

CODESA



NATIONAL WORKING COMMITTEE

DOCUMENT (1)

22 JULY 1993

AFRICAN NATIONAL CONGRESS

NATIONAL WORKING COMMITTEE

DATE: *Thursday, 22 July 1993*

VENUE: *Boardroom, 10th Floor*

TIME: *10:00*

AGENDA

- 1. Opening*
- 2. Apologies*
- 3. Adoption of Agenda*
- 4. Negotiations Commission: Report*
- 5. SGO: Car Scheme*
- 6. SGO: Retrenchment Procedures*
- 7. SGO / Emancipation Commission: Miss SA Contents*
- 8. SGO: Report on Disciplinary Committee*

NEGOTIATIONS

COMMISSION

INTERNAL MEMORANDUM

TO: COMRADE VALLI MOOSA
NATIONAL WORKING COMMITTEE.

FROM: COMRADE WILLIAM COBBETT
DEPARTMENT OF LOCAL, REGIONAL GOVERNMENT
& HOUSING

RE: NATIONAL HOUSING NEGOTIATIONS

Further to my submission of the proposed agreement and Executive Summary, the National Working Committee is asked to consider the following issues:

- 1) To confirm the general approach being adopted, and to support the agreement in-principle.
- 2) To note the forthcoming Consultative Workshop on this issue; and
- 3) To reserve time at the first NWC meeting in August to give a final decision on this issue.

INTERNAL MEMORANDUM

**TO: NEGOTIATIONS COMMISSION
 NATIONAL WORKING COMMITTEE**

**FR: BILLY COBBETT
 NATIONAL CO-ORDINATOR
 DEPARTMENT OF LOCAL AND REGIONAL GOVERNMENT & HOUSING**

DATE: 16.07.93

RE: STATUS REPORT: NATIONAL HOUSING NEGOTIATIONS

Introduction

The National Housing Forum (NHF) and the Department of National Housing (DNH) have been in negotiations for the past seven months. Attached you will find a draft agreement, compiled by the NHF lawyers, which will shortly be in a position to be tested with Principals.

For purposes of brevity, I am also submitting this executive summary for your information and consideration. The detail of the proposed agreement will be considered in a three-day consultative workshop which the Department has organised for the end of July.

Please note that the ANC's formal response to this proposed agreement would be expected in the first week of August, with implementation contemplated in the month of August.

EXECUTIVE SUMMARY

1. Scope of the proposed agreement

The agreement basically provides for immediate joint control of various state funds for the allocation of funds in the field of housing. It should be noted that this agreement would include the 'own affairs' funds.

The mechanism to be employed will be a political agreement to reconstitute (and rename) the National Housing Commission in a manner acceptable to both parties. The route of a 'political agreement' has been chosen because of the time, political dangers and complexity that would be involved in taking this through the tri-cameral system.⁽¹⁾ However, certain relatively minor adjustments would be required to be effected, especially to the Housing Act of 1966.

The new board replacing the National Housing Commission (provisionally the National Housing Board) will, accordingly, have discretion in the spending of an initial sum of R500m as well as all uncommitted money in the various housing funds. The composition of the NHB would be as follows:

Eighteen people, comprising:

Six nominated from the mass-based organisations on the NHF
(ANC / SANCO / COSATU / PAC / AZAPO / IFP)

Six nominated from the private sector, including black builders;

Six nominated by the government.

Decisions would be by consensus, failing which the sufficient consensus rule will apply.

The new Board will, in applying its mind on project applications, have to utilise the guiding principles and rules that have been the subject of negotiations between the NHF and the DNH. These include, inter alia,

2.3.1 Location - integrate the cities;

2.3.2 Focus on the poor;

2.3.3 Level playing fields;

¹ This approach is very similar to that adopted in the negotiations with Minister de Villiers in respect of restructuring the Electricity Council (May), as well as the recent agreement providing for joint control over the hostels programme (June).

- 2.3.4 Community involvement and participation;
 - 2.3.5 Gearing of public resources (matching finance);
 - 2.3.6 Non-racial approach;
 - 2.3.7 Non-preemptive of long-term policy;
 - 2.3.8 Housing as a vehicle for socio-economic reconstruction;
 - 2.3.9 Multiplier effect (labour based)
- (* Numbers above relate to relevant sections in main document).

The overall programme has been structured in such a way as to ensure maximum local control over the processes (section 2.2.2), as well as identifying a major role for small black businesses and construction.

The agreement can be implemented within the immediate future, with the month of August (prior to legislation in September) being utilised to set up the systems, put structures in place etc.

The agreement is designed to create a high level of certainty in the housing sector, where the construction sector is currently in a highly depressed state. The country is currently building between five and eight percent of the housing required to remove the backlog in ten years.

In addition, this agreement will also create the possibility of high-impact intervention into strife-torn areas before the election, in areas such as the East Rand. In addition, it will also prevent the Government (including the Houses of Reps and Delegates) from using housing as an electoral bribe.

Please do not hesitate to contact this Department if any further clarification is required which is unclear from the documentation.

DOCUMENT A

FOR CONSIDERATION BY THE WORKING COMMITTEE

SUMMARY OF MAIN ISSUES IN THE LOCAL GOVERNMENT NEGOTIATION FORUM

1. Phasing of the Local Government Transition

The LGNF has adopted a similar phasing approach to the Multi-Party Negotiation Forum, namely:

- Pre-interim (the period from now until elections for interim local government);
- Interim (the period after elections for interim local government), and
- Final (after the adoption of the final constitution).

2. Timing of the Local Government Transition

The timing of the local government transition is likely to be as follows:

- September/ October, 1993: Promulgation of a Local Government Transition Act in parliament; establishment of local government demarcation boards; dissolution of apartheid local councils; appointment of Transitional Local Councils (TLCs) and Transitional Metropolitan Councils (TMCs).
- October/ November, 1994: Elections for interim local government

3. Local Government Legislation

The LGNF is currently preparing draft legislation known as the

Local Government Transition Act. This legislation will serve two purposes: to establish appointed interim structures, and to prepare for local government elections to be held in 1994.

The LGNF is also preparing a set of guidelines to be published in two weeks time by the Minister. These guidelines, which will be issued in terms of existing legislation, will allow for local forums to be established, interim boundaries to be demarcated, and appointments for interim councils to be made.

As existing legislation (i.e. the Interim Measures Act) is enabling rather than mandatory, the guidelines will only be enforced on a voluntary basis. However, the guidelines will state clearly that new legislation that is in place in October will be mandatory for all local areas.

4. **Appointed Interim Structures**

The LGNF has accepted the principle of appointed interim structures to replace existing white and black local authorities.

Local negotiating forums are expected to nominate new councillors on a 50/50 basis between statutory and non-statutory organisations. The legal appointments will be made by the appropriate provincial/ regional authorities, in consultation with appointed regional monitoring committees (RMCs). It is not clear yet whether the RMCs will be established by the TEC sub-council on local and regional government, or by the LGNF.

TLCs and TMCs will be established by combining local government areas historically separated on the basis of race. This means that local government demarcation boards will need to be established.

The LGNF has agreed that the size of appointed TLCs should not be larger than the sum of existing council seats in any combined area. This means that at least 50% of existing councillors will not be reappointed, ensuring that there will be a clean political break with previous apartheid structures. The term of office of all existing councillors will end with the appointment of new structures.

5. Services and Finances

It is agreed that agreement on local government services and finances will be part of the overall agreement. This has not been finalised yet. The issues to be dealt with are:

- writing off of arrears;
- restoration and maintenance of municipal and emergency services;
- tariffs and affordability;
- payments for services;
- interim financial arrangements.

The LGNF non-statutory delegation has prepared a comprehensive set of proposals regarding services and finance.

6. Elections for Interim Local Government

The LGNF has agreed that elections for interim local government should take place after national elections, as soon as practical arrangements have been made.

