

DRAFT AGENDA FOR THE MEETING OF
THE PLANNING COMMITTEE TO BE HELD ON
24 SEPTEMBER 1993 AT 10H00
AT THE WORLD TRADE CENTRE

Chairperson : Z Titus

Moment of prayer/meditation
Welcome and attendance
Ratification of agenda

Substantive Issues

Feedback on progress in bilateral meetings

Programme for the next three weeks (Addendum A, p2)

Preparation for the implementation of the TEC, IEC, IMC and IBA
(Addendum B, p18)

Reportback on Technical Committee on Fundamental Human Rights during the
Transition and the ad-hoc committee

Draft Programme and Schedule of Meetings (Addendum C, p35)

Draft Agenda for the Negotiating Council meeting of 28 September 1993
(Addendum D, p37)

Closure

PLANCOMM/DOCUMENT/AGEN2409
24 September 1993

Adosorrers A

EXPLANATORY MEMORANDUM ON PROGRESS ON THE CONSTITUTION FOR
THE TRANSITION.

There are a number of matters regarding the Constitution for the period of the transition addressed in previous reports, on which no definitive decisions have as yet been taken by the Negotiating Council. Urgent instructions on these matters are required in order to finalise the constitutional text, bearing in mind the time constraints.

In this memorandum, some of the most important outstanding matters requiring the urgent attention of the Council are listed. (See Addendum A)

There are also various matters which have not as yet been addressed by the Technical Committee, which should be included in the Constitution. The Committee is in the process of preparing texts and accompanying reports on these matters. These matters not yet considered are listed in the memorandum as well. (See Addendum B)

In order to facilitate the speediest processing and refining of the constitutional text, attached for your consideration, is a schematic representation of the status of the clauses of the draft constitutional text. (See Addendum C)

For quick reference a table describing the status of the clauses is divided into the following categories indicated by an #

Clause: Indicating the clause being referred to

Discussed: Indicating that the clause has been discussed in Council

Referred to PC/bilaterals Indicating that the clause has been referred to the Planning Committee and or bilateral for resolution

Referred to TC Indicating that the clause has been referred back to the Technical Committee by the Council for reconsideration

Agreed: Indicating that the clause has been agreed to by Council

Indicating that the Council has agreed to revisit the clause

Submissions: Indicating that it was agreed that participants would submit submissions on the relevant clause either to the Planning Committee or the Technical Committee

Vai

Outstanding Matters ADDENDUM A

Matters relating to the Constitution requiring the consideration of the
Negotiating Council

The lists below reflect an overview of most of the issues that need to be addressed
in order to enable us to complete the outline of a draft Constitution.

Matters raised in previous reports

The text of the preamble

National symbols

Languages

The final wording of the chapter on Fundamental Rights

The electoral system

Deadlock-breaking mechanisms in the process of constitution-making

Various issues relating to the national executive

Various issues relating to the judiciary

The terminology relating to SPRs (states or provinces or rÃ©gions)

The competences of SPRs

The consolidation and rationalisation of public administration (especially on
the SPR level), which is also related to the question of the reincorporation of

the TBVC states

SPR finance and fiscal affairs, including an orderly reghlation of financial
matters prior to and immediately after the election

SPR constitutions and the role of SPRs in the further deployment of a new
constitutional dispensation

. Traditional leaders.

Matters not yet considered _ADDENDUM B

(@ The Ombudsman and a Human Rights Commission

(b) Financial provisions of a general nature

(Â©) The Auditor-General

(d The Reserve Bank

(Â¢ The composition and operation of the Financial and Fiscal Commission

() The Commission for Administration and the Public Service

(Â® The armed forces and the police

(h) Protection of the organs of civil society

(i) Various general, transitional and technical provisions relating to, inter alia,

the status of international law, continuity of existing laws and the legal system, and definition, construction and commencement clauses.

DISCUSSION/AGREEMENTS ON DRAFT CONSTITUTION Addendum C Kl'b

Discussed Referred to Referred To be Submissions
PC/Bilaterals to TC Revisited awaited

again

Preamble

Chapter One _
Constituent Provisions

Clause 1 (1)
Clause 1 (2)
Clause 2

Clause 3

Clause 4
Chapter 2
Citizenship and
Franchise
Clause 5(1)

Clause 5 (2)
Clause 5 (3)

Clause Discussed Referred to Referred to TC Agreed To be Submissions
PC/Bi-laterals revisited awaited
again
Clause 6 &
(Waiting for
discussion -
Electoral Act
Chapter 3 Referred to &
(Clauses 7 to 37) TC on FHR
Fundamental Rights and Ad-hock
Committee
on FHR
Chapter 4
The Legislature
I Clause 38 (1) N 1
Clause 38 (2) o
Clause 39 s
Clause 39 (2) Subject to
deadlock-
breaking
mechanism
(referred to
PC and Bi-

laterals

Referred to
PC/Bi-laterals

Referred to TC

To be
revisited
again

Submissions
awaited

Clause 40

Clause 41

Clause 42

Clause 43

Clause 44

Clause 45

Clause 46

Clause 47

Clause 48

Clause 49

Clause 50

Clause 51

Clause 52

Clause 53

> |2 (> [(> |> |> |> |> (> |

Clause 54

Clause 55

Clause Discussed Referred to Referred to TC Agreed To be Submissions
PC/Bi-laterals revisited awaited
again
Clause 56 &
Clause 57 &
Clause 58
,
Clause 59 &
H
Clause 60 & &
Clause 61 'y
A
L Clause 62 P
Clause 63 i
Clause 64 'y
Chapter 5 &
Adoption of the new
Constitution
Clause 65 A
Clause 66 A
Clause 67 S
â\200\234 Clause 68 ã©

Clause Discussed Referred to Referred to TC Agreed To be Submissions
PC/Bi-laterals revisited awaited
again
Clause 69 &
Chapter 6 Clauses 70-86 | In the Py A
The Executive Power process of
being
developed
Should the President be It was agreed
an executive head of that the
state? President
should be an
executive head
of state
Should the President be requested to The President
elected directly or investigate the should be
indirectly? desirability of the elected
Senateâ\200\231s indirectly
involvement in this
process
Should the President be a
member of Parliament? & i
Should there be a deputy Referred to bi-
President? E laterals

Discussed

Referred to
PC/Bi-laterals

Referred to TC

To be
revisited
again

Submissions
awaited

Should there be a Prime
Minister/Powers and
Functions

Should the Cabinet be
proportionally appointed
or a winner takes all
govt?

That the
Cabinet be
proportionally
appointed

What should the
threshold be for a
Cabinet composed
proportionally?

Should Cabinet Ministers
be members of
Parliament?

preliminary
agreement

Decision-making by the
Cabinet

Discussed

Referred to
PC/Bi-laterals

Referred to TC

To be
revisited
again

Submissions
awaited

Which variation
regarding the
composition of the
Cabinet is acceptable?

A

Chapter 7 Clauses 86-91
The Judicial Power

In the
process of
being
developed

Should the Constitutional
court be a separate court?

Constitutional
Court should
be a separate
court

Should the Constitutional
Court be separate from
the Appellate Division?

