

FIRST REPORT OF THE TECHNICAL COMMITTEE ON CONSTITUTIONAL
ISSUES TO THE NEGOTIATING COUNCIL: 13 MAY 1993

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INTRODUCTION

Our instructions require us to prepare systematic documentation to facilitate discussion in the Negotiating Council. It has been made clear to us that we are not ourselves to engage in negotiation. What is expected is that we should address the issues raised in the Codesa documents, the discussions in the Negotiating Forum and the Negotiating Council, and the submissions and inputs of the participants in the current negotiating process which are relevant to the terms of reference of our committee, and on the basis of such information prepare documentation for the Negotiating Council which will enable the debate to be taken forward in that forum. For that purpose we can also have regard to submissions that may be made to our committee in writing by individual experts and interest groups.

On one issue we have been asked to go beyond these instructions and to make recommendations to the Planning Committee. That issue concerns the process to be followed in dealing with the debate on the boundaries, powers and functions of regions. This is clearly a core issue in the negotiations and directly relevant to the disputes which exist in relation to the form of the state and self determination. The way in which this matter is dealt with will have a bearing on several matters that are included in our terms of reference.

We were asked to make our report to the Planning Committee by Thursday 13 May, and to deal with the process for taking the regional debate further in that report. We have done so.

We are of the opinion that the debates in the Planning Committee and the Negotiating Council will be facilitated by a brief analysis of the constitutional issues that have been identified in our instructions as being the concern of our committee. The issues are interrelated and reflect in particular the concerns of the different participants in respect of the legitimacy of the constitution making process, and the position of minorities in any new constitutional order. The process for determining the boundaries, powers and functions of regions could be crucial to finding an acceptable solution to these fundamental concerns.

The framework within which the earlier debates took place, and the particular issues that have been raised appear from the documents with which we have been briefed. They include three documents dealing with deliberations at Codesa. These are a bundle of Codesa agreements, a summary of these agreements and a consolidated document based on Codesa reports. We will refer to these documents as the agreements, the summary and the consolidated document respectively. We have also been briefed with a resolution on the

transition process taken by the Negotiating Forum on the 1st and 2nd April, extracts from minutes of the Negotiating Council of the 26th April, 30th April and the 7th May, the declaration of intent on the negotiating process made by the Negotiating Council on the 30th April, and a transcript of discussions held in the Negotiating Council of matters relating to the transitional process.

We have not yet received representations from all the participants in regard to these issues. Once we have the representations we will be able to identify the compatibilities and differences that may exist. We may then be able to suggest appropriate ways of addressing these matters.

We begin our report by setting out our views on the relationship between the questions concerning self determination and the form of state and the other issues which form part of our terms of reference. As directed, we have given consideration to each of the issues mentioned in our terms of reference, using the terminology thereof.

SELF-DETERMINATION

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Self-determination, in the sense of making one's own choices, developing one's own potential, securing one's own well-being and of not being subjected to undue external pressures and domination, is certainly a very basic human need and aspiration. Similarly, it has to be conceded that nations and national sub-groups have similar aspirations. It is therefore only natural that the law, which is a normative system defining and regulating human freedoms and aspirations, should also give recognition to this very essential need. For this reason it is unproductive and not even necessary to contest the existence of the general right of self-determination of individuals, organised groups and nations. Stated succinctly, self-determination, being the expression of a basic urge to be master of one's own destiny, is recognised in law. What is of importance for the purposes of this report, is not the existence of such a right, but the actual content, scope, application and protection of this right.

In international law, the right of self-determination has been one of the strongest factors in promoting the liberation of countries and peoples from colonial rule, foreign subjection and external domination. In recent years some countries and peoples, especially in certain parts of Eastern Europe, have exercised their right of self-determination to liberate themselves from foreign rule.

In national legal systems, the right of self-determination manifests itself at different levels of society and of the life of the nation, as regards the individual

as well as groups. It would be wrong to assert that the right of self-determination is a right which finds application in only one sphere of life or pertains only to some individuals or groups. For this reason, it is more appropriate to speak of the rights of self determination. In order to understand the scope of the rights of self-determination and their manifestations in a national legal system, it is necessary to distinguish between the recognition and the protection of the rights of self-determination and, at the same time, to appreciate the limitations which the law imposes on these rights (in the same way that all rights and freedoms have certain limits).

In a democratic constitutional system, the rights of self-determination are recognised in different ways:

3.4.1 Generally, when mention is made of the rights of self-determination, it is immediately thought of the rights of organised and other national groups to protect themselves from undue influence or coercion. It is often forgotten that the individual's rights to self-determination takes precedence and that virtually no collective rights of self-determination can be recognised effectively without ensuring the individual's rights to freedom, own choice and self-fulfilment. Individual self-determination covers a whole range of human activities: thus, the right to life, liberty and property and public freedoms of contract, conscience, movement, association, etc, all serve to secure the individual's overall right to self-determination, in one way or another. (It is noteworthy that the German Constitution goes even further and expressly recognises the right to the full development of every person's personality).