These preparations include **inter alia** the demarcation of local government boundaries, the establishment of an electoral system, delimitation of wards, and preparation of voters rolls.

The statutory delegation is pushing strongly the entrenchment of local power sharing. The LGNF has agreed to examine the concept of 'governments of local unity' which are in line with decisions about an interim government of national unity. Four areas are being examined by the LGNF in this regard:

- council decision-making process;
- representative of parties on the executives of councils;

- the electoral process and qualifications for voting;
- sub-local government structures such as ward councils;

No agreement has been reached yet on these issues. The non-statutory delegation has argued that governments of local unity should not undermine the following principles:

- the democratic process, as established by an election, should not be frustrated or undermined;
- the aspirations of the majority, who have historically been denied access to local government, should not be thwarted;
- the legitimate fears of the white minority should be accommodated, but racially-based structures are not acceptable;

7. Rural Government

The LGNF is examining proposals for the establishment of democratic local government in rural areas, including so-called white farming areas and tribal authority areas. The non-statutory delegation has proposed the establishment of district councils to replace existing Regional Services Councils (RSCs) in rural areas. The LGNF has agreed to discuss these issues with Contralesa, rural civics and other rural bodies.

8. Metropolitan Government

The LGNF is about to debate the question of metropolitan government. The non-statutory delegation has put forward proposals for metropolitan government with strong powers and functions, in order to address historical backlogs and prevent the economic decline of the major urban areas in South Africa.

9. Training and Affirmative Action

The LGNF has accepted a proposal to restructure the existing statutory Training Board for Local Government on a 50/50 basis. A set of training principles has also been agreed. The LGNF is currently formulating a policy on affirmative action for local government.

10. **Communication with the Multi-party Negotiation Forum (MPNF)**

The LGNF has written to the MPNF to ask for a formal meeting to discuss **inter alia** the following issues:

- the functions and powers of the TEC sub council on local and regional government;
- the establishment of regional monitoring committees for local government;
- provincial administrations during the pre-interim period;
- National Transition Act
- local government and the interim constitution

lgnf.108

DOCUMENT B

LOCAL GOVERNMENT NEGOTIATION FORUM: NON-STATUTORY DELEGATION PROPOSALS FOR METROPOLITAN GOVERNMENT

Principles for the establishment of metropolitan government

Most economic activity in South Africa takes place within and between metropolitan areas. From the point of view of the national economy, it is essential that these areas are developed and governed in a way that promotes economic growth and development.

Previous apartheid urban policies were based on economic, spatial and political fragmentation of our cities and towns. This has meant that today, many of our cities, including our metropolitan areas, are:

- * economically inefficient (because of large distances between workers and factories, retail areas and markets);
- * faced with the problem of urban sprawl and the need for high public transportation subsidies;
- * socially segregated into different residential areas;
- * faced with inadequate services in most residential areas; and,
- * unprepared for rapid urbanisation.

New urban policies, including local government, should therefore be based on economic, spatial and political integration.

The restructuring of local government, especially in metropolitan areas, should as far as possible not exacerbate any of the problems that already exist.

Metropolitan government should therefore be established in metropolitan areas on the basis of an integrated urban economy and a common revenue area.

Metropolitan government should be regarded as the third tier of government in metropolitan areas, and as a form of strong local government.

Metropolitan government should have, inter alia, the powers and functions of planning for an integrated metropolitan economy and the collection and distribution of revenues.

Metropolitan government should be democratic and close to the people. Therefore, metropolitan government should establish metropolitan sub-structures of roughly equal size with devolved political and administrative powers. These sub-structures need to be small enough to be close to the people.

Metropolitan government should constitute sub-metropolitan structures, and not the other way around. Sub-metropolitan areas should not be demarcated prior to the establishment of metropolitan government. During the pre-interim phase, 'sub-regionalisation' should not take place, as this would pre-empt the constitutional and internal boundary demarcation process.

In terms of elections for interim metropolitan government, a combined system should be examined: for example, metropolitan government could be directly elected through proportional representation, and indirectly through ward-based elections for sub-metropolitan units.

locgovt\lgmf.107

**EIGHTH REPORT OF THE TECHNICAL COMMITTEE
ON CONSTITUTIONAL ISSUES TO THE
NEGOTIATING COUNCIL**

26 JULY 1993

1. INTRODUCTION

1.1 In terms of the Resolution on Steps to be Taken for the Purposes of Establishing a New Constitutional Order, we were instructed by the Negotiating Council to draft a Constitution for the transition which shall make provision for:

1.1.1 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 deadlock breaking and special majorities by which decisions will be taken;

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

- 1.1.3 the powers, functions and structures of regions for the transitional period;
 - 1.1.4 fundamental human rights on a justiciable basis during the transitional period;
 - 1.1.5 a constitutional court/tribunal to ensure the justiciability of the constitutional principles, of the fundamental rights and of the Constitution itself.
- 1.2 This Resolution requires us to proceed along the lines of the "two stage process", and to formulate the provisions of a constitution for a transitional period during which an elected body will function both as a legislature and a constitution making body charged with the responsibility of drafting a new constitution in accordance with Constitutional Principles agreed upon by the MPNP. Some of the submissions to us continue to urge us to follow a "one stage process" according to which a rigid constitution will be adopted by the MPNP. In the light of our instruction we cannot proceed along these lines: we are required to follow the "two stage process" and have done so. We have, however, paid particular regard to the status of SPRs and have made provisions in our draft to ensure that they will have both autonomy and original powers - factors which are stressed as being of importance in some submissions dealing with the "one stage process".
- 1.3 In our Fifth Report we drew attention to a number of issues relevant to the drafting of a constitution for the transitional period on which decisions still have to be taken by the Negotiating Council. Participants were asked by the Negotiating Council to submit their proposals concerning such matters to us by 12 July. We have received responses to our Fifth Report from various

participants. In preparing this report we have had regard to these responses, as well as to the previous submissions made to us. The previous submissions include both submissions of a general nature and drafts of proposed constitutional legislation.

1.4 We have prepared a Draft Outline of a constitution for the transition which we attach to this report. This draft provides an indication of the subject matter of a possible constitution, and includes preliminary texts of two chapters of the Constitution: these preliminary texts are intended to provide an indication of how the legislative and constitution making process would be conducted, and how SPRs would be established and developed, if the outline is approved. *The preliminary texts will be edited and refined and developed in the light of the debates in the Negotiating Council.*

1.5 *This report provides an overview of the Draft Outline, but it is essential that the Draft Outline (including the texts) be studied by all the participants.* The technical interpretation of the Draft Outline will be further elaborated to the Negotiating Council when we present this Report.

1.6 Certain issues relevant to the constitution for the transition, concern matters of principle on which political decisions are required from the Negotiating Council. We deal with some of these matters below.

2. CONFEDERATION

The national territory should be defined in the Constitution. The territorial boundaries are relevant to the holding of elections and also to the definition of the SPR boundaries. The question of confederalism needs therefore to be addressed expeditiously to enable the constitution to be finalised.

3. THE TBVC STATES

We have received a recent submission from the government of Bophuthatswana which proposes "associate membership of the Republic of South Africa" for Bophuthatswana. What it has in mind is a retention of its present identity, representation in the South African parliament on a non-voting basis save in regard to issues directly affecting the constitution, and submission to South African laws only if they are specifically adopted by its own Parliament. We cannot, however, explore the possibilities of this proposal unless we are assured by the Negotiating Council that instead of reincorporation, Bophuthatswana will be accorded the status of an "associate member of the RSA."

The question of the reincorporation of the TBVC states is relevant to the definition of the national territory, the boundaries of the SPRs, and the holding of elections. Whether reincorporation should take place, and if it does, when and on what terms this should be done has not yet been resolved.