Should be
separate from
the Appellate
Division

Discussed

Referred to
PC/Bi-laterals

Referred to TC

Agreed

To be
revisited
again

Submissions
awaited

What should the ambit of
the jurisdiction of the
Constitutional Court be?

Formulation
by TC
accepted?

How should laws
contrary to the
Constitution be dealt
with?

Formulation
by TC
accepted

Revisit 87.4
& 87.5

Should a procedure be
provided for i.t.0o which
the Constitutional Court
can be approached to
give an opinion on the
Constitutionality of a Bill
before it becomes a law?

What should the
qualification of the
Constitutional Court be
and how should they be
appointed?

Discussed

Referred to
PC/Bi-laterals

Referred to TC

To be
revisited
again

Submissions
awaited

Deadlock-breaking
mechanisms,
qualifications of judges,
in-camera, etc. (88)

A

To what extent should
the existing court
structure be continued or
re-organised?

Accepted the
TCâ\200\231s direction

Participants
invited to make
submissions

How should the judges
be appointed or
removed?

Chapter 8 Clauses 92-99
The Ombudsman and
the Human Rights
Commission

In the
process of
being refined

Chapter 9
SPRs

Clause 100

Clause 101

Clause 102

Clause 103

<

Discussed

Referred to
PC/Bi-laterals

Referred to TC

Â»>
=
@
@
=%

To be
revisited
again

Submissions

Clause 104

Clause 105

Clause 106

Clause 107

Clause 108

Clause 109

Clause 110

Clause 111

Clause 112

>|P|P(D|>|(>|>|>|>

Clause 113

Not drafted

Clause 114

Clause 115

Clause 116

Clause 117

Clause 118

Clause 119

Clause 120

Clause 121

Discussed Referred to Referred to TC To be Submissions
PC/Bi-laterals revisited awaited
again

Clause 122
Clause 123
Clause 124
Clause 125
Clause 126
Clause 127
Clause 128
Clause 129
Clause 130
Clause 131
Clause 132
Clause 133
Clause 134
Clause 135
| Clause 136
1[Clause 137

&
&
[)
&
A
Â£
A
L
e
L3
&

Discussed

Referred to
PC/Bi-laterals

Referred to TC

To be
revisited
again

Submissions
awaited

Chapter 10
Local Government

Will be
tabled on
28/9/93 in
Council

Chapter 11
Finance

In the
process of
being
developed

Chapter 12
General and
Transitional Provisions

In the
process of
being
developed

Schedule 1
Boundaries of SPRs

Referred to
Commission on
Regions

Schedule 2
National Flag

Referred to
Commission on
National Symbols

Schedule 3
The National Coat of
Arms

Referred to
Commission on
National Symbols

Clause

Discussed

Referred to
PC/Bi-laterals

Referred to TC

Agreed

To be
revisited
again

Submissions
awaited

Schedule 4
The National Seal

Referred to
Commission on
National Symbols

Schedule 5
System of the Election
of a National Assembly

Schedule 6
Oaths and Affirmations

Schedule 7
Constitutional
Principles

Schedule 8
Procedure for the
election of President
and Deputy-President

|

1. Introduction

The main focus of this report is preparations necessary for the establishment of the TEC once authorised by the Negotiating Council. It should be noted that the IMC, IEC and the IBA only come into existence when they are established by the TEC. Accordingly, some attention is given in this report to steps which also have to be taken for the establishment of these institutions.

2. External Interactions of the TEC

Graphic 1 (Page 8) provides an overview of the critical interactions between the TEC and other and external institutions in order to give effect to the objectives for which the TEC has been created.

The implications are clear: the TEC and its sub-councils will be engaged in innumerable interactions all of which will require speedy engagement. This must impact upon the way in which the TEC as a whole is internally organised. This in turn will influence the way in which its administration is structured and staffed.

2.1. The Transition Phase Structures

It is desirable that these structures which are referred to in Graphic 1 should be set up by the TEC at its first meeting. In a later part of this report we shall look at each of these structures/institutions. At this stage, it is clear that the Planning Committee needs to take steps inviting participants to submit nominations so that these can be processed before the TEC meets. If this is done, the TEC will be able to decide on the composition of the IEC, IMCATBA = = -
" . as soon as - I{ is established.

It also means that preliminary steps need to be taken now to ensure that when each of the above - structures are composed by the TEC, each of them can rapidly come into effective existence. That is to say, for each of these structures more detailed preliminary planning has to be effected now under the supervision of the Planning Committee, just as it is being done in the case of the TEC. =

In this regard, we suggest that a minimum of three to four core

personnel be earmarked for these structures, subject to the approval of the IEC, IMC, IBA, etc., as the case may be. We

could then immediately draw them in to prepare the plans for effective establishment of these structures.

3. Internal Structuring of the TEC

3.1 Graphic 2 (page 9) provides an overview of the TEC and its sub councils located in the context of the external interactions which are set out in Graphic 1.

However, it should be noted that the relationship between the TEC and the Sub Councils which are depicted in Graphic 2 do not adequately show how these different structures of the TEC will individually relate to the external structures.

3.2 The TEC Act sets out the powers of each of the Sub Councils and provides each Sub Council with the capacity to act on its own accord. At the same time, Sections 7 (2) and 7 (3) Entitled General Powers of the Council locates the specific powers of each Council in the overall context of delegation and entrusts the TEC in Section 7 (3) (d) with the power to review, amend or withdraw any decision or recommendation of a Sub Council.

The implication of this from a practical point of view, and if we are to avoid a bureaucratic logjam, is this:

firstly, there will be decisions taken by a Sub Council and acted upon by it without awaiting prior TEC approval;

secondly, there could be decisions taken by a Sub Council which could be acted on only after approval by the Management Committee which would meet more often than the TEC;

thirdly, recommendations to the TEC which can only be acted upon after a decision by the TEC. ;

3.3 Section 24 (4) provides for the creation of a Management Committee which we have referred to in 3.2 above. This Section of the Act requires the TEC to appoint a Management Committee from within itself at its first meeting. It also leaves it to the TEC to assign functions to the Management Committee.

Structurally, either the TEC meets almost daily, or it establishes a Management Committee which would function on a daily basis and thereby allows for the TEC to meet periodically, say once a week or every ten days. The creation of a Management Committee would facilitate continuous interface between the Sub Councils and the TEC. This would enhance co-ordination between the Sub Councils and the TEC for purposes of both the internal

interaction of the TEC as a whole and external interactions. Either this course is taken, or these tasks will have to be entrusted to the Chief Executive Officer.

4. Overview of certain Sub Councils

4.1 It is preferable that planning with regard to steps to be taken for the effective functioning of each of the Sub Councils should be looked at in a systematic way by persons already being earmarked for each of these Sub Councils by participants, subject to appointment by the TEC at its first meeting. Alternatively, such preliminary planning could be entrusted at this stage to a 2-3 person ad hoc group based on personnel who would serve at the core of the administration of a particular Sub Council.

4.2 At this stage, the starting point of such planning should be a careful look at the TEC Act in order to derive a global picture of each specific Sub Council and the structures it would need to give effect to the task assigned to it.

