Caroline Morris · Jonathan Boston
Petra Butler *Editors*

Reconstituting the Constitution

Springer

ethnography," in which the goal is "not prediction but comprehension."[1] The premise of my approach is that these different aspects of constitution-building in effect frame the more immediate task of constitution-writing, and thus have a profound impact on the overall project of building a constitutional democracy. The five sources of variation that will be explored in this chapter include, first, a temporal dimension, which may be characterised as being both macro and micro in scope. On the macro scale we should consider the general historic timing of a democratic transition, while on the micro scale there are the specific time-frames within the process of constitution-making, both registers of scale having clear consequences for the choices available to the parties. Second, there is the question of processes in which the specific means of constitution-building, chosen from a range of historic options, is deployed by the parties to achieve specific advantages over their opponents but can also serve as a means to ensure that the political transition continues towards the creation of a new constitutional order. Third, participation in the constitution-building process is an aspect that is important both for those who are active in the actual constitution-making process, as lawyers, politicians, drafters, activists etc., as well as the broader society that is called upon to accept and legitimate the constitutional product as the basis of a future social compact. Fourth, the recognition and use of constitutional principles is an important element of constitution-building in this era. Finally, the process of making substantive choices inherent in every constitution-making process involves alternative institutional designs and substantive elements of the constitution, all of which have a significant impact on the overall process of constitution-building.

In addition, there are two key elements that need to be highlighted in any description of South Africa's successful constitution-building experience. On the one hand there was the adoption of a two-stage process in which the constitution-making process migrated from an essentially bilateral negotiation between the apartheid state and the liberation movement to a democratically-elected constitutional assembly. Adopted to overcome the need of the apartheid regime's demand for legal continuity, as a means to secure certain minority guarantees before relinquishing power, the idea of first adopting an "interim" constitution as a step towards a "final" constitution was inherent in the "sunset clause" proposals, adopted by the African National Congress (ANC) in early 1993 and the National Party's acceptance that a "final" constitution would be produced by a democratically-elected body.[2] On the other hand there were also specific mechanisms that framed the process of constitution-making. First, there was the emergence, adoption and eventual reliance on the idea of constitutional principles. Second, the creation of relatively fluid transitional mechanisms brought the conflicting parties together to resolve particular crises and political tensions. In the first instance the presentation and debate over constitutional principles had the dual virtue of being both

[1] Scheppele (2004), p. 391.

[2] Klug (2000), pp. 104–105.

sufficiently abstract and yet tied to broader international conceptions of the range of acceptable alternatives. This allowed the negotiated evolution of specific institutional and substantive elements toward acceptable, if contested, understandings of constitutional alternatives even as these alternatives were in effect bounded by a broad framework of internationally recognised meanings of these principles. Finally, the adoption of a number of transitional mechanisms, to enable and administer the transition, had the effect of creating personal and professional links between individuals and their parties in a context of ongoing crisis which allowed for a process of confidence building in the midst of continuing conflict. A good example of these processes occurred with the military rebellion in Bophuthatswana, one of the former apartheid Bantustans, barely 2 months before the first democratic elections. In effect these two processes, the defining of constitutional principles and the adoption of transitional mechanisms, allowed participants to maintain a form of legal continuity, which was of primary concern to the old regime, while enabling a process of integration in which the democratic opposition began to increasingly exercise authority and take responsibility for governing.

Even if the "interim" Constitution, which went into effect at the time of the first democratic election in April 1994, lacked a democratic pedigree, the careful inclusion of all political parties willing to participate in negotiations, even as some engaged in violence or constantly threatened or disrupt the process, as well as the willingness of the dominant parties to include constitutional principles that addressed the concerns of some objectors while being in tension with the broader democratic goals of the process, provided a sustainable basis for the next phase. As a result, the clear allocation of power which emanated from the electoral process served to bolster the demands of the democratic majority without precluding the hopes of the newly-disempowered minority. Fundamental differences continued to roil the constitution-making process, right through to the final certification by the Constitutional Court that the Constitutional Assembly had substantially abided by the requirements of the 36 constitutional principles listed in Schedule Four of the "interim" Constitution. Yet, the constant process of debate and adjustment precluded extreme alternatives and helped the parties to re-imagine a place for themselves in the new emerging dispensation.

