2/2/1/10/1/1

VOLKSTAAT COUNCIL

TECHNICAL COMMENTS ON THE REFINED WORKING DRAFT (THIRD EDITION)

on the basis of the Volkstaat Council's Interim Report

JANUARY 1996

COMMENT ON THE NEW DRAFT CONSTITUTION

INTRODUCTION

Are the Volkstaat Council's (VSC) proposals as embodied in the first transitional report reconcilable with the structure of the draft constitution?

1.1 Our understanding is that it is possible within the structure of the draft constitution with key pointers to stipulated articles and the wording thereof.

1.2 The draft thus makes provision for a provincial system with watered down powers which could well, with adaptation, accommodate the proposals of the VSC. The provincial system rests on the objective of territorial decentralisation of powers which is also an objective which was accepted in the first VSC report.

1.3 Certain provisions of the draft are formulated in such a way to create the impression that until proposals are made by the VSC, final attention can be paid to it. It is clear from the footnote to article 117. Article 154 also makes provision for a provincial constitution which can be converted to the VSC's proposal. Normally provinces do not have such competencies in a unitary state. Various options are also spelt out for the powers of a provincial legislator. One of those, including option 4, is with adaptation, to an extent compatible with VSC proposals.

1.4 What is clear is that set conceptions previously used by the Council may lead to confusion. We will therefore have to concentrate on the content of set conceptions without necessarily making declarations and models such as federations and confederations or unitary states applicable to it.

BASIS OF THIS COMMENT

This comment was drawn up against the background of the First Report of the Council. It is based on the entitlement of the Afrikaner to territorial self-determination in their own province or shared-state and that such self-determination must be realised through the constitution as set out in Constitutional Principle XXIV in the preamble. Thus the Constitutional Principle of South Africa as a single sovereign state, is also respected. The attainment of a volkstaat, within a broader South Africa, with its own powers and structures but without sovereignty, is the minimum form of self-determination, which in the light of Constitutional Principle XXXIV and the Accord concluded by the Freedom Front,can be acceptable. It is further noted that the right to self-determination of nations with their own culture and language must be recognised and respected by the draft constitution. Self-determination must thus be given stature in the draft constitution. Besides its provincial stature, provision is also be made for autonomous areas in the form of development areas and the erection of Citizen Councils aimed at protecting cultural self-determination. Self-determination as a general concept also needs to be built into the constitution to direct

future government responses and this comment contains such references.

COMMENT ON THE STRUCTURE OF THE DRAFT

Chapter 1:

Art. 1. This article does not present particular problems for the implementation of our proposals. We propose that the article is amended as follows:

> The Republic of SA is one sovereign democratic state founded on a commitment to achieve equality, to promote and protect human dignity, MINORITY RIGHTS and to advance fundamental human rights, FREEDOMS AND SELF-DETERMINATION OF ITS DIFFERENT PEOPLES

Art 1(2). Comment on this art. must be reserved until Appendix 1 is presented to us.

Art. 2 This art. can only be acceptable to the Afrikaner if submission to the constitution is linked with the right of the Afrikaner to self-determination. we propose that the second sentence of the art. is modified as follows:

> It binds the Republic, its institutions, its citizens and all persons within its borders AS LONG AS THE RIGHT TO THE SELF-DETERMINATION OF PEOPLES AND THE FUNDAMENTAL RIGHTS OF INDIVIDUALS ARE RECOGNISED AND MAINTAINED; law and conduct inconsistent with ITS BINDING NATURE is invalid.

Art. 3 This article is acceptable but subject to the insertion of a particular identification of citizens by a provincial legislator. This provincial citizenship will not detract from the general SA citizenship but provincial suffrage must have a linkage with this identification.

Art. 5(2) We note that every province and particularly the volkstaat, also has the right to their own flag and anthem. It is the only manner in which the self-determination of the Afrikaner and their own culture can be attained. We propose the following amendment:

> Every province and the Volkstaat retain the right to its own cultural symbols.

Art. 6 We comply however with recommendations that we previously made in this regard, on language.

> 1. It is proposed that article 3 of the Interim Constitution is retained but that it be clearly spelt out that the languages that are protected are those that existed on 27 April, namely with the operationalisation of the Interim constitution.
>
> 2. The official status of a language needs to be

territorially established and recognised. This means that provinces also have the right to establish the official status of a language within a province provided that a language is used as the mother tongue by the majority or a considerable minority of more than ten percent in that province. Its status may not be reduced or advantaged over other languages that are used in this way. Parliament must also not have the power over provinces where an official language is used by more than ten percent of the population, to oust the use of that language by other languages. Language status must therefore also be territorially bound and protected. The use or status of a language in one region may therefore not be reduced on the basis that persons from other regions use other languages or are more in number than in the former region.