4.2.1 Graphic 3 (Page 10) is an attempt to conceptualise key substructures which the Sub Council on Regional and Local Government and Traditional Authorities will require as well as interactions with other existing institutions. A number of these institutions must be understood not as sub structures of the Sub Council but as independent bodies with whom the Sub Council will have to liaise. This is only an initial step aimed at facilitating those who would have to look in greater detail with planning for the effective functioning of this Sub Council. It also facilitates planning for the structuring of the administration that it would have to require. 4

it should also be noted that since voter education for the April 27 elections is specifically entrusted to the IEC, the particular function of voter education assigned to this specific Sub Council will have to be clarified by the TEC when it establishes the Sub Council. .

4.2.2 Graphic 4 (page 11) is a first attempt to conceptualise the task of the Sub Council on . . for the same purposes.

â\200\230L'AQ) ORDOER. ;STABI Ll T ~ AND

4.2.3 A similar exercise with regard to the Sub Council: = SECÂ@&R /T, DBFENCT: = " is depicted in Graphic 5 ' ipage 12). - - = X

4.2.4 We have not prepared graphics for the remaining Sub Councils.

s,

4.2.5 These graphics underline certain aspects. Firstly, each Sub Council differs from the other as to the way in which it has to be structured to effect its tasks. Secondly, to some

" extent this will impact on the size of the administrative personnel required. Thirdly, these overviews facilitate consultation to begin about the composition of each of the Sub Councils so that at its first meeting the TEC can appoint them. Fourthly, consideration will have to be given to whether one member from the Sub Council on the Status of Women should not be assigned to each of the other Sub Councils while they together as a collective constitute a Sub Council on the Status of Women.

Revisiting certain aspects of the TEC as a whole

Against the backdrop of the above it is necessary to revisit certain aspects of the TEC.

6.1

5.2

5.3

The Planning Committee should now formally invite participants to submit nominations within a stipulated period for the TEC. The Act provides for a delegate and an alternate.

At the very least those from the TEC who serve on the Management Committee will have to function on a full time capacity. If they do not serve on a full time capacity then some formula has to be found to ensure their effective continuous service.

The next question that arises is how the Management Committee which is drawn from the TEC can serve as a continuous interface between the TEC and each of the Sub Councils. One possible solution is that the Management Committee should be composed of at least seven {7} and not more than nine {9} members of the TEC. This will enable one member of the Management Committee to be assigned the direct responsibility for a specific Sub Council. Such a person could be the convenor of the Sub Council and need not be given any voting status. This approach would ensure that the Management Committee is interacting directly with the Sub Councils, etc. At the same time, by having nine members in the Management Committee, two members would be free to give specific attention to the overall functioning of the Management Committee and the interface with the TEC. The above is one possible solution and the purpose of putting it in the report is to draw attention and solicit other views from the Planning Committee.

AT

First Report - 24 September 1983

Problems relating to levelling and ensuring free political activity as well as free and fair elections manifest themselves through experiences on the ground. Clearly, some of the Sub Councils and possibly the TEC will have to have, at the very least, administrative offices and facilities in the regions so that issues as they arise can be tackled with effective feedback impacting on the situation on the ground.

Administrative Structure for the TEC and its Sub Councils

Attach hereto is a Graphic 6 (page 13) entitled Suggested Staff Structure for a TEC. It was made as a submission to the Technical Committee at an early stage and should therefore be understood in that context. Given the earlier outline in this paper, it would need re-examination to ensure that the administration is structured and staffed to meet the overall needs. However, we attach this graphic to this report to give the Planning Committee a reasonable overview of what is involved.

With this initial overview of administrative needs, it would be timeous if the Planning Committee called on Governments and Administrations to look at making available suitably trained and experienced administrative staff for secondment to the TEC. It would also be necessary to consider appointing a core group who should begin looking intensively at the administrative needs, ensuring that other personnel available from outside of existing administrations are considered for employment and seeing how the administration as a whole can be properly structured. Accordingly, participants other than Administrations should also be approached to suggest personnel for the different levels of the administration.

At the same time, more urgent consideration should be given to looking at suitable candidates to be considered for the post of Executive Director and the other Deputy Executive Directors, i.e. the top level of the administration.

7. Budgetary Preparations for the TEC

Nonetheless, the suggested staff structure referred to in paragraph 6 above has been used as a basis for initial budgeting by Constitutional Development Service: Attached hereto is a Memorandum on the Estimated Expenditure and Suggested Staff Structure for a Transitional Executive Council (pages 14-16). This was part of a South African Government submission to the Technical Committee. It is attached hereto as a useful starting point for preparation for budgeting by the TEC.

- 8. Accommodation for the TEC and other Structures

The Department of Constitutional - Development Service - is looking at possible buildings which can be leased by these structures. The possibilities exist in Pretoria and possibly in the Midrand area and the World Trade Centre. Before any recommendations can be made to the Planning Committee we are awaiting more concrete suggestions from CDS.)

In the meantime, we recommend that the TEC on the one hand and the IEC and the IMC on the other hand should be accommodated in separate buildings as far as it possible.

9. Time Frames

If the negotiating process has to meet the requirements of the November Parliamentary session, the following steps have to be completed: the Electoral Act has to be discussed and adopted by the Negotiating Council; the Constitution for the transition has to be adopted by the Negotiating Council.

Only if we have completed these two aspects will the negotiating process be able to look at the key aspects of the total package. Without fixing hard and fast dates for events, it would appear that to meet the Parliamentary time scales the package as a whole should be looked at in terms of holding a Plenary on the 25/26 October. This raises the question whether the Constitution for the transition can be completed at the Negotiating Council level before this date. In this regard, the follow up work on demarcation of regions has presently been given until 15 October for their report. If this date can be realised then the Council can

" devote the 18, 19 and 20 October to resolving the boundaries question. .

The Commission on Symbols is expected to have its report ready by 20 October. If this date can be achieved, then the report on the Commission on Symbols can be tabled at the Negotiating Council on the afternoon of 20 October with a view to Council resolving this question on the 21/ 22 October.

This implies that the Council may have to meet on all five days from the 18 to 22 October in order that the Plenary can take place on the 25/26 October.

From the above it follows that the process has between now and

the 15 October to arrive at agreement on all the other aspects of the Constitution for the transition.

First Report - 24 September 1993

If these projections are realised, and allowing for any tidying up that may need to be done on aspects of the Constitution relating to symbols, finalisation of the schedule outlining the regions and boundary demarcations and the preamble which could be tidied up even after the Plenary of the 25/26 October. The Plenary of the 25/26 could decide on the package. Once agreement on this has been reached, the Plenary and/or Council could then set the - date for the implementation of the TEC and other Transitional structures. The setting of these dates are also subject to the requirements of the TEC Act. The formal requirements are set out in Section 4 of this Act. Effectively, this means that if the Plenary is complete by 26 October, the TEC could formally come into operation around 6 November and that the IEC, IMC and IBA could formally come into operation shortly thereafter.

These projections enable Planning Committee to address the schedule of Council for resolving the Constitution for the transition and the Electoral Act, Planning for the possible Plenary as well as looking at the current report with regard to steps to be taken in preparation for the implementation of the TEC and other structures.

