

Substantive Issues re: Report on the  
Demarcation of Regions

Proposals of the Planning Committee

iy Report seen as a building Dblock for debate and  
deliberations in specific areas where there are disputes.

2 Contributions of the delegates should help identify areas  
that are in disputes

3. Devise the process to receive further submissions and local  
hearings for disputed areas

4. Find appropriate mechanisms for taking this report further

51 Need a time line which will allow for boundaries to be  
incorporated into the TEC legislation.

ANC - Boundaries must not be entrenched for 12-24 months to  
allow a sense of reaction from the "people"

Therefore agree on number of regions now and then refer the  
issue of actual boundaries back to the Commission.

Agree on number of regions rather than boundaries  
Volksunie - concern about suggestion to use the report as a  
constructive building block.

The Commission did not apply itself to the demarcation of

regions for electoral purposes only( and not for regions)  
PAC - Undemocratic practices should be described as such.  
Therefore, cannot support that these boundaries should be  
imposed on the people without them having had a say.

Agree that the report be debated, the problem areas be  
identified and further discussion on how to amend and carry  
forward.

Discussion of problem areas:  
Democratic Party

1. The number of regions -+ nine is not a problem

2% Extensive consultation is needed to proposals and fine  
tuning of boundaries.

3, Areas of concern:

;F\â\200\230x

a..the Northern Cape as demarcated and its viability as a region. Namaqualand and to the South should be part of the Western Cape.

b. whether Pretoria should be part of one region rather than two. Historically the two areas have been independent of each other only recently have they grown together. Given the potential of the decentralisation of power its questionable why the PWV should be one region

G East Griqualand

d. East Cape - one region or two

Mr. Raja

Time frames - suggestion of soft boundaries is unrealistic.

Cannot go into an election with boundaries being contested, because of their highly sensitive and emotional issues.

Look at alternatives in case the commission cannot come up with less conflictual boundaries

\* % KwaZulu Natal boundary

\*% Northern Cape boundary

population small. vote one seat per 50,000 seats, SPR must have a maximum of 10 Therefore, has implications for election of representatives for the senate and house of representatives.

Ciskei

Need time to grant to grassroots to determine what they want.

Division between the two KEIs and historical conflicts have not been taken sufficiently into account.

Take the matter to the people

Intando ye Sizwe

Acknowledge the work of the Commission.

The economic aspects not addressed well re: the local problems of the people. The towns bordering KwaNdebele e.g. Groblersdaal is functionally linked to this area. Middleburg is also in the functional area of KwaNdebele. Areas are interdependent in terms of labour flows and infrastructure. Same with Witbank. Brokhorspruit is also part of KwaNdebele functional area. The same applies to Pretoria as well.

Historically, Pretoria, to the East was part of the KwaNdebele Kingdom.

Therefore, Pretoria should be part of the Eastern Transvaal. Alternative 1 is to include KwaNdebele and Pretoria as part of one region.

ANC

Contentious issues are arising from the report.

The issue of taking the matter to the people - what does it mean?

Either let the Commission here further work and hearings and make a decision thereafter

Or here are proposals and the issue of consultation continues the report from there to go to the elected body to finalise the boundaries. Shifting one boundary would require shifting others - the question is where does it all stop.

Therefore, raise the issues as they pertain to identifying the areas of concern.

Volkunie

This is an exercise in futility.

There is no technical information for the Council to debate the issue.

South African Government

Concur with the planning committee.

Differ on particular areas however, feel the work was approached scientifically.

Areas of agreement with report

No predetermination on the number of SPRs

Soft boundaries

Need for further consultation on areas of dispute

Areas of Concern

Agree on Northern Cape Region except Northern Border

Disagree with: the one OFS - Northwest

one Eastern Cape

prefer to retain Sasolburg with the OFS instead of PWV

East Griqualand should be with Natal for economic and political regions as well as cultural ties.

Justice Steyn's report also indicated as proof.

Kuruman and Postmasburg be included in Northern Cape in order to strengthen this region.

Fundamental difference: Govt. favours a SATSWA option in order to incorporate as much of BOp as possible excluding the areas interlinked with the PWV.

Mutual agricultural and mineral base of the areas makes it possible as an area. This area should therefore be revisited. Eastern Cape Region should be two areas. The EC has limited ties the Kei area. The Kei area has no linkages with with PE-Uitenhage

Walvis Bay - form part of the Western Cape and be administered from there

Kruger National Park - should be part of one region

\*\*\*Mechanism needed to test the will of the people regarding these boundaries. Disagree with Mr. Botha's proposal

PAC  
Party position

apartheid structures should go ; homelands, provinces, etc. and be replaced within a unitary state by other structures

elected representatives should make the final decision

Comments

? re: whether the difficult working circumstances of the Commission could have allowed them to come up with something

satisfactory to all.

Shortcomings of the work

15 the question of size of regions why is a large regions desirable or undesirable

2 time frame was a problem

3 tribalism - no indication of the report on how the regions

might impact on this

4, implication of regions on nation building

54 implication of imposing democratic boundaries on the people

Therefore proposal to discuss this further with local people is

important to avoid violent conflict and war.

Problems with the Northern Cape, Eastern Cape and Pretoria. All shows the need for further input.

Commission is silent on the issue of Walvis Bay. The latter is not part of South Africa it was colonised and cannot agree to this area being made part of South Africa.

The question of the electoral implications of these boundaries is important.

Democratic Party

Want the issue to be decided now. Its not a soft boundary issue  
gt

Eastern Cape

Two distinct nodes exist.

Two completely separate nodes exists therefore, there should be two regions. Structures exist for each regions e.g. Business, development fora, ANC and Cosatu.

Therefore, the linkages are minimal. For the Commission to indicate what it has said it an insult.

Intraregional disparities. Differential in per-capita. No reason advanced as to how combining the two areas will uplift the Kei region.

The size of the region is now 6million people. Does not make sense for election purposes.

No indication how joining the two regions will help the region economically.

Institutional Capacity

Both areas have adequate infrastructure.

Geographical coherence.

Two different geographical areas exist, tourism patterns differ, history etc.

Socio-cultural areas

Why majority of submissions rejected.

The black people in the area do not themselves a sense of identity. E.g. Transkei government indicates the same.

The Democratic party feels that the socio-cultural aspects were sucked out of the thumb of some the Commission members.

Therefore, the issue should be referred back to the people.

ANC

1. Commission could not have produced a report to satisfy all.

2. Each party expected to obtain the maximum out of the submissions. Therefore, expected to make some compromises.

3 The notion of "the people" needs to be clarified. This notion needs to be clarified.

4. The report may be lacking here and there, but it has tested all the criteria to the different regions.

Problems

The region of the Northern Cape, no economic viability and institutional capacity.

Western Transvaal and Northern Cape need to be kept together. Consultation with the people in that area per ANC consultation agreed to the region. NOT one of them wanted the OFS be combined with the Western Transvaal.

The idea is not to reincorporate the homelands. Therefore are against the

Sasolburg should be part of the PWV

East Griqualand area needs further consultations. There are counter claims with regard to both aspects of the issue.

Eastern Cape - argument of the DP is similar to that presented when the Bantustans were created. Separation of the two areas would lead to the consolidation of the Bantustan area, and relegate the area to dependence on the Centre.

The existence of two nodes doesn't hold

Cultural distinction - from DP's view maybe it makes sense. But its not clear that there is cultural distinction.

Separation of Chambers of Commerce may be a function of apartheid.

Its not clear what the benefits are of separating the regions.

\*\*Do not agree the boundaries should be agree to now. They should be soft and tested around the boundaries.

Chief Nonkonyana

There is a need to test the will of the people.

There is no economic activity at all and people cannot plan  
Therefore need to strike a compromise. A purely democratic path  
will not resolve the issue, because of the leveling of the  
playing field.

Five positions:

Recommendation of the Commission

River boundaries -Fish river and Umzikhulu river. Commission  
left out Port Shepstone. Emphasis on Kokstad is wrong - area  
belongs to Kei.

Where will the capital be.

What will the nature of representation be.

\*\*Need to consult further and strike a compromise in the  
interest of certainty.

Bop. Govt.

