

**INKATHA FREEDOM PARTY REACTION TO THE FOURTH REPORT OF THE  
TECHNICAL COMMITTEE ON CONSTITUTIONAL MATTERS**

**DEADLINE : 17H00 : JUNE 8, 1993**

1. The IFP thanks the members of the Technical Committee on constitutional matters for the lucid analysis performed in the fourth report to the Negotiating Council. However, the IFP believes that the Technical Committee could provide greater assistance to the negotiating process by extending the scope and parameters of its analysis to consider different process alternatives so as to allow the Council to adopt the necessary political decisions on the basis of a full awareness of the available alternatives.
2. The IFP maintains and submits that the instructions that the Technical Committee received from the Negotiating Council on Tuesday, June 1, 1993 do not define a specific process proposal. On the contrary, they require the Technical Committee to outline process alternatives for the constitution-making of South Africa.
3. And therefore the IFP would like to receive alternative recommendations from the Technical Committee on possible constitution-making processes. The IFP maintains that the parameters of any acceptable constitution-making process should involve the following:
  - (a) The next constitution should be a fully-fledged, complete and all-encompassing constitution consistent with advanced standards of modern constitutionalism.
  - (b) Such a constitution shall contain a fully-fledged, complete and self-implementing regional constitutional dispensation drafted on the basis of federal principles which recognise to the regions all residual powers.
  - (c) Such a constitution shall be the supreme law of the land and as all constitutions shall be capable of being amended, modified or repealed through special procedures set forth in it. These procedures for amendment must be consistent with similar provisions adopted in modern constitutions and shall not be such that they undermine the stature, credibility and effectiveness of the next constitution of South Africa.
4. The IFP submits and maintains that the instructions provided by the Negotiating Council to the Technical Committee are consistent with the foregoing requirements around which the next constitution of South Africa ought to be drafted.
5. The IFP also maintains and submits that it should be the task of the Technical Committee and of the Negotiating Council alike to focus on the required characteristics and elements of the next constitution of South Africa so as to ensure that such constitution is the most democratic, pluralistic and complete constitution achievable at the present stage of constitutional development of our country. This



effort should not be clouded by the expectation that such a constitution could be amended at a later time.

6. The IFP believes that we all share in the duty of producing the highest quality constitution possible and that no technical or political justification could be advanced to produce anything less than a complete and high-standard constitution. We feel that neither this Technical Committee nor the participants in the process shall fall into the temptation of doing anything less than their very best in drafting a new constitution, and that, therefore, we should not act under the assumptions that our failures of today will be corrected at future stages of the constitutional development of our country, for instance in a Constituent Assembly.
7. Therefore, the IFP rejects the notion that the consideration of the powers of the SPR in the next constitution of South Africa should be clouded by any consideration related to presently foreseeable or unforeseeable future stages in the process of constitutional development.
8. The Technical Committee and the Negotiating Council must recognise to the SPR those powers which make sense in order to ensure peace and prosperity in South Africa within the parameters of a final institutional, constitutional and political settlement among all the forces and interests operating in our country.
9. The IFP has constantly maintained that this goal can only be achieved through the establishment of a federal system where the SPR be recognised independent and residual powers on the basis of the allocation of sovereignty between the federal and the state level. The IFP has also maintained that this is the will of the great majority of the people of South Africa. If this is true, federalism must be established at this stage, and if necessary the IFP is willing to consider the need to have a preliminary nation-wide referendum on the issue of form of state.
10. The IFP fears that many of the constitutional principles detailed in the Third Report of the Technical Committee will not be consistent with the establishment of a true federal system in South Africa. In this respect, the IFP makes specific reference to the document it produced in reply to the Third Report of the Technical Committee.
11. The IFP also wishes to stress that the work of the Technical Committee should not create any preclusion in the final determination of the form of state. Therefore, the Technical Committee should constantly provide alternatives in the formulation of each relevant constitutional principle to ensure that the decision on the form of state is not prejudiced by the adoption of constitutional principles.
12. Accordingly, the IFP needs to take exception to the language in the Fourth Report which focuses the entire analysis on the powers, functions and structures of the SPR within the framework of a constitutional transition.
13. The IFP also re-states that it believes that the constitutional principles proposed by the Technical Committee in its Third Report describe relations between central



government and SPR which are not consistent with the notion of residuality and the federal model advocated by the IFP.

