

## LIST OF TECHNICAL COMMITTEE I.T.O RENUMERATION

### ACADEMICS

Professor A Seegers  
Professor H Vilikazi  
Mr V Ntsubane  
Professor GE Devenish  
Professor M Wiechers  
Professor H Corder  
Professor LM du Plessis  
Professor D van Wyk  
Professor D Davis

10. Professor J Dugard

11. Professor HG Erasmus

### ATTORNEYS

Mr F Cachalia  
Dr F Haysom  
Mr Me Mapheto  
Ms A Armstong  
Mr RB Rosenthal

Ms Z du Toit

### PRACTISING ADVOCATES

e Advocate P Oosthuizen

2. Advocate A Chaskalson

3 Advocate E Moseneke

4. Advocate B Ngoepe

5. Advocate W Olivier

6. Advocate J Renene

7. Advocate D Dison

8. Advocate L Laubscher

9. Advocate P Langa

10. Advocate P Moroka-Motlana

11. Advocate Z Yacoob

#### OTHERS

Ms D Nene ( Urban Foundation)

e Mr E Mabuza ( Director of Companies)

#### GOVERNMENT/PARA. STATAL

1. Dr F Venter

2. Mr G Grove

3. Dr JC Heunis

4. Advocate P Pretorius

5. Mr S K Ndlovu

PROCEDURES TO BE FOLLOWED IN THE DRAFTING AND ADOPTION BY  
THE MPNP OF A TRANSITIONAL CONSTITUTION

: Background

In the Draft Resolution on Constitutional Issues presented to the Negotiating Council by the Planning Committee on 1 June 1993, the following paragraph, which was supported

by a number of participants, appeared:

2. There is a need for the adoption of a Constitution for the transitional period, the text of which is agreed to at the Multi-Party Negotiating Process:

2.1 Which shall be drafted in accordance with the constitutional principles agreed upon in so far as they may be applicable;

2.2 Which will provide, inter alia, for justiciable fundamental rights, the structures of national and regional governments and their respective powers, functions and authority; and

2.3 ... which will provide for the procedures relating to the drafting and adoption of a Constitution by the elected constitution-making body.

Our understanding our instruction in terms of paragraph 3.3 of the Draft resolution (which, as part of paragraph 3, was adopted unanimously by the Negotiating Council) is that we must proceed on the premise that the process and constitutional structure envisaged in paragraph 2 of the draft resolution (quoted above) may meet the approval of all participants when the details of such process and structure have been developed.

2. The development and formalisation of a transitional Constitution

In terms of the thinking reflected in the draft resolution of 1 June, the text of the transitional Constitution will emerge from the cumulative development of political consensus within the MPNP.

The exact formulation of different components of the text of the transitional Constitution will be developed within the framework of the instructions of the relevant Technical Committees appointed by the Negotiating Council, and it will be co-determined by the work of other institutions such as the Commission for the

Demarcation of Regional Boundaries and the Independent Elections Commission.

In view of the fact that the MPNP does not have legislative powers, the transitional Constitution will have to be adopted formally by Parliament. It should however be clear that all parties participating in the MPNP that are also represented in Parliament, will be bound by the agreement concerning the precise wording of the transitional Constitution. The implication is therefore that no amendments to the agreed text will be adopted by Parliament without the concurrence of the MPNP. This would further mean that the final text agreed upon, will have to conform to all the technical

requirements of a draft Bill.

### 3. Elements of a transitional Constitution

Despite the fact that the constitutional principles enuciated in our Third Report are primarily designed to be incorporated in the transitional Constitution in a manner that, by means of their justiciability, will bind a constitution-making body established by the transitional Constitution in its task, the principles should also serve as a guideline for

the design of the transitional Constitution.

In the development of the text of a transitional Constitution, agreement should in our view be sought systematically. For this purpose it is recommended that the elements of the transitional Constitution be considered in the order set out below. We propose to develop draft texts dealing with the elements falling within our mandate in sequence.

3.1 The composition and functioning of the national legislature. Components of this element of the transitional Constitution will include:

3.1.1 The composition of the legislature as constitution-making body, its election and its procedures.

3.1.2 The composition of the legislature as national law-giver, its election and its procedures.

3.2

3.4

3.5

The composition and functioning of the national executive. Considerations under this  
il

3.2.2

3:2:3

3.2.3

3:3

heading will include:

Multi-party participation in the executive.

The location and nature of the powers and functions of the Head of State.

