the draft national constitution," Burrows said.

The African National Congress could not immediately be reached for comment.