Sympathise with planning Committee re: way forward

Report of the Commission should be seen as building block. This  
should not been interpreted as meaning acceptance of the report.

ok The way the report was presented lacks substance to enable  
debate and intelligent debate.

Use of the criteria in the case of North West has ignored  
the criteria.

The economic criteria is also disappointing. Studies done  
there have not been looked into.

In the face of international experience history and  
language have been ignored. History before 1910 has been  
ignored. It needs to be taken into account.

History determines the affinity of people to an area

That Odi 1 and Moretele should be left out of this area is  
problematic.

Other long term research that has been done, indicates that  
due to affinity, the SATSWA proposal emerged.

There are several areas where tribes are cut into half because of the boundaries demarcated.

Affinity of the people plays a pivotal role.

\*\* No logical basis for subdividing Bop. It has become a historical and permanent feature that cannot be divided.

\*\* The Commission should go to the regions to find out what the people want and study reports undertaken.

Chief Kekela - Northern Transvaal

Not much of a problem with report. The issue of primary concern to them is the election.

Issues:

Pretoria in the Northern Transvaal. Haamanskraal, KwaNdebele, Groblersdaal in order for the Ndebele to be together.

The owners of the country are not fighting for the boundaries.

There is a need to take into account other boundaries other than magisterial districts.

Kruger National Park must be part of the Northern Transvaal. Alternative especially if Pretoria is not included in Northern Transvaal.

Sasolburg to be out of PWV.

\*\*Why not leave the issue to the provinces for the purpose of elections.

Transvaal traditional leaders - Mrs. Kekana

\*\*People of Moretele want to be part of Northern Transvaal or where Pretoria will be. A thorough analysis of this area is needed. Some of the people in the area in Bop. and some are in Pretoria. People in that area do not consider themselves Tswana. VolksUnie

Clear that only two parties happy with the demarcations NP and ANC.

Concentrate on the Pretoria/Eastern Transvaal region.

No problem with the criteria given and considered by the Commission.

The modern tendency is to place emphasis on cultural and historical claims. Example of Nigeria and Bosnia given.



Unfortunately in South Africa, cultural, language homogeneity have been contaminated. Thus economic viability are being placed at a higher level.

Disregard of cultural, language and historical issues will lead to bloodshed.

VolksUnie insisted that ethnicity be taken into account. The report ignores the issue of ethnicity.

VolksUnie believes that after elections, the reality of the people's inclinations will be revealed - avoid the situation of Nigeria and India.

The redrafting of boundaries have significant cost and conflict implications.

\*\*The case of the Afrikaner people has not been considered at all.

The Commission was given a map where the Afrikaner people are the majority. It has been challenged.

\*\*\*pPretoria they cannot do without.

The NP excludes Pretoria, yet the city council, the RSC's want Pretoria out of the region.

In line with the question of Walvis Bay VolksUnie raised on behalf of the Swazi King a dispute of boundaries concerning an area in dispute.

x\*\*x Their bottom line is that Pretoria must be included. Given the criteria, Pretoria should be excluded. Quoted Seventeen parties having submitted that Pretoria should not be in the Witwatersrand region.

\*\*\*The Afrikaner people's needs must be accommodated or else things will not be good for the country.

SACP

ilivs The Commission has been insulted as if they invented the criteria, particularly by the DP that they are going to fight them. COSATU has always had the Eastern Cape as one region. The credibility of the Commission is at stake. People used to imposing the will of the minority of the majority.

\*\* gsince constitution not finalised, interim regions will be needed, so too will the boundaries will not have been finalised.

\*\* parties have made submissions at the national level, and now they are being informed that their people want particular issues.

\*\* issue of canvassing the people has to be recognised in the context that there are areas where particular parties cannot engage in free political activity.

\_\*\*Proposal ...agree on regions as closely as we can but continue discussion on particular areas. Free political activity must be allowed for this consultation to occur,

Agree on: How many regions to have for elections  
Do further work on areas that need more consultation

Reincorporation : appears to mean lets do away with the Bantustans but maintain them in some other form. SACP finds that unacceptable, regions must be economically viable, etc. all criteria must be taken into account.

\*\*Some people want the Council to adopt the minority report. Support raising of issues that we have, move toward free elections, continue further consultation and see if consensus can be reached, or continue further work.

s Support Commission to do the work and accept their integrity.

Inyandza

The report is a preliminary report. want to commend the Commissioners in compiling the report, which lays down the parameters for further discussion.

Disagree with those who would condemn the report.

Associate with the planning Committee that the report should be a building block that will be finalised by the CA.

Suggestion:

Use report for demarcations for elections. If agreement not reached on these boundaries then revert to the four provinces.

Eastern Transvaal, fully associate with idea of separation from resource centres. The towns contested by the KwaNdebele should be included. ;

Issue of ethnicity and culture - there is a need to balance the various criteria.

Problem of subregions - particularly as a subregional approach.

Give Commission a mandate to engage in some fine tuning of particular areas, through submissions and hearings until the CA

appoints a Commission to finalise boundaries.

The Issue of borders is going continuous

Mr. Mahlangu- Northern Transvaal

Need to deal with the process without derailing it.

Want to Commend the Commission for the work done in a short space of time.

Agree with planning committee's proposal

Commission suggestions: investigate some of the problem areas  
hear evidence and visit people in  
affected areas,  
particularly people at the grassroots  
level

The traditional leaders have serious problems re: the  
current demarcations. They need to be heard.

\*\*Groblersdal - 40% of buying power comes from KwaNdebele. Well  
the rest comes from the Northern Transvaal. This town plays an  
important role.

The northern Transvaal has lower than average income and quality  
of life. Therefore, removal of Groblersdal deprives the

Northern Transvaal. \*\*This is therefore an area that needs to  
be investigated and the people consulted.

Dikwankwetla Party

Express appreciation for the good job done by the Commission  
given the limited time span.

It should not have been their intention to put in front of the  
Council a final product. Therefore this needs to be seen as a  
stepping stone.

\*\*Sasolburg - why does the PWV need Sasolburg. The OFS needs  
Sasolburg and belongs with it.

P. 45 population of OFS is only 7%. OFS needs the North West.  
That will be 13%. The same applies with GGP.

Don't agree that the region would be too big. Then the same  
could be said for the Eastern Cape and the Northern Cape.

Arguing that to bring region in line GGP and population line.  
Labour Party

This report can only be the beginning.

An unelected unrepresentative body cannot finalise regions.  
\*\*North Cape region is highly problematic

Incorporate northern cape into the North West and the Southern Area to the Western Cape.

Contest the idea that there is socio-cultural identity in the region.

Aware that this area has been targeted as a white homeland. This would be disastrous to the to the population. Furthermore it will not satisfy the aspirations of the right wing.

Transkel Govt.

Commend the Commission on its work.

Believe in the principle of democracy

\*\*concerned that part of Transkei is now falling under Natal  
\*\*Eastern Cape /Kei region must be viable. Bottom line is to consult with the people i.e. the people of Border/kei and Cape need to decide what they want.

\*\*\*Need a mechanism for the Commission to consult with these problems or some other way forward through a coordination mechanism re: those issues

PG

Commend the Commission for its work

It has identified the shortcomings, don't need a minority report to do so.

Emotive response to the Commission. Reflects its partisanship. Three issues raised in an article that are not factual.

Report has provided not an objective report, but rather projects a partisan approach )

\*\*Not rush to firming up these boundaries

\*\*leave it the CA to firm boundaries after appropriate long term consultation

\*\* preparation of technical report to substantiate the recommendations of the Commission

\*\*Areas to be revisited. Natal boundary, Northern Cape area, Walvis Bay resolved by this council

ANC

Kruger National Park is a National asset and should be

administered at the national level.

Walvis Bay - Fourie's statement has compounded the problem./  
Clarity needs to be reached on this for the purpose of SPR's.

Walvis Bay belongs to Namibia.

PAC

\*\* Not in favour of cutting up country into regions  
\*\* regions must be done by the CA

\*\* TBVC be incorporated into the current provinces  
\*\*unfettered constituent assemble

\*\*total revision of the interim constitution  
\*\*Walvis Bay be reverted to Namibia

Resolution

Commission noted that the exclusion of WB from its report  
UN Agreement re WB

Notes Agreement on joint admin

Council recommends that the present govt. revert WB and Islands  
to Namibia

Transvaal Traditional leaders

Concerned about the division of tribes ruled by one chief  
divided into two regions. In the interest of not dislocating  
people, and inconveniencing people, its important that people be  
included in one area.