3. It appears from the above that the status of only those languages that were official languages, may not be affected. The Afrikaner Volkstaat will thus retain those languages, that enjoyed official status in its region at the coming into being of the Interim Constitution, as official languages.

4. The language stipulations in art. 3 must be read with art. 31 and art. 32 and Principle XI of the Interim Constitution. Principle XI states expressly that the conditions for the promotion of the diversity of language must be encouraged. According to art. 30 of the Indian Constitution, the state may not withhold any subsidies simply because a particular teaching institution under management of a minority, bases its teaching on its own language and religion.

5. If this principle is accepted in the Indian constitution, it is clear that the Afrikaner has the right over its own teaching institutions, in its own language and that state subsidies may not be withheld if these schools are not state managed but privately managed and even if they are exclusively in Afrikaans and exclusively for the preservation of Christian National Instruction.

6. Language is an essential characteristic of a nation and is the medium through which culture is expressed and conveyed. It is inextricably linked to a nation's right to self-determination. Recognition of a nation's right to self-determination implies that this essential characteristic must be protected and promoted and that is more than a mere individual right.

Proposals for constitutional wording:

1.(1) Afrikaans, English, isiNdebele and Sesotho sa Leboa, SeSotho, siSwati, Xitsonga, Setswana, Tshivenda, isiXhosa and isiZulu are the official South African languages at national level, and conditions must be created for their development and for the advancement of their equal usage

and enjoyment.

(2) Rights with regard to language and language status as they existed on 27 April 1994 is not curtailed, and provision must be made by Act of Parliament that rights with regard to language and language status of languages that exist only at regional level, are extended nationally in accordance with the principles stated in sub-article (9) but with the provision that a language that is used in one region by more than ten percent of its population, may not be ousted by other languages not used in that region and also historically not used as such.

(3) Where practicable a person has the right, in his or her relations with any state administration on the national government level, to be addressed in any official South African Language of his/her choice.

(4) Regional differentiation with regard to language policy or practice is permissable.

(5) A provincial legislator can adopt decisions, through two thirds of all its members, any language in sub-article (1) intended to be declared an official language for the whole province or any part thereof and for any or all competencies and proceedings within the competencies of that legislator, except that neither the rights with regard to language nor the status of an official language as it existed in any region or with regard to any proceeding on 27 April 1994, may be reduced.

(6) Where practicable, a person when relating to any state administration on the provincial government level, has the right to use or be addressed in any of the official languages of his/her choice as aimed at in sub-article (5).

(7) A member of Parliament can address Parliament in the official South African language of his/her choice.

(8) Parliament and any provincial legislator can, except this article, by legislation, make provision for the use of official languages for the purposes of functioning of the government by taking into account considerations of use, feasibility and cost.

(9) Legislation as well as official policy and practice, with regard to the use of languages on any government level is subject to and founded on the provisions of this article and the following principles:

(a) The creation of conditions for the development and advancements of equal use and enjoyment of all South African languages but with the provision that a language that is used in one region by more than ten percent of its population may not be threatened by languages that are not used in that region or were not historically used as such.

(b) the expansion of the rights with regard to language and language status of languages limited to certain regions on 27 April 1994.

(c) the appearance of the use of any language for purposes of exploitation, domination or division;

(d) the promotion of multilinguilism and the provision of translation facilities;

(e) the cultivation of respect for other languages, together with official languages, spoken in the Republic and the encouragement of its use in appropriate conditions; and

(f) the non-reduction of rights with regard to language and language status as it existed on 27 April 1994.

(10)(a) Parliamentary legislation must provide for the institution through the Senate of an independent Pan-South African Language Council to promote respect for the principles aimed at in sub-article (9) and to promote the development of the official South African languages;

(b) The Pan-South African Language Council must be consulted, and the opportunity afforded to make recommendations with regard to any proposed legislation aimed at in this article.

(c) The Pan-South African Language Council is responsible for the advancement of respect for and the development of German, Greek, Gujarati, Hindi, Portuguese, Tamil, Teloegoe, Urdu and other languages used by South African communities, as well as Arabic, Hebrew and Sanskrit and other languages used for religious purposes.

2. No state subsidy or contributions to any private cultural, language or teaching institution is withheld only on the basis that such an institution is privately managed or delivers a service to a single language or cultural group, or only promotes a stipulated language or culture.

Chapter 2:

Our original comment in this regard however needs to be submitted to the negotiating team of the constitutional assembly. Once again we give our original comment.

THE NATURE OF A BILL OF RIGHTS AND ITS APPLICATION

1) A Bill of fundamental rights must provide for the diversity of rights as it comes to bear on a plural society.

2) In the Republic of South Africa as a plural society the fundamental rights differ form that which may apply in a homogenous society.

3) The Republic of South Africa consists of different nations where some, like the Afrikaner nation, are actively striving towards self-determination.

