

# **COMMISSION ON PROVINCIAL GOVERNMENT:**

## **SUBMISSIONS BY THE CONSTITUTIONAL COMMITTEE OF THE NORTHERN CAPE PROVINCIAL LEGISLATURE**

### **KEY CONSTITUTIONAL ISSUES**

#### **PROVINCIAL AND LOCAL GOVERNMENT**

##### **1. PROVINCIAL LEGISLATIVE COMPETENCE**

- 1.a Provinces have a choice between having entrenched exclusive legislative powers, thus sacrificing a say in national legislative powers, or having a say in national powers with concurrency. Which is preferable'?

Neither of these options is preferable. A combination of exclusive and concurrent legislative powers should be considered ( as has already been guaranteed by constitutional principles XVIII to XXI) Certain powers need to be exclusively allocated to the national level, other powers exclusively to the provincial level (with certain standardization provisos) All those powers not specifically listed must be regarded as potential exclusive provincial legislative powers or possible concurrent powers depending on negotiation between provincial and national authorities and must be facilitated by an independent and impartial body, such as the constitutional court. The exclusive national competencies should be: Foreign Affairs, Defence, Finance and Copyright Law.

- 1.b What would be the appropriate legislative powers to allocate to provinces in the light of the preference expressed in (a)

The proposed appropriate provincial legislative powers should be:

- \* Agriculture
- \* Abattoirs
- \* Airports other than international (national airports to be considered separately)
- \* Animal control and diseases
- \* Casinos, racing, gambling and wagering
- \* Consumer Protection
- \* Cultural Affairs
- \* Economic Affairs

- \* Education at all levels, excluding university and technikon education (teachers colleges and technical colleges need to be considered separately)
- \* Environment and conservation
- \* Health services - requires definitions i.e. which levels
- \* Housing
- \* Indigenous law and customary law
- \* Language policy and the regulation of the use of official languages within a province, subject to section 3.
- \* Local Government, subject to the provisions of chapter 10.
- \* Markets and Pounds
- \* Nature conservation ( national parks, national botanical gardens and marine resources should be considered separately.)
- \* Police subject to all provisions of Chapter 14
- \* Provincial Sport and Recreation
- \* Provisional Fiscal and Financial Control
- \* Provincial public media
- \* Provincial Public Protector
- \* Provincial Public Works
- \* Public Transport
- \* Reconstruction and Development Programme at Provincial level
- \* Regional Planning and Development
- \* Road traffic regulation
- \* Roads
- \* Soil Conservation

- \* Tourism
- \* Trade and Industrial Promotion
- \* Traditional Authorities
- \* Urban and Rural Development
- \* Welfare Services
- \* Question of Standardization should be addressed.

However all those items not specifically listed above should be regarded as potential exclusive provincial powers or as concurrent powers depending on negotiations between provincial and national authorities, which should be facilitated by an independent and impartial body such as the Constitutional Court.

1.c How are the powers and functions going to be established?

1.c.i Should the allocation be on the basis of specific allocation to one level of government with residual powers to the other?

No as already stated in 1.a

1.c.ii In the case of concurrent powers, should the Constitution spell out the detail of powers allocated to each of the legislatures or are the provisions in section 126 in conjunction with schedule 6 of the interim constitution adequate?

No, the constitution should not spell out the detail of the powers allocated to each of the legislatures. However it is imperative that the Constitution make provision for section 126 not to be used in such a way as to minimize powers and functions.

1.c.iii How should powers which are not specifically allocated in the new constitution be dealt with (CP XXI)?

This must be facilitated by an independent and impartial body such as the Constitutional Court.

1.c.iv Should all provinces exercise identical powers. Should provinces be able to decide which powers they wish to exercise?

No, provinces need to be self-determining according to their unique needs. Yes, provinces must be able to decide which powers they wish to exercise.

1.c.v How should future disputes about legislative powers be settled?

By negotiation, facilitated by an independent and impartial body such as the Constitutional Court.

1.d How explicitly should the Constitution address these issues?

These issues should not be too explicitly addressed. The constitution should address broad principles in line with the 34 Constitutional Principles.

## **2. PROVINCIAL CONSTITUTIONS**

2.a To what extent should the national Constitution specify the form and content of provincial constitutions?

In answer to this question, (we have chosen option b.) that is provinces should be entirely free to shape their own constitutions, provided only that they are not in conflict with the National Constitution.

## **3. PROVINCIAL LEGISLATURES**

3.a Do checks and balances between the provincial legislature and provincial executive need to be improved?

Yes, they do need to be improved.

3.a.i Do you consider that one branch of government is dominant at present in your province?

Yes, the Provincial Cabinet is dominant at present.

3.a.ii Should there be a greater role for the legislature in introducing legislation?

Yes. In addition, provision should be made to ensure that proposals for legislation proceed through the system.

3.a.iii Should the legislature have greater leeway in turning down bills emanating from the executive? (if so, this would probably indicate an independently elected executive).

The standing committee system is working well and has already established a procedure for processing bills.

3.a.iv How can provincial legislatures be made more accessible to the public?

The public should be encouraged: to make written and oral submissions to and ask questions of the standing committees, to submit petitions; to attend sittings of the legislature and to attend committee meetings.

- 3.a.v Should the legislature fulfil a greater watchdog role over the administrative departments at provincial level? What limits should there be on this role? What are the implications for the separation of powers?

The legislature does need to have a strong watchdog role over administration departments at provincial level. This role should not take the form of an individual MPL making direct personal contact with any official in any department; it should take the form of a standing committee asking a Minister to respond on behalf of his department, or asking for a response from officials within that department. In that case the Minister should be informed of the committee's intention, as a courtesy gesture, although the Minister would not have the right to refuse. Other means of exercising the watchdog role are by means of questions and interpellations in the house. This can be undertaken by any member, but should only be directed to the Minister responsible. The separation of powers would not be negatively effected, it would in fact enhance the accountability of the executive to the legislature and the transparency of government.

- 3.a.vi Should the legislature have a guaranteed period of existence, or should the executive have the right to dissolve the legislature.?

Yes, the legislature should have a guaranteed period of existence, only in the case of a vote of no - confidence in the Premier would there be a premature dissolution of the Legislature.

- 3.a.vii Should MECs be members of party caucuses?

Yes, MEC's should be members of party caucuses. Generally speaking, these members should act on a mandate from their caucuses.

- 3.a.viii Should the executive convene sittings of the legislature, or should it be decided by the constitution?

The speaker should convene sittings of the Legislature in conjunction with the Premier.

- 3.b At present, no member of a provincial legislature represents a geographic constituency, because of the form of PR being used. There are other options, such as:

- \* A multimember constituency system, or
- \* Electing a proportion of the legislature on the basis of constituencies, while the rest are elected on party lists.

Should a constituency system be introduced alongside, or in conjunction with, the PR system?

Without being prescriptive this committee decided to choose the second option that is electing a proportion of the legislature on the basis of constituencies, while the rest are elected on party list.

- 3.c In terms of Section 133(1)(b) of the Interim Constitution, a member of a provincial legislature will vacate his/her seat if he/she ceases to be a member of the party which nominated him/her. Is this provision consistent with Principle VII ('representative government' and multiparty democracy)?

Broadly speaking and in accordance with internationally accepted principles of democracy and freedom of association, Section 133(1) (b) is in conflict with constitutional principle VIII. We acknowledge that the different political parties have different views on this particular issue and we request them to make submissions in this regard through the different channels available to them.

- 3.d According to Principle VIII, 'regular elections should be held:-

If national and provincial elections were held at different times, could it strengthen the provinces' focus on politics and issues?

Simultaneous elections should (b) be required, unless circumstances such as a vote of no-confidence dictate otherwise.

- 3.e In terms of Principle XX, "Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively". Do you believe that an extensive or vibrant committee system would contribute to the effectiveness of the legislative process?

Yes.

- 3.f Should provincial legislatures' staff fall under the Public Service commission, the executive, or the legislature itself?

This should fall under the Legislature itself.