The location and nature of the powers and functions of government and  
administration.

The constitutional relationship between the executive and the legislature.

The location of the judicial power, the composition of the judiciary and the  
nature of the judicial function. Matters to be addressed in this respect will  
include:

3.3.1 Adjudication of the provisions of the transitional Constitution, including  
the protection of fundamental rights and adherence by the constitution-  
making body to the constitutional principles.

3.3.2 The appointment of judicial officers.

3.3.3 Continuity of the judicial function.

Fundamental Rights. This element of the transitional Constitution should, to a large  
extent, be the product of the work of the Technical Committee on Fundamental  
Rights during the Transition.

Powers, functions and structures of SPR's during and after the transitional period.

Regarding the powers and functions of SPR's during the transition, reference  
should be made to our Fourth Report. In addition to the matters addressed in  
the Fourth Report, and concerning SPR structures, the following will have to

receive consideration:

3.5.1 Consolidation of the legislative and executive powers and functions within a SPR.

3.5.2 The location of the legislative and executive functions and powers of a SPR.

3.5.3 SPR representation in national institutions.

3.5.4 Method and procedure for the establishment of SPR structures in a "final" dispensation.

3.6 Other matters, structures, procedures and arrangements. These will include:

3.6.1 A preamble.

3.6.2 National symbols and official languages.

3.6.2 Finance.

3.6.3 Other institutions (eg. an Ombudsman, a Fundamental Rights

Commission, etc.)

3.6.4 General and transitional provisions.

Elements of a transitional Constitution requiring priority consideration at the MPNP

In order to facilitate the expeditious production by the Technical Committee of draft texts of sections of the transitional Constitution, we request the Negotiating Council to give consideration to the following issues as a matter of priority:

4.1 Should the national legislature be composed unicamerally or bi-camerally?

4.2 Should the transitional Constitution provide for multi-party participation in the national executive?

4.3 Should a Constitutional Court be established by the transitional Constitution?

4.4 Should the legislative and executive structures of the SPR's be elected or appointed?

## 2 CONSTITUTIONAL PRINCIPLES

In the Negotiating Council's mandate to the Technical Committee on Constitutional Issues of 18 May 1993, this Committee was instructed, inter alia, to:

Provide the Negotiating Council with a report on constitutional principles.

The Technical Committee also received submissions from various participating parties on constitutional principles.

The following paragraphs reflect the preliminary conclusions of the Technical Committee based upon a consideration of the relevant documents.

### 2.1 On the purpose and nature of a set of constitutional principles

Constitutional principles could play an important role in providing participants with the security they need in the process of constitutional transition with regard to future opportunities for political participation and other basic concerns. (Refer to the Technical Committee

report to the NC, par ) The principles should therefore incorporate basic rights of political participation, multi-party democracy, checks and balances, separation of powers and secure SPR representation in order to ensure that a future constitutional system provides for the protection of minority and regional interests.

The principles should provide a clear framework for the drafting and adoption of a future Constitution.

The principles should not have the character of constitutional provisions as such, but they should establish clear parameters within which a future Constitution must be drafted.

The principles must be formulated in clear language which is capable of effective judicial interpretation and adjudication.

Although the principles and constitution making process are related, it may be desirable to reach agreement on constitutional principles first. In drafting such principles, regard may be had to other precedents, international instruments, the CODESA documents and the submissions of parties.

### 2.2 Emerging consensus

It appears from the documents and submissions that we have considered, that consensus has emerged in relation to the following:

(a) Democracy in the form of universal adult suffrage at all levels of government.



(b) Supremacy of a rigid Constitution, whereby the validity of all laws and all acts of government is made subject to consistency with the provisions of the Constitution, such consistency being justiciable by an independent judiciary.

(c) The inclusion in the Constitution of a set of fundamental rights authoritatively protecting the individual in a non-discriminatory manner against the state and all its organs.

(d) The constitutional separation of the executive, legislative and judicial powers.

(e) The constitutional distribution of the powers of government among democratically elected national, regional and local institutions.

(f) Constitutional recognition and accommodation of the variety of cultures and religions being practised, and languages used by various segments of the population.

It should be noted that the above wording is not intended as formulations of constitutional principles as such, but simply to indicate areas of consensus.