\*\*Pilgrim's Rest area is currently in the Eastern Transvaal, but  
they are under areas where the Makgoshi are in the Northern  
Transvaal.

BOP Government

1. Joining NorthWest and OFS is just to consolidate BOP.

2. Hamaanskraal does not belong to the Ndebele, they only own  
a very small part of Hamaanskraal

Sicgau

Commend the Commission

The issue of boundaries must not create poor and in nonviable boundaries. Rivers should be used as boundaries

East Griqualand - For life depends on the surrounding areas of Transkei and would not survive without them. The area includes good farming land. What area would agree to its best lands being taken away from them. Life has to be given to the north Eastern Cape by leaving East Griqualand as part of the EC.

\*\*Need to consult is important to meet the grievances of people on the ground. Issue is not ethnicity but economic viability.

Approach to the Eastern Cape is that of those who have had, in fear of the less developed. The people need to share in the wealth

%k ok ok ok  
DP

Its map does is not intended to cordon off the Transkei in the same way that the NP proposal does.

DRAFT RESOLUTION

PG

Areas of Contention and difficulty have been identified  
With the help of the TST the two co-chairpersons

RAJBANnsi - The entire Commission needs to be called back. NOT to dilute the important

\*\* receiving submissions from sensitive areas and hearings

\*\*two co-chairpersons cannot reflect the position of the entire commission.

Mense VOLkUnie  
Sensitive areas should be identified

Commission itself should look into these areas

Time frames be stipulated in consultation with the Commission  
Schuman

Allow the Co-Chairpersons decide whether the whole commission

DP

Want in addition to the pros include the cons for the regions  
that they recommend

ANC

The practicability of the whole thing is an issue. Availability of the rest of the COmission should be ascertained.

How final is final? -

Gininda

\*\*\* TIssue of regions is sensitive

\*\*\* The whole Commission should be mandated  
\*\*\*Consultation should not be a delaying technique.

SACP

Agree with the suggestion of Baleka and Mr. Schoeman

The parameters of the exposition are important to determining.  
The whole process could get out of hand.

\*\*\*X\*\*RE: DRAFT RESOLUTION OF PLANNING COMMISSION\*\*\*\*

%%k \*

Rajbansi : Not react

quorum

#### QUORUM OF MEETINGS OF SPR LEGISLATURE

The presence of at least fifty per cent [50%] of the total number of members of the SPR legislature entitled to attend shall be sufficient to constitute a meeting of the SPR legislature for the exercise of its powers.

- OR -

A quorum for a meeting of the SPR legislature shall be not less than one half [2] of all its members entitled to attend.

#### VOTING IN REQUISITE MAJORITIES

Save as otherwise specified in this Constitution a decision of a majority of the members of the SPR Legislature shall constitute a decision of the legislature.

- OR -

Save as provided in this Constitution a simple majority of votes cast in the SPR legislature shall be sufficient for the passing of any legislation or taking of any decision or resolution of the SPR legislature.

The Chairperson of the legislature shall not vote unless the numbers are equal in which event the chairperson shall have a casting vote.



## RULES OF PROCEDURE AND ORDERS

The SPR legislature may make rules and orders with respect to the order and conduct of its business and proceedings.

The SPR legislature may also make rules for the establishing and functioning and procedures of committees, and formulate such standing orders having regard to the business of such committees.

For the purposes of exercising their powers and performing their functions any committee of an SPR legislature established in terms of 5 hereof shall have the power to subpoena persons to appear before it to give evidence under oath and to produce any documents required by it, and to receive representations from interested parties.

## PRIVILEGES AND IMMUNITIES OF SPR LEGISLATURES

Rules providing for the privilege and immunities of members of the SPR legislature shall be made by a law of the SPR legislature.

Notwithstanding the provisions of any other law, no member of the legislature of the SPR shall be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of any matter or thing which he or she have brought by petition, bill,

motion or otherwise or may have said before or in the SPR  
legislature or any committee thereof.

KEY INDICATORS

2.1.8 PWV

INDICATORS AS PROPOSED BY COMMISSION

Area (000 km<sup>2</sup>) 25,3

Population ('000) 9 267,2

Population Growth (%) 3,6

1985-1991

Density (Persons per km<sup>2</sup>) 366,1

Official Urbanisation level (%) 82,4

Growth in Urbanisation (%) 3.7

(1985-1991)

Illiteracy rate 12,5

(Economically active population)

Potential labour force ('000) 4 573,3

Participation rate 70,9

Absorption capacity 53,1

Official Unemployment rate 13,5

Male Absenteeism rate 35,8

Dependency ratio 1,1

Real GGP (R million) 47 100

(1988)

Real annual growth in GGP 4,3

(1970-1988)

Percentage distribution 3,1

GGP per capita (R)  
(1988)

Personal Income/ GGP (%)  
(1985)

Personal Income per capita (R)  
(1985)

Sex (%)  
Male  
Female

Age  
under 15  
15-65  
65 and over

Black  
White  
Coloured  
Asian

Language 1991 (%)  
Afrikaans  
Zulu  
English  
N. Sotho  
S. Sotho

This area is the most densely populated of all SPRs, with more than 9 million people living in an area of 25 000 km<sup>2</sup>, and comprising 23% of South Africa's population.

The PWYV has the second highest official urbanisation level and its population is also likely to continue growing substantially.

This SPR has the highest proportion of economically active persons. Unlike most other SPRs the number of males is much higher than that of females. This suggests that migration to the PWYV of females and families joining the males is likely to occur. The illiteracy rate in this SPR is much lower than in other SPRs, excluding the Western Cape, suggesting the area has adequate human resource potential to propel development.

The PWYV contributes 39.5% of the total national GGP. It has the highest per capita

a

GGP in the country.

## 7.1 SUMMARY OF ARGUMENTS FOR AND AGAINST THE PWV SPR

The position of Pretoria in the PWV is one of the most complex problems emerging from the demarcation process.

### 7.1.1 Arguments for the PWYV as proposed in the submissions

The PWV is an integrated industrial complex which is both economically functional and economically viable.

Unlike most SPRs it displays a higher level of language heterogeneity within which is found a sense of identity associated with its heterogeneous and highly urbanised nature.

The PWV is a geographically coherent region as indicated by its compactness and functional linkages between its various localities.

With regard to institutional and administrative capacity, the PWV has a number of tertiary education institutions, hospitals, as well as five RSCs and viable local governmental institutions

The excision of either the Greater Pretoria Area (GPA)' or the Vaal Triangle<sup>231</sup> area from the PWV would create an imbalance in the power of the remaining region relative to the Central Witwatersrand. Thus, the various components should be left intact.

Given the growing migration of population into the Central Witwatersrand relative to the GPA, which has a more permanent and less urbanised population, the excision of Pretoria from the SPR will create excessive population pressures on economic opportunities and infrastructure in the remaining region.

Since the PWV region is a highly urbanised integrated complex, there is a difficulty with regard to where one would demarcate the line separating its different components. This matter is further complicated by the fact that it is precisely between some of its nodal points, e.g., Midrand, that rapid construction and new business location are occurring.

Arguments against a PWYV as reflected in the submissions

There are a number of positions against a PWYV region as demarcated. These options are as follows: (i) that the eastern part of the Greater Pretoria should be part of the Eastern Transvaal; (ii) that Greater Pretoria should be part of the Northern Transvaal; (iii) that Odi 1 & 2 and Moretele 1 & 2 should be part of the North-West Region; (v) that Sasolburg should be part of the Orange Free State; (vi) that Pretoria be demarcated as a separate SPR; and (vii) that if Greater Pretoria is excised from the PWV, then the Vaal Triangle should also be excised as a separate autonomous SPR.

There are several general arguments that are presented with regard to the exclusion of

! The Greater Pretoria area includes the magisterial districts of Pretoria, Brits, Wonderboom, Cullinan, Bronkhorstspuit and the areas of KwaNdebele and Bophuthatswana currently located in the PWV.

%2 The Vaal Triangle is defined as the magisterial districts of Vereeniging and Sasolburg

the Greater Pretoria area or its various components from the PWV region.