Not only is the 1996 Constitution democratic South Africa's founding Constitution, it also marks the shift, together with the 1993 "interim" Constitution, from parliamentary sovereignty to constitutional supremacy, thus fundamentally changing the role of the judiciary and the significance of the Constitution. While there are significant continuities between the 1993 "interim" Constitution and the 1996 "final" Constitution, there are also important differences. These include such innovations as the idea of co-operative government to address inter-regional relations and the explicit inclusion of a range of socio-economic rights in the bill of rights – beyond those limited to children's rights that had been included in the interim Constitution. The "final" Constitution also includes a set of Founding Provisions that guarantee human rights, multi-party democracy, and the supremacy of the Constitution, all of which may only be changed by "super" majorities in the

legislature – all features that mark the unique character of this Constitution as the crowning achievement of South Africa's democratic transition.

Reflecting back on the decade during which South Africa's constitution was conceived, it becomes clear that the journey South Africans travelled together was as important to the process of creating a common South African identity, if not necessarily a single national vision, as any of the specific deals that were cut in the negotiations. While this insight may seem self-evident it contains important implications for thinking about other contexts in which constitution-building is advanced as a means to overcome conflict or enhance democracy and nation-building. Instead of taking South Africa's two-stage transition or the details of the "interim" Constitution as models to be applied in other contexts, it becomes important, I believe, to consider how the different elements of South Africa's transition, from constitutional principles to transitional mechanisms as well as practices of negotiation and participation, may be elements that participants in these processes may embrace and adjust to the specific historical and political context of their own constitution-building exercises.

An important element of my argument is that learning from deeply textured examples is more useful than the rigid application of models that may exacerbate existing conflicts. While this approach does not claim to make rigorous causal inferences as might be justified by a qualitative study premised on a "scientific" or "systematic" method,[3] it does rely on a rich description to reveal the underlying texture of the context in which constitution-building unfolded in South Africa. By elaborating on a deeply textured example I want to demonstrate how participants in different constitution-building efforts may be offered the ability to make informed choices as opposed to simply being encouraged to adopt one or other specific model. These models are too often propagated by experts who will have their own conceptions and interests in offering this or that model process, constitutional clause or arrangement. Even here the constitutional advisor or informed participant must constantly be aware of the danger that they, or other participants in any particular transitional process, will transform a context-laden example into a model they wish to advance in order to achieve a specific advantage or strategic goal in the inevitably difficult process of negotiating a new constitutional order.

4.2 A Brief History of the South African Process

South Africa's democratic transition was achieved through a two-stage process of constitution-making. The first stage, from approximately February 1990 to April 1994 was buffeted by ongoing violence and protests, yet it remained ultimately

[3] See King et al. (1994).

under the control of the main negotiating parties.[4] In contrast the second stage, from the time of the elections until the adoption of the "final" Constitution at the end of 1996, was formally constrained by a complex set of constitutional principles contained in the "interim" Constitution,[5] yet driven by an elected Constitutional Assembly made up of a joint sitting of the National Assembly and the Senate of South Africa's first democratic parliament.[6] While South Africa's first democratic national elections in April 1994 marked the end of apartheid and the coming into force of the 1993 "interim" Constitution, it would take a further 5 years before the 1999 elections swept away the last transitional arrangements at the local level, replacing them with the first democratically-elected local governments under the "final" 1996 Constitution. The 1999 election also marked the setting of the sunset clauses which had provided numerous guarantees to the old order – including a 5-year government of national unity and job security for apartheid-era government officials – which facilitated the democratic transition. Even then it would take another 3 years before the amnesty process initiated by the Promotion of National Unity and Reconciliation Act[7] would be formally concluded in March 2002.

The 3 years, from the unbanning of the ANC until the agreement on the date of an election and on an "interim" constitution, were dominated by uncertainty and violence. From the moment State President FW de Klerk announced the unbanning of the ANC and other political parties, on 2 February 1990, the negotiations process was torn between the demand by the liberation movements that the political playing field be leveled and the National Party government's refusal to dismantle the apartheid "Bantustans" and its insistence on remaining in control of the political transition. Even as the negotiations continued, the armed-wing of the Pan African Congress launched a series of terror attacks on white civilians, including a Church in Cape Town and a golf course clubhouse in the Eastern Cape, while attacks against ANC members and between ANC and Inkatha Freedom Party supporters continued unabated in parts of the country.