3.4.2 Collective rights of self-determination necessarily require preceding constitutional rights and freedoms such as freedom of association, assembly, conscience, etc. to give effect and meaning to these rights. It is self-evident that no group or groups will be able to maintain their identity and pursue their interests if they are not allowed to contract freely, associate at will, disseminate their views openly, etc. Collective rights of self-determination, either separately or conjunctively, are exercised in different ways: in the labour field, trade unions, either on their own, or with employers' organisations, exercise collective rights of self-determination by means of collective bargaining, the withholding of labour, etc; in the civic field citizen organisations also exercise their collective rights of self-determination in various recognised forms of group activities, be they of social, cultural, linguistic or religious nature (as a matter of fact, it is through the exercise of these rights of self determination that the foundations for a civil society are established and fortified); in the political field collective rights of self-determination are best ensured by a pluralistic electoral system which allows free participation in elections and institutions of government.

(In this respect it might very well be necessary to have representative institutions on different levels of government to give greater

opportunities of representation to political parties which enjoy less support on the national level, for effective representation, for it is clear that a political party with stronger regional support will feel more comfortable in the exercise of its right of self-determination if it is well-represented in the regional institutions where its support lies.) What needs to be emphasised, is that collective rights of self-determination in a democratic society are not singular, solitary rights which can be claimed and exercised as such, but entail a totality of specific legal rights and freedoms which groups can rely on in the context of predetermined social, economic and political relationships.

The rights of self-determination of linguistic, cultural and religious groups are of particular importance, especially if these groups constitute minorities vis-a-vis the general population. These groups are often well-organised and influential and this allows them to exert influence and demand protection in all spheres of life and levels of society. This is not always the case, however, and especially in the face of an uncaring or unsympathetic and even hostile majority the law would require special recognition and safeguarding of linguistic, cultural and religious expression (e g allowing mother-tongue instruction, special schools, support of cultural activities, etc). In this respect Article 27 of the International Covenant on Civil and Political Rights still provides the most useful criterion: " In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to

enjoy their own culture, to profess and practise their own religion, or to use their own language."

In a democratic state, individual and collective rights of self-determination (which are, as explained, a totality of multi-faceted rights and freedoms pertaining to individuals and groups) are protected and safeguarded by various legal instruments and state institutions, the most important being:

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A justiciable bill of rights and an independent judiciary.

Watchdog bodies, such as ombudsmen, independent human rights commissions and generally a free press and an open society.

Regional and local institutions as well as national bodies in which collective interests can be accommodated.

Specially recognised and accredited linguistic, cultural and religious bodies of a representative nature and freely associated which can act in conjunction with governmental bodies and institutions to safeguard the interests of cultural, linguistic and religious groups.

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3.6 Rights of self-determination, whether they are individual or collective, and which form the basis of a democratic society, have certain limitations. They may not be exercised in such a way that they impinge upon the rights and freedoms of others or endanger national safety or the integrity of the state. It is for this reason that international law is extremely hesitant to recognise any unilateral secession from national state territory. What is of the utmost importance is that the law will not recognise or enforce rights of self-determination which may lead to discrimination or unequal treatment on the basis of colour, race, gender, etc. In other words, this means that the law does not recognise one person's rights of self-determination in such a way that it infringes on another's rights, particularly where issues of colour, race, gender, ethnic origin or creed are concerned.

3.7 Conclusion: The Committee is convinced that, bearing in mind what has been said about the contents, scope and limitations of these rights of self-determination, a much more fruitful and constructive discussion will follow in the Council if these rights are viewed and assessed under the headings of concrete topics such as the recognition and protection of fundamental rights and freedoms; regionalism and the form of state; representative institutions; free political activities; etc.

FORM OF STATE

The second report of the Planning Committee to the Negotiating Council (29/4/93) deals with the form of state in paragraphs 3.2.1 and 3.2.2. We are in substantial agreement with the views expressed in these paragraphs.

The form of state will be shaped by decisions taken in regard to the structures of the Constitution. Concepts such as the separation of powers, the entrenchment of fundamental rights, the powers of the judiciary, the boundaries, powers and functions of the regions, and the like, all have a bearing on the form of state. It seems to us that the most expeditious way of dealing with this matter is to deal with these component parts. By resolving them, the Negotiating Council will determine the form of the South African state. Our report on Regional Demarcation and Related Issues (13/5/93) to the Planning Committee is consistent with this approach and should serve to advance the debate on the form of state.

CONSTITUTIONAL PRINCIPLES

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The process of developing constitutional principles has as its object the

establishment of a broad framework within which a future constitution could be developed. The development of such a framework commends itself as a sensible mechanism for the promotion of a successful resolution of constitutional negotiations.

A multi - party agreement on constitutional principles would in the first place provide fundamental direction to the constitutional debate, and secondly, should they be formalised as a set of principles binding on further constitution making, they will give direction and security to all relevant interests. The adoption of a comprehensive set of constitutional principles could therefore be an expression of a national consensus on the constitutional way forward for South Africa.