The PWV is not an integrated complex but rather an economically functional complex with three distinct sub-regional economies. Economic activity within each node is considerably more than between the three various nodes. Therefore, any one of the components could comprise an autonomous SPR.

Pretoria as a unit functions basically as a separate entity with close economic links not only with the Witwatersrand, but also with the Brits-Bronkhorstspuit-Middelburg-Witbank economic development axis.

The creation of the PWV leads to the existence of an SPR which is economically dominant relative to the other SPRs. Therefore, its carving up allows a sharing of its resources and capacity with other SPRs.

With regard to geographic coherence, it is argued that the exclusion of the above listed areas from the PWV SPR will not have a negative effect on the coherence of the SPR.

The Socio-cultural mix of the PWV will not be negatively affected by the removal of Pretoria from the PWV SPR. The areas that are excised from the PWV will benefit from being joined with areas with which they have a cultural affinity.

The combination of Pretoria and the Eastern Transvaal will facilitate the consolidation of the Ndebele people in one SPR, whereas they are currently split between the Eastern Transvaal and the PWV.

The excision of Pretoria from the PWV does not affect the institutional and administrative capacity of the PWV negatively. With respect to the joining of Pretoria with the Eastern Transvaal, an argument is advanced that the latter area will benefit from the institutional and administrative capacity that exists in the Pretoria area. The same argument holds for Northern Transvaal.

An additional reason advanced in the case of Odi 1 & 2 and Moretele 1 & 2 is that these areas are satisfied with the governance of the area by the Bophuthatswana government and are in favour of the SATSWA option; yet there are those who argue that the majority of people there do not want to be part of the North West, but wish to be included in Pretoria.

With regard to the Odi 1 & 2 areas there is the argument that the current boundary divides the territory that is under the administration of one chieftainship, Bakwena-Ba-Mamokgale and Bakwena-Ba-Mokgopo and that both areas should fall under the North West in order to facilitate their administration. In between Odi 1 and Odi 2 lies Brits, the residents of which are divided between being demarcated into the Pretoria area and the North West.

## 7.2 APPLICATION OF CRITERIA

### 7.2.1 Geographical Coherence

The PWV as demarcated is a geographically coherent SPR. It is compact and displays substantial internal interlinkages. Its area is 874,000 m<sup>2</sup> and it has a density of 27,2 people per square kilometer. According to 1989 population figures (DBSA) the PWV SPR has a functional urbanisation rate of 93 percent. Disaggregated figures for the areas of KwaNdebele and Bophuthatswana falling within the PWV indicate their functional urbanisation rates to be 66% and 98% respectively. The concept of functional urbanisation is useful since in essence it captures the interlinkages between peri-urban, semi-rural areas and the urban centres contiguous to them. It is upon these centres that the inhabitants of the mentioned areas rely for employment, services and trade.

It is important to note that because of the differences in the categories of area included in the count, the official urbanisation rate will tend to be lower than the functional urbanisation levels. For example the figures for 1989 are 82% for the PWV, 10% for KwaNdebele and 20% for Bophuthatswana, while the 1991 urbanisation figures for Greater Pretoria indicate that it is 51% urbanised.

In terms of population distribution, the Greater Pretoria ( including Bophuthatswana area) constitutes 33% of the population, Central Rand 27%, East Rand 25%, West Rand 11% and Vaal 5%.

With respect to internal linkages the PWV SPR is characterised by a core triangle of relative high density and intense economic activity centred around the East-Central-West Witwatersand and Pretoria areas. This core has a high degree of interlinkages with the peri-urban and rural areas contiguous to it.

### 7.2.2 Economic and Development Issues

#### Economic functionality

The PWV SPR is a highly integrated urban-industrial complex with major nodal points in five sub-regional areas namely, East, Central, and West Rand areas, Pretoria, and the Vaal Triangle.

The economy of the PWV SPR centres around manufacturing, finance, commerce and mining. These sectors have significant backward and forward linkages with mining having historically formed the backbone of the development of the manufacturing and the other sectors of the PWV. This is demonstrated by the sectors within the various sub-regions of the region.

3 Functional urbanisation includes the urban, peri-urban and semi-urban populations



The 1988 GGP figures indicate specialisation trends for the various subregions of the PWV. The West Rand still concentrates on the primary sector of mining while the East Rand and Vaal are dominated mainly by secondary industries and the Central Rand and Pretoria are showing trends toward tertiary activities. The nature of specialisation of the five subregions, therefore, also demonstrates a high degree of diversity within the economy, an important factor in assessing the economic viability of an area.

The functionality of the PWV economy is also demonstrated by the intra-regional flows of labour and goods between the major nodal areas and their hinterlands. Economic functionality correlates closely with administrative nodality and reflects the different hierarchy of services available in the various centres of a region. Johannesburg, with its role as a centre for corporate headquarters and the control functions of the financial sector,

serves an important nodal function around which administrative structures have evolved. This implies that while the sub-regional economies of the PWV area may differ somewhat they are functionally interlinked.

The economic functionality of the PWV SPR is further demonstrated by the transport flows among its various components, which indicates that Pretoria, Johannesburg and Vereeniging are the major nodal points. It also shows that there is a concentrated pattern of passenger traffic within the Witwatersrand and Pretoria areas with the next intense volume of flows being between the major nodal cities themselves.

#### Economic viability

In addition to being economically functional, the PWV region is also economically viable. According to 1988 figures, the PWV SPR accounts for 40% of the national GGP and had the highest real per capita income of all the regions at RS 624. Furthermore, due to the diversity of its economy, it is also able to provide a range of employment opportunities to its inhabitants, although at present it is also experiencing a decline like other regions of South Africa. Its labour absorptive capacity was only the fourth highest and it has the second lowest real growth rate between 1977-1988. On the other hand, its contribution to the tax base amounts to 55% of the total tax pool.

With regard to the location of services, the PWV with its significant infrastructure is in a better position than most SPRs. Both households and businesses would benefit from the existing physical infrastructure particularly as it mirrors the economic nodality of the SPR.

#### Development potential

The PWV by virtue of its economic diversity and level of development has some of the indicators which point towards a positive development potential. In addition, the fact that it has significant institutional and administrative capacity indicates that the framework for effective development planning does exist. However, typical of a rapidly urbanising area it also has socio-economic indicators that reflect its significant development challenges. More importantly



the existence of different levels of development among the different components of the PWV point to the need for it to be managed in an integrated manner.

Statistics for the SPR indicate that the Central Rand is experiencing relatively high levels of population growth and influx relative to other areas contiguous to it. The need for mobility within the demarcated SPR is important if the resource base is to be used in an optimal manner to provide for the population.

### 1:2:3 Institutional and Administrative Capacity

The PWV has sufficient institutional and administrative capacity. The area is served by the administrative and institutional infrastructure of the Republic of South Africa, the Republic of Bophuthatswana, the Self-Governing Territory of KwaNdebele, the Transvaal Provincial Administration, and at the local level, five Regional Service Councils and various local governments.

Therefore, administrative and institutional capacities to exercise the assigned SPR functions exist. However, the need for the rationalisation and integration of existing institutional structures is apparent.

As far as social infrastructure is concerned, the PWV region has three major academic hospitals that provide high level tertiary care services, namely the Medical University of South Africa, University of Pretoria and the University of the Witwatersrand. Health services are administered by among others the city councils of Johannesburg and Pretoria, the Transvaal Provincial Administration, the governments of Bophuthatswana and KwaNdebele and the Department of National Health. This SPR has 268 primary health care clinics or 0.15 clinics per 5000 people which is still less than the Western Cape.

Measured against its health indicators, the PWV has an infant mortality of 37 per 1000 live births. In the urban areas 15% of the population does not have access to water while in the rural areas it varies from 10% to 30%. Over 25% of the urban population in the PWV has inadequate sanitation. However in the Bophuthatswana and KwaNdebele areas it varies from a low of 24% to a high of 93%.

The PWV has 15% of the national children aged between 5 and 14 years ( 1 382 284). However, the enormous variations between SPRs cannot be overcome by forming SPRs with equal numbers of children, but rather by having a varying number of school districts per SPR.