#### **4 PROVINCIAL EXECUTIVES**

- 4.a Should each province be allowed to decide the composition and powers of its executive? If so, are safeguards needed to prevent provinces from establishing undemocratic institutions?

Yes, in both instances

4.b Principle VI requires that legislature and executive be separated. At present, the provincial executives are composed of 11 members of the provincial legislatures. Is this an adequate form of separation of powers?

This does not indicate separation of powers one way or the other. It depends on how it is run.

Executive may be established in various ways. The executive should be appointed by the chief executive (Premier), who is elected directly, from among the members of the legislature.

\* It is possible for an executive to be elected directly by the citizenry. Are you in favour of such a system?

No

\* At present, the MECs may form a large proportion of the legislature. Is this satisfactory?

(i) Should MECs be members of the legislature at all?

Definitely

(ii) Should legislature be enlarged?

Yes, they must be enlarged to become four or five times the size of the executive.(The number of elected representatives at National level should be reduced.)

(iii) Should the size of the executive be limited?

Yes, but this should be realistic in terms of the number of provincial competences.

\* At present, the constitution provides for the appointment of staff of the legislature by the province. Is this satisfactory? Should there be a separation between the national Public Protector and the Provincial Public Protector?

No this is not satisfactory. Yes there must be a separation.

\* Is the present relationship between the national Public Protector and the Provincial Public Protector satisfactory?

Only time will tell.

4.c What should the position be when the connection Premier or MEC with the party list is severed?

The caucus of that party would then have to decide on a new candidate (in the case of the MEC). In the case of the Premier it would have to be submitted to the house.

- 4.d Should there be constitutional provisions relating to governments of unity at the provincial level?

If there is provision made at national level for a government of unity, there would have to be similar provisions at the provincial level.

- 4.e Should there be uniform provisions in the national Constitution for procedural matter relating to provincial executives, as contained in section 145 to 154 of the interim Constitution?

Procedural matters relating to provincial executives should be determined by the provincial Constitution.

## **5. PROVINCIAL STAFF MATTERS**

- 5.a Should all provincial staff (other than a legislatures staff) be part of the Public Service? If so-

Yes

- \* Is there a need for a Provincial Service Commission for each province?

Yes, there is need for Provincial Services Commission for each province

- \* What should be the powers and functions of a Provincial Service Commission, vis a vis the Public Service Commission?

The power of Provincial Service Commission should be related specifically to the Provincial Civil Service, whereas the Public Service Commission should deal with the nationally appointed civil servants. The question of standardization of service condition needs to be addressed.

- \* In view their limited powers and functions under the present Constitution, how many members should served on such commissions and should they be full-time or part-time?



A chairperson and vice chairperson must be appointed full-time with three part-time members. However decision on this should remain under the control of the Provincial Legislature.

\* Should the new Constitution provide for Provincial Service Commissions?

Yes.

MR GG MOKGORO  
CHAIRPERSON  
PROVINCIAL CONSTITUTIONAL COMMITTEE

## **PROVINCIAL LEGISLATURE OF THE NORTHERN CAPE**

### **KEY CONSTITUTIONAL ISSUES**

#### **PROVINCIAL AND LOCAL GOVERNMENT**

#### **SUBMISSION BY THE CONSTITUTIONAL COMMITTEE**

### **6. FINANCIAL AND FISCAL ISSUES**

6.a Which economic principles or criteria should play a dominant role in determining the revenue powers assigned to provinces by the Constitution?

An optimal system of subnational government financing would be based on the principles of equity, stability, efficiency, autonomy, and simplicity. It would be transparent, and based on objective, stable criteria as well as being administratively cost-effective and efficient. All of the other criteria suggested are covered by this statement of principle and could be expanded by appropriate legislation as required.

6.b What constitutional provision should be made for:

\* exclusive revenue (tax and non-tax) powers to central and provincial levels (separation of revenue powers); and

\* concurrent powers over revenue source (sharing of revenue bases)?

Are the existing provisions adequate?

### **7. TRADITIONAL AUTHORITIES**

7.a What should be the role of traditional authorities; how should this role be reconciled with other elements in the constitutional system. and how should the Constitution deal with these matters?

It is recommended that:

- \* the role of traditional authorities should be recognized only where the existence of such authorities is historically proven;
- \* a cut- off date, as in the interim constitution, should not be set;
- \* any decision-making power be restricted solely to areas of indigenous and customary law;
- \* such decision making power should never be in conflict with any constitutional principles or article of the Constitution. e.g. human rights should not be compromised;
- \* such decision-making should not be allowed to conflict with laws and regulations at national, provincial and local levels;
- \* wherever logistically possible and practical, formal structures should be set to ensure harmonious cooperation between the traditional authorities and all spheres of government.
- \* the Constitution of the country should provide only the basic principles; more specific provision could be made in the separate Provincial Constitutions (thereby recognizing the extent to which this will differ from province to province).

7.b Should the Constitution provide a basis for determining who are to be recognized as traditional leaders?

Yes. It is recognized that this will be difficult, and a great deal of negotiation will be required as to how this should be worded. Nonetheless, it is necessary to ensure that the recognition is not extended too far, which would become economically unaffordable.

7.c What should be the powers and functions of traditional leaders at each level of government? Should this be provided for in the Constitution?

This has been dealt with to some extent in (a). At all levels of government this should be primarily consultative and advisory, without taking away any authority accorded by the Constitutional Principles. Some provisions for this could be made in the provincial constitution, but only in terms of broad principles, with specifics dealt with in legislation.

7.d What should be the relationship between traditional authorities and elected structures at various levels?

The responses to (a) and (c) answer this question. In recognition of the supremacy of democratic principles, the authority of elected structures should not be compromised, however, the authority accorded to traditional leaders by the Constitutional Principles remains intact.

7.e Should provinces have exclusive power with regard to traditional matters? If not, which matters should be subjected to national regulation?

Yes. However, there needs to be some provision at national level to take into account difficulties which may be encountered where traditional authorities cross provincial boundaries.

7.f Should the Constitution provide a basis for determining the number and remuneration of traditional leaders, and the size of Houses of Traditional Leaders? What might that basis be?

Yes, in terms of determining the principles to be applied in reaching decisions with regard to members and remuneration. Actual numbers and remuneration figures should be dealt with in legislation.

Affordability should be the key note.

\* CLOSING REMARK:

Traditional authorities must be accepted by the people of that area and they must be accountable to the people and to the provincial legislatures.

## 8. SELF-DETERMINATION

The Provincial Constitutional Committee has decided to continue to support Constitutional Principle XXXIV. Beyond that the Committee has agreed that each party send in their own submission regarding Question 8 - Self Determination.

Please see the attached documents from the Freedom Front, Democratic Party, National Party and African National Congress.

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To the Northern Cape Provincial Constitutional Sub-Committee

**Key Constitutional Issues: Provincial & Local Government**

## **Question 8 - Self-Determination**

### **Introduction**

Possibly the first question to be addressed is whether there **is** any **conflict** between **Constitutional Principles I** and **XXXIV**. There are those who feel that there is such a conflict. However, it is suggested that those principles **may be reconciled**, to accommodate XXXIV, without sacrificing anything of I.

While **self-determination** may be an **acceptable** objective in terms of according recognition of and respect for **cultural diversity**, the extent to which it should be permitted to extend to **political self-determination** is a more complex question. It would be in the worst possible interests of peace and harmony in the country, or in any province for that matter, to deny cultural diversity, to deny any group the right to make and implement decisions relevant to their own interests, whether they are based on language, religion, or any other primarily cultural basis. However, it would be no less disastrous to permit any such self-determination without very specific safeguards against any form of discrimination, whether on the grounds of race, ethnicity, gender, sex, language, or any other basis.

The history of the first year of the democratisation of South Africa has been characterised by the wide commitment to **reconciliation**. As a result, there is often a tendency to avoid discussing too openly issues which could be divisive, or at least to do so in terms sufficiently euphemistic to avoid giving offence.