From the documentation provided to this committee, it appears that a broad area of agreement has already emerged. Thus the notion of a constitutional state seems to enjoy wide acceptance, implying the establishment of a modern democracy based upon universal adult suffrage, the supremacy of the constitution, the separation of the legislative, executive and judicial powers and justiciable fundamental rights binding all organs of the state. Furthermore it has become clear that the idea of the constitutional distribution of governmental powers and functions between the different levels of government has received general acceptance. These and other principles, when finalised and formalised, should serve as an important factor in the debate on the future form of state, the constitution making process and self determination.

The Committee therefore urges the Negotiating Council to discuss the content of a set of constitutional principles as a matter of urgency. As soon as this may be practicable, the Committee proposes to compile a report on the inputs received from all parties regarding constitutional principles in which it will identify areas of commonality, and issues which require further discussion and debate within the Negotiating Council.

CONSTITUTION MAKING BODY/CONSTITUENT ASSEMBLY

6.1 As appears from paragraph 5 of this report the principles are directed towards the development of a constitutional structure which would offer a democratic form of government, protection of minority interests, and safeguards against the abuse of power. They would provide guarantees in respect of such matters in an elected constitution making body/constituent assembly.

6.2 It appears to have been accepted by working groups 2 and 3 at Codesa that the final constitution would be drawn up by an elected constitution making body/constituent assembly within the framework of agreed constitutional principles, and that the body/assembly would also be vested with powers enabling it to act as a interim legislature. ~ See: The report on the status of discussions in working group 2 at page 33 of the agreements, and paragraph 2 of

the section dealing with the constitution-making process at pages 34 to 36 of the consolidated document.

The Declaration of Intent on the Negotiating Process adopted by the Negotiating Council on 30 April 1993 records a commitment by the Council to reach agreement on binding constitutional principles, the constitutional framework and the constitution making process in terms of which elections will be held. It contemplates that a date will be set before the end of May 1993 for an election to be held not later than the end of April 1994.

If the Negotiating Forum agrees in due course that the final constitution will be drawn up by an elected constitution making body/constituent assembly within the framework of agreed constitutional principles, then in addition to agreement upon the relevant principles, agreement will also be required on the following matters:

Constitution Making

6.4.1. How the constitution making body/constituent assembly will be structured, including whether it will be unicameral or bicameral

6.4.2 How many members will it have.

6.4.3 What electoral system will be adopted.

6.4.4 Who will be entitled to vote.

6.4.5 How will decisions be taken.

6.4.6 Will time frames be set for the taking of decisions.

6.4.7 How will conflicts be resolved and deadlocks be broken.

6.4.8 How and by whom will questions concerning the application of the constitutional principles be resolved.

Acting as a Legislative Function

6.4.9 How will the body/assembly be composed, how will it function when it acts as a legislature.

A Transitional/Interim Executive

6.4.10 How will the transitional/interim executive be appointed, how will it be composed and how will it take decisions

The Constitutional Framework

6.4.11 A constitutional framework dealing with the above matters will be required. This will have to be done either through an amendment to the existing constitution or through the adoption of a transitional/interim constitution.

If the Negotiating Forum decided upon a process other than the one envisaged in 6.4, it should specify the details and constitutional and legislative framework which will be necessary to implement it.

TRANSITIONAL/INTERIM CONSTITUTION

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A Transitional/Interim Constitution will be necessary if it is decided by the Negotiating Forum that the Constitution should be adopted by an elected constitution making body/constitutional assembly within the framework of agreed constitutional principles. The transitional/interim constitution will ensure constitutional continuity and provide the legislative framework for the functioning of a constitution making body/constituent assembly with legislative power.

If this process is adopted the Negotiating Forum will have to reach agreement on the structure of the transitional/interim constitution, which will require it to give consideration to and take decisions on the following matters:

7.2.1 The constitutional principles by which the constitution making body/constituent assembly will be bound.

7.2.2 The constitutional framework governing the functioning of the assembly when it sits as a constitution making body.

7.2.3 The constitutional framework governing the functioning of the assembly when it sits as a legislature.

7.2.4 The way in which the transitional executive will be composed, what its powers will be and how it will function.

7.2.5 Regional government, including the position of the self governing territories and the TBVC states prior to and subsequent to the election of the constitution making body/constituent assembly.

7.2.6 Local government, including the periods prior to and subsequent to the

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election of the constitution making body/constituent assembly.

7.2.7 Whether provision should be made in the transitional constitution for the protection of certain fundamental rights. This issue is being considered by the Technical Committee on Fundamental Rights in the Transition.

7.2.8 Constitutional amendments during the transitional period.

7.2.9 The structure, functioning and powers of the judiciary, including whether there should be a special constitutional tribunal or court to deal with matters arising out of the provisions of the transitional constitution.

7.2.10 National symbols

7.2.11 Miscellaneous provisions including transitional provisions needed to ensure constitutional and legal continuity and effective government. Under this heading would be included any special structures or procedures that the Negotiating Forum may require to be included in the interim constitution.

7.3 These matters will have to be addressed in the Negotiating Council as a matter of urgency if the commitment made in the Declaration of Intent is to be met.