With regard to physical infrastructure, the road network for this area is the highest above the national average. On the other hand the provision of rural roads per capita for the entire area is the lowest below the national average. The total utilisable water varies from a high of 700 to 800 million m<sup>3</sup>/a to 350 million m<sup>3</sup>/a adequate sanitation. The population without electricity in the metropolitan areas of Pretoria and Johannesburg, and the rural towns of Bophuthatswana and KwaNdebele vary between 24% and 46%.

#### 7.2.4 Socio-cultural dimensions

The PWV has a linguistically heterogeneous population, although certain languages are predominant in particular sub-regions. Sub-regional senses of identity coalesce with a sub-regional sense of history. However, the demographic characteristics of the area (i.e. its linguistically diverse and urbanised nature) make the PWV unique from other areas and gives it a distinct sense of identity separate from other areas. The strength of the PWV as an SPR lies in its capacity to develop a common regional identity which transcends ethnic and other divisions. Therefore, a sense of regional identity does already exist based on the SPR as demarcated.

#### 7.3 SENSITIVE AREAS: Exclusion of the Greater Pretoria area from the PWV

##### 7.3.1 Arguments for and against the exclusion of Pretoria from the PWV as presented in the submissions.

There are some arguments that Pretoria should be excised from the PWV and included in either the Eastern Transvaal or the Northern Transvaal. (See discussions on the Eastern Transvaal and Northern Transvaal for arguments in favour of the inclusion of the GPA

#### 132 Application of criteria Economic Development Issues

While the SPR borders will be soft and therefore allow for a free flow of goods and services, the creation of a relatively less urbanised SPR with a component that has economic functionality with the PWV will exacerbate certain negative trends already occurring in the Central Wits economy. As indicated above, the Central Wits area is experiencing relatively higher influx of population than other parts of the PWV. Secondly, the Central Witwatersrand is experiencing an appreciable decline in its key sectors of mining and manufacturing and slower growth in its finance sector relative to other major metropolitan areas, and national trends in these sectors. Greater Pretoria on the other hand is experiencing significant growth in finance, and relatively more growth in the manufacturing sector. Thirdly, what new construction and growth is occurring appears to be centred in a core triangle of the Central Witwatersrand and Pretoria, with the important growth nodes in border areas such as the Midrand. All three factors point to the fact that the development of the region needs to be approached in an integrated manner. Otherwise, there may be negative consequences for the optimal utilisation of the SPR resources for the benefit of the population as a whole.

The static picture of how much GGP will be lost by the PWV if Pretoria is removed is only one dimension. An analysis of the dynamic growth and trends of the PWV region indicates that its various components are growing more integrated and joining them with other SPRs may have a disruptive effect on the overall economy of the functional unit.

## Economic viability

Clearly the excision of Pretoria from the PWV will deprive the latter of territory needed for expansion as well as a portion of its tax base. Greater Pretoria accounts for 23% (1988) of the PWV's GGP. This, viewed in the context of the above arguments has significant negative implications. Furthermore, when SPR boundaries cut through nodal areas, the potential exists that a proportion of labour remuneration of one SPR will actually remain in another SPR, through direct and indirect taxes from expenditures in that SPR.

## Institutional and Administrative Capacity.

Given the capacity which does exist in the PWV area this region will not be seriously affected

in terms of administrative capacity. There will, however, be a dislocation of services and administrative functionality with regard to development planning and implementation processes.

## Socio-Cultural Aspects

The PWV as a region is heterogeneous linguistically, and has a relatively more urban culture than other contiguous regions. Greater Pretoria is less linguistically heterogeneous than the

Central Witwatersrand. However whether this in itself implies either a sense of PWV regional identity or that Greater Pretoria has a distinct culture and identity is subject to debate. There are

conflicting viewpoints on the nature of the correlation between culture and language which make it difficult to use only language as an indicator of culture, since there are other important elements that contribute to the formation of culture.

It is often argued that Pretoria is different from the Central Witwatersrand area due to its lower levels of urbanisation. However, taking into account functional urbanisation, one cannot automatically argue that cultural milieu of Greater Pretoria is less affected by urbanisation than the Central Witwatersrand area. In fact given the levels of urbanisation of the Eastern or Northern Transvaal it is less similar to those areas than it is to the PWV.

Given the heterogeneity of the PWV, there are likely to be sub-regional cultures. But the question is whether they are so distinct and fundamental as to justify the carving up of an economically functional unit that benefits the country as a whole.

## 7.4 ODI/MORETELE

Proposals have been submitted for the exclusion of Odi and Moretele from the PWV

### 7.4.1 Arguments in favour of retaining Odi and Moretele in the PWV

## Economic and Development Aspects

TECCOM/DOCS/PWV1

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1 October 1998

Given the economic base and socio-economic indicators of Odi/Moretele the area has little development potential on its own. Its development is tied to the overall health of the economy and capacity of the SPR in which it is located. Its excision from the PWV will not affect the regional indicators negatively, however it will deprive the population of that area of the opportunity to be integrated into the SPR with which it is functionally linked, and to which it has historically contributed economically as part of the labour pool for Greater Pretoria and the Central Wits area.

The separation of labour supply and labour demand areas under apartheid has created pockets of peri-urban and semi-urban areas, such as the Bophuthatswana area and Kwandebele, which are functionally linked to the nearby urban centres. Thus, the implication of their separation from the regional economies within which they are currently located, functionally, must be considered before the area is divided up.

#### Socio-Cultural aspects

The Odi/Moretele area appears to be predominantly Tswana speaking according to the language census. However it is also well known that there are pockets within the area, such as Winterveldt which are linguistically heterogeneous.

The issue of sense of identity in this area is difficult to measure since some of the areas have been highly contested territory with portions of the population resisting incorporation into the Bophuthatswana territory.

The current PWV boundary places Odi 1 in the North West and Odi 2 in the PWV. These areas are currently under the Republic of Bophuthatswana and the Tribal Authority administering Bakwena-ba-Mogopa. These areas are currently separated by Brits which forms a different local jurisdiction. The process of integrating and/or rationalising the local administrative structures depends on issues not currently resolved. Specifically, these issues are the powers and functions of local governmental structures and their relationship to SPR governments. This issue needs to be revisited once these powers and functions are clear.

### Geographic coherence

The excision of Qdi/Moretele from the PWV would not have a negative impact on the compactness of the SPR. It would make the remaining area more metropolitan.

### Institutional and Administrative Capacity

While this region sub-region falls officially under the Republic of Bophuthatswana it does rely on the institutional capacity of the PWV, especially education and health services.

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7.4.2 Arguments in favour of excluding Odi and Moretele from the PWV ( See discussion on the North West)

## 7.5 SASOLBURG

Submissions have been received to the effect that Sasolburg should be included in the Orange Free State as opposed to the PWV.

### 7.5.1 Arguments in favour of retaining Sasolburg in the PWV

#### Economic Aspects

Sasolburg accounts for approximately 10% of the GGP of the PWV. According to 1988 GGP figures, manufacturing accounts for approximately 63% of the economy of the sub-region Vaal area. The economy of Sasolburg specifically is also centred around manufacturing with the chemical industry accounting for 91% of the employment according to 1985 figures.

Thus, with regard to economic functionality, Sasolburg is more functionally linked to the Vaal and as such with the PWV region than it is to the Orange Free State whose economy is dominated primarily by mining and agriculture. Therefore, its excision from the PWV may impact negatively on both Sasolburg and the PWV.

#### Economic viability

Since Sasolburg accounts for only 10% of the GGP of the PWV its excision from the SPR would not significantly reduce its gross output. On the other hand, the Orange Free State would gain from the GGP produced in Sasolburg.

#### Geographic Coherence

The excision of Sasolburg from the PWV would not affect the compactness of the SPR negatively.

#### Socio-Cultural Aspects

The Sasolburg area is predominantly South Sotho speaking as is much of the Orange Free State. In that sense it may share a sense of identity with the OFS. This is further accentuated by the historical provincial boundary which demarcates Sasolburg into the OFS.

Nonetheless, considering the level of urbanisation of the Vaal of approximately 82% as compared to 49% for the OFS it would have a culture more akin to that of the more highly urbanised areas of the PWV.



urbanised PWV region.