But when one comes to a discussion of self-determination, in the context of making recommendations for the new Constitution, one must recognise that the time for euphemism has passed. There may be much to be said for having a Constitution which addresses only broad principles, leaving the details to legislation. Such Constitutional silences, or Constitutional ambiguities, as they have been called, would have much to commend them, on many issues; not, however, on the question of self-determination. This is one **area** which has to be addressed very **openly**, very **directly**, with complete **honesty**. No one must be in **any** doubt whatsoever what anyone else is talking about. To fail to achieve this can only lead to the main issues remaining unresolved, and so to continued misunderstandings, possibly to expectations with little chance of being realised, and thus even to increasing conflict and destabilisation.

It is suggested that there is one aspect of self-determination, viz the Volkstaat, which could be an **issue** affecting the **Northern Cape** more than any other province. **Consultation** with **this Province** on details of this question is therefore **particularly important**.

The recommendation therefore is that the **Constitution of South Africa** should provide the necessary **protection** and guarantees of the **rights** of all **citizens**, and of all **cultural groups**, to exercise **self-determination** over their own **cultural interests**, but only to do so without in any way coming into conflict with the Constitutional rights of other individuals and groups.

- (a) (i) At the national and provincial levels, it is suggested that self-determination should be non-territorial, ie there could be provision for decisions with regard to issues affecting culture, but only insofar as such decisions do not impact negatively on any citizen of the country, nor conflict with any laws of the land, or of any province.
- (ii) Self-Determination could be accommodated territorially in smaller, localised areas, where a culturally homogeneous community predominates. Thus a decision could be made to have a school use the predominant mother tongue as the medium of instruction. However, no decision could be discriminatory. . Thus the school given in the example could give instruction in the majority home language, but could not refuse to admit students of other home language groups, though it could obviously not be expected to accommodate all home languages as media of instruction.
- (b) There could well be other communities interested in this issue.
- (c) \* Numerical support for the group could be one criterion.
- \* Possibly geographical dispersment could also be considered; the more wide-spread the dispersment, the less practical the concept of self-determination on any basis other than a cultural one.
- \* An absolute commitment to non-discrimination in any form whatsoever should always be a prerequisite.
- (d) This should be done only in the broadest terms.  
However, there should be no possibility of a state-within-a-state developing,
- (e) It is suggested that the new Constitution should be so fully negotiated, with all inputs and aspirations taken into account, that consensus can be reached..

**SUBMISSION ON (CPI)**

**SUBMISSION FROM ANC**

**NO. 8 SELF DETERMINATION**

CP XXXIV allow for the possibility of constitutional provision being made for the right to self-determination of any community sharing a common heritage of language and culture, whether in a territorial entity within the republic or in any other recognised way, on the basis of substantial proven support within the community concerned.

The above principle must be read with CP XXXIV (2) which states.

The constitution may give expression to any particular form of self-determination provided there is substantial proven support within the community concerned for such form of self-determination.

The immediate question flowing from the above principle is - How do we determine substantial proven support.

We definitely don't go further than 1994 National Elections where the Volkstatters canvassed and sold the idea of Volkstaat.

They met a Resounding No throughout South Africa.

It will be an exercise in futility if now and again, we are going to dwell on the issue of Volkstaat.

The electorate has already spoken for a United, non-sexist, Democratic South African where man and women of all colour enjoy rights.

The most standard but nevertheless sticky problem that confronts those in favour of Volkstaat are:

What Region of South Africa - should be set aside for the Afrikaner National State

What is a volk - does it include volk in the NP who are opposed to the Volkstaat

It would further be appreciated that there are three major lines of cleavage within the right wing

A number of its cultural and intellectual vanguard organisations have begun to question the morality of apartheid - for example, to control the land with legitimacy, the Oranjewerkers and the Afrikanervryheidstigting argue, Afrikaners not only need to own and occupy it fully, but also to work it themselves. This scenario therefore contains no elements of ruling over or subjugating "aliens", racial discrimination against other or exploitation of their labour. While this vision takes apartheid ideology to its logical conclusion it also implicitly rejects both Verwoerdian grand apartheid - which includes the right to rule over other races - and the CP's closely allied notion of partition.

There is also ideological discord over the question of negotiations. The CP, for example, argues that it not only will not, but cannot debate what it sees as its God-given birthright with aliens. Other followers have questioned this approach. While they still hold notions of divinely inspired nationhood, racial ordering and Afrikaner sovereignty, they are far more pragmatic about securing a future for their people with negotiations as a means towards this end. For the CP, this position is nothing short of treason.

While all the institutions of the far right are broadly committed to the notion of a Volkstaat, their policy stances reflect a range of constitutional and geographical possibilities.

Finally , South Africa is at present preaching reconciliation - on the other hand there are still those who preach the notion of Volkstaat-

There is no way that we can deliver RDP to our people if part of our time is to be spend on the issue of Volkstaat on which the electorate had spoken.

The present Interim Constitution protect all the people in South Africa without discrimination or prejudice

There are provisions on non-discrimination equality and miles of democracy

Why Volkstaat?

**SUBMISSIE : NASIONALE PARTY : 10 MEI 1995**  
**SELFBESKIKKING/KORPORATIEWE SELFBESKIKKING**

**1 INLEIDING:**

a. **AGTERGROND EN OOGMERKE:**

Die oorgangsgrondwet bevat sekere meganismes vir die beskerming van minderhede, bv.ten opsigte van hulle akkommodasie in wetgewende en uitvoerende strukture en die beskerming van godsdienste-, taal- en kultuurregte in die handves van menseregte. Die Grondwetlike Beginsels waaraan die finale grondwet moet voldoen, maak ook voorsiening vir meganismes vir die selfbeskikking van groepe. Addisioneel tot hierdie voorsiening, het die Nasionale Party tydens die onlangse Federale Kongres 'n voorstel in verband met korporatiewe selfbeskikking aanvaar.

b. **MEGANISMES:**

Meganismes vir een of ander vorm van korporatiewe selfbeskikking sal saam met proporsionele verteenwoordiging in die wetgewende en uitvoerende gesag, 'n handves van regte, die regstaat-idee, grondwetlike kontroles en sterk provinsiale regering, die NP se pakket vir minderleidsbeskerming afrond.

**2. MOONTLIKE MEGANISMES:**

Daar bestaan verskillende moontlike wyses waarop uitvoering gegee kan word aan die gedagte van korporatiewe selfbeskikking.

a. **STATUTÊRE KULTUURRADE:**

- (i) Die voorstel behels dat daar op dieselfde grondslag as vir tradisionele owerhede in hoofstuk 11 van die oorgangsgrondwet, voorsiening gemaak word vir statutêre kultuurrade waardeur 'n kultuurgroep wat dit wil benut, kollektief standpunt kan inneem en kan beding ten opsigte van sake wat so 'n kultuurgroep in die besonder raak. In beginsel het kultuurgroepe wat nie in sogenaamde tradisionele gebiede woon nie, of wat meer verspreid oor Suid-Afrika woon, dieselfde aanspraak op erkenning en akkommodasie. Statutêre voorsiening vir suke kultuurrade sal die erkenning van die multikulturele aard van die Suid-Afrikaanse samelewing volledig deurtrek. Dit sal ook in ooreenstemming wees met grondwetiike beginsels XI, XII en XXXIV (2) van Bylae 4 van die grondwet.