7.4 If we receive instructions to that effect we would be able to prepare a draft transitional/interim constitution for discussion and development by the Negotiating Council. The instructions should contain sufficient detail to direct us in regard to the main structures of the contemplated constitution.

TRANSITIONAL REGIONAL/LOCAL GOVERNMENT

This is dealt with in paragraph 7.2.5 and 7.2.6 above.

FUTURE OF THE TBVC STATES

If reincorporation takes place, it will be necessary to formulate the draft legislation according to which this will happen, and to address the practical implications of absorbing existing administrations into appropriate regional and local structures. The issue of the future of these states is closely linked to the demarcation of regions and regional powers. It requires urgent resolution, to facilitate the work of the Commission referred to in our report to the Planning committee on Regional Demarcation and Related Issues of 13 May 1993.

Submissions by Parties

As at 18h00 on 13 May we had received submissions from the following participants.

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These reports will be discussed as soon as possible.

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6.1.4 Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation: 10/6/nc

It was noted that this report of the Technical Committee was distributed at this meeting but due to time constraints, it was agreed to defer the discussion on this report of the Technical Committee to the next meeting of the Negotiating Council on Thursday 3 June 1993.

6.1.4 Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation:

It was noted that this report of the Technical Committee was distributed at this meeting but due to time constraints, it was agreed to defer the discussion on this report of the Technical Committee to the next meeting of the Negotiating Council on Thursday 3 June 1993.

6.1.4 Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation:

It was noted that this report of the Technical Committee was distributed at this meeting but due to time constraints, it was agreed to defer the discussion on this report of the Technical Committee to the next meeting of the Negotiating Council on Thursday 3 June 1993. 10/6/nc

Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation: 18/5/nc

5.7.1 The members of the Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation were welcomed.

5.7.2 An overview and issues to be highlighted or requiring decision/guidance from the Negotiating Council in the report was presented by a spokesperson of the Technical Committee. Discussion followed.

5.7.3 The Technical Committee was requested to take into account the concerns and views of delegates in formulating its second report (including the role of Traditional Leaders).

5.7.4 It was agreed to mandate the Technical Committee to:

Within the next two weeks identify those laws which are discriminatory and that inhibit free political activity which should

be repealed; and report Dback to the Negotiating Council;

In addition, a the "higher code" spoken of in the report and an implementation mechanism should be suggested by the Technical Committee.

was requested that the various

governments/administrations co-operate with the Technical Committee with regard to the identification process.

5.7.6The members of the Technical Committee were thanked for the work so far completed.

Technical Committee on The Repeal or Amendement of Legislation Impeding Free Political Activity and Dsicrimatory Legislation:2107/nc

* The Technical Committee was welcomed. Present were 220

The Technical Committee presented an overview of its report and drew the attention of the meeting to matters that needed its consideration.

The following issues relating to the Technical Committee Committee on the Repeal of Discriminatory Legislation were referred to the Planning Committee for consideration by the Negotiating Council:

1. To look into what mechanisms need to be employed or what suggestions can be made in respect of the date of implementation of the Bill of Rights and secondly, the issue of verticality and horizontality pending the report from that particular Technical Committee.

To consider the issue of the need for democratic/democracty and rule of law government from day one after the elections - concern and the concern of the IEC is what happens with the period before the elections - getting from point A to point B (the elections).

To look into the isue of the uniformity of application.

The Fundmental Rights Committee has suggested a set of enforcement mechanims, the IEC is also considering enforcement mechanisms. Furthermore enforcement mechanisms are necessary for the enforcement of the Bill of Rights - the Planning Committee should apply it mind to this issue and bring various recommendations on how the overlaps could be avoided.

The Planning Committee should submit recommendations as to how to deal with this particular part of the wecond report

of the Technical Committee in relation to specific pieces of legislation
present three of them. draw attention to matters that need to be considered:

tech comm gave presentation.

NP : joint report on this issue from both the tech comms

Pravins comments

PC look into mechanisms need to be employed date of implementation of Bill of Rights, question of horizontality and then make a recommendation to the NC, pc give attention to the

issue of what happens to that period before, (what about uniformity of application - also nb)

Code for pol parts iec tech comm going todraft certain guarantees provided for

Relationship bill of fund rights and IEC

Tech comm comments

Enforcement mechanisms ? - pc also apply its mind to this

Also instruct how all the tribunals work - pc as well - apply as quickly as possible

Tech comm free to make recommendations - how solve problems of overlaps.

Draft code has been submitted in the latest report

proposals emanating decisions about leg that needs to be repealed imm and prior to bill of rights coming into effect - how deal with this. (tech comm - falls into uniformity of applic)

Refer to Planning Committee -

Also clarify this tech comms brief)

5% Substantive Issues

5.1 Report from the Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation:29/6/nc

5.1.1The members of the Technical Committee were unable to attend the meeting, due to the fact that they were not initially scheduled to attend this meeting. It was noted that the relevant points from the debate of the Negotiating Council would be forwarded by the Administration to the Technical Committee for their consideration.