#### 7.5.2 Arguments for excluding Sasolburg from the PWV (See discussion on the OFS)

### 7.6 EVALUATION

Based on the application of the criteria provided, the PWV as demarcated constitutes an economically viable and functional SPR. It has sufficient institutional and administrative capacity to effectively manage service delivery and manage the policy formulation and development. From a socio-cultural perspective, it is linguistically heterogeneous although there are areas in which one or two languages are dominant. The PWV also in general shows high levels of functional urbanisation with small proportions of its population located in semi-rural areas in the Greater Pretoria area.

The opportunity cost of excising Pretoria from the PWV needs to be seriously considered given the functional linkages and the need to approach the development of the area in an integrated manner. In order for the majority of the residents of the PWV functional region to become fully integrated into the area and derive benefit from their contribution to the area's economy the current fragmented approach to the planning development of the region needs to be reversed. The excision of parts of Pretoria to the Eastern Transvaal and North West regions will perpetuate this fragmentation to the detriment of the majority of the inhabitants of those areas. Commuting patterns in these areas indicate that a significant number of people work in the PWV.

With regard to the inclusion of the Eastern parts of the Greater Pretoria in the Eastern Transvaal, it needs to be noted that the argument that the two areas have a cultural affinity is, tenuous if one takes into account the population of these two regions as a whole. The inclusion of the Pretoria area into the Eastern Transvaal in fact makes the latter's population linguistically more heterogeneous. Furthermore with regard to the two language groups that are added, the Afrikaans language is more predominant in Pretoria (29,7%) than it is in the Eastern Transvaal (12,0%). The same applies to Ndebele which is more predominant in the Greater Pretoria area (16,0%) than it is in the Eastern Transvaal area (3,5%).

It has also been argued that the inclusion of Pretoria into the Eastern Transvaal would make the SPR economically more viable. The GGP of combined Pretoria/Eastern Transvaal region is certainly almost double that of the Eastern Transvaal SPR as demarcated. However, it is important to note that the populations of the two areas are also almost equal - 1,9 million Pretoria and 2,1 million in Eastern Transvaal and that the GGP per capita of the Eastern Transvaal by itself is RS 197 and when combined with Pretoria it is RS 446. When taking into account the proportion of GGP that remains in the Eastern Transvaal, as indicated by personal income as a proportion of GGP one notices that Pretoria's per capita GGP is reduced from R4 498, while that of the Eastern Transvaal rises from R2 131, to the combined one of R3 238. Without knowing the precise redistributive effects of such a combination and taking into account the functionality issue, the economic viability argument in favour of the combined region is not sufficient to justify the carving up of the PWV.

In fact, the argument for using Greater Pretoria to strengthen another region holds better for the Northern Transvaal than it does for the Eastern Transvaal, given the much lower economic base of the former. The inclusion of Greater Pretoria into the Northern Transvaal would have a more dramatic impact on the latter's GGP.

The Eastern Transvaal community is itself divided on the prudence of combining with Pretoria, with submissions having been received indicating a strong sentiment for Pretoria not to be included into the Eastern Transvaal, along side those presenting the opposite view point.

There are several groups which have a vested interest in Pretoria. At the national level Pretoria is of interest because it is currently the administrative capital, and forms part of the PWV functional area which produces 40% of the country's GGP. The debate at the regional level has been addressed above. Given these contending interests no particular group will be satisfied with regard to Pretoria. Therefore two options have been put forth, either to leave Pretoria in the PWV or to have what has been referred to as the "Washington DC" option.

The Pretoria "DC" option raises questions with regard to geographic coherence and institutional and administrative aspects. It also opens the door for other metropolitan regions to argue for forming a separate region. Therefore, it needs to be further investigated.

Finally, submissions have also been received from the Vaal triangle indicating that if Pretoria is hived off from the PWV, the Vaal would prefer to be a separate region of its own. The basis of this position is that the excision of Pretoria from the PWV would create an imbalance in the

power of the Central Witwatersrand relative to the Vaal Triangle. The

On the issue of Sasolburg, what needs to be considered is the functional linkage of the district to the Vaal Triangle. The inclusion of Sasolburg into the Orange Free State increases the GGP of the latter from R 7 327 million to R9 365 which would be beneficial to the OFS. Furthermore, the language affinity of the area to the OFS favours its inclusion in that SPR. The difficulty, however, remains that some of the community feel that the area should remain in the PWV for reasons of economic functionality.

CHATSWORTH LEGAL CIRCLE

BILL OF RIGHTS SEMINAR

Paper on the bill of rights and to property Rights delivered by  
Professor G E Devenish 31 July 1993

"Of all the processes which have brought about the inequitable distribution of wealth and power that characterises present day South Africa, none has been more decisive and of more immediate importance to most black communities than the dispossession of land. To an agrarian community whose entire economic structure is based on the distribution of land, dispossession was an act akin to national destruction.' State President F W de Klerk, 1991.Â°

Introduction

The protection of immovable property in the bill of rights is one of the most controversial and emotive issues in our body politic that has to be settled. Ever since the European settlement of South Africa started Dblacks have been dispossessed of their land. In terms of the policy of grand apartheid blacks were allocated 13% of the land and whites were allocated 87%. According to the Race Relations Survey

1991/1992%, no recent figures for land ownership in South Africa are available. The distribution of privately owned land in South Africa ( excluding the ten homelands) in 1978, excluding land used for housing, was as follows:

No of owners	Total area owned	Area Rented
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African	N/A	Lo 000 157000 N/A
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Coloured and	2487 515 000	230000 285000
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Indian		
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White	65 972 77000000	6300000014000000
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lgee Prof B Moore - â\200\230From Entitlement to Restitution'

Indicator Autumn 1992 at 25.

2.380.

These figures indicate the inordinate imbalance in regard to land ownership in South Africa. The total population of South Africa was 38,4 million in 1991 of which approximately 29,314 million were African people. The unequal distribution of land is one of the most pressing problems that will face any new government in South Africa.

Separate development was based on the policy on territorial segregation. The nominally independent TBVC states and the self-governing homelands are inordinately overcrowded. The outrageous policy of forced removals was used to deprive settled black communities of land that in many cases they had occupied for generations. Any new government in South Africa will be under great pressure to correct the injustices of the past that has resulted in the great imbalance in land possession between blacks and whites in South Africa. There is no magic solution. What will be required will be a comprehensive land policy that will tackle the problem. The most extensive policy contribution on land matters to be

published up to date is the Urban Foundation's Rural

Development: towards a new framework. © Prof Robertson 2002 observes

that these proposals, presented as only the initial steps towards a comprehensive rural development framework, include the following: emphasis on negotiation and community participation; the expansion of farmer support programmes; and the establishment of special agricultural areas for small farmers.

3 Issue No 4 in the Urban Debate 2010 series.

\* \*Rural land issues' South African Human Rights and Labour

Law Yearbook (1991) 235.

The bill of rights will provide the framework within which

the policy will be effected. In this regard H Dolny and H Klug comment 'Land redistribution, which deals both with the return of appropriated land and the needs of the landless, requires a legal framework within the constraints of a bill of rights.'

The Law Commission

The Law Commission stipulates in Article 22 (b) of its draft bill of rights that:

Legislation may authorise that expropriation of any property or other right in the public interest and against payment of just compensation, which in the event of a dispute shall be determined by a court of law.

The ANC's Draft

The ANC's draft bill of rights deals with this matter as

follows:

11.2 All men and women and lawfully constituted bodies are entitled to the peaceful enjoyment of their possessions, including the right to acquire, own, or dispose of property in any part of the country without distinction based on race, colour, language, gender or creed.

11.3 All natural resources below and above the surface areas of the land, including the air, and all forms of potential energy or minerals in the territorial waters, continental shelf and the exclusive economic zone of South Africa, which are not owned by any person at the time of coming into force of this Constitution, shall belong to the State.

11.4 The State shall have the right to regulate the exploitation of natural resources, grant franchises and determine royalties, subject to payment of appropriate compensation in the event of interference with any lawfully vested interest.

11.5 The State may by legislation take steps to overcome

'Land Reform: Legal Support and Economic Regulation' South African Review 6 323.

the effects of past discrimination in relation to the enjoyment of property rights...

11.7 No persons or legal entities shall be deprived of their possessions except on grounds of public interest or public utility, including the achievement of the objectives of the Constitution.