Apart from the issue of boundaries and elections, there are a number of technical issues that will have to be addressed if there is to be reincorporation. These include the legal forms according to which it will be effected, arrangements to be made in respect of existing contractual liabilities, and the creation of a single legal order in the SPRs into which the TBVC states will fall.

If there is to be reincorporation it would be easier from a practical point of view to address these issues before the elections are held. This would not only facilitate the conducting of the elections, but would also allow more time for the process of rationalisation and integration of the existing administrations, and make it easier to establish SPR government and administration during the transitional period. For the purpose of drafting a constitution for the transitional period it is essential to reach finality on the question whether, and if so, when and on what terms the TBVC states will be reincorporated. Similarly, we are not in a position to assess the constitutional implications of those submissions in which the retention of sovereign status for SPRs

is proposed. Such "inalienable and untransferable sovereignty" which according to these submissions, gives preference to the provisions of SPR constitutions over and above those of the National Constitution, is essentially confederalist in nature and does not correspond with the approach consistently adopted in the Negotiating Council and in our previous Reports. Again, as stated in paragraph 2, we urge the Negotiating Council to take a decision on the matter of confederalism.

4. NATIONAL SYMBOLS AND LANGUAGES

The question of languages during the transition both at national and SPR level needs to be addressed in the constitution for the transitional period. This, and the question of symbols, such as the anthem, the flag and the coat of arms, are political rather than technical constitutional issues. The MPNP must decide how these issues are to be dealt with. Possibly a special committee of the MPNP could be appointed to address such issues which call for political decisions, and to make recommendations thereon to the MPNP.

5. COMING INTO FORCE OF THE CONSTITUTION FOR THE TRANSITIONAL PERIOD

The Constitution for the transitional period will have to make provision for the holding of the elections and the governing of the country after the elections have been held. We have assumed that in the period between the enactment of the constitution, and the holding of elections, existing administrations either on their own or in consultation with the TEC will remain responsible in terms of existing constitutional legislation for the governing of the country. If this is so, the constitution could stipulate that the provisions relevant to the holding of elections and the making of preparations for the establishment of SPR government and administration in the newly created SPRs, shall come into force at an appropriate time before the elections are

held, and that the other provisions shall come into force immediately after the elections have been held. Appropriate transitional provisions will be necessary to ensure that there is constitutional continuity and that there is at no stage a political vacuum.

6. CITIZENSHIP IN THE TRANSITION

The constitution should make provision for all existing South African citizens and all citizens of reincorporated TBVC states to be citizens of the new Republic of South Africa. There should also be provisions authorising the acquisition of citizenship in terms of the prevailing citizenship legislation which should be amended in so far as the MPNP may consider this to be necessary, for the purpose of the elections. Because of a possible link between citizenship and voting, and the need for existing citizenship legislation to be rationalised, this would have to be addressed during the pre-election period. We will deal further with this issue after the Negotiating Council has responded to the report of the Technical Committee on the Independent Electoral Commission and after we have had an opportunity of consulting with such Committee on these matters.

7. COMPOSITION AND FUNCTIONING OF THE ELECTED BODY

7.1 The elected body functioning as legislature

This is dealt with in Chapter 4 of the Draft Outline.

7.1.1 *Composition of the legislature*

During the time of the transitional period, the elected body will constitute parliament. Parliaments may be unicameral or bicameral. A unicameral parliament during the period of transition could accommodate SPR interests through an electoral system which makes provision for a proportion of the

members to be elected on regional lists. However, in the light of the constitutional principles adopted by the MPNP which imply a dispensation with safeguarded and entrenched SPR autonomy, as well as regional participation by SPR representatives in the constitution making process, and the need to address the matters referred to in paragraph 8 below, we consider that a bicameral system may be more appropriate: a second house elected on an SPR basis would provide an important link between the SPRs and the National Assembly during this period.

In the draft constitution we therefore make provision for a bicameral system with a National Assembly of 400 members and a Senate to be elected on an SPR basis. The election for the National Assembly will be according to a system of proportional representation in which there will be both regional and national lists. The Draft Outline refers to a schedule in which the voting system is described. We have not yet finalised the schedule, but will do so in our subsequent reports.

In order to establish the equality of SPR dispensations during the transitional period, the Senate will be composed of an equal number of representatives for each SPR. With SPR representation on an equal footing and SPR representatives in the National Assembly, the Senate does not need to be a large body, and provision has been made for 10 senators per SPR. Senators could be elected directly or indirectly by SPR legislatures or by the SPR representatives in the National Assembly. We favour a system of indirect election for the Senate for the transitional period. This will provide the necessary link between SPR interests and the constitution making process, and will do so in a way which ensures that the

first general election is not unduly complicated. This will not preclude the adoption of a system of direct election of a Senate if the constitution making body decides that a bicameral system should be adopted for the future.

7.1.2

Powers of the legislature

Parliament for the period of transition, will have full legislative powers, which means that all laws must be adopted by it subject to the provisions of the Constitution. Immunities and privileges of Parliament and its members should be regulated by law.

7.1.3

Procedures

During the transitional period Parliament will have to pass ordinary laws, laws dealing with the budget and appropriations and may even have to amend the constitution for the period of transition. Different procedures and deadlock breaking mechanisms must be devised for these different kinds of legislation. In the draft constitution we have dealt with these issues as follows:

7.1.3.1

We consider that it is important that the Senate be involved in legislation during this period, which will involve the phasing in of the new SPRs, and will also be a time when close co-operation will be required between the national legislature and SPR legislatures. We have therefore provided that ordinary legislation should generally be passed with a majority in both the National Assembly and the Senate. If

the Senate rejects a bill, a joint meeting of both houses will be held so that they can attempt to resolve their differences. The legislation could then be passed by a majority at such a joint sitting. To facilitate co-operation and where possible, to avoid disagreements arising between the two houses, provision is made for a system of standing joint committees of the National Assembly and the Senate. The requirement that there be both SPR and national lists for the election of the National Assembly ensures that SPR interests will be adequately represented in the National Assembly and in the joint sitting.

7.1.3.2

Money bills (namely budgetary measures and appropriation bills) must also be approved by both the National Assembly and the Senate, but in the case of rejection by the Senate, such bills could be adopted by the National Assembly with an ordinary majority.

7.1.3.3

Bills concerning specific SPR matters must also be approved by the National Assembly and the Senate. However, should the Senate reject such a bill, it cannot be overruled by the National Assembly. A bill which affects a particular region or regions only, must be approved by a majority of the Senate representatives of that particular region or regions.

It may be necessary for technical reasons to amend the Constitution for the transitional period in order to address situations which have not been contemplated or difficulties which are encountered in the application of the Constitution. A distinction must be drawn between fundamental provisions such as the Constitutional Principles, and key aspects of the constitution making process, which should not be amended, and other provisions of the Constitution which may be capable of being amended.

We have provided that these core provisions cannot be amended by the legislature during the period of transition. We have also made special provision for the protection of SPR boundaries and SPR interests. Other amendments to the constitution for the period of transition, which are not designed to subvert the essence of the Constitutional Principles, can be passed by a two-thirds majority of both the National Assembly and the Senate, sitting together in joint session.

The reason why Constitutional Principles, and the key aspects of the constitution making process should not be amended by the legislature during the time of transition, is that these provisions are contained in a solemn pact agreed upon by the parties in the MPNP, and constitute the basis of the future constitutional

state and constitution making process. Constitutionally, once the MPNP is dissolved, there will be no other body which can change this solemn pact, which must remain binding until the new constitution has been adopted in accordance with its requirements.

7.2 The Elected Body as Constitution Making Body

This is dealt with in **Chapter 5** of the Draft Outline. The process which is contemplated by the Draft Outline of the Constitution for the transitional period, can be described as follows:

7.2.1 The MPNP, through the adoption of a solemn pact of Constitutional Principles, has laid the foundations of the future constitutional state. The elected body acting as a constitution making body, will have the legitimacy to perform the task of giving precise form and content to the constitutional state. In doing so, the elected body (whether it acts as legislature or constitution making body) must act in terms of the constitution for the period of transition drawn up and approved by the MPNP.