In the early stages of the negotiations the ANC relied upon the Harare Declaration, an internationally adopted statement which required the apartheid regime to: release all political prisoners; un-ban political organisations; remove military personnel from the black townships; cease political executions; end the state of emergency and repeal all legislation designed to circumscribe political activity. In a series of talks beginning with the Groote Schuur meeting in Cape Town in May 1990 the ANC engaged in direct talks with the government to secure the implementation of the Harare preconditions. These agreements enabled the ANC to begin to reestablish a legal presence in the country as part of the process towards the normalisation of political activity. However, by December 1990, when the ANC

[4] See Klug (2000, 2001).

[5] See S. Afr. Const. 1993, Fourth Schedule.

[6] Ibid, section 68.

[7] Act 34 of 1995.

held its first legal consultative conference in South Africa in over 30 years, its fast expanding legal membership reacted sharply to the rising violence directed by clandestine government forces and Inkatha Freedom Party aligned hostel dwellers against black township communities.

At first it seemed that the ANC leadership would respond to this pressure from its membership and demand an end to the violence as an added precondition to negotiations. But it soon became clear from the pattern of violence, particularly the manner in which it intensified to coincide with ANC political initiatives, that if an end to violence was to be an additional precondition to negotiations, the apartheid state would be in a stronger position to exert control over the transition. As a result the ANC decided to take the initiative, advancing its own plan for the transition to democracy including: calling for an all-party conference; calling for the establishment of an interim government; and calling for the holding of elections for a constituent assembly to draw up a new constitution. This plan envisaged a separate election for a democratic government once a new constitution was adopted. At the same time, debate over the nature of the transition began to take place within the ANC where some began to ask whether we wanted to see Nelson Mandela and other senior ANC leaders made responsible for administering the apartheid state with no ability to make substantive changes, while negotiations continued without a clear timetable or end point. In response the National Party government argued that legal continuity was essential and that any negotiated agreements had to be legally adopted by the undemocratic tricameral Parliament as required by the existing 1983 Constitution.

With the convening of multi-party talks, at the Convention for a Democratic South Africa (Codesa) in late 1991, it seemed as if the process of transition was well under way. In fact there seemed to be a convergence of opinions as the major parties – the ANC and the government – agreed on a number of fundamental issues including the establishment of a multi-party democracy in a united South Africa with an entrenched bill of rights to be adjudicated by a special constitutional tribunal. Substantive negotiations began with the convening of Codesa's five working groups in February 1992. Their terms of reference included: the reincorporation of the four Bantustans given "independence" under apartheid – the Transkei, Bophuthatswana, Ciskei and Venda; the creation of a transitional government to lead the country to democracy; the establishment of a set of constitutional principles; a method for drafting and adopting a new constitution; and the creation of a climate for free political activity. With the signing of a common declaration at the end of this first formal negotiation there were high hopes that the process was now irreversible.

However, it soon became clear that the convergence in language masked deep differences and a clear strategy by the government to retain control over the transition and thus to project the power of the ruling National Party and its allies into the future through constitutional gerrymandering. Although Codesa's founding declaration included a commitment to a united South Africa, the government soon interpreted this to mean merely the maintenance of South Africa's internationally recognised 1910 borders. Furthermore, as a prerequisite to agreement on the nature

of a future constitution-making body the government began to insist there be prior agreement that any future constitution be premised on a strictly federal system of government, based on the Balkanisation of the country into a number of all-but-independent regions. It was this insistence on "federalism" as a precondition to the creation of a democratically-elected constituent assembly and the demand that a new constitution be adopted by 75% of the proportionally elected constitution-making body, as well as 75% of the regionally-elected delegates, that led to the failure of the second plenary session of Codesa in May 1992.

The response of the ANC and its allies in the labour movement and the South African Communist Party was to mobilise their supporters in a campaign of mass action in demand of a democratically-elected constituent assembly. However, as had occurred so many times before, the ANC initiative was met with an upsurge of violent attacks on communities culminating in the Boipatong Massacre. Reacting to the massacre the ANC announced a formal suspension of multi-party negotiations and demanded that the government take action to halt the escalating violence. Among its demands the ANC noted that the government was still holding over 300 political prisoners in contravention of earlier agreements and had made no effort to ban the carrying of lethal weapons by its allied parties – particularly Inkatha, which insisted that its members had a right to carry "traditional" Zulu weapons and whose supporters were regularly implicated in attacks on ANC supporting communities, including the Biopatong killings.