- (ii) Geskoei op hoofstuk 11 sal die kultuurrade adviserende liggame wees en nie enige wetgewende en uitvoerende magte hê nie. Dit moet egter verteenwoordigende liggame wees wat, soos die huise en raad van tradisionele leiers in hoofstuk 11, namens 'n kuLtuurgroep standpunt kan inneem en kan beding ten opsigte van sake van belang vir daardie kuLtuurgroep. Dit berus by die parlement om na behoefte wel bepaalde magte aan 'n kultuurraad toe te ken.
- (iii) Die Kultuurrade bestaan en funksioneer soos enige statutêre instelling met die finansiële ondersteuning van die staat. Dit is tot die staat se voordeel om 'n amptelike mondstuk van 'n bepaalde kultuurgroep te hê wat in die staat se besluitnemingsproses 'n verteenwoordigende standpunt namens 'n kultuurgroep kan stel. Die doel van 'n kultuurraad is dus nie om kultuurgroepe wat daarvan gebruik maak, af te sonder nie, maar om 'n kultuurgroep binne die bestaande besluitnemingsproses 'n platform vir kollektiewe standpunte en bedinging te bied en sodoende die regeringsproses op alle vlakke te bevorder.
- (iv) Wat die presiese samestelling en funksionering van die kultuurrade betref, word voorgestel dat die analogie van die tradisionele owerhede nie volledig gevolg word nie en dat kultuurrade ter wille van koste-effektiwiteit net op nasionale grondslag saam gestel word, maar in staat gestel word om wel op elke regeringsvlak te funksioneer en insette te lewer. Nasionale sowel as provinsiale kultuurrade lyk onnodig, uitgebreid en duur. Dit lyk in elk geval asof 'n enkele nasionale kultuurraad per groep die behoefte sal nemingsbevoegdheid oor talle aangeleenthede wat kultuurgroepe kan raak, byvoorbeeld onderwys, taal beleid, kulturele aangeleenthede, media, sport en ontspanning, ensovoorts. Dieselfde argument kan ten opsigte van die plaaslike regeringsvlak aangevoer word. Indien 'n kultuurraad dus net op nasionale vlak funksioneer, sal dit oor talle sleutelkwessies geen behoorlike inset kan lewer nie. Vandaar die voorstel dat kultuurrade op nasionale vlak saamgestel word, maar op al die vlakke moet kan funksioneer.
- (v) Wat hul totstandkoming betref, behoort kultuurrade in die eerste plek op die inisiatief van kultuurgroepe as sodanig, of van kultuurorganisasies, ingestel te word en nie op die inisiatief van politieke partye nie. Daarom ook behoort kultuurrade as vertrekpunt deur kultuurorganisasies, of groepe uit die publiek wat hul self organiseer, saamgestel te word, met die opdrag om gedurende 'n eerste termyn aanbevelings te maak oor hul toekomstige demokratiese samestelling.
- (vi) Die volgende **konsep-bepaling** om gevolg te gee aan die gedagte sou in hoofstuk 11 bygevoeg kon word:

"184A (1)(a) Die President moet op versoek van 'n kultuurgroep wat volgens voorskrif aan hom of haar gerig word, 'n kultuurraad vir daardie groep instel.
- (b) Konsepwetgewing wat, behoudens hierdie artikel, voorsiening maak vir die instelling, samestelling, bevoegdhede, werksaamhede en funksionering van kultuurrade beoog in hierdie artikel, (insluitende die wyse waarop 'n kultuurgroep die instelling van 'n kultuurraad



moet versoek), vir die prosedures van toepassing op die verrigting van sodanige bevoegdhede en werksaamhede en vir enige ander aangeleentheid in verband met die instelling en funksionering van 'n kultuurraad, moet nie later as ses maande na die inwerkingstreding van hierdie artikel by die Parlement ingedien word.

(c) Kultuurgroepe moet voor die indiening van konsepwetgewing in paragraaf (b) bedoel, op 'n wyse bepaal deur die Parlement geraadpleeg word om hulle sienswyse oor die inhoud van sodanige wetgewing vas te stel.

(2)(a) 'n Kultuurraad in subartikel (1)(a) bedoel, is geregtig om -

(i) die Parlement, die nasionale regering, 'n provinsiale wetgewer, 'n provinsiale regering, of 'n plaaslike regering, na gelang van die geval, te adviseer ten opsigte van enige aangeleentheid rakende die belange van die betrokke kultuurgroep; en

(ii) op versoek van die President, hom of haar oor enige aangeleentheid van nasionale belang te adviseer.

(b) 'n Parlementêre of provinsiale wetsontwerp wat betrekking het op die belange van 'n bepaalde kultuurgroep of enige ander aangeleentheid wat daarmee in verband staan, moet deur die betrokke Speaker na die betrokke kultuurraad, indien 'n kultuurraad vir daardie kultuurgroep ingevolge subartikel (1)(a) ingestel is, vir kommentaar verwys word voordat die wetsontwerp deur die Parlement of provinsiale wetgewer, na gelang van die geval, aangeneem word; Met dien verstande dat 'n parlementêre wetsontwerp aldus verwys moet word nadat dit aanvaar is deur die Huis waar dit ingedien is, maar voordat dit deur die ander Huis aanvaar word.

(c) Die kultuurraad moet binne 30 dae vanaf die datum van sodanige verwysing, by skriftelike kennisgewing aan die Parlement of provinsiale wetgewer, na gelang van die geval, sy steun vir of teenkanting teen die wetsontwerp aandui, tesame met enige kommentaar wat die kultuurraad wil lewer.

(d) Indien die kultuurraad ingevolge paragraaf (c) aandui dat dit teen die wetsontwerp gekant is, neem die Parlement of provinsiale wetgewer, na gelang van die geval, die wetsontwerp nie aan voordat 'n tydperk van 30 dae vanaf die datum van ontvangs deur die Speaker van so 'n skriftelike kennisgewing verloop het nie.

(e) Indien die kultuurraad in gebreke bly om binne die tydperk in paragraaf (c) voorgeskryf, aan te dui of dit die wetsontwerp steun of daarteen gekant is, kan die Parlement of provinsiale wetgewer, na gelang van die geval, met die wetsontwerp voortgaan."

b. **GESAGHEBBENDE TAALRADE:**

(i) **Na analogie van die Beigiese model (aangeheg) behels die voorstel dat die dominante taalgroepe binne elke provinsie 'n eie taalraad saamstel om binne elke provinsie**

**verantwoordelikheid te neem vir persoonsgebonde sake van die betrokke groep. Die provinsiale taalrade word saam verteenwoordig in 'n nasionale taalraad vir daardie groep.**

- (ii) Al die taalrade bestaan uit 'n gelyke getal lede. Oor die **instelling** van die taalrade moet verder besin word. Dit kan geskied op die inisiatief van 'n taalgroep se partlementslede of lede van die onderskeie provinsiale wetgewers.
- (iii) Die taalrade is **gesaghebbende liggame** wat besluitnemende bevoegdhede het oor sake soos onderwys, godsdiens, taal en maatskaplike dienste.
- (iv) Die taalrade verkry **fondse** van die nasionale/provinsiale regerings en kan dit aanvul deur "kultuurbelasting" wat op lede van die betrokke taalgroep gehef word.
- (iv) Aangesien die taalrade nie oor dieselfde boeg gegooi kan word as die liggame vir tradisionele leiers in hoofstuk 11 van die grondwet nie, sal elders in die grondwet voorsiening daarvoor gemaak moet word.

### 3. **OPSOMMEND:**

Watter model ook al gevolg word, sal deeglik besin moet word oor die instelling van sulke liggame. Dit lyk gewens dat 'n taal/kultuurgroep self die inisiatief neem, met die implikasie dat die lede van die groep met hulleself in gesprek sal moet tree om 'n verteenwoordigende versoek vir sodanige instelling te kan rig. Net soos in die geval van politieke partye, kan die neem van inisiatief deur kultuurorganisasies omstrede wees omdat nie alle lede van 'n bepaalde taal/kultuurgroep daaraan behoort nie. 'n Verkiesing/referendum deur die lede van taalgroep mag ook in hierdie stadium te sensitief wees.

## **COMMISSION ON PROVINCIAL GOVERNMENT:KEY CONSTITUTIONAL ISSUES**

### **SELF DETERMINATION**

#### **SUBMISSION FROM THE FREEDOM FRONT - NORTHERN CAPE**

##### **Introduction:**

Constitutional Principle I is of central importance to the question of self-determination. Along with CP II it is interpreted by some as defying all the endeavours for a volkstaat. It refers to one sovereign state, to achieving equality and to universally accepted fundamental rights, freedoms and civil liberties - concepts traditionally opposed by proponents of a volkstaat.