IEC

Attached hereto is Graphic 7 (page 17) which depicts the IEC and the different structures provided for in the IEC Act. Bearing in mind that the IEC Act structures will be organised through all the regions, both the structures and their administrative needs have huge ramifications. It is therefore urgent that preparations are taken in hand not only for the composition of some of these central structures but also the setting up of the regional

structures.

We are unable at this stage to give an overview of what is involved in preparation for the establishment of an effective IMC and IBA.

sopHomny
"JAOD) B0

â\200\230v1 DI UmH_
.no.:so:.cm osel] :oa.m:Â«...ï¬\201

SUOI) Â@1)STUTUI
PV [epulA0Lg

(9) swopeysyupmpy
SUNLIACD-J]OS

SUONeI) SIIupy
JALL

suonoeielu| [BWIBIX] (931 â\200\230L

2. Overview of TEC and its interactions

S A Govt

TBVC
Admins

Self-gov.
Admins.

[Management Committee]

_ i Provincial
â\200\230 ' Admins

Local Gowl.
Authonties

FOREIGN | LOCAL 4 4 A | Lawe INTELLI-
AFFAIRS GOVERN < ORDER e | | GENCE
\d [\ 3 \d â\200\230 :

N

i

3. Sub Council: Regional & Local Govt. & Traditional Authorities

(

e)

Q)
)

\.

Sub Council:

Regional & Local Government] ;41\ (&
& Traditional Authorities | & ()

D

S.A.Govt.

- Self Gov

Admins.

Monitoring Developments

1& Liaison with all struc-

tures 14(). @), (H &

Voter Education
14 (c)

LGNF

Regional Electific.
Government Forum

TBVC
Adminins.

National
Peace Secre-|
tariat

S

i

4. Sub Council: Law and Order & Stability and Security

r

CTEC }

Sub Council:
Law and Order &
Stability and Security
e

Police Board
15 (1) (h)

National Peace

J

/

SAP

15 () () 0, (g), (i)

& (3)

Commanders -
Brigadics 15(7)a)

Secretariat 15 {}
O

[fBC

o 15(1)-(1) 4

NPKF
15 (1) (m)

National Inspec-
torate
15 (1) (a), (b) & (k)

National Independ-
ent Complaints
Mechanism 15 g ()

Other Transitional
Structures

Committee of A
Experts 15 (1) (e

T1

&

5. Sub Council: Defence

T
(TEC) Sub Council: SAG
Defence
' _J
IEC and other TBVC
Transitional
Structures
NPKF Com- dependent In- 80"â\200\235,â\200\2301â\200\234';,22â\200\2343 Monitoring liaison w
ith Commission
mand Council gagation e =1 [Body SAP & NPKF for Research
16 (11) Y 16(2) (c) & (d) ;;a" 1560 (@& 16 (2) () & (b) 16 (6) 1620 & (@

S

Unit 16 (12) (@)

NPKF Training

PKF Command
tructure

16 (12) (b) (<}

. SUGGESTED STAFF STRUCTURE FOR A TRANSITIONAL EXECUTIVE COUNCIL

EXECUTIVE
DIRECTOR

|
@

DEPUTY
EXECUTIVE
DIRECTOR

P i 1
PERSONAL SECRETARIAL ADMINISTRATIVE LEGAL ADVISORY MEDIA AND
SUPPORT SERVICES SUPPORT SERVICES LIAISON SERVICES
. A
30 Private Secretaries i Director: i Deputy Director: H Chief Legal Officer 1 Director:
30 Typists Administration Administration r Senior Legal Officer Communication
30 Drivers 6 Deputy Directors: 1 Deputy Director:
Administration Communication
7 Senior Administration
. p (r: !ar(cs
â\200\224 ypists

W

{ |

PERSONNEL FINANCIAL OFFICE SUPPORT
ADMINISTRATION ADMINISTRATION SERVICES
1 Assistant Personnel "Â\$ Senior Accountant ! Assistant Director:
Practitioner f Senior Accounting Clerk Procurement
1 Senior Personnel Administration
Officer ! Senior Procurement
Administration
Officer
2 Senior Procurement
Clerks
! Senior Filing Clerk
1 Filing Clerk
H Typist
5 Secretaries
H Yelecom Operator
5 General Assistants

7

SUouiedÃ©

MEMORANDUM ON THE ESTIMATED
EXPENDITURE AND SUGGESTED STAFF
STRUCTURE FOR A TRANSITIONAL EXECUTIVE
COUNCIL

Based on an analysis of the requirements for an administrative support infrastructure for a Transitional Executive Council the estimated expenditure for a period of twelve months is set out in Addendum A.

The estimated expenditure for a period of twelve months in respect of salaries, allowances (including travel and accommodation) for full-time and part-time members of a Transitional Executive Council is set out in Addendum B.

Based on an analysis of the requirements for an administrative support infrastructure for a Transitional Executive Council a suggested staff structure is set out in Addendum C.

The basis on which staff will be appointed should form part of the negotiations in respect of the Transitional Executive Council. Selection of staff should be the responsibility of the Executive Director in consultation with participating parties. In this regard it should be pointed out that knowledge and expertise rather than political considerations should form the basis selecting and appointing members of staff. Whatever the position, a core group of the support staff will require specific skills and expertise to ensure financial and public accountability.

For the efficient administration and functioning of the administrative support infrastructure of the Transitional Executive Council the Commission for Administration Act, 1984 (Act No 65 of 1984), the Public Service Act, 1984 (Act No 111 of 1984), the Exchequer Act, 1975 (Act No 66 of 1975) and the Auditor-General Act, 1989 (Act No 52 of 1989), including any regulation, code, instruction issued or measure taken in terms thereof, as well as any other act, regulation, instruction or measure issued or taken, or to be issued or taken, in order to ensure efficient administration and functioning of the Public Service of the Republic of South-Africa, shall be deemed mutatis mutandis applicable to the official duties and activities and also to all personnel of the said administrative support infrastructure.

The Transitional Executive Council shall out of its funds pay to a full-time member of the Council or his alternate, not doing in the full-time service of or not receiving a

salary or remuneration wholly or in part from the State, a TBVC state or self-governing territory, such remuneration and allowances and afford him such transport facilities in respect of his services as such a member or alternate as the Minister of Finance in consultation with the Council may determine.

Addendum A

ESTIMATED EXPENDITURE FOR AN ADMINISTRATIVE SUPPORT INFRASTRUCTURE FOR A TRANSITIONAL EXECUTIVE COUNCIL

Based on an analysis of the requirements for an administrative support infrastructure for a Transitional Executive Council the estimated expenditure for a period of twelve months is set out below.

In this regard it should be pointed out that the estimates do not provide for the following expenditure that may arise:

salaries, allowances (also travel and accommodation) for full-time members of the Transitional Executive Council (as set out in Addendum B);

office accommodation (estimated at R2 580 000 per annum) and furniture (estimated at R2 770 000) for the administrative support staff, the full-time members of the Council and conference facilities that may be required; and

security staff (estimated at R800 000 per annum) and equipment for security (estimated at R80 000).