14. Furthermore, the IFP takes exception to the notion that it is the task of the Technical Committee to "make provision for a legal framework to regulate SPR governments between the adoption of a constitutional framework by the MPNT and the adoption of a new constitution by the elected constitution-making body". The task of the Technical Committee should be to provide a draft for the best regional dispensation in the best interests of South Africa irrespective of whatever might happen after the adoption of the next constitution.
15. Also the process which brings about such regional dispensation must be determined with reference to the true needs, wants and aspirations of the people of South Africa and of the various regions of our country. Therefore, greater emphasis needs to be put on ground-up democracy building processes, and the Technical Committee is kindly requested to report on the viability of the IFP proposal to coordinate ground-up democracy building processes in top-down negotiations through the work of a statutory Commission which would set guidelines and parameters to encourage and register ground-up democracy building within mainstream negotiations.
16. This approach can ensure that the process of rationalisation of existing regional realities such as self-governing territories and TBVC States can ensure the constitutional continuity of the existing forms of local autonomy into the new regional dispensation for South Africa.
17. The IFP has constantly maintained that this process of rationalisation should meet two requirements.
  - (a) that existing territorial autonomies should be transformed and reincorporated within new SPR provided with residual powers on the basis of a final process subject to possible future constitutional amendments. Their reincorporation should not take place in any process which would rely on the expansion of powers of the existing provinces or on other types of interim arrangements.
  - (b) There shall be no institutional hiatus between the time of dismantling of the present territorial autonomies and the time of establishment of the future territorial autonomies.
18. The IFP maintains and submits that the IFP's proposal on the process of transformation would ensure this result. In this respect the IFP takes exception to the conclusion of the Technical Committee that the existing territorial autonomies are not capable of instant rationalisation.
19. Therefore, the IFP rejects the alternative set forth in 3.1.1 of the Fourth Report of the Technical Committee and invites the Technical Committee to work on procedures which would allow the full implementation of the alternatives set forth in 3.1.2. along the lines set forth in the original submission of the IFP to this Technical Committee.



20. The IFP also makes reference to the applicable provisions of the Constitution of the State of KwaZulu/Natal and invites the Technical Committee to express a technical opinion on the viability of such provisions for the purpose of reincorporation and rationalisation of the existing territorial autonomies.
21. Moreover, the IFP takes exception to the recommendation of the Technical Committee that the allocating of powers to the SPR should be "flexible" to preserve the discretion of a constitution-making body and maintains that all powers should be vested both with the characteristics of "administration" and "government". There is no need to discount to the present a speculative possibility that the regional dispensation might be modified in future stages of our constitutional development. Conversely, we also see no compelling technical justification to believe that any type of future constitutional development driven by the required democratic political support might be impaired by what is established during the present stage of constitutional development.
22. The IFP also invites the Technical Committee to apply its technical expertise in developing procedures which will (a) establish SPR and (b) allow the holding of elections in the SPR prior to, or simultaneously to, the holding of elections at central level and not afterwards.
23. The IFP also rejects the notion advanced by the Technical Committee that the powers of the SPR should be subject "to supervision of the constitution-making body". The IFP sees no technical or political reason to create such a situation of institutional uncertainty and confusion and asks the Technical Committee to provide further clarification on its suggestion in this regard.
24. More importantly, the IFP takes exception to the list of powers allocated by the Technical Committee to the SPR and notes how this list of powers is narrower than the powers recognised to regions in established models of regional states.
25. The IFP invites the Technical Committee to apply its mind and knowledge to determine what powers are to be necessarily allocated to the central government so as to leave the residual powers to the SPR. Only this exercise will empower the Negotiating Council to make an intelligent and informed decision on possible alternatives and will leave open the decision on the form of state.

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