Nevertheless it could not be read without taking into account Principles V, XI, XII, XIII and XXXIV, all of which have to do with supra-individual or collective matters like affirmative action

for members of disadvantaged groups and self-determination for language and cultural communities.

It is even argued that CP XXXIV cannot be defined or limited by the other Constitutional Principles; in fact, that CP XXXIV takes priority over the other principles, because it is a later addition to Schedule 4 of the Interim Constitution. (H. Booysen, Regsopinie aan die Volkstaatraad: Is die strewe na 'n onafhanklike Volkstaat versoenbaar met die Tussentydse Grondwet)

It follows that in principle the formation of a volkstaat is not limited by the Interim Constitution, but only by practical difficulties and impediments. If this holds true for the Interim Constitution and the Constitutional Principles, it would make no sense to preclude it in the next constitution.

Self-determination in a volkstaat cannot be realized by a single act, but has to be the outcome of a process. This process may not be started only to be frustrated in the next phase of constitutional development, but should rather be facilitated in the same spirit of constructive cooperation.

- (a) Self-determination by communities may take either (i) non-territorial or (ii) territorial forms. At the levels of both provincial and local government, how might such self-determination be accommodated (i) non-territorially and (ii) territorially?

The concept of self-determination poses unique challenges under different conditions. Although Afrikaners are widely dispersed over South Africa, they constitute a highly self-conscious people with a definite sense for freedom which a growing number want to realize within their own state. Under these circumstances it must not be **either** non-territorial or territorial, but rather **both** non-territorial **and** territorial self-determination.

- (i) Non-territorial self-determination has to be vested in the subjects being organized in corporate institutions, recognized by the state.

Such institutions should be established on local and provincial level wherever a language, cultural or religious community is marginalized and feel the need for institutional protection to foster and further their tradition.

At the local level Civic or Community Councils should be established on the initiative of local organizations when at least 3000 members can be registered. Their powers and functions should include those facets of local government which have a direct bearing on the practice and protection of the communities' culture and tradition. It would typically include education and training, welfare and health, broadcasting, literature, performing and plastic arts, museums, monuments and sanctuaries, et. Civic/Community Councils may function with constituent sub-councils and may conclude mutual agreements, may own fixed assets, render other services when necessary or possible and has a right to public funding. Details must be negotiated between the councils and the relevant provincial and local authorities.

Members of minorities organized in this way should form its own constituency and be represented as such in a second chamber on provincial level, alongside with traditional leaders and constituent (sub-) regions. On a national level, representation in the Senate should be accommodated on the same basis.

(ii) Territorial self-determination with regard to a volkstaat can only be implemented when and where Afrikaners form a substantial majority of the population within an area, without being economically and otherwise integrated with non-Afrikaners, in- or outside that area, to a point of total dependence.

At the same time volkstaat Afrikaners see territorial self-determination as more than just a way to protect their interest; it has to be the expression of a national ideal, carried over from one generation to the next. It follows that territorial self-determination on local level will not meet their needs and cannot be regarded as anything more than a starting point.

As a result of the Afrikaners' dispersion and interspersion, no single territory qualify to become a volkstaat out of hand. Wherever great numbers of Afrikaners are concentrated, there are even greater numbers of non-Afrikaners playing a vital role in all segments of society, especially as working force. But this do not nihilate the Afrikaner people's right to self-determination and would not prevent them from resisting the erosion of their material and spiritual heritage.

The only long-term solution is to identify a relatively underdeveloped and sparsely populated part of South Africa, to reach an agreement on promoting Afrikaner settlement within the area and to enter clauses into the new constitution specifying procedures according to which growing levels of self-determination could be attained by such an area.

The process of volkstaat formation shall have to include phases of **recognition, demarcation, economic development and settlement, and constitutional implementation**. It has to satisfy the requirements of the present (and next) constitution, the Bill of Rights and the rules of democracy, and need not threaten any concerned parties. It could in fact be of great advantage for that part of South Africa and for the Province(s) concerned, where this kind of development takes place.

Further details of this process has to be worked out by the Volkstaat Council and has to be negotiated between interested parties. As parts of the Northern Cape and Western Cape fit the description best, it is assumed that these provinces and parties should be involved from the outset.

(b) Does the matter of self-determination have a bearing only on the Volkstaat issue, or are there other communities who might have a real interest in exercising such a right?

At this stage it seems that only the volkstaat Afrikaners are interested in self-determination in the full sense of the word. But that does not mean that it will be so forever. The international tendency towards closer economic cooperation within greater economic units, and at the same time towards the decentralisation of political power to smaller ethno-cultural units (the "global paradox"), will most probably have an affect on South Africa too.

It has also been proven time and again that when a minority gains a sense of identity, it cannot be ignored. To oppose it is to strengthen it and nothing confirms it better than resistance.

It may thus not be wise to limit the concept to self-determination to the exclusion of any contender for it, especially not in the Northern Cape with its abundance of local communities, dialects and identities. The principle of subsidiarity and of local autonomy may fit our circumstances best, as do a federal constitution for our province.

(c) If a right to collective self-determination is claimed, what criteria and procedures should there be for deciding whether it is justified?

In all cases it will have to comply with the Constitution and Bill of Rights of the RSA, including non-discrimination, equality and the rules of democracy. In no way should self-determination be an excuse for reviving apartheid practices or racism.

With regard to corporate self-determination the main criteria will be whether a specific community is numerically marginalized and whether there is a clear cultural coherence between members of a group or a civic or community council. The degree and extent of autonomy as well as the specific functional areas which is accorded to a specific council, will be determined by its numbers of members, its financial capability, the relationship between its members and the other members of society, etc. In the final instance it will have to be settled by local agreement.

With regard to territorial self-determination, the main criteria will be the opinion of all the inhabitants in the area; whether it will better or worsen mutual relations within the area as well as South Africa as a whole; whether new minority problems and suppression is created; whether the new state is economically viable and whether its regional economic impact is positive or negative; etc. Again it will be the result of a process with all the political checks and balances which is characteristic of a democratic society, and concrete circumstances rather than academic criteria will be decisive.

(d) How should provisions concerning self-determination be constitutionalised?

Constitutional Principle XXXIV should be entered into the next constitution to empower the process of implementing self-determination, even under unforeseen circumstances.

The Volkstaat Council will propose such provisions in more detail, but the Commission may in addition be referred to the Spanish Constitution, Title VIII, Articles 137 to 158 and especially Articles 143 and 144 on initiative towards self-government and the Basic Law of the Federal Republic of Germany, Article 29 on reorganization of Federal territory.

(e) If no territorial entity is established under the interim constitution (as provided for in Constitutional Principle XXXIV) should this possibility continue to be accommodated in the new Constitution?

Definitely yes.

It has been argued above that in principle the formation of a volkstaat is not limited by the Interim Constitution, neither by the Constitutional Principles, but only by practical difficulties and impediments. Against this background it would make no sense to preclude it in the next constitution.

Self-determination in a volkstaat cannot be realized by a single act, but has to be the outcome of a process. This process may not be started only to be frustrated in the next phase of constitutional development.

## **PROVINCIAL LEGISLATURE OF THE NORTHERN CAPE**

### **KEY CONSTITUTIONAL ISSUES**

#### **PROVINCIAL AND LOCAL GOVERNMENT**

##### **SUBMISSION BY THE CONSTITUTIONAL COMMITTEE**

### **9. NUMBERS AND BOUNDARIES OF PROVINCES**

- 9.a Are the provisions in the Constitutional Principles sufficient to protect the integrity of provincial Boundaries and to prevent frequent changing of boundaries? Or should it be made easier to amend provincial boundaries?

Provisions of the present Constitutional Principles are more than adequate for the protection of provincial boundaries and the prevention of frequent changes. Changes to boundaries should not be made lightly, and it should therefore not be too easy to do so, however the provisions of the present Constitutional Principles are such that changes are very difficult.

People move, cities grow, small towns and villages sometimes become smaller, or even disappear. Thus population density may change in some areas, and sometimes it may be necessary to make changes to provincial boundaries to accommodate such changes.