ESTIMATED EXPENDITURE

PERSONNEL EXPENDITURE (TOTAL) R8 586 000

Salaries R6 121 154

Allowances, contributions to pension and medical schemes R2 464 846

Accommodation (domestic travel)

Government transport

Private and public transport

Domestic air fares

Contractors (transport)

Telephone, fax and modem

Regional Services levy

Entertainment allowance

Accidental expenditure

SUPPLIES

Printing

Publications and books

Stationery

Uniforms and overalls

Household requirements

Other supplies

>

Acquisition of labour saving devices

Acquisition or rental of computer accessories

Office furniture and safes

Acquisition of other equipment

Rental of equipment

PROFESSIONAL AND SPECIAL SERVICES

Maintenance services -

Private expert and professional services

TOTAL

Addendum B

ESTIMATED EXPENDITURE IN RESPECT OF FULL-
TIME MEMBERS OF THE TRANSITIONAL EXECUTIVE
COUNCIL

The estimated expenditure for a period of twelve months in respect of salaries, allowances (including travel and accommodation) for full-time and part-time members of a Transitional Executive Council is set out below.

ESTIMATE OF EXPENDITURE

PER. Ti

Salaries

Allowances

Car allowance

Home allowances, contributions to pension and medical schemes

A TRATI

Accommodation (domestic travel)
Government garsge transport
Private and public transport
Domestic air fares

Rail transport

Telephones, fax, modem
Accidental expenditure

SUPPLIES

Printing
Publications and books

PR /ONA A
Private expert and professional services

TOTAL

7. IEC

Special Electoral
Court 32

N\
\(Elections Adjudica-
7/ tion Secretariat 25

g

Chief Executive
Officer 17Â¢1)

|

]

(International Adviso
L IÂ°E C Â» Committee 1

/,-

ribunal 30
+ Flcctions Appeal
i

Electoral Tribu-
nals 28

|

Electoral Administration
Directorate 19

lections Monitorin
Directorate 22

Monitors & Observ-
ers 24 (1) (a) (b) (c) (d) (e)

Investigation of in-
fringements 24)

Sosowr~ C

REVISED PROPOSED SCHEDULE OF MEETINGS

Planning Committee

Planning Committee
Negotiating Council
Negotiating Council
Negotiating Council

Planning Committee
Negotiating Council
Negotiating Council
Negotiating Council

Planning Committee
Negotiating Council
Negotiating Council
Negotiating Council

Please note :

24 SEPTEMBER 1993

Friday 24 September 1993

Tuesday 28 September 1993
Tuesday 28 September 1993
Wednesday 29 September 1993
Thursday 30 September 1993

Tuesday 5 October 1993
Tuesday 5 October 1993
Wednesday 6 October 1993
Thursday 7 October 1993

Tuesday 12 October 1993
Tuesday 12 October 1993 |
Wednesday 13 October 1993
Thursday 14 October 1993

10h00-14h00

08h30-10h00
10h00-22h00
11h00-20h00
08h30-18h00

08h30-10h00
10h00-22h00
11h00-20h00
08h30-18h00

08h30-10h00
10h00-22h00
11h00-20h00
08h30-18h00

The adjournment times of the Negotiating Council meetings as stated are target times, which will only apply if the agenda has been completed, subject to the final decision of the meeting.

PLANCOMM/DOCUMENT/SCHED

23 September 1993

Fo

DRAFT PROGRAMME FOR MEETINGS

24 SEPTEMBER 1993

Tuesday 28 September 1993 Discussion: Constitution
Transition

Wednesday 29 September 1993 Discussion: Electoral Act

Thursday 30 September 1993 Discussion: Constitution
Transition

Tuesday 5 October 1993 Discussion: Constitution
Transition

Wednesday 6 October 1993 Discussion: Electoral Act

Thursday 7 October 1993 Discussion: Constitution
Transition

Tuesday 12 October 1993 Discussion: Constitution
Transition

Wednesday 13 October 1993 Discussion: Electoral Act

Thursday 14 October 1993 Discussion: Constitution
Transition

PLANCOMM/DOCUMENT/SCHED

24 September 1993

D6

DRAFT AGENDA FOR THE MEETING OF THE NEGOTIATING COUNCIL
TO BE HELD ON TUESDAY 28 SEPTEMBER 1993 AT 10H00

Chairpersonship - PJ Gordhan assisted by B Kgositsile
Moment of Prayer/Meditation
Welcome and Attendance
Ratification of Agenda

Minutes

- 4.1 Ratification of the minutes:
 - 4.1.1 Ratification of the minutes of the meeting of 30 August 1993
 - 4.1.2 Ratification of the minutes of the meeting of 31 August 1993
 - 4.1.3 Ratification of the minutes of the meeting of 1 September 1993
 - 4.1.4 Ratification of the minutes of the meeting of 2 September 1993
 - 4.1.5 Ratification of the minutes of the meeting of 7 September 1993
- 4.2 Matters arising out of the minutes of:
 - 4.2.1 30 August 1993
 - 4.2.2 31 August 1993
 - 4.2.3 1 September 1993
 - 4.2.4 2 September 1993
 - 4.2.5 7 September 1993
- 4.3 Further minutes will be distributed during the course of the meeting for ratification at the next meeting of the Negotiating Council

Planning Committee Reportback

Substantive Issues

- 6.1 Third Draft Constitution for the Transition (including the 13th Report)

Administrative and Financial Matters
Meetings Schedule and Draft Programme

Closure

NEGCOUNS/AGENDA/AGEN2809
September 24, 1993

YA

&

&

14-P9-93 18:27 FROM: APPELHOF BFN ID: @81 170088 PAGE

CHIEF JUSTICE OF SOUTH AFRICA

APPEAL COURT

BLOEMFONTEIN
P.C. BOX 288 8300

14 September 1993

Dr T Bloff

Head: Administration
Multi-Party Negotiating Process
P O Box 307 -

ISANDO 1500

Dear Dr Bloft

With further reference to the above matter, I send herewith by fax
& memorandum which is submitted on behalf of the Judiciary of
South Africa and represents the views of my colleagues on the
Appellate Division and myself on the 12th Report. Owing to the
time constraints involved it has not been possible to canvass the
views of other Judges, but I have taken the liberty of sending to
the Judges President by fax copies of the 12th Report and this
memorandum

Yours sincerely

At oo
nnc{:&(

CHIEF JUSTICE

Committees of the Multi-party Negotiating Process on 6

September 1993 ("the Judges' . â\200\230Jae"morandum'f). We also wish
to make mention of a small amendment to the Scheme put
forward in par 4 of â\200\230the Judges' Remorandum, '

(a) The status of the-Constitutional Court ("CC")

@3 2 separate court.

{Â®) The Jurisdiction of the Provincial and local
divisions of the Supreme Court in

constitutional matters,

tnT0s-83 18:28 FROM: APPELHOF BFN 1D: 851 478088

The composition of the cc

The composition

Commission.