5.1.2The Technical Committee was mandated to liaise with the other Technical Committees where

overlaps occur.

5.1.3 The Planning Committee was requested to set up mechanisms and procedures, for the approval of the Negotiating Council, which would allow greater co-ordination amongst the Technical Committees, including the drafting of legislation in a consistent way.

5.1.4 Discussion and debate then followed around the first part of the Final Report of the Technical Committee and the following was noted:

5.1.4.1 That an enquiry was made as to when the proposed discriminatory laws, as listed, would be repealed and the effect of such laws on structures such as the self-governing territories, etc. was raised.

That there seemed to be an overlapping between the work of this Technical Committee, that of the Technical Committee on Fundamental Human Rights during the Transition and that of the Technical Committee on the TEC and its Sub-Councils. This overlap should be attended to by the Technical Committee.

5.1.5 Discussion and debate then followed around "The Higher Code" and the following was noted:

5.1:5.1 It was suggested that a Code of Conduct for an election should be dealt with by the Technical Committee on the IEC.

Item 5.3.2 refers; A concern was expressed with regard to the powers of a political nature given to the tribunal. The Technical Committee should therefore reâ\200\224-examine the mechanism.

Item 5.3.2 refers; The Technical Committee should give details of how the tribunal would function. This should be done in conjunction with the other relevant Technical Committees.

It was suggested that all the criteria that may have a material effect on the work of the Technical Committee on the IEC, should be taken note of by the Technical Committee on the IEC.

Item 5.5.3 refers; The political nature of a tribunal was questioned and the Negotiating Council agreed to refer the matter back to the Technical Committee in order to reconsider the powers of a tribunal.

Item 5.5.3 refers; More detail was needed on the functioning of an ombud and a tribunal. The Technical Committee was requested to deal with this in consultation with the other relevant Technical Committees.

Item 5.5.5 refers; This clause should refer to the same tribunal.

Item 5.7 refers; It was noted that when CODESA dealt with the TEC, it also dealt with a Sub-Council which could in its opinion deal with any matter that has an impact on the levelling of the playing field. It was therefore suggested that the question of political matters should be separated and be dealt with by a Sub-Council of the TEC.

Item 5.10.3.2.1 refers; It was suggested that the assumption that there would be a voters role should not necessarily be made. It was further suggested that voting could be done by way of registration or by a decision that everybody who has an ID document would be entitled to vote.

Item 5.10.10 refers; It was suggested that the words "on the advice of the TEC" be deleted and replaced by the words "after consultation with the TEC".

The agreement on formulation, as per the Negotiating Council meeting of 28 June, should also be applicable throughout this Report, i.e. that the State President shall act only upon the advice of the Negotiating Council.

Item 5.10.12.1 refers; Reference is made to ten regions. Clarity was needed on whether it was referring to the establishment of regions, or if it was bound up with the number of regions or whether it refers to something different.

5.1.6 It was noted that the Negotiating Council had already agreed in principle to adult suffrage.

RESOLUTION ON STEPS TO BE TAKEN FOR THE
PURPOSES OF ESTABLISHING A NEW CONSTITUTIONAL ORDER
ADOPTED BY THE NEGOTIATING COUNCIL ON 30 JUNE 1993

The Negotiating Council agrees on the following steps to be taken for the purposes of establishing a new constitutional order:

1.1 The MPNP shall adopt the Constitutional Principles, including principles of regional government, providing for both strong regional government and strong national government;

The Constitutional Principles shall be binding on the Constitution-Making Body and shall be justiciable by a Constitutional Court/Tribunal;

The Commission on Delimitation/Demarcation appointed by the MPNP will make recommendations to the MPNP on regional boundaries for the purposes of elections and regional government for the transitional phase;

The MPNP shall agree on legislation to make provision for the following structures for the purpose of levelling the playing field and promoting conditions conducive to the holding of free and fair elections:

1.4.1 A Transitional Executive Council;

1.4.2 An Independent Electoral Commission;

1.4.3 An Independent Media Commission and an Independent Broadcasting Authority;

The MPNP shall agree on details of discriminatory legislation to be repealed;

The MPNP shall agree on a Constitution for the transitional period;

The Negotiating Council accordingly requests the Technical Committee on Constitutional Issues to draft a Constitution for the transition which shall make provision for:

2.1 The election according to a system of proportional representation of a Constitution-Making Body, legislature and national government for the transitional phase which will include a national and regional component. With regard to constitution making, this Constitution shall provide for dead-lock

breaking and special majorities by which decisions will be taken;

The election of regional legislatures and the establishment of regional governments in the transition;

The powers, functions and structures of regions for the transitional period;

Fundamental human rights on a justiciable basis during the transitional period;

A Constitutional Court/Tribunal to ensure the justiciability of the Constitutional Principles, of the fundamental rights and of the Constitution itself;

Participants are given until the 12th of July 1993, to make further inputs to the Technical Committee with regard to the above draft Constitution for the transition.

This is agreed against the background of paragraph 6 of the Explanatory Memorandum adopted by the Negotiating Council on 30 April 1993.