2.3 Matters of principle requiring further negotiation

From a perusal of the relevant documents it would appear that the following matters of principle require further consideration and negotiation:

Traditional institutions

Constitutional arrangements regarding the Auditor-General, security forces, the Ombudsman and the Commission for Administration

Subsidiarity

Bicameralism

Asymmetrical federalism

Civil society

Power sharing

## PROCEDURES TO BE FOLLOWED IN THE DRAFTING AND ADOPTION BY THE MPNP OF A TRANSITIONAL CONSTITUTION

### 1. Background

In the Draft Resolution on Constitutional Issues presented to the Negotiating Council by the Planning Committee on 1 June 1993, the following paragraph, which was supported by a number of participants,

appeared:

2 There is a need for the adoption of a Constitution for the transitional period, the text of which is agreed to at the Multi-Party Negotiating Process:

2.1 Which shall be drafted in accordance with the constitutional principles agreed upon in so far as they may be applicable;

2.2 Which will provide, inter alia, for justiciable fundamental rights, the structures of national and regional governments and their respective powers, functions and authority; and

2.3 ... which will provide for the procedures relating to the drafting and adoption of a Constitution by the elected constitution-making body.

Our understanding the instruction in terms of paragraph 3.3 of the Draft resolution (which, as part of paragraph 3, was adopted unanimously by the Negotiating Council) is that we must proceed on the premise that the process and constitutional structure envisaged in paragraph 2 of the draft resolution (quoted above) may meet the approval of all participants when the details of such process and structure have been developed.

### 2. The development and formalisation of a transitional Constitution

In terms of the thinking reflected in the draft resolution of 1 June, the text of the transitional Constitution should emerge from the cumulative development of political consensus within the MPNP.

The exact formulation of different components of the text of the transitional Constitution will be developed within the framework of the instructions of the relevant Technical Committees appointed by the Negotiating Council, and it will be co-determined by the work of other institutions such as the Commission for the Demarcation of Regional

Boundaries and the Independent Elections Commission.

In view of the fact that the MPNP does not have legislative powers, the transitional Constitution will have to be adopted formally by Parliament. It should however be clear that all parties participating in the MPNP that are also represented in Parliament, will be bound by the agreement concerning the precise wording of the transitional Constitution. The implication is therefore that no amendments to the agreed text will be adopted by Parliament without the concurrence of the MPNP. This would further mean that the final text agreed upon, will

have to conform to all the technical requirements of a draft Bill.

### 3. Elements of a transitional Constitution

Despite the fact that the constitutional principles enuciated in our Third Report are primarily designed to be incorporated in the transitional Constitution in a manner that, by means of their justiciability, will bind a constitution-making body established by the transitional Constitution, the principles should also serve as a

guideline for the design of the transitional Constitution.

In the development of the transitional Constitution, agreement should in our view be sought systematically. For this purpose it is recommended that the elements of the transitional Constitution be considered in the order set out below. We propose to develop draft texts dealing with the

elements falling within our mandate in sequence.

3.1 The composition and functioning of the national legislature. Components of this element of the transitional Constitution will

include:

8: 1Â«1 The composition of the legislature as

constitution-making body, its election and its procedures.

3.1.2 The composition of the legislature as national law-giver, its election and its procedures.

3.2 The composition and functioning of the national executive.

Considerations under this heading will include:

3.2.1 Political participation in the executive.

3.2.2 The location and nature of the powers and functions of the Head of State.

3.

3

3

6

3.2.3 The location and nature of the powers and functions of government and administration.

3.2.3 The constitutional relationship between the executive and the legislature.

The location of the judicial power, the composition of the judiciary and the nature of the judicial function. Matters to be addressed in this respect will include:

3.3.1 Adjudication of the provisions of the transitional Constitution, including the protection of fundamental rights and adherence by the constitution-making body to the

constitutional principles.

3.3.2 The appointment of judicial officers.

3.3.3 Continuity of the judicial function.

Fundamental Rights. This element of the transitional Constitution should, to a large extent, be the product of the work of the

Technical Committee on Fundamental Rights during the Transition.

Powers, functions and structures of SPRâ\200\231's during and after the transitional period. Regarding the powers and functions of SPR's during the transition, reference should be made to our Fourth Report. In addition to the matters addressed in the Fourth Report, and concerning SPR structures, the following will have to

receive consideration:

3.5.1 Consolidation of the legislative and executive powers and functions within a SPR.

3.5.2 The location of the legislative and executive functions and powers of a SPR.

3.5.3 SPR representation in national institutions.

3.5.4 Method and procedure for the establishment of SPR structures in a "final" dispensation.

Other matters, structures, procedures and arrangements. These

will include:

3.6.1 A preamble.

3.6.2 National symbols and official languages.

3.6.2 Finance.

3.6.3 Other institutions (eg. an Ombudsman, a Fundamental Rights Commission, etc.)

3.6.4 General and transitional provisions.

Elements of a transitional Constitution requiring priority consideration at the MPNP

In order to facilitate the expeditious production by the Technical

Committee of draft texts of sections of the transitional Constitution, we request the Negotiating Council to give consideration to the

following issues as a matter of priority:

Should the national legislature be composed unicamerally or bi-camerally?