' We deal with these mattersg Seriatim,

3. The status of the Constitutional Court

We - have 'car-fully considered the relative merits of the cc being a Separate court, ag 'a"dvocated in â\200\230the 12th Report, of being & chamber of the Appellate

: D'ivision, - @8 advocated' in the Judgaes' memorandum. we Temain convinced that .the latter. option is to ha" Preferred. We thinkx 4t Very important that the cC should bo Seen as a court of law, albeit a spec;iaiizod ; one si:affed-by Judges spccially chosen for the task, and its deci_sions as expounding the fundamental law of the ,COnsti.t:â\200\230ution. in oupr View, best achieved by

- ince , .
the manner Suggested by us. There is, we think, a grave danger that a Separate cc, especlally if it ig conposed as the 12th Report proposes (we returnm to .thia poiht later), will be seen by the public as a "political"

tribuna) Qealing with fundamenta) legal issues cen

Â£

14-08-83 15.28

FROM: AFPELHOF BFN ID: as) 478088 PAGE

"politicalâ\200\235 grounds. Nothing could be more damaging to the endeavour to create a human rights culture and to the acceptance by the public of the concept of the rule of

= We think, too, that the creation of a separate

CC, with an exclusive appellate jurisdiction in constitutional matters. This, in itself, is something to be

envisioned. The same comment applies to the office of Chief Justice.

It is argued in the 1975 Report, the importance of

- the fact being a separate court, that constitutional,

tional law, Coupled with an understanding of the dynamics of society" (see para 3.7 of the Report), Although this may sound self-appraising, we believe that senior and experienced Judges are capable of adapting to the task of constitutional adjudication as they have in many other countries, e.g. Canada, Zimbabwe and Namibia; and that the experience of practice at the Bar and of

of, "the dynamics of Society", whatever that may mean Precisely. We point out, moreover, that the scheme proposed in para 6 (read with para 7(0).) of the Judgment's Remorandum contemplates on the CC a blend of Appellate

FROM . AFPELHOF BFN ID: @851 478088 PACE g

Court, who. could include Persons qualified to be ddmitted
28 advocates ang having 19 yoars-exporience, eVen though

Ret in Private praceice. The latter Judges | coyla:

Appellate Division the Chief Justice Will decide which
court, the ÂĈÂĈC or the Appcliatg Division, is to hear the
matter and wijij thus in effect decide on the composition
of the Court, , further consequÃ©nce would bhe that
important constitutiona) ' issues miÃ©ht be .decided by

"degbc .who -are not cdnptitutionaliï¬\201 Judges. we . would

Point out that in terms of the mode! proposed by us this

:uould not oœur. In acÃ©ordance'with that propogal (see
'pa; 6(c) of the Judges' menorandum).vhonovor it iï¬\201ppeara

to the Chier Justice that an appeal raises & constitu-
tional issue which Bay ke decisive of. the aggeai he is

called constitutional issue appears to be irrelavant or

frivolous. . 15 4t later 2ppeared tg he relevant ang

get down for hearing refora the general Chamber of the
Appellate Division, there could he machinery for then
referring the matter to the cc.

14-29-93 16: 392

FROM: APPELHOF BFN ID: @51 478098 - PAGE

5

With regard to the point raised in par 3.7(d) of the 12th Report, we have reconsidered par 6(f) of the Judges' memorandum and would agree tht it is desirable

that the CC always sit en banc. In that event the total number of members of the CC could be reduced to nine or even seven and would consist of the Chief Justice- and four (or three) Judges from the Appellate Division and four (or three) Judges specially appointed to the Court.

There is a further point in support of the notion that the C should be a chamber of the Appellate

Division, viz that it is desirable that once seized of a matter the CC should be empowered to decide all aspects

of the case. Take this example. Suppose that a person approaches the Supreme Court with an application to have

an executive or: administrative decision declared invalid

on two grounds: (1) that it offends against the Bill of Rights and -is unconstitutional and (2) that it is

assailable on one or other of the various review grounds.

- at common law. The court rules on one or other or both of these issues and there is an appeal by the losing

party raising both issues. How is this to be dealt with

on appeal? Must both the CC and the Appellate Division

hear the matter, the one to decide the constitutional

issue and the other to decide the common law issue? This would be a very time-consuming and unwieldy procedure.

- We would suggest that the matter should go only before the CC, which would be empowered to deal with both issues

(<

14-29-93 16:30

vy

FROM: APPELHOF BFN IID: @851 478098 PAGE

6

and give a final judgment. It follows that the CC should be a court of law, composed, at least partly, of Judges of the Appellate Division, and capable of deciding

issues other than questions of pure constitutional law.

4. The Constitutional Jurisdiction of the Supreme

Court

The 12th Report proposes that the Provincial

and local divisions of the Supreme Court (for convenience

I shall refer merely to "the Supreme Court") be vested

with a constitutional jurisdiction in three main areas

(see sec 9(4) of the addendum to the 12th Report). In

effect this would seem to mean that these divisions will

not have a constitutional jurisdiction in regard to -

(1) the validity of an Act of Parliament (including presumably any provision of an Act of

Parliament), and

(i) disputes of a constitutional nature between

organs of the state.

We do not agree with this limitation on the constitutional jurisdiction of the Supreme Court and are not sure what motivates it. If it be the relative importance of the matters referred to in (i) and (ii) above, then we

would argue that the constitutionality of an executive or

administrative act or of legislation, other than an Act

of Parliament, could raise questions of equal, or even

8

14-09-83 16:31

FROM: APPELHOF BFN ID: @51 478089

7
greater, importance to society than those arising under

(i) and (ii) above. If it be motivated by the need in
such cases for a speedy decision, then this could be
provided under a system of direct reference, such as that
proposed under par 6(e) of the Judges' memorandum. -

Furthermore, this limitation on the constitu-
tional jurisdiction of the Supreme Court could lead to

considerable practical difficulties. . This is best

illustrated, by way of an example which is of real

- relevance and typical of the kind of difficulty likely to

, arise. A person is charged in the Supreme Court with

- dealing in dependence-producing drugs under Act 41 of.

'1971. The State relies on one or more of the presump-

â\200\230tions in sec 10 of - the Act which place an onus on theâ\200\231

accused. The defence takes the point .that the relevant

- portions of sec 10 are invalid in that they conflict with

_the provision in the Bill of Rights which enacts that an

accused is to be presumed innocent. The State counters
this by . contending that under, the Bill of Rights the
presumptions constitute limitations which are "reasonable
and justifiable in a free, open and democratic society"

It seems to us that in such a case convenience, practicality

and expedition (not to mention the factor of

costs) demand that the trial Court should have

jurisdiction to adjudicate on these constitutional

issues. This Court would then- hear all the evidence,

including evidence that might be led on the issue of

-8

permissible limitation under the Bill of Rights, and decide the issues, factual, legal and constitutional, which arise. It might decide that, without any reliance on the presumptions, the accused is guilty; or that, he is innocent. In either case the constitutional issue

- will have become irrelevant. It might, on the other hand, decide that the presumptions are unconstitutional, in which event the State would, presumably, have a right of appeal to the CC on this issue; or that they are constitutional, in which event the accused would be entitled to appeal on this issue to the CC. If, at any stage before judgment, it were to become apparent to the trial Court that facts are not in dispute and that the

, issue of constitutionality is the only one, then the

- procedure we propose in par - 6(e) of the Judges'

memorandum would come into operation.