11.8 Any such deprivation may be effected only by or pursuant to a law which shall provide for the nature and the extent of compensation to be paid.

11.9 Compensation shall be just, taking into account the need to establish an equitable balance between the public interest and the interest of those affected.

11.10 In the case of a dispute regarding the amount of compensation or its mode of payment, provision shall be made for recourse to a special independent tribunal, with an appeal to the courts.

11.11 The preceding provisions shall not be interpreted as in any way impeding the right of the State to adopt such measures as might be deemed necessary in any democratic society for the control, use or acquisition of property in accordance with the general interest, or to preserve the environment, or to regulate or curtail monopolies or to secure the payment of taxes or other contributions or penalties.

The Commission is very critical of these provisions and concludes that "...the whole question of compensation is manipulated in such a way as to enable the state to act arbitrarily."Â® It says that

[t]he ANC's bill therefore provides, in a manner which hardly disguises the aim, for nationalisation of property without objectively testable norms of compensation.â\200\231

Â® paragraph 7.250 at 362.

" See note 32.

This interpretation is supported by examining the approach adopted by Sachs in regard to property rights.<sup>8</sup> He states that for example, with regard to the property rights of an Afrikaner businessman, ...his rights to personal property (a home, a motor car, a bank deposit, etc.) will be protected while his rights in

relation to productive property will be subjected to the principles of public interest and affirmative action.<sup>9</sup>

Policies of institutionalised discrimination have resulted in Blacks being systematically dispossessed of property rights or prevented from acquiring property. This has resulted in a glaring economic imbalance. If property rights are given absolute protection, any meaningful redistribution becomes very difficult if not impossible. If, on the other hand, only limited protection applies, as is provided by the ANC's clauses, the abuse of such provisions is not only possible, but inevitable.

Resolution of the problem

It is suggested that a compromise solution would be a provision similar to Article 14 (3) of the German Constitution which provides:

Expropriation shall be permitted only in the public weal.

It may be effected only by or pursuant to a law which shall provide for the nature and extent of the compensation. Such

compensation shall be determined by establishing an equitable balance between the public interest and the interest of those affected. In case of dispute regarding the amount of compensation, recourse may be had to the ordinary courts.

The decision-maker is thus enjoined to consider two competing interests before arriving at a reasoned conclusion. The market value of the property may well be discounted against the

resources of the state and the public need for the property.

8 "Towards a Bill of Rights in a Democratic South Africa" (1990) 6 SAJHR 1.

9 see note 31 at 22.

Section 16 (2) of the Namibian Constitution reads as follows:

The state or competent body or organ authorised by law may expropriate property in the public interest subject to payment of just compensation, in accordance with the requirements and procedures to be determined by Act of Parliament.

A court of law would have to interpret the meaning and application of 'just compensation'. This is different from requiring 'adequate' compensation. The criterion of 'just' would give a constitutional court a greater discretion than the criterion of 'adequate'.

The Nature of the Dilemma caused by the unequal Distribution of Land

The legal entrenchment of a rigid provision incorporating an unqualified free market based economy involving a willing seller/ willing buyer formula could indefinitely obstruct any meaningful programme of redistribution. On the other hand unrestricted nationalisation could provoke capital flight, changes in the asset structure of banks leading to a partial collapse, and international retributory action. The same governments which undertook sanctions because of apartheid could do so again because of their opposition to nationalisation.

Some meaningful and just compromise must be worked out. In the rest of this paper this matter is explored.

Land Commission and Tribunal

A land commission will have to be established in order to deal with conflicting land claims made by people who were dispossessed as a result of the policy of apartheid. It could make a contribution to resolving the land dilemma. The purpose of this commission should be to reconcile conflicting interests. In the event of irreconcilable claims the parties

should have a right of appeal to a specially created land

o South African Review 6 at 331.



court. Claims involving recently expropriated land can be dealt with more easily, since the amounts involved with are relatively small, many areas concerned are still under government control, proof is relatively easy, and the expelled communities can identify themselves without problems.\*? Restitution or just compensation is imperative in regard to this category of claims. In many of these cases the areas of land are clearly identifiable, the state remains in many cases the present owner of the land and the beneficiaries are identifiable communities which suffered forced removals'.

Older claims will prove far more problematic. Compensation will in all probability be required by the Bill of Rights. Other factors will have to be considered. Thus the ANC in its reaction to the government's papers on Land Reform indicated that land should be acquired by the government for redistribution without disrupting farming productivity. South Africa would face serious economic problems if redistribution resulted in a decline in agricultural production and shortages of food. More radical black groups are not in favour of such an approach. Thus the chairman of the Black Consciousness Movement of Azania, Mr M Mangena stated that his organisation

believed that land seizure and other methods were the only way to redress the present imbalance in land ownership.

On the other hand if a political settlement is reached and political stability results in a flourishing economy, the new government will be able to tackle socio-economic problems including land redistribution in a way that does not harm the economy and does justice to the communities involved. South Africa requires a process of political and social reform, in order to uplift disadvantaged communities. Land redistribution

must fit into this process. It must also form part of a

See A Sachs protecting Human Rights in a New South Africa (1990) 129.

South Africa Review 6 326.

Sowetan 5 November 1990.

process of rural upliftment, which will have to involve white farming expertise and their black workers. In this regard Sachs comments 'There has to be a comprehensive policy which takes account of all the land, both rural and urban. The basic approach here is that the land belongs to all who live in it.' Some of the issues that will have to be penetratingly considered in this regard are:

- (1) Excess land holdings;
- (2) Underutilised land;
- (3) Abandoned land;
- (4) unauthorised land-use or subdivision;
- (5) Corporate ownership; and
- (6) Criminal convictions arising out of a failure to comply; and with labour laws or abuse of farmworkers.

Other possible solutions

Prof B Moore<sup>1</sup> endeavour to show how the problem could be addressed. He starts from the premise that the only just solution would appear to be for the state to pay the full market value of any assets appropriated for distribution to blacks.

He further indicates that as the full cost of compensation are prohibitive the obvious solution to reduce land prices would be to impose a tax on land values. Once a more equitable land distribution is reached, the new government could lower or even abolish the tax rate and so raise land values. He concludes that if the goal were to effect a transfer of 50% of all land to blacks, a 5% tax would take ten years to reach this target.

Conclusion

A more equitable distribution of both land and wealth is essential to lay the foundations on an authentic democratic, politically stable and just society. In a democratic country with an operative bill of rights a more equitable distribution

of both wealth and land cannot be brought about overnight. It

o Protecting Human Rights in South Africa 128.

i South african Review 6 327-328.

L See footnote 1.

will take time. Total and immediate restitution would involve moving large numbers of people across the land and would be prohibitively expensive. It would also be difficult to find a suitable cut-off point. Vast expanses of land are owned by the state, these could be used to start a process of land distribution. A policy will have to be worked out that does justice both to the disadvantaged black community and the present title holders. This will require compromise on both sides. The white community have benefitted unfairly from the practice of discrimination against black people, they must therefore make a significant contribution in effecting a more stable and equitable society. What has been advocated is a moderate, flexible and long-term approach to land distribution, that would be compatible with a protection of property provision in a bill of rights and the ethos of an operative bill of rights. A policy of nationalisation invariably requires a vast state bureaucracy which is open to corruption. This is the antithesis of open and accountable government, which South Africa so desperately requires. However it is imperative that the problem be tackled seriously. Prof Sachs<sup>1</sup> puts this matter in the right perspective – 'The correcting of massive historic injustices cannot be done from one weekend to the next. It is in the interests of the farmers themselves, of the dispossessed, and the country as a whole that the process be orderly and manifestly just.'

The Multi-Party Negotiating Process has always been seized with the question of violence since the Planning Conference of the 5th and 6th of March 1993. On the 1st of April the Negotiating Forum resolved to:

1. Identify those issues that cause violence and which threaten the Negotiating Process and the undermining of the effective implementation of the National Peace Accord.

- 2 Mandate the Negotiating Council to establish what urgent steps and mechanisms are required to resolve the above issues as a matter of national priority. The Negotiating Council shall report to the next meeting of the Negotiating Forum.