4.6

14/5/pc

Presentation of the Report of the Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory

Legislation: 22/6/nc

4.6.1The members of the Technical Committee were welcomed. Present were J de Bruyn, MG Erasmus and P Motlana-Moraka. Apologies were noted from J Dugard and P Langa.

.2The report was tabled and presented. Questions of clarity were directed to the Technical Committee members.

.3It was agreed that discussion on the Report would not take place in this meeting.

.4The Technical Committee was mandated to have discussions with the other Technical Committees on issues where overlapping in their work occurs.

.5The Technical Committee was thanked for their work so far completed.

.5Technical Committee on the Amendment or Repeal of Legislation impeding free political activity and Discriminatory Legislation:

It was agreed to recommend to this Technical

Committee (via the Sub-Committee) to wuse the direct route as recommended in the first report (Option 1.1 of the first report). The Technical Committee would be assisted in this regard by the seconded members from the relevant Jjustice departments, i.e. from the South African and TBVC States Department of Justice.

Technical Committee on the Amendment or Repeal of Legislation impeding Free Political Activity and Discriminatory Legislation:25/5/pc

It was noted that a report will only be received for the meeting of the Negotiating Council on 1 June 1993 as per the instructions of the Negotiating Council at its last meeting.

5.3.6Repeal of Discriminatory Legislation:3/6/pc

534641 It was agreed that the Report be formally tabled.

5.3.6.2 It was noted that the Report should be tabled by the current Planning Committee Chairperson, Z Titus. It was, therefore, not necessary for the Technical Committee to be present at the meeting of the Negotiating Council.

5.1.7Technical Committee on the Amendment or Repeal of Legislation impeding Free Political Activity and Discriminatory Legislation:

It was noted that a report will only be received for the meeting of the Negotiating Council on 1 June 1993 as per the instructions of the Negotiating Council at its last meeting.24/5/pc

Repeal discrim : not identified the issues - clear brief needed to be given to this tech comm to identify the laws Higher code overlaps with the bill of rights 26/7/pc

In submission 11/5 (Spotlight on Region F) a case was made for a separate Region F and in terms of the region's economy, it was on numerous instances argued that Regions F and G should not be merged because the economy of Region G is smaller and less diversified than that of Region F (p.91), and that Eastern and Northern Transvaal are quite dissimilar in economic structure and development needs. The same economist who made the economic analysis for Region F, Dr. P du Toit, later was also responsible for the economic analysis in the Submission by the Pretoria City Council and Partners (11/121). In this report he argues a strong case for a merger of the economies of Greater Pretoria and Region F because of its economic complementary. "Region F is focused on the primary and secondary sectors; and the Greater Pretoria Area has a well-diversified economy with the main emphasis on tertiary as well as secondary activities" (p.22). In addition, he states "The main engine to economic development in a region is its entrepreneurs and skilled labour. The regional economies of Regions F and G are lagging behind that of the Greater Pretoria Area in this regard. The economy of Region F (especially the Kangwane part) could benefit greatly from development and especially in the form of entrepreneurial, managerial and technical expertise - which could be at their doorstep in the Greater Pretoria Area" (p.22).

5.2 Geographical Aspects

As a territorial entity Region F is quite compact but two prorptions, namely the southern part of the Kruger National Park (KNP), as well as the "Pongola Finger" in the

southern eastern extremity, is found. The National Party proposal which removes the Pongola Finger, and the Democratic Party's proposal for the KNP to be included in the Northern Transvaal region, and not to be split (as many proposals entail), makes sense. Region F will also have to face the fact that the districts of Groblersdal, Lydenburg and Pilgrimsrest 2 could be added to the northern region. This potential loss in territory could be more than compensated for by the inclusion of the Greater Pretoria Region. The GPR is already very strongly linked to Region F because the two development axes from Pretoria towards Middleburg (the east-west axis) and to Secunda (the southern eastern axis) respectively ensures a high degree of integration.

The Witbank-Middleburg axis is actually an extension of the Brits-Rosslyn-Pretoria-Ekandustria (Bronkhorstspuit) axis towards the east. Traffic counts between Pretoria and Witbank along the N4, and Pretoria and the southeasterly development axis (Pretoria-Delmas-Leandra-Secunda) actually confirm this because Pretoria is the node where the two axes in Region F converge. Data gleaned from the annual average daily traffic outside metropolitan areas for 1991 (figure 3) indicates that 14 478 vehicles travel between Pretoria and Region F (in an easterly and south easterly direction) daily. Traffic between Middelburg and Nelspruit amounts to approximately 6 300 vehicles per day, while movement between Middelburg and the towns situated to the south of it, constitutes about 4 500 vehicles per day. The heavier traffic thus appears between Pretoria and Region F in comparison to intra-regional traffic within the region.