Furthermore there should be provision for the elimination of anomalies such as a Provincial boundary running through a town. Cognisance should also be taken of Constitutional Principle XXXIV. Depending on decisions which may be taken in this regard, further boundary negotiations could become necessary.

- 9.b Should public participation by way of a referendum or otherwise be obtained before boundaries are amended?

Yes, always. The only question is the extent of the public participation. If the people affected by the proposed boundary change are a small group, possibly a rural community which finds itself separated by a boundary from its nearest town, should they be the only ones to be considered in the referendum? Or should all those in the nearest town be considered? Or should all the people of both provinces be considered? Another example: if an institution is in one province, but is near to the boundary, and its function is to serve the neighbouring province exclusively, who should decide whether that boundary should be moved just far enough to include that institution? (The example referred to is Grootfontein.)

- 9.c What special majorities should be required in Provincial legislatures for the approval of amendments to boundaries?

Two thirds; but it should not even be possible to put the matter to the Legislature without the consultation referred to under (b).

- 9.d Would Provincial Legislatures be prepared to accept amendments of boundaries without their involvement (as is made possible in CP XVIII.4) if a chamber of Parliament is composed of provincial representatives?

No. Only those provinces affected should determine any possible changes.

- 9.e How should deadlocks be resolved where legislatures of the provinces involved in a pending amendment of their boundaries cannot agree on such an amendment?

The best method would be by public referendum in the provinces. If the deadlock were still unresolved, it should be referred to the Constitutional Court.

## 10. SUB-REGIONS (POWERS & FUNCTIONS)

### INTRODUCTORY STATEMENT

It is proposed that the name should be **regions**, not subregions. There can only be sub-regions where regions exist. Since the provinces are called provinces and not regions, the sub-division below that level has to be into regions. Only if there were a further sub-division below that would the term sub-region be appropriate.

It is further proposed that the term **tiers** of government should be replaced with **spheres** of government.

The term **tiers** suggests a top-down control, with each level linking only to the level above or below, rather than to all the levels.

**Spheres** suggests an inter-action between each of the levels with each of the others in certain areas, and with autonomy in others.

The existence of **Regional Services Councils** suggests that the reality of regions as a sphere of government already exists.

The national Constitution should not make provision for this, other to indicate that such a sphere could be allowed to exist. Provinces should be left to make their own decisions in this regard. The possibility of any province not eventually adopting its own Constitution seems remote.

10.a On what basis and subject to which criteria could formal sub-regions be established?

The present Regional Services Council areas might serve as a suitable guide-line, with some negotiation where previous areas have been affected by provincial boundaries.

10.b What should be the powers and functions of subregions? Should they be able to exercise subordinate legislative powers and, if so, what structures should be created for this purpose?

A system similar to that of the present RSCs could be considered.

10.c Could metropolitan areas be considered for sub-regional status with concomitant powers and functions?

Possibly.

10.d Could a cultural entity be accommodated as a sub-region?

The rights of such a community to exist and provide for cultural self-determination should be ensured by the terms of the Constitution.

MR GH AKHARWARAY (ANC)  
CHAIRPERSON

MRS EM PAPENFUS (DP)

MR KA SINCLAIR (NP)

PROFF JJ HENNING (FF)

**PROVINCIAL LEGISLATURE OF THE NORTHERN CAPE**

**KEY CONSTITUTIONAL ISSUES**



## **PROVINCIAL AND LOCAL GOVERNMENT**

### **SUBMISSION BY THE CONSTITUTIONAL COMMITTEE**

#### **11. LOCAL GOVERNMENT**

- 11.a Should local government powers and functions be described more specifically in the Constitution?

Powers should be described sufficiently specifically to ensure their protection, but their functions should be in broad terms only to define their legislation.

- 11.b What should be the relationship between national, provincial and local government? How could encroachment on local government powers by other levels of government be prevented?

As stated in the introductory statement to question 10, should be in terms of spheres of government, rather than tiers of government, with defined concurrent and defined exclusive powers. The principle of subsidiarity should always be upheld and recognized. There must be a provision for a higher level of government to take control should a local government be incapable of managing, but not with the intention of interfering.

- 11.c Is the provision of section 158(b) of the interim Constitution in regard to revenue allocations to local governments adequate?

Yes, agree with this allocation.

- 11.d Should the Constitution specifically provide for local government representation on the Financial and Fiscal Commission?

Yes it should.

- 11.e Should metropolitan areas enjoy special constitutional recognition? if so, in what ways?

Not applicable in the Northern Cape at the moment, should the need arise i.e. if Kimberly becomes a metropolitan area, we should then be able to take example from such areas.

- 11.f How should disputes between local governments, and provincial and national governments be resolved? What mechanisms or structures are needed?

Conflicts arising at a local level should be referred to the relevant MEC for Provincial Government and take this further if needed to the Standing Committee. Conflicts arising at a local to provincial level should be referred to the provincial court and cabinet and then if needed to the National Minister and the Standing Committee.

Conflicts arising from Provincial to National must be referred to the reformed Senate and then to the Constitutional Court.

In all of these cases the Premier in conjunction with the Cabinet must be consulted and then he must refer this to a National Minister.

## **12. INTERGOVERNMENTAL RELATIONS**

Should these relations be:

- 12.a Institutionalised by means of institutions prescribed in the Constitution, and if so, for which relationship should the Constitution provide;

The Constitution must make specific provision for matters fiscal and judicial and in any areas where there is concurrency, with the exception of exclusive National Powers, there should be no overriding powers on the part of National Government. The first institution to resolve most of the relationships should be the reformed senate, institutions other than that should be equally representative not proportionally representative of the province.

- 12.b If institutionalised, should the intergovernmental bodies be composed of political representatives and/or officials and /or experts;

Should be composed of all three; political, officials and experts.

- 12.c Of a specialised nature, e.g. in the fields of finance, policy-making in various fields, and in matters concerning administration;

Yes, to all these, but this should also include Legislative functions.

- 12.d Facilitated by an independent and impartial body, and if so, how should it be structured?

The Senate would be the right body to facilitate this.

### **SUB COMMITTEE MEMBERS:**

PROF BOSHOFF (FF)

MR PENKER (ANC)

DR. LIEBENBERG (NP)

MRS PAPENFIJS (DP)

MISS G. COUTTS  
COMMITTEE SECRETARY

# PROVINCIAL LEGISLATURE OF THE NORTHERN CAPE

## KEY CONSTITUTIONAL ISSUES

### PROVINCIAL AND LOCAL GOVERNMENT

#### SUBMISSION BY THE CONSTITUTIONAL COMMITTEE

#### 13. THE SENATE

- 13.a Is a Senate needed? If so, should its primary purposes be to represent provincial interests, or should it have a wider legislative function, or should it combine both functions?

We do need a senate, but this should include both functions. Its primary function should be to represent provincial interests. It must have its own separate function and should not be a duplication.

- b. In terms of its purpose as defined, what should its composition be? Should interests other than provinces be represented? If so, what interests?

The Senate should be made up of an equal representation for each province regardless of the population of provinces. It is further recommended that consideration be given to the ten senator positions matching the portfolios of the specific provinces and maintaining direct and regular contact with the MEC and the chairpersons of the relevant portfolio committees. It must be stressed that such liaison should be at both the legislative and the executive level. Consideration could also be given to a further ten senators being appointed by the President based on their expertise.

- c. Are there shortcomings in the present constitutional provisions relating to the Senate? If so, how should these be rectified?

Answers to the previous questions in this section address the issue.

- d. What should be the size of the Senate, in view of its purpose and vis a vis the National Assembly?

The size is already addressed in b). Neither the size nor its composition should be related to the size of the National Assembly. It is recommended that the Senate should not be any smaller than already recommended in order to carry out its function efficiently.

- e. What should be the status of provincial representatives in the Senate vis a vis provincial governments and political parties? Issues might include the following:

- (i) Should Senators be additional to the provincial representatives in the National Assembly, or should the latter comprise the Senate?