7.2.2 In strict constitutional terms, the nature and task as well as the functions of the elected body acting as a constitution making body could be described in the following way:

The elected body, acting in accordance with the precepts of the Constitutional Principles, concluded as a solemn pact by the MPNP, is specifically charged under the constitution for the transitional period, to undertake a *total revision* of that constitution.

Constitutionally, total revision of a constitution means the writing of a new constitution. There are various precedents for this elsewhere in the world.

An understanding of the process in this way, namely that an elected body, authorized and charged to do so by the MPNP, will undertake a total revision of the Constitution, within prescribed forms, and will adopt a new constitution according to prescribed specified majorities within prescribed time frames will, we believe, put the contemplated processes in their proper context.

7.2.3

The elected body acting as constitution making body, should be seen as separate from the elected body acting as legislature or Parliament. It has therefore been provided in the draft that we have prepared, that for the purposes of totally revising the constitution, the elected bodies will sit together. The National Assembly and Senate sitting jointly will be the constitution making body. The constitution making body should be given an appropriate name - those suggested so far are: **Constitutional Conference; Constitutional Assembly; Parliament in Constitutional Conference or Constituent Assembly**. In the draft text we refer to the CMB, but an appropriate name must be chosen, and used in the text of the constitution. To indicate its constitution making task, the CMB will have its own chairperson, and provision is also made for the CMB to appoint its own commissions, technical and parliamentary committees and advisory bodies to assist it in its task.

- 7.2.4 The general constitutional principles which are agreed to by the MPNP in the form of a solemn pact are fundamental to the total revision to be undertaken by the CMB. As stated above, these principles cannot be amended. On completion of the total revision in accordance with the provisions of the constitution for the transitional period, the CMB must submit its draft of the new constitution to the Constitutional Court for endorsement.
- 7.2.5 The CMB, by the specified majority, and with the endorsement by the Constitutional Court, could if it so decides adopt certain separate parts of the constitution before the total revision has been completed. It may be possible for instance for SPR constitutions to be adopted in this way if a decision is taken that there should be such constitutions. This will, of course, only be possible if the SPR constitutions are designed in ways which ensure that they will be compatible with the new national constitution when it is ultimately adopted.
- 7.2.6 The total revision of the Constitution has to be completed within a period of two years. If this is not done a draft Constitution adopted by a simple majority of the CMB, and endorsed by the Constitutional Court, may be submitted to a popular referendum. If the draft is ratified by a specified majority in the referendum it shall become the new Constitution. If it is not adopted, or if a referendum is not held, then Parliament shall be dissolved, new elections shall be held, and the total revision shall be undertaken by the new Parliament and be completed within a period of one year.

8. SPR GOVERNMENT IN THE TRANSITION

8.1 In formulating the powers and functions of the SPRs in Chapter 9 of the attached Draft Outline we have made provision for the establishment and implementation of elected SPR government during the transitional period on a flexible basis under the supervision and co-ordination of the national government and the constitution making body as well as a Financial and Fiscal Commission and a Commission on SPR government, on both of which SPRs will be represented.

8.2 This flexibility seems to us to be necessary for various reasons.

8.2.1 First, the details of the allocation of powers and functions by the constitution-making body to SPRs, within the framework of the Constitutional Principles, may prove to be different to any allocation of such powers and functions to them under the constitution for the transitional period. Until the final allocation has been made, it seems to us to be appropriate that the SPRs should have concurrent rather than exclusive powers, and that there should be consultation and co-operation between the National Government and the various SPR governments in the exercise and implementation of such powers.

8.2.2 There will inevitably have to be a rationalisation and reallocation of posts from existing administrations to new administrations. The TBVC states, the Self-governing Territories, and the Provinces will no longer exist, and the former employees of these administrations will, where possible, have to be accommodated in administrations to be established by the new SPRs.

If material changes are made in the functions and responsibilities of the National Government, this will also have an impact on the structure and functions of existing government departments. How the various former administrations can best be incorporated into the administrations to be created under the constitutional arrangement for the transitional period, will depend not only on the number, boundaries and administrative capitals of the new SPRs, and their relationship to the number, boundaries and administrative capitals of the former administrations, but also on the allocation of powers and functions to the National Government and the SPR governments in the transition.

The Constitution for the transitional period will have to make provision for the transfer of responsibilities from existing structures, to structures to be created under the new constitution, and for this to be done in a way which least disrupts the functioning of the civil service in all its aspects and delivery of services throughout the country.

8.2.3

Another factor favouring the phased introduction of SPR government is the need to establish a uniform system of law nationally, as well as uniformity within the different SPRs. The legal order existing immediately after the elections will include pre-existing legislation of the Tricameral Parliament, Provincial Ordinances, TBVC legislation, and legislation of the Self-governing Territories. In some SPRs all these forms of legislation will have to be accommodated. The constitution can provide a framework for the rationalisation, but there will be a need for close co-operation between the national government and the SPR governments in sorting out the problems that will arise.

There will also be a need to co-ordinate and rationalise existing structures for the administration of justice including possibly the establishment of new courts and the maintenance of law and order. Here too the national government will have a crucial role to play in the process of co-ordination and restructuring.

8.2.4

It may be possible for certain preparatory work and planning to be undertaken by the TEC in the period between the enactment of the Constitution for the transitional period and its coming into force. We suggest that consideration be given to appointing a Secretariat for each SPR (we assume that this would be done by the TEC), and for these Secretariats to be charged with the task of making preparations for the changes which will occur when the Constitution for the transitional period comes into force. Their work would include the identification of all administrations and providers of services within the boundaries of the new SPRs, the differences in the statutory regimes under which portions of the new SPRs may previously have been governed, and what may be needed to establish a uniform legal order and effective administration. The Secretariats could report to the TEC and carry out all other duties allocated to them by the TEC. They could also be made responsible for convening the first meetings of the SPR legislatures, and conducting elections within the SPR legislatures for the appointment of the various elected positions.

But even allowing for this, it seems to us to be likely that much of the restructuring will have to take place after the Constitution for the transitional period has come into force, and political decisions have been taken by the newly elected SPR

legislatures in regard to the establishing and staffing of departments for the implementation of the responsibilities entrusted to them.

There will have to be close co-operation between the National Government and the SPR governments during this period to ensure that there is no breakdown in services, and the National Government will clearly have a crucial role to play in the supervision and implementation of the restructuring.

8.2.5

In our view the best way of ensuring continuity of services and of rationalising and co-ordinating the existing administrations is to require the rationalisation and co-ordination to be done by the National Government and the SPR governments in co-operation with each other. When necessary, the National Government will be able to take responsibility for the continuity of services while the new SPR administrations are being set up, and to transfer appropriate functions to the SPR administrations as soon as they are in a position to assume responsibility for them. Some SPRs may have the infrastructure to take on administrative responsibilities sooner than other SPRs. We propose the establishment of a Commission on SPRs which will have the task, inter alia, of facilitating the process of establishment of SPR governments during the period of the transition as well as the development of the final SPR dispensation.

8.2.6

The need for flexibility and co-operation between the National Government and SPR governments during the transitional period, are factors which favour proportional representation in the executive, and a bicameral legislature in which one chamber will consist of SPR representatives. The Draft

Outline of the constitution that we have formulated makes provision for these structures, as well as for proportional representation in the SPR executives.