The consolidated Eastern Transvaal region will consist of four regional services councils

that would in fact be reflected in the four distinct sub-regions: Lowveld and Escarpment based at Nelspruit; South Eastern Transvaal based at Secunda, Highveld based at Middelburg; and Greater Pretoria based in Pretoria. Apart from the very strong functional links between the Highveld and South Eastern Transvaal sub-regions thus being endorsed with Greater Pretoria, the Eastern Transvaal will also gain an urban core area of metropolitan status which it presently lacks to a large extent. Geographically speaking the east-west axis from Brits in the west, through Pretoria, Bronkhorspruit, Witbank and Middelburg to Nelspruit in the east will not be interrupted halfway, but its functionality as an integrating transport link and line of development will be regionally endorsed by a merger.

Institutional and Administrative Aspects

One of the most prominent politico - geographical deficiencies in Region F as presently demarcated, is the lack of a capital town or primate city capable of integrating the whole area through the higher-order urban services it provides. Any developed region usually has a developed urban hierarchy that reflects the order and structure of urban functions in its service area. Subordinate to a capital city or town certain functions are decentralised to a number of regional towns which service the sub-regions coinciding with their services areas, while such towns in turn decentralise functions to local centres which normally hold the administrative seat of the magisterial districts they serve. Region F has a number of regional towns such as Nelspruit which has not rival in the Lowveld. In the Highveld sub-region, Witbank and Middelburg compete for prime status, while Secunda recently won the battle against Ermelo when the seat of the South Eastern Transvaal RSC was relocated there.

The future institutional and administrative capital is a problem not addressed in Region F's first submission (11/5) but deficiencies were highlighted in their second submission (11/256) when the number of regional government departments that are usually concentrated in the capital city or town were found to be scattered in 7 different towns throughout the region (p.13). The inclusion of the Greater Pretoria Region would immediately solve this problem because of the city's excellent administrative infrastructure. Pretoria has traditionally been the capital city of the region because the higher - order functions and services have normally been supplied by Pretoria and will continue in the foreseeable future.

These include:

5.3.1 A legislative and executive infrastructure in the Provincial "Raadsaal" and offices from where provincial services are currently being rendered and which does not exist elsewhere in the region.

Higher - order tertiary education comes from Pretoria because the region has no university or technicon of its own. Pretoria University has a satellite campus in Witbank while the Pretoria Technicon opened a branch in Nelspruit.

There is no supreme court infrastructure in the region (Region F is the

only proposed future region without such a facility) since cases have always been heard in the Pretoria Supreme Court.

High - order and specialist medical care. The region has no academic hospital or medical faculty while the Greater Pretoria Region has two faculties (UP and Medunsa) and three academic hospitals. This particular issue was raised in the submission by Medunsa (11/269). In the DBSA regional survey (already quoted in 5.1) Region F was singled out as a region with a health care system that is relatively underdeveloped. It has the second lowest number of doctors and hospital beds per 1000 people and the lowest number of nurses per 1000 (DBSA report, p.16). Regions F's second submission (11/256) lists a total of 21 hospitals with a cumulative total of 4418 beds. The inclusion of the GPR would add another 47 hospitals and approximately 10500 hospital beds. A check in the Pretoria telephone directory will confirm that literally hundreds of general practitioners and medical specialists (those are only in private practice) can be included to solve the problem of a shortage of doctors. In Pretoria alone an additional 28 clinics exist while Brits has 6. Figures in other parts of the GPR are not available at this stage.

Cultural services such as the Performing Arts Council of the Transvaal are situated in Pretoria, while the Transvaal Museum with all its research and educational facilities are also Pretoria-based. Radio Jacaranda (the SABC's regional transmission service) also serves the Eastern Transvaal.

While strictly an economic aspect, enquiries at the Pretoria Fresh Produce Market (Mr Charles Hamilton, PRO) revealed that this market is the single largest outlet for fruit products from the Eastern Transvaal. It entails 365 000 tons of fresh produce per year with a turnover figure of approximately R280 million.

Socio-Economic Aspects

One of the usual indicators of development potential is the level of urbanization. In terms of the 1991 census (DBSA figures) the level of urbanization in Region F is 45,13% while the GPR has a figure of 54,2%. The averages for the combined region would be 51,03% which improves the situation. More important though, is the GGP per person which should rise from approximately R3000 per person to R3540 following the inclusion of Greater Pretoria, thereby establishing a figure well above the national average in South Africa.

While the inclusion of Greater Pretoria can only be to the benefit of Region F, it would not change the socio-cultural or linguistic profile. Region F consists of a group of minority languages in which Siswati, Zulu and Afrikaans constitute two thirds. In the Greater Pretoria Region Afrikaans, North Sotho (Pedi); Ndebele and Tswana are the main languages while a merger would highlight the cultural complementary of the two regions. Siswati would still be the dominant minority language in the following

linguistic profile:

TABLE 5: LANGUAGE COMPOSITION IN GREATER EASTERN TRANSVAAL

POSITION	LANGUAGE	TOTAL	PERCENTAGE
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Siswati	832 463	21,95
Afrikaans	748 761	19,74
Zulu	724 049	19,08
N. Sotho	445 350	11,74
Ndebele	337 204	8,88
English	176 270	4,65
Tsonga	159 004	4,19
Tswana	110 734	2,92

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This analysis indicates which languages would have to be considered as future official languages for the region.