After the 2-day general strike in early August 1992 it seemed that the state was ready to make concessions in order to encourage the ANC to reopen negotiations, including accepting international observers and an expansion of the Peace Accord structures which were designed to address violent conflict within individual communities. Despite these concessions the government still refused to accept a democratically-controlled constitution-making body and as evidence began emerging of the government's role in political assassinations the government demanded the acceptance of a general amnesty, without the need to document or accept specific responsibility for particular acts. Rejecting the government's response, the ANC committed itself to intensifying its mass action campaign so as to ensure free political activity in those areas – the Bantustans and right-wing white towns – where local administrations continued to suppress ANC organisation. This situation revealed two continuing sources of opposition to the negotiated settlement internal to the main negotiating parties. First, the government's duplicity in insisting that apartheid had been abolished while continuing to sustain apartheid's Bantustan system and to deny responsibility for the lack of free political activity in those areas controlled by the government's allies. Second, an element within the ANC who believed that free political activity would create conditions for a more direct revolution modeled on what had occurred in East Germany – termed the Leipzig option.

While the apartheid regime's efforts to sustain anti-liberation movement coalitions in electoral contests in Zimbabwe in 1980 and Namibia in 1990, had failed, the National Party and elements within the security apparatus seemed to cling onto the hope, in the early 1990s, that conditions in South Africa would be

different.[8] Among members of the liberation movement there were many in the Pan Africanist Congress and other Black nationalist groups as well as some in the Communist Party who either rejected the idea of compromise with the apartheid regime or dreamed of a people's revolution in which the old regime and its economic elite would be swept away. Among these were a group within the ANC and the Communist Party who looked to Eastern Europe and the "people's revolutions" that were at that time transforming the former state socialist countries, and especially the example of Leipzig, where continuing peaceful mass demonstrations had delegitimised the East German government's attempts at limited reform and finally forced concessions that would lead to the collapse of the state in East Germany. With the goal of using mass mobilisation or "mass action" as a means to pressure the government, the ANC called for the establishment of an interim government to take over the running of the country from the apartheid regime.

Demanding the adoption of an amendment to the 1983 Constitution in the form of its proposed Transition to Democracy Act, which presented a detailed scheme to establish an interim government and a democratically-elected constitution-making body, the ANC mass action campaign gained momentum. Participation of over four million workers in a 2-day general strike in early August 1992 encouraged the ANC to focus on those areas of the country in which Bantustan administrations were engaging in widespread repression of ANC organisation. Designed to ensure free political activity this part of the campaign focused first on the military administration in the nominally-independent Ciskei Bantustan. On 7 September 1992 over 20,000 ANC members marched into the deadly machine-gun fire of the Ciskei security forces, leaving 28 dead and nearly 200 injured. The massacre of ANC demonstrators at Bisho was the final nail in the coffin of the first round of multi-party negotiations. At the same time the international response made it clear that the government could no longer deny responsibility for the violence its allies wrought and within the ANC the voices who suggested that mass action could lead to a non-violent insurrection and takeover, as occurred with the fall of the Berlin wall, went silent.[9]

With the negotiations yet again on the brink of collapse, the ANC and National Party government were pushed to reach agreement in the Record of Understanding on 26 September 1992, setting the scene for the creation of a new negotiating process. The National Party's concession of an elected constituent assembly and the ANC's acceptance of a government of national unity under a transitional constitution provided the key elements of this agreement. By accepting a democratic constitution-making process, the National Party made it possible for the ANC to agree to the adoption of a negotiated "interim" constitution which would entrench a government of national unity for 5 years and ensure the legal continuity

[8] See generally Heunis (2007).

[9] See generally Kasrils (1993), pp. 301–368.

the National Party government required. The architecture of this agreement, reflecting continuity and change, allowed the multi-party negotiations – which eventually became known as the Multi-Party Negotiating Forum – to resume at the World Trade Center outside Johannesburg in early 1993. The assassination of ANC and Communist Party leader Chris Hani by a white right-winger in April 1993 put the country again on the edge of the abyss and in many ways marked the moment when FW de Klerk's government realised that they could no longer assert control over the transition but needed to build a working relationship with Nelson Mandela and the ANC.