On the 7th of May 1993 the Negotiating Council agreed to the establishment of a Technical Committee on Violence. The Technical Committee has compiled, and presented to the Negotiating Council, four reports. The Technical Committee is currently preparing the fifth report wherein it will address a number of outstanding issues which have already been identified in a number of reports prepared by the Technical Committee.

On the 22nd of June, based on the work done so far by the Technical Committee, the Negotiating Council resolved that:

- i. The National Peace Committee finalised proposed amendments to the Peace Accord as a matter of urgency so as to strengthen the Accord, empower the Peace Structures and increase their effectiveness;

2. The Negotiating Council recommends that the signatories to the Peace Accord meet as a matter of urgency to reaffirm their commitment to the Accord and to approve the proposed amendments to it;

B Non-signatories should give urgent and immediate attention to signing the Peace Accord, after consultation with the National Peace Committee.

4. That the Technical Committee on the Independent Electoral Commission develops:

- 4.1 A Code of Conduct for all parties, organisations, administrations and governments taking into account the Code of Conduct of the Peace Accord; and

- 4.2 Appropriate compulsory sanctions/punitive measures against those who transgress the Code.

5. Any party organising a public demonstration or any other form of mass action must comply with the guidelines set out in paragraph 6.2 of the Fourth Report of the Technical Committee on Violence;

6. The National Peace Committee submit proposed amendments to the Regulation of Gatherings Bill as a matter of urgency;

Ve A series of phased confidence-building measures which would include the future of all armed formations, their personnel and arsenals, be adopted leading to the creation of impartial, legitimate and effective security forces with the consequent dissolution of all other armed formations. A distinction been drawn between statutory and non-statutory armies on the one hand and police forces on the other hand. The Technical Committee on the TEC and its sub-councils to make proposals and precise mechanisms to be adopted;

8. Parties between whom conflict exist, which have contributed to violence, in addition to participating in the MPNP, meet bi-laterally to seek joint solutions to the conflicts between them;

9. The principle of a independent peacekeeping force and its practical implementation should be considered by the Technical Committee on Violence in consultation with the Technical Committee on the TEC.

10. Every party to the MPNP commits itself without reservation to a holding of a free and fair election and to do everything possible to ensure that the electorate and the leaders and candidates of political parties are enabled to conduct their election campaigns and other political activities freely without being intimidated are obstructed and without fear of being injured or killed;

11.1 The Technical Committee on Violence prepared detailed proposals on the desirability, financing, establishment and composition of a Peace / Youth Services Corps.

11.2 The National Peace Committee and members of the Technical Committee on Violence be entrusted with the initial drawing up of structures for a Peace Corps.

4. On the 22nd of June the Negotiating Council also adopted a declaration on the cessation/suspension of hostilities, armed struggle and violence. The relevant and operative part of the declaration reads:

5. Now therefore declare:

That as from the 22nd day of June 1993 we, the parties subscribing to this declaration, commit/recommit ourselves to peaceful resolution of conflict and, where applicable, cease/suspend any form of hostilities/armed/struggle/violence in pursuance of political objectives and in the resolution of political differences and further ensure that the conduct and utterances of all are consistent with this declaration.

> The Negotiating Forum, it is recommended, should note the progress that has been made so far on this matter and then issue any further instructions it may deem necessary.

## REPORT ON THE ELECTION OF THE PRESIDENT

Clause 2 makes provision for the election of the President. This provision must be read in conjunction with Schedule 8.

Clause 2.1 provides for the election of the first President in terms of the Constitution by the National Assembly at its first sitting. It will be in the national interest that this presidential election should take place as soon as possible after the election of 27 April 1994. Time will indeed be of essence and it will be imperative that executive power be transferred as expeditiously as possible to the newly elected executive authority in terms of the Constitution. It is for this reason that only the national Assembly is involved in the election of the first president. The Senate will not be involved because it is an indirectly elected body, the members of which are elected by the members of the SPRs. It will take time for Senators to be elected and the involvement of the Senate in the first presidential election could result in an unfortunate delay at a time when the speedy election of the first President will be absolutely essential.

The election of subsequent Presidents in terms of this constitution, if this does in occur, will involve the Senate as well as the National Assembly according to clause 2 (3) which provides for the election of a President in a joint sitting of the National Assembly and the Senate.

The time limit in this regard are set out in clause 2(2).

Presidential elections envisaged in clauses 2 (1) and 2 (3) shall be presided over by the Chief Justice or an Appellate Division Judge designated by her or him.

Clause 2(6) stipulates that no person may be elected as President unless he or she has been elected to the National Assembly.

Thus Senators and extra-parliamentary political leaders are excluded from being elected as President.

On being elected the President will be obliged to rotate her or his seat in the National Assembly and clause 2(7) stipulates how the resulting vacancy in the National Assembly will be filled.

What will emerge will be a hybrid presidential/parliamentary executive, in terms of which the President will be extra-parliamentary, but ministers of state who together with her or him will constitute the cabinet will be members of parliament.

Clause 2(8) provides that the President shall not hold any other public office in respect of which she or he receives any remuneration out of public funds.

Schedule 8 enumerates the details of the procedure to be followed by the Chief Justice or the Appeal Court Judge designated by him or her for the election of the President. Clause 9 of the Schedule empowers the president officer to make detailed rules relating to the election of the President and to make these known in a manner that she or he may consider necessary.

The first step in this regard is to call for nominations. The formalities in regard to nominations



are set out in clause 2.

Clause 3 provides the names of the nominated candidates for the presidential election shall be announced by the President officer and that no debate shall be announced at the election.

Should only one nomination be received the president officer shall then declare shall candidate to be duly elected.

Where there is more than candidate than a vote involving a secret ballot must take place. Only those present are entitled to exercise a single vote. A candidate who secures a majority of all the votes cast shall be declared duly elected by the president officer. If this is not the case the Schedule provides for a process of elimination of the participation of candidates with the smallest number of votes until a candidate receives a majority of all the votes cast. It also provides for the procedure to be followed in the case of two candidates receiving an equality of votes.

The net result of the procedures described and set out in Schedule 8 is that a successful presidential candidate must be elected by an absolute majority of all the votes cast.



2.18

It was suggested during the debate that the words "and entrenched" be inserted after the word "defined" in the first sentence. The effect of the principle as it has been formulated is to require the defined powers to be entrenched in the constitution. The specific form of entrenchment is set

out in the second sentence of the principle.

It was also suggested that the first sentence should be amended to read "The powers functions and institutions of national and SPR governments shall be defined in the Constitution." In view of the unresolved debate concerning SPR constitutions, it may be better to leave this open, so that the constitution making body can authorise SPRs to adopt their own constitutions in which SPR institutions will be defined. Institutions required by the constitutional principles will in any event have to be provided for in the national constitution in order to comply with such principles, and in our view there is no need for any change to be made to

the existing wording of the first sentence of the principle.

Finally, it was suggested that the entrenchment should be made more extensive by requiring the word "and" to be substituted for the word "alternatively" in the second sentence (line six of the principle). There was no agreement on this suggestion and a decision is required by the

Negotiating Council.

2.24.1 It was suggested that the question of powers should specifically be referred to in this principle. We think that this is implicit in the language of the principle, but to put the matter beyond doubt, the following words could be added at the end of the sentence:

and such level shall be empowered by the constitution, or in the case of local authorities, by legislation authorised by the constitution, to do so.

2.24.9 It was suggested that the reference to "aspects of health,welfare and education" in the concluding words of the principle was inappropriate and that the

2.26

reference should have been to criteria rather than to specific functions. We think that the principle should also refer specifically to culture, and that the point made would be met (as suggested during the debate) by

reformulating the principle as follows:

SPR governments shall have such powers, either exclusively or concurrently with the national government, as may be necessary, inter alia, for the purpose of regional planning and development, the delivery

of services, and aspects of government relevant to the health,

welfare, culture, and education of people within their boundaries

It was suggested that the Attorney-General should be included in this principle. In the United Kingdom and many Commonwealth countries the Attorney General is a member of the government having cabinet status, and holds his or her office at the discretion of the government of the day. This makes the government, and the individual holding the office, directly accountable to Parliament for the way in which the functions of the office are discharged. We think that it should be left open to the constitution making body to decide whether the Attorney General should be a member of the government and accountable as such to Parliament, or whether he or she should be an independent

functionary without such accountability.