Conclusion

It is my considered opinion, that taking all criteria discussed in this document into account, Region F or Eastern Transvaal would be in a far better position as a viable SPR if it is linked to the Greater Pretoria Region. It will also serve to satisfy the wishes of a number of parties who either do not want Pretoria in Region H, or who want Pretoria to be linked to the Eastern Transvaal. Such a move will not cripple the economy of the Witwatersrand since the region will still be the most dominant in South Africa.

REMEDIES

4. PROPOSAL TO MOBILIZE THE AFRICAN COMMUNITY FOR ENDING VIOLENCE

The particular violence which is currently the most serious political problem in our country, for the overwhelming majority of our people, is the violence within the African community. The African family seems to be at war with itself.

The people involved in this particular violence are largely not middle-class, or upper-class, or educated African people, but overwhelmingly lower-class people

in rural, semi-rural, or urban areas. Culturally,

these are essentially non-Western people.

We must look at the people involved in this violence, and identify those mechanisms which the traditions and cultures and history of these African people designed specifically for putting out such fires, and then make wuse of these cultural mechanisms to put out

this fire of violence in the African political

community, in the medium of the culture of the people concerned.

Once violence is an on-going phenomenon, on the scale and frequency characteristic of the current African community, then we must agree that the entire African community has become poisoned, or sick, spiritually,

PROPOSAL

emotionally, and mentally. A wholistic approach, involving the entire African community, must be adopted and implemented, first, so as to make possible and more probable the pre-empting and prevention of individual incidences of violence, as well as making the entire African community healthy.

This is crucially important for the political, social, and spiritual health of the entire country. Peace, brotherhood, sisterhood, unity, friendship, and humanism, among African people, the overwhelming majority of this country, is a pre-condition to peace,

brotherhood, sisterhood, unity, friendship, and

humanism, between Africans and Whites, Africans and

Indians, and Africans and Coloureds. Peace, unity,

and humanism within the African community is a

pre-requisite for peace, unity, and humanism within

the entire country. If Africans are frightfully

divided, and are fighting among themselves, with

which section shall Whites make peace?

We propose the mobilization of the COLLECTIVE LEADERSHIP and CULTURE of the African people, towards

ending this violence.

We suggest the staging of an event -a march and rally-
around which we should focus, mobilize, and organize

the attention of the African community -and the entire country- in a way similar to the manner in which the emotions, minds, and attention of our people were focussed, mobilized, and organized, around the event of the release of Dr. Nelson Mandela from prison on that entire day in 1990. That focus of the Press, mass media, and statements, ignited and mobilized the imagination, emotions, and minds of the entire South African community, and of the entire world, around the freedom struggle of this country, whose symbol he had become.

We propose a march/rally of the entire African community, led by King Zwelithini, Paramount Chiefs, other traditional leaders, the top political, religious, and civic organizations, such as IFP, ANC, PAC, AZAPO, President Mangope, Brigadier Gqgozo, General Holomisa and other leaders of independent and self-governing territories, Bishop Lekganyane of the ZCC, Archbishop Tutu, and other leaders of African Churches, Traditional Healers, Izangoma, Hostel Associations, Women's organizations, Trade Unions, Sports Associations, etc. etc. We may even consider

inviting leaders of neighbouring African countries.

The focus of the march/rally shall be ending violence within the African political community, and affirmation and forging of bonds of brotherhood,

sisterhood, and humanism, among African people.

The dominant medium shall be African culture. This emphatically does not exclude non-Africans from participating in the march/rally. All we are saying is that, since this is a war within the African community, the African family wants to talk to itself; and since the overwhelming majority of the African community is culturally non-Western, the event should be conducted

through the medium of African culture.

WHAT SHALL HAPPEN AT THE CLIMAX OF THE MARCH/RALLY?

- a) Short speeches, focussing on brotherhood, sisterhood, and humanism among African people.
- b) Prayers, short religious rituals, by leaders of African traditional religions, and by leaders of African Christian Churches, e.g. ZCC, etc.
- c) Rituals for peace -Izangoma, Izinyanga, etc
ISIKHALO
- d) Cultural items: traditional dances, songs, etc.
- e) Role for leaders from neighbouring countries.

THROUGH THIS EVENT, WE ANNOUNCE A NATIONAL AGENDA FOR PEACE, BROTHERHOOD, SISTERHOOD, AND HUMANISM AMONG AFRICAN PEOPLE IN

THE ENTIRE COUNTRY. IT IS ONLY AFTER SUCCESS IN THIS EFFORT CAN

WE GET A COMMITMENT FROM THE MASSES OF AFRICAN PEOPLE FOR PEACE,

BROTHERHOOD, SISTERHOOD, UNITY, AND HUMANISM OF ALL PEOPLE

WITHIN OUR COUNTRY.

Once this national agenda has been announced, and African people's emotions and imaginations have been ignited around this issue of peace and humanism, then, and only then, can we successfully implement this programme of peace at the local level.