

MEMORANDUM RELATING TO THE FURTHER HANDLING OF THE TRADITIONAL LEADERS' PROPOSALS ON CONSTITUTIONAL ISSUES:

INTRODUCTION

1. On the 5 October 1993 the Planning Committee established a Task Group to consider the proposals presented by Traditional Leaders to the Multi-Party Negotiating Process. The Task Group is composed of :

- 1.1 Z Titus (convenor);
- 1.2 SN Sigcau;
- 1.3 CW Eglin;
- 1.4 M Nonkonyana;
- 1.5 MA Netshimbupfe,

and such other members of the Technical Committee on Constitutional Issues as may be coopted.

2. The Planning Committee has mandated us to :

- 2.1 draft an appropriate organogram setting out the proposed structures including the relationship between them;
- 2.2 consider the impact which these proposals will or may have on the present constitutional proposals; and
- 2.3 identify issues calling for a political decision.

ANALYSIS OF THE ISSUES REQUIRING OUR ATTENTION

3. It is clear from what was said at the Planning Committee meeting that :

- 3.1 the contents of the document presented by the Traditional Leaders should first be understood before anything else is done and that, to this end, organograms taking into account the suggested powers should be drawn up, explanations should be made, proposed powers should be clearly defined, etc;
- 3.2 In drawing up the organogram the powers of the District Councils should be analysed carefully and that where possible, duplication of powers within the proposed structures avoided.
- 3.3 the relationship between the proposed structures and the existing structures should be clearly defined (note the differences existing between the laws of the SATBVC States);

- 3.4 the changes sought to be brought about, their nature and the extent to which the existing system (where applicable), will be altered, should be outlined clearly;
- 3.5 the proposals relating to the setting up of new structures should be isolated so as to ensure that a clear distinction is drawn between them and those merely effecting modifications, improvements and/or alterations to what already exists;
- 3.6 where the jurisdiction of an existing structure is being altered then the extent of such alteration should be identified;
- 3.7 where a proposal may lead to the extension of the present territorial jurisdiction of an existing authority or the jurisdiction of such authority as to persons, then such proposed extension should be identified; and
- 3.8 one needs to be certain whether fundamental changes relating to the nature of the present functions of traditional authorities vis a vis those of municipalities are being proposed.

Further additions may be made to this list.

4. It is clear from the mandate extended to the Task Group that its primary task is to analyse the proposals and thereafter present them to the Planning Committee in simplified form. The document from the Task Group will also recommend further action steps with regard to each aspect of the proposals. These further action steps may involve :

- 4.1 the referral of certain proposals (or all of them) -
 - 4.1.1 directly to the Negotiating Council for consideration;
 - 4.1.2 to the Technical Committee on Constitutional Issues;
 - 4.1.3 to bilateral discussion amongst participants in the Negotiating Council and the Traditional Leaders; or
 - 4.1.4 to the Traditional Leaders for further motivation, reconsideration, clarification, etc.
- 4.2 interaction with various bodies outside the Negotiating Council such as municipal associations, traditional leaders' associations, the Local Government Negotiating Forum, other national forums, etc;
- 4.3 the referral of the proposals (or any of them), to outside technical experts for

comment and consideration of certain aspects; or

- 4.4 the referral of the full set of proposals to the Negotiating Council for guidance on the way forward.

The above list is not meant to be exhaustive.

5. Briefly the Task Group, in my view, is not being asked to reject or accept the proposals by the Traditional Leaders. Only the Negotiating Council can do this. What we are being asked to do is to analyse the proposals in terms of the mandate and suggest a way forward. The purpose of this document is to facilitate the task of the group and to assist towards the shaping of a clear modus operandi regarding the consideration of this matter. This is therefore a discussion document and is not meant to drive anyone towards any particular direction. Further additions are invited.

WAY FORWARD

6. We need to agree on an agenda for a meeting which I propose should be held as soon as possible. In view of the fact that Mr Eglin may not be here on Thursday we will have to find time to meet tomorrow. In the meantime I invite -
 - 6.1 members of the Task Group to propose an agenda for that meeting. I will prepare the final text;
 - 6.2 traditional leaders, through their representatives, to prepare an organogram of the proposed structures taking into account what is contained in paragraph 3 hereof and the sentiments expressed within the Planning Committee at its meeting today;
 - 6.3 members to consider the impact which these proposals will have on what appears currently in the latest draft of the Constitution for the Transitional period (including the constitutional principles and the powers being proposed in respect of regional governments);
 - 6.4 to look into the possibility of setting out broad principles in the constitution and leaving matters of detail to a separate piece of legislation;
 - 6.5 to consider how the proposed subcouncil on regional and local government and traditional authorities and the Constitutional Assembly can be afforded the opportunity to contribute to the drafting of any final proposals and also how the Local Government Negotiating Forum can contribute to the drafting of final proposals;
 - 6.6 to suggest a way forward bearing in mind the options (and any others) set out in paragraph 4 hereof, and the need to avoid a proliferation of structures at the local level;

- 6.7 to comment on the steps which may possibly be taken to ensure that any proposals put forward on this issue do have a measure of popular support; and
 - 6.8 to suggest a mechanism or yardstick which will assist one in the determining which urban local authority will fall under the jurisdiction of a District Council.
7. We need to finalise this matter as a matter of urgency. When discussing this matter technical issues should be isolated from political issues. When dealing with each one of them a clear way forward will have to be identified. Possible alternatives to each proposal may have to be identified. It is suggested that the local government issues be separated from matters pertaining to the houses of chiefs.
8. Finally, your comments are invited on the participation of technical committee members at this stage of the process.

With regard to the forthcoming meeting I wish to point out that we need to approach it in a positive spirit, that we should all move forward on this purposely instead of casting aspersions and that one should not read into another's question or comment things which were never intended. Remember, we are a facilitating body charged with an important duty aimed at ensuring that this matter is finalised as speedily as possible.

9. Looking forward to your inputs.



Z TITUS
CONVENOR
5 OCTOBER 1993

**ADDENDUM TO THE REPORT SUBMITTED TO NEGOTIATING COUNCIL
BY THE PLANNING COMMITTEE ON 21 OCTOBER 1993
IN RESPECT OF
THE TRADITIONAL LEADERS' CONSTITUTIONAL PROPOSALS**

FURTHER INFORMATION RELATING TO THE TWO ALTERNATIVE PROPOSALS
SET OUT IN ITEMS 3.1.6 AND 3.1.7 OF THE REPORT REFERRED TO ABOVE

1. **Number of seats to be reserved for Traditional Leaders within the appropriate
Regional Legislature.**

The Traditional Leaders propose that the number of seats to be reserved for them should be equivalent to 40% of the total number of seats allocated to the elected members within that Regional Legislature.

2. **Number of seats to be reserved for Traditional Leaders within the Senate.**

The Traditional Leaders propose that the number of seats to be reserved for them should be equivalent to 30% of the total number of seats within the Senate. The aforementioned 30% shall be divided proportionally amongst the Traditional Leaders elected by Traditional Leaders from each of the SPRs.