Should the transitional Constitution provide for multi-party participation in the national executive?

Should a Constitutional Court be established by the transitional Constitution?

Should the legislative and executive structures of the SPR's be elected or appointed?

ECTRCON . DOC  
8 JUNE 1993

## Political participation in the executive

In the interests of inclusivity and legitimacy of government and administration in the period following the elections, there are sound reasons for the establishment of a Government of National Unity composed of representatives of the political

parties emerging from the elections with significant support.

One approach to achieve a multi-party government would be to allow the ordinary political process to run its course, which

may possibly lead to the formation of a coalition government.

Another approach (which is being advocated by some of the participating parties), would be to provide for a procedure in the Constitution whereby a multi-party government may be composed, while simultaneously affording the parties with significant support a choice to participate in such government

or not.

Should the latter approach be broadly acceptable to the Negotiating Council, we will formulate the relevant draft

constitutional provisions.

The location and nature of the powers and functions of the

## Head of State and executive government

South African constitutional history has known both a system of symbolic Head of State and the present system of an executive Head of State. A fundamental question regarding the next dispensation which will have to be confronted by the Negotiating Council, is whether the Head of State in the Constitution should be an executive or titular State President. A system of executive Head of State will tend to concentrate governmental power in the hands of the leader of the majority party or coalition of parties, whereas the separation of the office of Head of State from the rest of the

executive, will tend to divide the bulk of the executive power between two or more office bearers, and possibly also among two or more political parties. An agreement in the Negotiating Council regarding this issue is required to enable us to frame a constitutional proposal.

The constitutional relationship between the executive and the legislature

The measure of separation of powers regarding the legislative and executive functions will determine questions regarding, inter alia, the accountability of the executive to the legislature, whether Ministers may be appointed only from the elected ranks of the legislature or otherwise, the question whether draft legislation may be initiated by ordinary members of the legislature or only by Ministers, and the right of the Head of State and Ministers to address the legislature on their own initiative or only on request/demand by the legislature. Debate and agreement on these matters in the Negotiating Council is called for.

The Jjudicial function wunder the Constitution for the transitional period

Various issues regarding the Jjudiciary will require the attention of the negotiating parties. In order to enable a beginning to be made in the framing of constitutional provisions regarding the judiciary, clarity on the following

crisp issues is neccessary:

] Should the existing judiciary be given the jurisdiction to decide issues emanating from the provisions of the

Constitution, including conformity of constitutional legislation to the binding constitutional principles and the protection of fundamental rights?

Should Jjudicial structures other than the ordinary courts be established for the adjudication of

constitutional matters?

Should a special Constitutional Court be established, and if so, should it be an integral part of the existing judicial structures or should it have a separate and

independent existence?



# Historical and Socio-cultural considerations in respect of North-west Region (Dr BM Malefo)

## 1. Preamble

The sub-group of the Task Force, Group Three was given a brief to look deeper into socio-cultural issues (including historical factors in respect of the sensitive areas as identified by the Negotiating Council).

The group comprises:

Anna Steyn - Co-ordinator  
Beauty Malefo

Sipho Buthelezi

Betty Govinden

Koos Reyneke

Neil de Beer

Chief Burns-Ncamashe

Sensitive areas identified

Refer to pp112 of the Draft minutes of the first meeting of members of the Task Force on further work in the Delimitation/Demarcation of SPRs held at the World Trade Centre on 4 September 1993 from 10h30.

2. Analysis of hearings of oral evidence and some of the written submissions which I managed to plough through, I find it reasonable to conclude that, there is a strong feeling that:

- the districts of Bophuthatswana;
- Odi 2 and Moretele 1 and 2.
- the district of Warmbad (or part of it)
- Region C (OFS)
- Qwa Qwa
- Thabanchu

should all be included in the North-West region as shown in the present map produced by CDDR to form one region and that Sasolburg be included in OFS and the districts of Kudumane, Postmansburg and Hartswater remain as shown in the North-west region. In a nutshell - SATSWA OPTION THREE.