The process of negotiations which followed led to the adoption in December 1993 of an "interim" constitution which went into force with the country's first democratic election in April 1994. This "interim" 1993 Constitution provided in turn for the creation of a "final" constitution within 2 years from the first sitting of the newly-elected National Assembly. Chapter 5 of the "interim" Constitution required that at least two-thirds of all the members of the Constitutional Assembly vote for the new constitution. In addition, sections of a final constitution dealing with the boundaries, powers and functions of the provinces had to be adopted by two-thirds of all the members of the regionally-constituted Senate. Once the new legislature, with both houses sitting together as a Constitutional Assembly, agreed on a draft, it would then have to be submitted to the Constitutional Court for certification. This required the Constitutional Court to certify that the provisions of the "final" constitution were substantially in accordance with the constitutional principles agreed upon during the multi-party negotiations and enshrined in Schedule Four of the "interim" Constitution. Only then would the "final" Constitution be promulgated into law. In fact the Constitutional Court at first declined to certify the text of the draft constitution and only once the Constitutional Assembly amended the draft was it finally certified. Although the "interim" Constitution had made elaborate provision, through a series of deadlock breaking devices, for the possibility that the Constitutional Assembly would fail to achieve sufficient consensus to reach the required two-thirds vote, the threat these provisions held, in terms of delay and an eventual reduction of the threshold from two-thirds to 60%, helped ensure that a spirit of eventual compromise endured.

4.3 Constitution-Making in the Constitutional Assembly

Provisions for the establishment of a Constitutional Assembly were spelt out in Chap. 5 of the "interim" Constitution. Constituted by a joint sitting of the two houses of Parliament – the National Assembly and the Senate – the Constitutional Assembly was given 2 years, from the first sitting of the National Assembly, to "pass a new Constitutional text."[10] At its first meeting on 24 May 1994, the

[10] S. Afr. Const. 1993, section 73(1).

Constitutional Assembly, comprised of 490 members from seven political parties, elected Cyril Ramaphosa of the ANC as its chairperson and Leon Wessels of the National Party as deputy chairperson. At its second meeting in August 1994 the Constitutional Assembly established a 44 member Constitutional Committee to serve as a steering committee and created an administrative structure to manage the process of constitution-making. Not only were they required to handle administrative support for the Assembly itself but the Constitutional Assembly's administrative team was also responsible for facilitating other important aspects of the process including: a Public Participation Programme including both written and electronic submissions; a Constitutional Education Programme; a Constitutional Public Meetings Programme; and a newsletter – *Constitutional Talk* – devoted to explaining the process and responsible for distributing four million copies of the working draft approved by the Constitutional Assembly in November 1995.[11]

In addition to the Constitutional Committee the Constitutional Assembly set up six theme committees in September 1994, made up of legal and policy experts "to collect information, ideas, views, and submissions from political parties, interest groups, and individuals on issues that would come to form the content of the constitution."[12] These theme committees would hold a series of seminars and conferences involving both members of the Constitutional Assembly as well as interest groups, academics and non-government organisations in debates over different sections of the draft constitution. There was also a technical refinement team that worked to ensure both that there was consistency throughout the fast-growing document and that it was written in plain language that could be read and understood by ordinary citizens. Apart from these informal mechanisms created by the Constitutional Assembly, there was also an independent panel of seven constitutional experts that the Constitutional Assembly was required by the "interim" Constitution to appoint, to both provide advice to the Constitutional Assembly and serve as a partial deadlock-breaking mechanism if the Constitutional Assembly were unable to achieve a two-thirds majority within the required period of time.

4.3.1 Negotiating the "Final" Constitution

Compared to the Kempton Park negotiations, constitution-making in the Constitutional Assembly introduced a new set of imperatives and conditions. Two of these conditions were of particular significance. First, the relative power of the different parties had been established by their respective performances in the first democratic elections. Second, as power shifted into the new democratic institutions and the constitution-drafting process took place in full view of the public, members of the

[11] See Bell (1997).

[12] Ibid, p. 34.

Constitutional Assembly found themselves subject to greater pressures from their constituencies. These conditions produced several results that distinguish the drafting of the "final" Constitution from that of the "interim" Constitution.