- 8.3 In line with the equilibrium suggested in our Sixth and Seventh Reports we have made provision in the preliminary texts for a process according to which SPR constitutions would be formulated and adopted, possibly even prior to the adoption of a new national constitution and subject to the approval of the CMB.
- 8.4 We have continued to use the expression SPR in our Reports and in the Draft Outline. A decision, must however, be taken in regard to the term which will be used to describe these entities in the text of the Constitution.
9. We are continuing our work and will complete drafts of the other sections of the Constitution as soon as we are able to do so. Our work will be facilitated if the Negotiating Council would consider as soon as possible the matters raised by us in this Report, and indicate whether or not the basis on which we are proceeding is acceptable to it.

**CONSTITUTION OF THE REPUBLIC OF SOUTH
AFRICA
1993**

(Draft Outline: 21 July 1993)

PREAMBLE

CHAPTER 1

Formal and Constituent Provisions

Including:

- The name, sovereignty and territorial definition of the state.
- The supremacy of the Constitution.
- National symbols.
- Languages.

CHAPTER 2

Citizenship

- South African citizenship at the time of the coming into operation of this Constitution.
- The acquisition and loss of South African citizenship after the coming into operation of this Constitution.
- The protection of South African citizenship after the coming into operation of this Constitution.

CHAPTER 3 Fundamental Rights

Wording provided by the Technical Committee on Fundamental Rights during the Transition

CHAPTER 4 The Legislature

Legislative authority

1. (1) The legislative authority of the Republic shall be vested in the Parliament of the Republic which shall consist of the National Assembly and the Senate and shall, subject to the provisions of this Constitution, have the power to make laws applying equally in all SPRs of the Republic.

(2) Parliament shall be competent to delegate by law any matter within its powers to the legislature of a region or of a local authority.

Duration of Parliament

2. Parliament shall continue until the entering into force of a new and totally revised constitutional text, or until it is dissolved under Chapter 5.

Franchise

3. *[To be formulated in light of the Negotiating Council's discussion of the reports of the Technical Committee on the Independent Electoral Commission.]*

Composition of the National Assembly

4. The National Assembly shall consist of four hundred members elected according to the system of proportional representation on national and regional party lists as provided for in Schedule 3.

Speaker of the National Assembly

5. (1) The Speaker shall be elected by the members of the National Assembly.

(2) The Speaker shall preside at meetings of the National Assembly.

(3) The Speaker shall be vested with all powers, duties and functions assigned to him or her by the rules and orders approved by the National Assembly.

Composition of the Senate

6. (1) The Senate shall be composed of ten members from each SPR, elected by the SPR legislature of each SPR at the first session after its election from among its number according to the principle of proportional representation, each voter having one transferable vote.

(2) The members of an SPR legislature elected in terms of subsection (1) to the Senate, shall vacate their seats in the SPR legislature.

(3) The vacancies in the SPR legislature occurring in terms of subsection (2) shall be filled by persons whose names appear on the party lists on which the names of the persons elected to the Senate appeared.

President of the Senate

7. (1) The President of the Senate shall be elected by the Senators.

(2) The President of the Senate shall preside at meetings of the Senate and at joint sessions of the National Assembly and the Senate.

(3) The President of the Senate shall be vested with all powers, duties and functions assigned to him or her by the rules and orders approved by the Senate.

Immunities and privileges

8. The immunities and privileges of Parliament and its members shall be regulated by law.

Parliamentary procedure

Rules and orders

9. (1) The National Assembly and the Senate may separately make rules and orders concerning the order and conduct of their various proceedings.

(2) The National Assembly and the Senate may make rules and orders concerning the order and conduct of their joint proceedings.

(3) Parliament may institute representative standing committees of the National Assembly and the Senate, in order to resolve possible disagreements and to make joint reports.

Ordinary legislation

10. (1) All laws, except laws relating to finance, specified SPR matters, and the amendment of this Constitution, shall be considered to be ordinary legislation.

(2) Ordinary legislation may be introduced in either the National Assembly or the Senate and shall be passed by a majority of the total number of the members in both Houses.

(3) A bill passed by one House and rejected by the other shall be referred to a joint committee consisting of members of all parties represented in Parliament to report on proposed amendments to the bill, whereafter the bill shall be referred to a joint sitting of both houses for decision by a majority of the total number of members of Parliament.

Finance Bills

11. (1) Bills appropriating revenue or moneys or imposing taxation shall be introduced only in the National Assembly after they have been considered and

reported on by a joint committee of both Houses and, in so far as it may be required in terms of this Constitution, by the Financial and Fiscal Commission.

(2) A bill shall not be deemed to appropriate revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties.

(3) The Senate may not amend any bills in so far as they impose taxation or appropriate revenue or moneys.

(4) If the National Assembly in any session passes a bill imposing taxation only or dealing with the appropriation of revenue or moneys, and the Senate in the same session rejects or fails to pass it within thirty days after it had been passed by the National Assembly, the bill shall be reconsidered by the National Assembly and may thereafter be presented to the State President for his or her assent and shall as soon as it has been assented to by the State President become an Act of Parliament as if it had been approved by the Senate.

Bills concerning specified SPR matters

12. (1) Bills concerning the exercise of powers and functions allocated to SPR governments in section 6(1) of Chapter 9, shall be approved by the National Assembly and the Senate.

(2) A bill which affects the exercise of powers or functions allocated in terms of section 6(1) of Chapter 9 to a particular SPR only, shall also be approved by a majority of the Senators of that particular SPR.

Amendment of the Constitution

13. (1) Save for the provisions of subsection (2) of this section and of Chapter 5, an amendment to this Constitution shall be passed by a two thirds majority of the total number of members of the National Assembly and the Senate sitting in joint session.

(2) No amendment of this Constitution shall be permissible in so far as it is designed to detract, directly or indirectly, from the essence of the Constitutional Principles contained in Schedule 1.

Provision should further be made for the following matters:

- *Assent to Bills by the State President*
- *Signature and enrolment of Acts of Parliament*
- *Resolution of conflicts between texts in different official languages*
- *Seat of the legislative power*
- *Sessions of Parliament*
- *Qualifications and disqualifications of members of Parliament*
- *Penalty for sitting or voting when disqualified*
- *Oath or affirmation of members of Parliament*
- *Quorum in Houses of Parliament*
- *Casting vote of President of the Senate and Speaker in the event of an equality of votes*
- *Rights and obligations of State President and Ministers regarding speaking, sitting and voting in the Houses of Parliament.*

CHAPTER 5

Total Revision of the Constitution and the Adoption of the new Constitutional Text

The Constitution-making Body

1. (1) The National Assembly and the Senate, sitting in joint session, shall be the CMB.

(2) The CMB shall undertake a total revision of this Constitution and adopt a new constitutional text in accordance with the provisions and procedures of this Chapter.

(3) The CMB shall be presided over by the President of the Senate, and in his or her absence, by the Speaker, and in the absence of both, by a person elected by the CMB for such purpose.

Constitutional Principles

2. (1) In undertaking its task of total revision of the present Constitution and the drafting of a new constitutional text, the CMB shall adhere and give effect to the Constitutional Principles contained in Schedule 1.

(2) During the course of undertaking the total revision and the drafting of the new constitutional text, any constitutional proposal pertaining to such revision and drafting may be referred to the Constitutional Court by the Chairperson after being petitioned by one third of the members of the CMB to do so, in order to obtain an opinion from the Court as to whether such proposal, if adopted, would conform with the Constitutional Principles.

(3) A new constitutional text, or any separate part thereof, shall not come into operation unless the Constitutional Court certifies that all its provisions conform to and adequately give effect to the principles contained in Schedule 1.

(4) A decision of the Constitutional Court in terms of subsections (2) and (3) shall be final and binding and no court of law shall have jurisdiction to enquire into or pronounce upon the validity of any constitutional provision which has been certified by the Constitutional Court in terms of subsection (3).

Appointment of commissions, committees and advisory bodies

3. (1) The CMB shall have the power to appoint its own commissions, technical and parliamentary committees and other advisory bodies to assist it in its task.