At the meeting of group 3 held on the 18 September 1993, I was given a brief to look at socio-cultural issues including history, language, ethnicity and sense of identity with special reference to the North-west region and all those regions and districts that are related to it in terms of the list of sensitive areas.

After the meeting of the Task Force that was held on 6 October 1993, the co-ordinator of

Group Three, Professor A Steyn asked members of the group to submit individual reportss since it was not going to be possible to draw a composite report on account of time constraints.

It is on the bais of the above raised issues that I now submit this report based on my brief as already outlined to be considred when drafting the report which is to be submitted to the Negotiating Council on 14 October 1993.

Volume 3

Submission 1/11/20/26 24 August 1993  
Stellaland: Comments in the CDDR Report.  
JH de Jager 24 August 1993

Stellaland Regional Services Council

"Die raad sou agter baise meer tevrede wees indien die nuutste poging van die sogenaamde SATSWA forum om ook die Oranje Vrystaat tot die Noordweste streeek te land toevoeg, sou slaag."

Volume 5

Submission 1/11/20/39

Regional Development Advisory Committee

Region C - OFS 24 August 1993

(Oral evidence - Welkom 21 September 1993)

Page 12 3.8 Taal and Kulturele gemeenskaaplikhede.

"Sothos and Tswanas het taal verskille, maar kan met mekaar kommunikeer. Ook van uit in godsdiens boekbelyk dit volgens dis Departement godsdiens verwantskap bestaan tussen die Suid Sothos's en die Tswanas".

Page 13 (4.3) SATSWA -Voorstelle

9... wat hulle derde scenario betref bly dit duidelik dat hulle nie probleme het met 'n gebied wat Bophuthatswana Wes- Transvaal en die Vrystaat in sit nie."

Volume 5

Submission 1/11/20/40 25 August 1993

Stella Municipality comments on the Report CDDR

"Stella Munisipaliteit is tevrede met dis voorlopige indeling van hierdie gebied in dis streek bekend as:-

Noord-weste -Die raad sou egter balse meer tevrede wees indien dis nuutste poging

van die sogenaamde SATSWA forum om ook die Oranje-Vrystaat tot die Noordweste streek te laat toevoeg, sou slaag".

Submission 1/11/20/42 27 August 1993

Council of Vryburg (Comment on CDDR report)

"Die stadsraad steun dis afbakening van die streek bekend as Noord-Wes waarin Vryburg akkomodeer kan word, maar wil voorts aanbeveel en ondersteun die gedagte dat die gebiede Noord-Wes en die Vrystaat, soos dit huidige tyd die kaart aangetoon word, een eenheid behoort te vorm."

Volume 7

Submission 1/11/20/60 21 September 1993 Oral evidence

Town Council of Sasolburg

"Hieruit blyk duidelik dat di gemeenskap van Sasolburg oorweldigend twyn gunste van die indeling van Sasolburg by die OVS is".

Page 7 Socio-cultural

"Daar heers ook in evesoortige plaaslik owerheidskultuur in die OVS wat by in indeling van Sasolburg by dis OVS met grrot voordeel vir al die gemeenskappe voort gesti, kan word. Daar benewens bestaan darr ook groot logaliteit by sie blanke gemeenskappe in die OVS teenoor hulle plaaslike en provinsiale owerhede".

Oral evidence: Welkom on Tuesday 21 September 1993 by

Regional Development Advisory Committees

Region C (OFS)

City Council of Zamdele

City Council of Bloemfontein

Town Council of Sasolburg

Executive summary at the hairng of oral evidence by JM Laubscher (Ms PhD).

Page 77?7 "In view od the argumants put in this report and the evidence to that

effect the author supports the inclusion of Sasolburg in a Free State Region".

Submission 1/11/20/70

The Battle of the Borders

A Case for the Inclusion of Sasolburg in the Orange Free State

These representations are made by the magisterial district of Sasolburg, vis the folloiwnng towns:

Zamdela

Refengkgotso

Deneysville

"The congruence of all borders pertaining to Sasolburg in the Orange Free State is a necessary pre-condition ...."

(Mrs Rosil Jager - Sasolburg 30 August 1993)

Welkom 21 September 1993 (Oral evidence)

List of organisations consulted:

Cosatu

Ikageng Women's Club

Mmulakhoru Business Associaton

Mongoli Taxi Association

Sanco - Refengkhotsa and Metsindis