Whereas the parties at Kempton Park had been concerned to draw the Inkatha Freedom Party into the constitutional settlement, if this was at all possible, there was no similar imperative in the Constitutional Assembly, where the true extent of the political support for the Inkatha Freedom Party had been laid bare by an election. When the Inkatha Freedom Party walked out of the Constitutional Assembly the remaining parties simply ignored it and applied themselves to the task of drafting a constitution in its absence. Within the Constitutional Assembly there was much less incentive for the ANC to settle contentious issues on unfavourable terms than there had been at Kempton Park. Thus the "final" Constitution shows fewer obvious signs of being a compromise when compared to the "interim" Constitution. In respect of almost all the controversial clauses the balance ultimately reached was one which weighed more heavily in favour of the ANC than did the "interim" Constitution: the property clause remained in the "final" Constitution, but it is a less expansive clause than that which was contained in the "interim" Constitution and it is offset by a comprehensive package of land rights; the right to economic activity is even more attenuated, while the right to lock-out was removed from the Constitution entirely; the right to education was reformulated to clarify that the state is under no obligation to fund culturally-exclusive schools; consociationalism is no longer entrenched in local government; and the provisions requiring the formation of a government of national unity were allowed to lapse as the sunset clauses of the "interim" Constitution provided.[13]

The National Party briefly contemplated a confrontation with the ANC over the three issues of property, lock-outs and cultural schools, but the dynamics of the new constitution-drafting process left it no option but to back down. Faced with the prospect of a referendum in the event of a failure by the Constitutional Assembly to pass a new constitutional text by a two-thirds majority,[14] the National Party could not afford to make its last stand on issues in respect of which the ANC had overwhelming popular support. On 8 May 1996, 87% of the members of the Constitutional Assembly voted in favour of a new constitutional text that was to form the basis of the "final" Constitution. The missing 13% comprised the Inkatha Freedom Party members, who steadfastly maintained their boycott of proceedings, the Vryheids-Front members, who abstained, and the two African Christian Democratic Party members, who voted against the Constitution on religious doctrinal grounds.

[13] Constitutional Principle XXXIII entrenched the government of national unity until 30 April 1999. This was retained in the "final" Constitution through the inclusion of the transitional provisions in Schedule 6. Clause 9(2) of Schedule 6 provided for the continuation of the government of national unity until 1999.

[14] As required by section 73(6) of the "interim" Constitution.

The degree of public exposure to the constitution-drafting process was probably without historical precedent anywhere in the world. Hundreds of public meetings were held to advertise the drafting of the Constitution and to invite public participation in the process. In addition the Constitutional Assembly organised a series of conferences through its theme groups that brought together "stake-holders" from different parts of civil society as well as academics and politicians to discuss contentious issues, such as land rights, restitution and the promise of land reform. The Constitutional Assembly published its own monthly newsletter, *Constitutional Talk*, to publicise events relating to the development of the Constitution. There was an extensive television and radio publicity campaign and the genesis of the Constitution from first draft to final product could be followed on a daily basis on the internet site of the Constitutional Assembly.

4.4 Five Sources of Variation Reflected in the History of Constitution-Building in South Africa

Building a constitutional democracy encompasses a far broader range of issues than drafting and adopting a new constitution.[15] Yet, it is the process of constitution-making that has become a key element in the political transitions that have followed the end of the cold war.[16] At the same time there has been a resuscitation, despite long recognised critiques, of the tendency to propagate and adopt model forms of institutions and rights that experts are convinced address this or that problem of governance or social conflict. While different examples may very well inform participants or serve to shape their own imaginations of the possible, the tendency to promote model solutions rather than to learn and adapt comparative experiences to the richness of each new national, cultural, political and temporal context often undermines the very goal of attempting to reconstruct a particular polity through constitutional change. To understand the place of constitution-making in building a democratic future I believe we need to focus less on this or that successful model and instead consider the different mechanisms and paths that have been employed in achieving at least some degree of sustainability in different democratic and constitutional transitions. From this perspective constitution-drafting or constitution-making may be central features of a broader process of constitution-building which includes a variety of different elements. It is the exploration of the specifics of these different elements that will enable us to develop a better understanding of the variations in different processes of constitution-building, enabling us to use different historical examples to inform the decisions facing constitution-builders around the globe.

[15] See Ghai and Galli (2006).

[16] Benomar (2004).