Under the system proposed by the 12th Report, the Supreme Court would have no jurisdiction in a case such as this; the proceedings would have to be suspended; and the matter referred in initio to the CC in terms of section 1 of the addendum. This would give rise to the difficulties referred to in par 4 of the Judges' memorandum, viz in particular, the decision of a constitutional issue where on the facts the court might otherwise hold that it is irrelevant; the delay and disruption of the trial before the Supreme Court,

including the disappearance of witnesses, etc; the cost

9

of a special reference to the CC which eventually turns out to have been unnecessary. Also, it is not clear how the CC would handle the question of evidence relevant to the issue of constitutionality. would it hear the evidence itself and thus get embroiled in what 'may

develop into a lengthy trial? Or what would it do?

Sec 90(5) speaks of the question of the Validity of the Act being referred to the CC. 'Does this - mean a stated case? If so, then we. repeat the comment in par 4(b) of the Judges' memorandum.

5. The Composition of the CC

: We have indicated how we think the CC should be

. y composed in par 6(f) of the Judges memorandum, as amended ' in par 3 above. Sec 88' of the addendum to the 12th . Report contemplates a CC consisting of a President and 10

other Judges appointed by the State . President in

-accordance with nominations made by Parliament. The

; qualifications for a Judge of the CC are set forth in sec

" 88(2) of the addendum. We adhere to our original view

as to how the CC should be composed. Moreover, we have

two main objections to the qualifications in sec 88(2).

In the first place sec 88(2)(d) appears to contemplate

someone who is not legally qualified in the manner

defined in sec 88(2)(c); indeed someone who is not

legally qualified at all. We do not find this

acceptable. It is unthinkable that one of the highest

-

: 10

courts of law in the land should be composed, even in part, of laymen. In the second place, there is no indication that there should be any kind of a mix of the

persons holding the various different qualities in sec : 58(2). Thus the CC as appointed could theoretically contain no Judges of the Supreme Court and be composed,

for example, wholly of university lecturers in law.

If our proposals as to the composition of the CC are rejected and a model along the lines of sec 88(2) is accepted, we urge that at any rate sec 88(2) be amended by the deletion of (&) and by a stipulation that at least six of the Judges of the CC be appointed from

the ranks of Supreme Court Judges.

6. The Appointment of Judges

We are not in favour of the method for appointing Judges of the CC described by sec 88(3) of the S endar: and adhere to the view that all judicial appointments should be made by the Judicial service

Commission.

It is not clear how candidates for the CC (President and CC Judges) would come before the joint standing committee ("JST") referred to in sec 88(3). Would they make application for the positions? That factor and the inquisitorial process involved would, we

think, tend to deter many candidates of real quality.

11.

Furthermore, the process of nomination and approval by

Parliament, especially as provided by sec 88(4),

-

S

difficult to understand and we question whether it is workable in practice. In Passing, we think that the interviews referred to in sec 88(3) should not be in

- camera. B =

In regard to the continuation in office of existing Judges, as provided by sec 96(1) of the addendum, we are not sure what is meant by the concluding words - |

How such functioning and appointment

may lawfully be changed by the competent

authority".

This appears to threaten the security of tenure of existing judges and, therefore, to strike at the independence of the judiciary. We would prefer a provision which deems all existing Judges to have been

appointed in terms of sec 92.

7. Mission of the Judicial Service Commission
| (JSC)

Judges should be chosen for their character, personality and professional competence. As the main function of the JSC appears to be to make recommendations regarding the appointment of Judges, we fail to see why there should be five senators on the JSC. They would be

unlikely to have much knowledge of the candidates for

-

a -

12

appointment. Indeed the senators would cutnumber the

maximum possible number of Judges on the JSM. In our
view if there is to be senate representation on the JSNM,

then it should be limited to one senator.

-1

M M CORBETT
CHIEF JUSTICE

13 September 1993

>

EMBARGOED UNTIL TABLING IN THE
NEGOTIATING COUNCIL

THIRTEENTH REPORT OF THE TECHNICAL COMMITTEE
ON CONSTITUTIONAL ISSUES
TO THE NEGOTIATING COUNCIL
16TH SEPTEMBER 1993

L Introduction-

There are a number of matters regarding the Constitution for the period of transition addressed in our previous reports, on which no definitive decisions have as yet been taken by the Negotiating Council. We require instructions on these matters to enable us to finalise the constitutional text. There are also various matters which have not yet been addressed by us, which should be included in the Constitution. We are in the process of preparing texts and accompanying reports on those matters.

In Part I of this report we set out preliminary proposals for a chapter of the Constitution dealing with local government, a draft of which is contained in the addendum.

In Part II stock is taken of some of the most important outstanding matters requiring the urgent attention of the Negotiating Council.

TECCOM/CONSTITUTIONAL ISSUES
. 13TH REPORT/16 SEPTEMBER 1993

Part I
Local Government

Considerations relating to the chapter on local government

Due to a number of factors, mostly of an historical, political and financial nature, the current situation regarding the development of a restructured system of local government seems to be fluid and unpredictable.

We are aware of the existence of the Local Government Negotiating Forum, but have not had the benefit of insight into its work or any results of its endeavours.

We have found very little guidance for the drafting of a chapter on local government in submissions received from participants in the MPNP.

We have taken note of the relevant provisions of the Transitional Executive Council (Draft) Bill approved by the Negotiating Council on 7 September 1993.

A number of the Constitutional Principles contained in Schedule 7 of the draft outline of the Constitution for the period of transition currently under discussion by the Negotiating Council contain provisions directly relevant to a future system of local government. These are Principles VII, XV, XVI, XVII, XIX, XXI, XXII, XXIV 4 and XXIV 9.

We have not dealt specifically with the role of traditional leaders in local government because this is an aspect of the broader question which has been referred to the Planning Committee.

In the addendum to this report we present a draft text for the chapter in the Constitution on local government with a view to facilitating the debate.

The draft text

The draft text contains three sections, respectively dealing with the establishment and status of local government, local government finance and a transitional arrangement concerning existing local governments.

TECCOM/CONSTITUTIONAL ISSUES
13TH REPORT/16 SEPTEMBER 1993

Section 140(1) is intended to accord local government the constitutional status of a level of government and to provide for its further regulation by parliamentary and 'SPR legislation.

Section 140(2) ensures the democratic nature of local government and affords it a measure of autonomy. The autonomy of a local government regarding its physical environment is specifically provided for in section 140(8).

Section 140(3) sets out the matters that must be regulated in detail by statute, though with due consideration of all the relevant provisions of the Constitution. The powers and functions to be exercised, and the services to be rendered by local government are related in section 140(7) to the maintenance of the well-being of local communities. -

Section 140(4) provides for the categorisation of local governments (eg cities, towns, villages) and the concomitant differentiation of powers and functions, and also prescribes some important criteria for the determination of the status of a local government. _

L1

Section 140(5) requires consultation with a local government before its status is changed. .