(2) The CMB shall, with the concurrence of at least two thirds of all its members, appoint an independent panel of five persons being recognised constitutional experts not holding office in any political party, to advise it and the Chairperson on constitutional matters and to perform such other tasks as are provided for in this Constitution.

Adoption of a new constitutional text

4. (1) A total revision of this Constitution shall be undertaken by the CMB, and a new constitutional text shall be adopted within two years from the commencement of the first session of Parliament.

(2) A new constitutional text shall be approved by two thirds of all the members of the CMB.

(3) Should the CMB fail to adopt a new constitutional text by a two thirds majority, but a draft of the new constitutional text is supported by a majority of its members, such draft shall be referred to the panel of constitutional experts by the Chairperson for their advice, to be given within 30 days of such referral, on amendments within the framework of the Constitutional Principles which might secure a majority necessary for the approval of the constitutional text.

(4) Should a draft prepared in accordance with the unanimous advice of the panel of constitutional experts in terms of subsection (3) not be submitted to the CMB within 30 days, or, should such draft, after being so submitted, not be supported by the necessary majority in the CMB, a constitutional text may be accepted by a majority of the members of the CMB.

(5) The State President shall refer a constitutional text accepted in terms of subsection (4), after it has been certified by the Constitutional Court to be in conformity with the Constitutional Principles enumerated in Schedule 1, to a national referendum.

(6) The question put before the electorate in the referendum shall be the acceptance or rejection of such draft constitutional text.

(7) The constitutional text presented to the electorate in the referendum shall, if approved by a majority of sixty per cent of the votes in the referendum, become the Constitution of South Africa.

(8) If the new constitutional text is not approved in the referendum contemplated in subsection (7), or if a new constitutional text is not otherwise approved, Parliament shall be dissolved by the State President and a general election shall be held.

(9) The CMB, composed of the newly elected National Assembly and Senate, shall within a period of one year after its first session, approve and pass the new constitutional text by ordinary majority.

Amendment of this Chapter

5. (1) No amendments to the provisions of this Chapter shall be permitted in so far as they relate to -

- (a) the Constitutional Principles set out in Schedule 1;
- (b) the requirement that the new constitutional text or texts shall comply with the Constitutional Principles, and that such text or texts shall be certified by the Constitutional Court as being in compliance therewith.

(2) All other provisions of Chapter 5 shall be capable of being amended by a two thirds majority of the CMB.

CHAPTER 6 **The Executive Power**

- An Executive representative of political parties occupying a specified percentage of the seats in the National Assembly.

CHAPTER 7 **The Judicial Power**

- Provisions for the continuation of existing courts and the establishment of a Constitutional Court.

CHAPTER 8

The Ombudsman and the Human Rights Commission

- Provisions for the establishment of an impartial and independent Ombudsman and Human Rights Commission.

CHAPTER 9

SPRs

Establishment of SPRs

1. The SPRs of South Africa shall be ... LISTED BY NAME ..., the boundaries of which are defined in Schedule 2.

SPR legislatures

2. (1) There shall be a legislature for each SPR.
- (2) The legislature of each SPR shall consist of the members elected at the time of the election of the National Legislature according to a system of proportional representation on SPR party lists as provided for in Schedule 3.
- (3) The number of seats in an SPR legislature shall be determined by dividing the total number of votes cast in the SPR in the election held in terms of subsection (2) by 50 000, approximated to the nearest complement.

Provision should further be made for the following matters:

- *Convening, venue and holding of sessions of SPR legislatures*
- *Qualifications for election to SPR legislatures*
- *Vacation of seats by members of SPR legislatures*
- *Filling of vacancies*
- *Quorum of meetings of SPR legislatures*
- *Rules of procedure for the conduct of the business of SPR legislatures*
- *Duties, privileges and immunities of members of SPR legislatures*

- *The requisite majority for decisions by SPR legislatures*
- *Public access to sittings of SPR legislatures*
- *Assent to bills passed by SPR legislatures*
- *Publication and enrolment of SPR legislation*
- *Duration of the SPR legislature.*

SPR executives

3. (1) The executive of an SPR shall be elected by the SPR legislature according to the principle of proportional representation, each voter having one transferable vote, and shall consist of ten members.

(2) The executive of an SPR shall from among its own number elect a Premier.

(3) Each member of the executive shall be responsible for the administration of one or more of the departments of the SPR to be established by the Premier.

(4) The Premier shall determine how responsibility for the administration of departments shall be allocated to members of the executive.

Provision should further be made for the following matters:

- *Oath or affirmation of office by Premier, members of SPR executives and legislatures*
- *Remuneration of members of SPR legislatures, members of SPR executives and Premiers*
- *Appointment of secretary and other officers for SPRs*
- *Vacation and removal from office of SPR Premiers and members of SPR executives.*

Transfer and consolidation of existing administrative responsibility

4. (1) Subject to the relevant transitional provisions contained in Chapter 12 and immediately following the determination of the extent of the legislative and executive competence of an SPR in terms of section 6, an SPR shall *mutatis*

mutandis assume responsibility for all the administrative and executive institutions existing within the SPR which were previously charged with the administration and execution of the matters falling within the competence of the SPR.

(2) The government of an SPR shall, on the advice of the Commission on SPR Government instituted in terms of this Constitution, establish a single, consolidated SPR administration as expeditiously as possible.

(3) In those instances where the administrative institutions of an SPR are charged by the National Executive with the administration of matters falling within the competence of the national government, the SPR executive shall administer those structures for and on behalf of the National Executive.

Administration of existing laws

5. (1) Subject to the relevant transitional provisions contained in Chapter 12 and immediately following the determination of the extent of the legislative and executive competence of an SPR in terms of section 6, existing laws applicable in the SPR governing matters falling within the competence of the SPR, shall *mutatis mutandis* be deemed to be laws of the SPR legislature.

(2) The powers, functions and obligations relating to the legislative and executive competence of the SPR arising from the provisions of the laws referred to in subsection (1), shall vest *mutatis mutandis* in the legislature and executive of the SPR.

(3) The legislatures of the SPRs shall undertake the consolidation and unification of the laws referred to in subsection (1) as expeditiously as possible.

Powers and Functions of SPR Governments

6. (1) The National Executive shall, after consultation with each SPR executive and receipt of the recommendation of the Commission on SPR Government established in terms of this Constitution, determine the extent of the legislative and executive competence of each SPR regarding the functional areas referred to in subsection (2), and such determination of competence shall, if approved by the CMB, be promulgated by the State President in a proclamation published in the *Government Gazette*.

(2) An SPR shall be entitled to the allocation of legislative and executive competences in each of the following functional areas -

- (a) Taxation within the SPR in order to raise revenue for SPR purposes
- (b) The appropriation of revenue and moneys for financing the government and services of the SPR
- (c) Local government
- (d) Town planning
- (e) Markets and pounds
- (f) Traffic control
- (g) Protection services
- (h) Local policing and law enforcement
- (i) Housing
- (j) Education
- (k) Cultural affairs
- (l) Traditional authorities and indigenous law
- (m) Health services
- (n) Welfare services
- (o) Agriculture
- (p) Fish and game preservation
- (q) Environmental affairs

- (r) Tourism and recreation
- (s) Public media
- (t) Public works
- (u) Roads
- (v) Transport
- (w) Casinos, racing and gambling
- (x) Language policy and language(s) for official use in the SPR.

(3) The competence of an SPR shall be determined as provided for in subsection (1) after due consideration of the SPRs' financial, administrative and infrastructural capability, and such determination shall have regard to the principles enumerated in Schedule 1.

(4) An SPR executive may decline specific powers and functions in any of the functional areas at the time of the initial allocation and may from time to time request the National Executive to expand its competence.

(5) The determination of the extent of the legislative and executive competence of an SPR made in terms of subsection (1) shall not be amended during the period of the operation of this Constitution without the consent of the SPR legislature.