The question of the senate is aside from that of the National Assembly. The latter should be addressed separately.

- (ii) What are the implications for provincial interests of representation from province to National Assembly on party lists?

This question has no direct relevance to the Senate. However, the present system does not give any specific distinction between the 200 elected on the Provincial list and the 200 elected on the National list. Consideration should be given to the Provincial list being based on equal representation for the provinces.

- (iii) What are the implications for provincial interests of the prohibition on crossing the floor:

This is not specifically a provincial concern; this problem certainly affects all levels of government.

- (iv) Should senators be elected at large (on a third list)?

The appointment of senators should be based on a system which ensures that the best people i.e. with the greatest expertise be appointed to the posts.

- (v) Should a residential qualification apply?

A Senator must be resident in the province which he/she represents. If a senator moves he/she should lose his/her seat in the senate.

- (vi) Should representatives of provincial governments sit in the Senate?

If the proposals given above were not accepted then the representatives of provincial governments should sit in the Senate.

- f. What principle should determine the representation of provinces in the Senate: state equality, population or a formula balancing these? Is the existing formula just and fair?

The existing formula is just and fair. The recommendation of presidential appointees should be taken into account.

MR AKHARWARAY (ANC)  
CHAIRPERSON

COMMITTEE MEMBERS:

MRS PAPENFUS (DP)

MR MOKGORO (ANC)

DR LIEBENBERG (NP)

## **COMMISSION FOR PROVINCIAL GOVERNMENT**

### **INTERIM RECOMMENDATIONS WITH REGARD TO PROVINCIAL AND LOCAL GOVERNMENT SYSTEMS**

25 April 1995

Comment by the Provincial Constitutional Committee, Northern Cape Provincial Legislature

#### **DOCUMENT 1**

##### **COMMENTS:**

- 3.5.1(a) (Pg5) : Agreed
- 3.5.1(b) (Pg5) : Agreed
- 3.5.1(c) (Pg6) : Composition should be left to the Province as far as the size is concerned, but there should be uniformity with regard to proportional and/or constituency representation.
- 3.5.1(d) (Pg6) : The dissolution must be determined by the rules in the Provincial Legislature of that specific province but the duration of the Provincial Legislature should run until the next election.
- 3.5.1(e) (Pg6) : Provincial and National elections should be held simultaneously.
- 3.5.1(g) (Pg6) : The appointment of the Speaker and Deputy Speaker must be determined by each province. This also holds for the Premier and the Provincial Executive Council.
- 3.5.1(h) (Pg6) : Qualification for membership of Provincial Legislature must be set at a national level.
- 3.5.1(k) (Pg6) : These must be provincial, however benefits must be consistent with a national standard.
- 3.5.1(m) (Pg6) : Rules and orders must be determined within the province.

- 3.5.1(n) (Pg6) : Quorum must be determined within the province.
- 3.5.1(o) (Pg6) : Ordinary votes and special votes must have a form of standardization, nationally as well as provincially.
- 3.5.1(p) (Pg6) : Assent to bills must go through the rules and is therefore provincial.
- 3.5.2 (Pg6) : Provincial Executive Authority - Agreed.
- 3.5.3 (Pg7) : Provincial Finance and Fiscal Affairs the fiscal powers and functions should only be in broad terms in the Constitution; specifics should be in legislation.
- 3.7.1 (Pg8) : These are important issues and we are in complete agreement.
- 3.7.2 (Pg9) : Complete Agreement
- 3.7.3 (Pg9): Complete Agreement
4. (Pg9) : Conclusion - endorsed fully

## **DOCUMENT 2**

### **COMMENTS:**

- 1.1 (d) (Pg1) : Care must be taken to ensure that the present position with regard to infrastructure and nodal points of service is not permitted to become a limiting factor. There must be provision for capacity-building for provinces currently less well endowed, particularly where there is obvious potential for such development.
- 1.3 (Pg2) : "Nine members from the provinces, appointed by the President, with the concurrence of the Premiers.": please advice what policy is being followed with regard to the reporting back by the provincial representatives to the provinces.

### **SPECIFICALLY:**

- \* to whom do the Provincial representatives report at present;
- \* how frequently do they do so; are the reports in writing;

- \* is there any provision for meeting periodically with:
  - the Premier
  - the Speaker
  - any of the Standing Committees
- \* how do they ensure that they have the mandate of their provinces on issues.
- \* it is recognized that the CPG itself, and all its individuals members, is non-partisan; however was there any multi-party consultation with regard to the CPG composition, and if so on how wide a basis?
- \* When meeting with the committee etc. who is going to carry the expense of these visits.
- \* it is strongly recommended that the Provincial representative remains in very close contact with all the branches of the provincial legislature and of the Premier.

**1.4(Pg2): Please confirm that the submission from the Northern Cape (Key Constitutional issues Question 1-6) have been received and have been taken into account.**

1.6 (Pg3) : This is a sound differentiation

1.7 (Pg4) : what is the CPG doing to recognize these recommendations

1.8 (Pg4) : There is only a terminology problem with this “..... the establishment of sub-regions, .....”. This should read the establishment of provinces, as we don't have regions.

1.9 (Pg4) : This is true, but dependence on the national government should always be perceived as a temporary measure, particularly on the part of the National government themselves.

1.10 (Pg5) : Agree in principle, but the constitution should provide for this in broad principles only, with specifics left to legislation. Costs should always be considered, and care must be taken not to create additional authoritative structures. There must be no interference with the autonomy of any of the spheres of government concerned.

1.11 (Pg5) : Absolutely - agree with this.

1.13 (Pg6) : The Province of the Northern Cape has already made submissions in this regard. (We have again included the list we Submitted for Question 1.6 of the Key constitutional Issues.)

..... The proposed appropriate provincial legislature powers should be:

- \* Agriculture
- \* Abattoirs
- \* Airports other than international (national airports to be considered separately)
- \* Animal control and diseases
- \* Casinos, racing, gambling and wagering
- \* Consumer Protection
- \* Cultural Affairs
- \* Economic Affairs
- \* Education at all levels, excluding university and technikon education (teachers colleges and technical colleges need to be considered separately)
- \* Environment and conservation
- \* Health services - requires definitions i.e. which levels
- \* Housing
- \* Indigenous law and customary law
- \* Language policy and the regulation of the use of official languages within a province, subject to section 3.
- \* Local Government, subject to the provisions of chapter 10.
- \* Markets and Pounds
- \* Nature conservation (national parks, national botanical gardens and marine resources should be considered separately.)



- \* Police subject to all provisions of Chapter 14
- \* Provincial Sport and Recreation
- \* Provisional Fiscal and Financial Control
- \* Provincial public media
- \* Provincial Public Protector
- \* Provincial Public Works
- \* Public Transport
- \* Reconstruction and Development Programme at Provincial level
- \* Regional Planning and Development
- \* Road traffic regulation
- \* Roads
- \* Soil Conservation
- \* Tourism
- \* Trade and Industrial Promotion
- \* Traditional Authorities
- \* Urban and Rural Development
- \* Welfare Services
- \* Question of Standardization should be addressed.

However all those items not specifically listed above should be regarded as potential exclusive provin concurrent powers depending on negotiations between provincial and national authorities, which should b independent and impartial body such as the Constitutional Court.

(Please note that we would like to add Finance, Mineral Affairs and Water to the list. A memorandum has been sent to the CPG on this matter).

2.6 (Pg8) : Agreed.

- 3.3 (Pg9) : As stated in the comment on 1.13 (Pg6) the Province of the Northern Cape has already made Submissions in this regard.
- 4.4 (Pg12) : The question of a Second House will be dealt with according to the time schedule which the CPG has provided.
- 4.5 (Pg12) : This is a great concern to the committee, as it seems that the submissions handed in have been disregarded. A memorandum has been written in this regard. Agreed that Finance should be added to this list (schedule 6).
- 4.6 (i) (Pg12) Agreed.
- 4.6 (ii) (Pg13) Agreed.
- 4.6 (iii) (Pg14) This should not only be unidirectional from national to provincial, but bilateral in that it can be from national to provincial or vice versa, furthermore, the consultation should be possible between national government and only one province i.e. it should not be required that all provinces become part of the process.
- 4.7 (Pg16) : Agreed.
- 4.8 (Pg16) : Agreed.
- 5.(Pg17) : Conclusion - Agreed with the conclusion, however would strongly like to state that we feel the CPG has disregarded what we have said about schedule 6.