Section 140(6) ;v_would establish a procedure whereby local government is afforded a -fair opportunity to express its opinion on draft legislation which will, if adopted, materially affect local government boundaries, â\200\230powers and functions. ' Section 140(9) expressly grants locus standi (the right to engage the court and to be heard) in the Constitutional Court to local governments in matters concerning their competences.

Local government finance is addressed elsewhere in the Constitution and we recommend that this matter be dealt with more extensively in chapters 9 and/or 11 in the interests of clarity and comprehensiveness. Against this background section 141(1) is intended to afford local government financial viability by empowering it to levy taxes and to raise revenue. In the proviso, local governments would however be prevented from raising service charges for profit - we consider this to be a limitation justifiable on the grounds of transparency and accountability of government.

Section 141(2) entitles local government to equitable allocations in the area of inter-governmental financial transfers.

Section 142 is intended to provide for continuity of existing local governments against the background of the process of the restructuring of the third tier of government. i

Part II Outstanding Matters

4. Matters relating to the Constitution requiring the consideration of the Negotiating Council

The lists below reflect an overview of most of the issues that need to be addressed in order to enable us to complete the outline of a draft Constitution. '

4.1 Matters raised in previous reports 4

- (a) The text of the preamble
- (b) National symbols
- (c) Languages
- (d) The final wording of the chapter on Fundamental Rights
- (e) The electoral system
- (f) Deadlock-breaking mechanisms in the process of constitution-making
- (g) Various issues relating to the national executive
- (h) Various issues relating to the judiciary
- (i) The terminology relating to SPRs (states or provinces or regions)

The competences of SPRs

The consolidation and rationalisation of public administration (especially on the SPR level), which is also related to the question of the reincorporation of the TBVC states

SPR finance and fiscal affairs, including an orderly regulation of financial matters prior to and immediately after the election

SPR constitutions and the role of SPRs in the further deployment of a new constitutional dispensation

Traditional leaders.

Matters not yet considered

The Ombudsman and a Human Rights Commission

Financial provisions of a general nature

The Auditor-General

The Reserve Bank

The composition and operation of the Financial and Fiscal Commission

ThÃ© Commission for Administration and the Public Service

The armed forces and the police

Protection of the organs of civil society

Various general, transitional and technical provisions relating to, inter alia, the status of international law, continuity of existing laws and the legal system, and definition, construction and commencement clauses.

TECCOM/CONSTITUTIONAL ISSUES
13TH REPORT/16 SEPTEMBER 1993

ADDENDUM TO THE THIRTEENTH REPORT (CONSTITUTIONAL ISSUES)

CHAPTER 10

Local Government

Establishment and status of local government

140. (1) Local governments shall be established for the residents of areas demarcated in terms of law and the functioning and structure of local government shall be regulated by law.

(2) A local government shall be elected democratically and shall be entitled to regulate its own affairs within the limits prescribed by law, which shall guarantee the democratic functioning of such local government.

(3) The boundaries of the area of a local government, the election of its members, the qualifications of voters, the powers and functions of local governments, the formal legislative procedures to be adhered to and all other matters necessary or incidental to local government shall, subject to the provisions of this Constitution, be provided for by law.

(4) A law providing for or relating to local government may make provision for categories of local government with differentiated powers and functions according to considerations of demography, income, physical and environmental conditions and other factors which justify or necessitate such status.

(5) The status of a local government shall not be changed without prior consultation with the local government concerned.

(6) A bill which materially affects the boundaries, powers or functions of local governments shall be published for comment in the Government Gazette or the SPR Gazette as the case may be, and local governments affected thereby shall be given a reasonable opportunity to make written representations in regard thereto to the legislature concerned.

(7) A local government' shall be entitled to exercise those powers and functions and to provide such services as may be necessary to maintain and promote the well-being of the residents of the area of the local government.

(8) Conduct affecting the physical environment of a local government area shall be permissible only after consultation with the local government concerned and shall not be undertaken against the wishes of such local government unless such conduct is reasonably required in the national interest.

(9) A local government shall be entitled to approach the Constitutional Court in any matter relating to the encroachment or threatened encroachment upon its competences under this Constitution or any other law.

Local government finance

141. (1) A local government shall be entitled, subject to the provisions of this Constitution, to levy taxes and raise revenue for the purpose of exercising its powers and functions: provided that service charges shall be raised solely for the

L1

purpose of recovering the cost of such services.

(@) A local government shall be entitled to an equitable allocation by the SPR government of the revenue referred to in section 121.

Continuation of existing local governments

142. A local government existing at the commencement of this Constitution shall, subject to any changes lawfully made by a competent authority, continue to exist and shall exercise its powers and functions in accordance with the provisions of this Constitution and any other law consistent with those provisions.

LOCALGOV.DOC

16 SEPTEMBER 1993

e s :

Demokratiese Party, Sde Verdieping, Ruskin-gebou, Roelandstraat 2, Kaapstad 8001
Democratic Party, Sth Floor, Ruskin House, 2 Roeland Street, Cape Town 8001

NASIONALE HOOFKANTOOR
NATIONAL HEAD OFFICE

B 45-1431 (R 1475, 8000 FAX 461-5276 Demokratiese Party
24 August 1993 Democratic Party

For the Attention of Dr Theuns Eloff

The Planning Committee

Multi Party Negotiation Process
P O Box 307

ISANDO

1600

Dear Sirs

The Democratic Party is concerned at the lack of progress being made in negotiations at local or third tier level of government. It is our view that:

1. Negotiations for a new dispensation for local government are not receiving a high priority at the Multi Party Negotiating Forum.

The Local Government Negotiating Forum does not represent all political parties and organisations.

Attempts to establish Local Government Negotiating Forums in cities, towns and villages are being frustrated due to conflicting and inadequate information being received plus a lack of clear guidelines on how to proceed.

There is an urgent need to resolve the issue of local government representation prior to the negotiation of a new constitutional dispensation for local government. It is furthermore of vital importance to address the issue of the lack of or poor services at local government level and to resolve the issue of payment for services rendered.

The Democratic Party accepts the need to include in the negotiation process people involved with local government but believes the lead must be taken in the Multi Party Negotiating Forum.

You are earnestly requested to place the issue of local government on the agenda.

Yours faithfully

Jd J WALSH

SPOKESPERSON ON LOCAL GOVERNMENT

One Nation. One Future. Een Nasie. Een Toekoms.

17 LT00111 838 7388 JHB FUE LIB ILLS

To: fax no. 397-2211
For attention: Sandy Hutchins

From: Corlia Saayman, Reference Library, Johannesburg
Public Library fax no. B838-7366 tel. no. 836-3787

Dear Sandy

I would like to confirm our telephone discussion on 29
Sept. 1993. You agreed to make available to us all
documentation in respect of all technical committee
reports.

I know that you are pressed for time, so it may be best
for you to let me know when it will be convenient for us
to come and fetch the material.

Can we make this an ongoing arrangement?
I really appreciate your willingness to help us, as we do

get a lot of enquiries involving these documents. Apart
from that we are very much aware of the historical

significance of these documents, the preserving of which
is part of the function of this library.

Thank you very much!
Corlia Saayman