SPR finance and fiscal affairs

7. (1) An SPR shall be entitled to an equitable share of revenue collected nationally in order to enable it and the local governments within its boundaries to provide basic services and to execute their functions and powers.

(2) The Financial and Fiscal Commission established in terms of Chapter 11 shall make recommendations to the National Assembly regarding equitable fiscal

and financial allocations to the SPRs from revenue collected nationally, taking into account the national interest, the provisions of subsection (1), economic disparities between the SPRs, as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each SPR.

(3) An SPR Revenue Fund shall be established in every SPR, into which shall be paid all revenues raised by or accruing to the SPR.

(4) An SPR government shall not be competent to raise loans for current expenditure.

(5) An SPR government shall be competent to raise loans for capital expenditure with the consent of the national executive given on the advice of the Financial and Fiscal Commission.

(6) An SPR government shall be competent to levy such taxes and surcharges as may be recommended by the Financial and Fiscal Commission and approved by the National Assembly, which approval shall not unreasonably be withheld.

(7) An SPR government shall not be entitled to raise taxes detrimentally affecting national economic policies, inter-SPR commerce, or the national mobility of goods, services, capital and labour.

(8) Allocations by the national government to local governments shall ordinarily be made only via an SPR government.

Effect of laws of SPR legislature

8. (1) A law made by an SPR legislature shall have effect in and for the SPR as long and as far only as it is not repugnant to any Act of Parliament duly passed within the competence of Parliament in terms of this Constitution.

(2) The provisions of a law made by an SPR legislature shall not be deemed to be repugnant to an Act of Parliament unless such provisions are expressly or by necessary implication inconsistent with an Act of Parliament.

Recommendations to Parliament

9. An SPR legislature may recommend to Parliament the passing of any law relating to any matter in respect of which such legislature is not competent to make laws.

SPR Constitutions

10. (1) An SPR legislature may, subject to the provisions of this Constitution, adopt a constitution for the SPR by a two thirds majority of all its members.

democratic! (2) An SPR legislature may make such arrangements as it deems appropriate for the negotiation and drafting of an SPR constitution.

(3) An SPR constitution adopted by an SPR legislature shall not be inconsistent with the principles enumerated in Schedule 1 or the provisions of the new constitutional text adopted in terms of Chapter 5.

(4) An SPR constitution shall be developed in consultation with the Commission on SPR Government established in terms of section 13.

← (5) An SPR constitution adopted prior to the adoption of a new constitutional text in terms of Chapter 5 shall be approved and come into operation in terms of a resolution of the CMB passed by two thirds of its members.

(6) An SPR constitution adopted by an SPR legislature may be referred to the Constitutional Court by the chairperson of the CMB after being petitioned by one third of the members of the CMB in order to obtain an opinion from the Court as to whether such constitution, if adopted, would conform with the Constitutional Principles.

(7) An SPR constitution which is not in force prior to the new constitutional text intended in Chapter 5, shall be approved and come into operation in terms of such new constitutional text.

Development of constitutional provisions regarding SPR Government

11. (1) The development of a system of SPR government shall receive the priority attention of the CMB and in this regard it shall take into consideration the recommendations of the Commission on SPR Government referred to in section 13 and the views expressed thereon by the executives of the various SPRs.

(2) The Commission's recommendations to the CMB regarding any matter that falls within the ambit of its objects in terms of section 14 shall include draft provisions for the national Constitution.

(3) The CMB shall deal with such draft provisions in the same manner as it is required to deal with other constitutional provisions.

(4) Draft provisions recommended by the Commission which are not adopted by the CMB, shall lapse, except if a majority of the members of the CMB present and voting resolve that the recommended provisions be referred back to the Commission for further consideration.

(5) Draft provisions referred back to the Commission may again be presented to the CMB, provided that if amended in one or more substantive respects, the provisions of this section regarding the acceptance, rejection or referral of the recommendations of the Commission shall apply *mutatis mutandis*.

Election of new SPR Governments

12. An SPR government may at any time after the coming into force of an SPR constitution contemplated in section 10 or of the constitutional dispensation contemplated in section 11, petition the CMB to determine by resolution that an election for the establishment of a new SPR legislature and executive in that SPR, or in an SPR incorporating that SPR in whole or in part, shall be held.

Commission on SPR Government

Establishment of Commission on SPR Government

13. A Commission on SPR Government shall be appointed by the State President in terms of this Constitution within 30 days of its coming into operation.

Objects and functions of the Commission

14. (1) The objects and functions of the Commission regarding the establishment of SPR government in terms of this Chapter are to -

- (a) advise the national government and SPR governments on the establishment and consolidation of administrative institutions and structures in the SPRs; and
- (b) make recommendations to the national government regarding the extent of the legislative and executive competence of SPRs during the period of operation of this Constitution.

(2) The objects and functions of the Commission regarding the constitution making process provided for in Chapter 5 are to submit recommendations to the CMB in the form of draft constitutional provisions regarding -

- (a) the finalisation of the number and the boundaries of the constituent SPR's of the Republic of South Africa;
- (b) the constitutional dispensations of such SPRs, including the constitutional structures within such SPRs as well as the method of their election and their authority, functions and procedures;
- (c) measures, including transitional measures, that provide for the phasing in of new SPR constitutional dispensations;
- (d) the rationalisation of statutory enactments and public sector resources directed at facilitating the introduction and maintenance of a system of SPR government;
- (e) the final delimitation of powers and functions between national and SPR institutions of government with due regard to the criteria that are set out in subsection (3);

- (f) fiscal arrangements between the institutions of national government and those of SPR government;
- (g) the powers and functions of local governments; and
- (h) any matter which the Commission considers to be relevant or ancillary to its functions.

(3) In carrying out its functions the Commission shall, *inter alia*, take into consideration -

- (a) The provisions of this Constitution;
- (b) The principles enumerated in Schedule 1;
- (c) Historical boundaries, including those set out in Schedule 2, former provincial boundaries, magisterial and district boundaries and infrastructures;
- (d) Administrative considerations, including the availability or non-availability of infrastructures and nodal points for services;
- (e) The need to rationalise existing structures;
- (f) Cost-effectiveness of government, administration and the delivery of services;
- (g) The need to minimise inconvenience;
- (h) Demographic considerations;
- (i) Economic viability;
- (j) Developmental potential;
- (k) Cultural and language realities.

Constitution and impartiality of the Commission

15. (1) The Commission shall consist of not less than ten full-time members appointed for such period, not exceeding five years, as the State President may determine.

(2) At least one member of the Commission shall be appointed from each SPR after consultation with the Premier of the SPR.

(3) Members of the Commission shall perform their duties fairly, impartially and independently.

(4) Members shall not perform or commit themselves to perform remunerative work outside their official duties.

(5) A member of the Commission may not hold office in any political party or political organisation.

(6) It shall be an offence subject to penalties prescribed by law to attempt to influence a member to act otherwise than in accordance with the provisions of subsection (3).

Chairperson and deputy chairperson

16. (1) The State President shall designate one of the members of the Commission as chairperson and another as deputy chairperson.

(2) (a) When the chairperson is absent or not able to perform his or her functions as chairperson, or where there is a vacancy in the office of chairperson, the deputy chairperson shall act as chairperson, and if the chairperson as well as the deputy chairperson are absent or not able to perform the functions of the chairperson, the Commission shall elect another member to act as chairperson.

(b) Such member shall while acting as chairperson have all the powers and perform all the duties of the chairperson.

Vacation of office and filling of vacancies

17. (1) Members of the Commission shall vacate their offices if they resign or if they become disqualified to hold office for the same considerations and in the same fashion as would apply to a judge of the Supreme Court.

(2) Any person who has ceased to be a member of the Commission by reason of the effluxion of time may be reappointed.

(3) If a member of the Commission ceases to hold office, the State President may, subject to section 15 appoint somebody to fill the vacancy.