MR MOKGORO .(ANC)  
FACILITATING CHAIRPERSON

MRS PAPENFIJS (DP)

PROF HENNING (FF)

MR VAN WYK (NP)

## **COMMISSION FOR PROVINCIAL GOVERNMENT**

### **INTERIM RECOMMENDATIONS WITH REGARD TO PROVINCIAL AND LOCAL GOVERNMENT SYSTEMS**

11 May 1995

Comment by the Provincial Constitutional Committee, Northern Cape Provincial Legislature.

## DOCUMENT 3

### COMMENTS:

3.4.2 (Pg2) : Agreed

3.5.2 (Pg3) : Provinces need greater say on this. Present minimum numbers are too low. It must be remembered that, regardless of the number of citizens in a Province the number of Ministerial Portfolios is the same for all, and therefore of Legislation, Committee Work etc.

On the recommendation of weighting for representation, the provinces must be consulted with fully as to how this should be done.

3.5.3 (Pg4) : This standard is inconsistent with the point made in page 5 of Discussion Document 1 - 3.5.1(c). However, we have already said in answering question 3b in the Key Constitutional Issues that a system of partial constituency and proportional representation in the Northern Cape Province will be preferable. It can be attended to as a provincial constitutional matter.

3.6.1 (Pg4) : Agreed

3.6.3 (Pg4) : It is recommended that this procedure be followed. The difficulties in view of the powers already assigned to the Premiers of the provinces by the interim constitution can be dealt with.

3.7.1 (Pg4) : This should only apply in special circumstances, notably a vote of no confidence.

3.9. (Pg5) : The Speaker's role in a Provincial Legislature is very different from that of the Speaker at National Level. The number of legislators at each level alone is indicative of this. This needs to be fully and thoroughly researched.

3.10. (Pg5) : The question of a deliberate vote for the speaker, as well as a casting vote (as for chairpersons for committees) needs to be addressed. The limited number of provincial seats needs to be taken into account in considering this.

This is not a proposal, it is only recommended that this be researched.

3.10.3 (Pg6) : This needs further consideration.

3.10.4 (Pg6) : There is a concern as to when the provinces were asked about this.

3.11.2 (Pg7) : This very important issue needs to be fully discussed. **It is felt that the CPG should not consider itself empowered to address this vital issue itself.**

3.11.3 (Pg7) : This is a problem which should perhaps be workshopped.

3.14 (Pg8) Most of these issues should be covered in Rules and not in the Constitution, the broad guidelines could be of assistance.

G. COUTTS  
COMMITTEE SECRETARY

## **COMMISSION ON PROVINCIAL GOVERNMENT**

### **PRELIMINARY RECOMMENDATIONS ON PROVINCIAL EXECUTIVE AUTHORITIES**

#### **DOCUMENT 5**

17 May 1995

#### **COMMENTS:**

3.4.4. (Pg3) : This was not the recommendation of the Northern Cape Province, as submitted in answer previously to the CPG.

3.4.5. (Pg4) : Agreed re the committees, but not re vacating of seat by the Premier.

3.6.1. (Pg4) : There must be an allowance for a maximum and a minimum. The argument given is unacceptable.

3.6.2. (Pg5) : The principles are relatively sound, but are being used to motivate an acceptable proposal. It needs to be remembered that the final responsibility lies with the Minister.

3.7.2. (Pg6) : This should follow similar principles and the same system as at national level.

3.7.5. (Pg6) : The first proposal is fairly sound. However we disagree with the paragraph .... “ In order to satisfy the concept of separation of powers .... etc”.

3.7.6. (Pg7) : Why an executive committee - surely this should be a legislative committee ?

## **DRAFT PRELIMINARY RECOMMENDATIONS ON PROVINCIAL STAFF MATTERS**

### **DOCUMENT 6**

#### COMMENTS:

2.8. (Pg4) : In total agreement with this recommendation.

MRS PAPENFUS (DP)

PROF HENNING (FF)

MR PENKER (ANC)

MR VAN WYK (NP)

## **COMMISSION ON PROVINCIAL GOVERNMENT**

### **PRELIMINARY RECOMMENDATIONS ON PROVINCIAL EXECUTIVE AUTHORITIES:**

#### **DOCUMENT 7 - PROVINCIAL FINANCE AND FISCAL AFFAIRS**

21 June 1995

Comment by the Provincial Constitutional Committee, Northern Cape Legislature.

#### DOCUMENT 7

#### COMMENTS:

The Provincial Constitutional Committee is pleased to note that the proposals which have been submitted are being taken into account.

3.2.v(pg 4) : This is in conflict with the basic principle of taxation, where the taxes obtained from the wealthy are used to the advantage of all.

The phrase “wealthier provinces.....generate most of the country's wealth.....” is misleading. The origins of the wealth of those provinces is not always within the provinces themselves. There is the appearance of the wealth being generated there, but the sources are not infrequently based elsewhere, for example, there are agribusiness and mining head offices in Gauteng, yet there is very little agriculture, and only one type of mining (to any significant extent) found in that province. The provinces from which the resources have come have a fair claim to that wealth.

3.vi(pg 4) Agree fully with this.

3.4.(pg 5 & 6) Please see this as a general comment on 3.4 with the proposal relevant throughout the document:

The issue of value added tax, and both the collection and the allocation of the revenue therefrom has not been addressed adequately and must be taken into consideration. Also, when considering provincial taxation, there should be controls which ensure that no citizen is overburdened because of where he/she lives. A tariff must be levied on raw materials/primary products which are derived from the province itself e.g. iron ore is mined in the Northern Cape, but no tariff is paid to other provinces when "importing" this material. The province mining the product is therefore disadvantaged, because the province which transforms the raw material into a final product benefits from VAT.

There should also be levies on road usage e.g. the province should have a financial advantage based on the extent to which their provincial borders are being used.

3.4.3(pg 6) : It is recommended that legislation should not be left to the National level alone, but should be done in consultation with the provinces and the process should not merely be an advisory one, but should have specific powers.

3.10 (pg 9) : The position, powers and functions of the Provincial Auditors-General need to be specified.

3.11 (pg 10) : We agree with the composition of the Financial and Fiscal Commission.

In closing, it must be stated that we feel the relationship between national, provincial and local government should be in terms of spheres of government rather than tiers of government.

This can be explained by the fact that all intergovernmental levels should be linked, there should not be definite hierarchical levels.

## **DOCUMENT 8 - TRADITIONAL AUTHORITIES**

### **COMMENTS:**

1.6 (pg 2) : Basic human rights must always take precedence.

We fully agree with this

1.7 (pg 2) : Agree with this

- 2.3 (pg 3) : This is contradictory as it has been recently decided that traditional leaders would be remunerated at National Level.
- 3.3.1(pg 4) We agree that this in an urgent issue which must receive the necessary consideration.
- 3.3.4(pg 5) : Agree fully
- 3.5.1(pg 6) : The constitution should provide only the basic principles; more specific provision could be made in the separate provincial constitutions, thereby recognizing the extent to which this will differ from province to province.

## **DOCUMENT 9 - LOCAL GOVERNMENT**

### **COMMENTS:**

- 2.5 (pg 2) : This is already happening.
- 2.6 (pg 3) : Agree. We are pleased to note that this proposal has been taken into account.
- 3.2.2(pg4) : Regional structures should be dealt with by those provinces drafting their own constitution.

**MR AKHARWARAY (ANC)  
CHAIRPERSON**

**MRS PAPENFUS (DP)**

**MR MOKGORO (ANC)**

**DR LIEBERNBERG (NP)**