Meetings of the Commission

18. (1) Meetings of the Commission shall be held at a time and place to be determined by the Commission or, if authorised thereto by the Commission, by the Chairperson.

(2) A quorum for a meeting of the Commission shall not be less than one half of all its members.

(3) A decision of a majority of the members of the Commission shall constitute a decision of the Commission and in the event of an equality of votes the chairperson shall have a casting vote in addition to his or her deliberative vote.

(4) All the decisions of the Commission shall be recorded.

Committees

19. (1) The Commission may establish committees from among its number.

(2) Any such committee shall consist of such number of members as the Commission may determine.

(3) The Commission shall designate one of the members of the committee as chairperson thereof, and if any such chairperson is absent from a

meeting of the committee the members present shall elect one from among their number to act as chairperson.

- (4) (a) The Commission may, subject to such directions as it may issue from time to time-
 - (i) delegate any power granted to it by or under section 14 to such a committee; and
 - (ii) grant authority that a duty assigned to it by or in terms of section 14 may be performed by such a committee.
- (b) The Commission shall not be divested of a power so delegated and the performance of a duty so authorised, and may amend or set aside any decision of a committee.

Co-option of persons to serve on or advise committees

20. (1) A committee may co-opt any person to serve on a committee or to attend a particular meeting thereof in connection with a particular matter dealt with by the committee.

(2) Such a person may take part in the proceedings of the committee in connection with the matter or at the meeting in respect which he or she has been co-opted, but shall not be entitled to vote.

Remuneration and allowances of members of the Commission and other persons

21. Members of the Commission and persons referred in sections 16 and 20 who are not in the employment of the State, shall be paid, from moneys appropriated by Parliament for that purpose, such remuneration and allowances as the Minister of Finance may determine.

Regulations

22. The State President may make regulations regarding -

- (a) procedures in connection with any function of the Commission; and
- (b) any other matter in connection with the achievement of the objects of the Commission.

CHAPTER 10

Local Government

- General provisions regarding the powers, functions and structures of local government;
- The comprehensive powers, functions and other features of local government shall be set out in parliamentary statutes and/or SPR legislation.

CHAPTER 11

Finance

- Provisions relating to existing debts and liabilities of the state (note position regarding TBVC and the self-governing territories;
- the national and SPR revenue funds, taxation, appropriation and financial procedures and legislation;
- the Auditor-General;
- the Reserve Bank;
- the Financial and Fiscal Commission representative of the SPRs.

CHAPTER 12

General and transitional provisions

Provisions relating to:

- The legal system (continuation of statutory and common law subject to the Constitution, unification of provincial ordinances, TBVC laws and laws of the self-governing territories with national and SPR law, recognition of indigenous law);
- the status of international law;
- the independence and impartiality of the Commission for Administration and the security forces;
- civil society;
- method of publication of notices, etc.;
- affirmation in lieu of oath;
- construction of certain references;
- definitions and terminology;
- short title, commencement and duration of the Constitution.

SCHEDULE 1

Constitutional Principles

I

The Constitution of South Africa shall provide for the establishment of one sovereign state, a common South African citizenship and a democratic system of government committed to achieving equality between men and women and people of all races.

II

The Constitution shall be the supreme law of the land, shall be binding on all organs of government, shall prohibit racial, gender and all other forms of discrimination and promote racial and gender equality and national unity.

III

There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness.

IV

The judiciary shall be competent, independent and impartial and shall have the power and jurisdiction to safeguard and enforce the Constitution and all fundamental rights.

V

There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters roll, and in general, proportional representation.

VI

Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.

VII

Formal legislative procedures shall be adhered to by legislative organs at all levels of government.

VIII

The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged.

IX

Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected.

X

All shall enjoy universally accepted fundamental rights, freedoms and civil liberties, protected by entrenched and justiciable provisions in the Constitution.

XI

The legal system shall ensure the equality of all before the law and an equitable legal process. The principle of equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.

XII

The institution, status and role of traditional leadership, according to indigenous law, shall be recognised and protected in the Constitution. Indigenous law, like common law, shall be recognised and applied by the courts subject to the provisions of the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.

XIII

Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy.

XIV

Amendments to the Constitution shall require special procedures involving specified majorities.

XV

Government shall be structured at national, SPR and local levels.

XVI

At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of Principle XII.

XVII

Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. The allocation of powers between different levels of government shall be made on a basis which is conducive to financial viability at each level of government and to effective public administration, and which promotes national unity, legitimate regional autonomy and cultural diversity.

XVIII

The powers and functions of national and SPR governments shall be defined in the Constitution. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of SPRs shall in addition to any other procedures specified in the Constitution for constitutional amendments, also require the approval of a specified majority of the legislatures of the SPRs, alternatively, if there is such a chamber, a specified majority of a chamber of Parliament composed of regional representatives, and if the amendment concerns specific SPRs only, the approval of the legislatures of such SPRs will also be needed.

XIX

A framework for local government powers, duties, functions and structures shall be set out in the Constitution. The comprehensive powers, duties, functions and other features of local government shall be set out in parliamentary statutes and/or SPR legislation.

XX

The powers and functions of the national and SPR levels of government shall include exclusive and concurrent powers as well as the power to perform functions for other levels of government on an agency or delegation basis.

XXI

National and SPR governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in Principle XIX shall make provision for appropriate fiscal powers and functions for different categories of local government.

XXII

Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that SPRs and local governments are able to provide basic services and execute the functions allocated to them in the Constitution.

XXIII

A Financial and Fiscal Commission, representing inter alia each of the SPRs, shall recommend equitable fiscal and financial allocations to the SPR governments from revenue collected nationally, after taking into account the national interest, economic disparities between the SPRs as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the SPRs.

XXIV

The following criteria shall be applied in the allocation of powers to the national government and the SPR governments:

1. The level at which most control can be exercised effectively over the quality and delivery of services, should be the level responsible and accountable for the quality and the delivery of the services and such level shall accordingly be empowered by the Constitution to do so.
2. The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the SPRs.
3. Where it is necessary for the maintenance of essential national standards, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one SPR which is prejudicial to the interests of another SPR or the country as a whole, the Constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the Constitution.
4. The essential principles of the Constitution, including the fundamental rights contained therein, shall apply to all organs of the state at all levels of government.

5. Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government.
6. Where uniformity across the nation is required for a particular function, the legislative power over that function should be allocated predominantly, if not wholly, to the national government.
7. Where minimum standards across the nation are required for the delivery of public services, the power to set such standards should be allocated to the national government.
8. The determination of national economic policies, and the power to promote inter-SPR commerce and protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.
9. SPR governments shall have powers, either exclusively or concurrently with the national government, inter alia -
 - 9.1 for the purposes of regional planning and development and the delivery of services; and
 - 9.2 in respect of aspects of government dealing with the specific socio-economic and cultural needs and the general well being of the inhabitants of the SPR.
10. Where mutual co-operation is essential or desirable or where it is required to guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the SPR governments.
11. In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national and SPR governments which cannot be resolved by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the national government.
12. The Constitution shall specify how powers which are not specifically allocated in the Constitution to the national government or to an SPR

government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national or SPR governments.

XV

Notwithstanding the provision of any other clause, the right of employers and employees to join and form employer organisations and trade unions and to engage in collective bargaining shall be recognised and protected.

XVI

The independence and impartiality of a Commission for Administration, a Reserve Bank, and Auditor-General and Ombudsman shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the Civil Service.

XVII

Every member of the security forces (police, military and intelligence), and the security forces as a whole, shall be required to perform their duties and functions and exercise their powers in the national interest and shall be prohibited from furthering or prejudicing party political interest.

SCHEDULE 2

Boundaries and Designation of SPRs

[Report of the Commission on Delimitation/Demarcation of SPRs]

SCHEDULE 3

System for the Election of the National Assembly and SPR Legislatures