4) Today it is internationally recognised that together with individual rights group- or national rights enjoy protection and it is the duty of governments to create conditions where national identity must be encouraged and promoted. (See e.g. the General Assembly's *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* of 1 December 1992).

5) A Bill of fundamental rights must thus provide for individual rights as well as minority rights and rights of nations.

6) The individual rights must be defined over rights of nations and minority rights and must be balanced to co-exist harmoniously.

7) The duty to ensure that individual rights as well as minority rights and national rights are maintained, rests with the state in its various forms and all its organs.

Art. 7: Proposal for constitutional wording art. 7

7.2 The rights in this Bill of Fundamental Rights binds all legislative and executive state organs at all levels of government.

7.3 The state is obligated to create conditions where the right of nations to self-determination as well as living out fundamental rights is possible.

7.4 The right of the individual in accordance with the existence of this Bill in so far that it does not that it does not affect the right of a nation to self-determination in accordance with this Bill or is incompatible with it.

7.5 Individual rights and the right to self-determination in accordance with this Bill is made compatible with one another, as far as possible, so that the character of the individual right is not undermined.

7.6 The right of a nation to self-determination for the objectives of this Bill of Fundamental Rights implies the right of a nation to be ruled according to its own character and to protect and develop its own identity, culture and language within national context.

7.7 The nation that is entitled to self-determination in accordance with this Bill of Fundamental Rights, is a group of people living in a given land or region who have a common religion, language, culture, tradition, history and origin and who feel united in protecting, living out, maintaining and promoting their common language, culture, religion, traditions, and history and who want to educate their people similarly.

7.8 The Afrikaner nation is one of the nations that is entitled to self-determination in accordance with this Act.

7.9 The right of a nation to self-determination is considered in a court by delimitation and enforcement of individual rights.

7.10 Nations, corporate bodies, associations and individuals are entitled to the rights in the Bill of Fundamental Rights where it is applicable to them mutatis mutandis.

Art. 8:

1. The objective of equality before the law as embodied in art. 8(1) of the draft is accepted.

Options 1 and 2 both present problems. We want to propose that the Council stands firm by its proposals as submitted to the Theme Committee. It reads as follows:

> 2. The no-discrimination-principle as underlined in art. 8(2) of the Interim Constitution is accepted but subject to the right of nations to self-determination, the right of freedom of association, and the right of the individual to its own language, culture and teaching.
>
> 3. It is recognised that group interests or group rights already underlies the stipulation of art 8(3)(a) of the Interim Constitution. If group rights are already protected then it is logical that rights of nations should also enjoy protection.
>
> 4. Such corrective action that is aimed at replacement of one race group by another, in the state service or public vacancies, without taking into account individual circumstances and qualifications, is viewed as a contradiction of the prohibition of discrimination in the Interim Constitution.
>
> 5. Corrective action is regarded as permissable only if a particular individual can prove if another person is advantaged over him/her based on the fact that he/she from another race group. Corrective action may only take place to set the record straight where a particular individual can show that he/she has been discriminated against. The test has bearing on the individual's circumstances, namely, the person against whom was discriminated and in whose favour, an not whether a particular race group was discriminated against in the past. The replacement of one race group by another, based on a quota system is no less than racial advantage and discrimination and contradicts the character of the principle of non-discrimination as a fundamental right.
>
> 6. Corrective action as a program is incompatible with the fundamental rights and can only be of a temporary nature and needs to be dealt with in a year because it threatens

the individual rights of other people. It does not need to be included in the new constitution.

7. Individual cases of corrective action must by nature be justified by a legal process and not be implemented by discretionary power of authority.

Proposal for constitutional wording art. 8

1. Every person has the right to equality before the law and equal protection by the law.

2. Nobody may be discriminated against whether direct or indirect, and without detracting from the generality of this stipulation, in particular on one or more of the following grounds: race, gender, ethnic or social background, colour, age, disability, worship, beliefs, religion, culture, language, *political or tribal affiliation*.

3. The principle of non-discrimination in par. 2 is subject to the principle of self-determination of nations, the right and freedom of association and the right of the individual to practice their own language, culture, traditions and teaching, in the context of the group.

4. Besides any other remedy a court is competent, in a case of unreasonable discrimination, to order the enactment of corrective action against the state.

5. Prima facie evidence of discrimination on any of the grounds in par. 2, is honoured with sufficient evidence of unreasonable discrimination as aimed to be in that par., until the contrary is proven.

Art. 9

The proposal of the draft is accepted.

Art. 10

1. The right as currently formulated is too broad and creates vagueness and uncertainty. An example of this is whether the death penalty is permissable or not.

2. It is predictable that the turmoil brought about by the death of a person may be questioned.

3. Our view is that these problems will be solved by wording that emphasises the protection of life. It will also emphasise the duty of the state to protect the lives of the innocent over that of the criminals.

Proposal for constitutional wording art. 10

1. Every person has the right to protection of his life.

Art. 11

According to us this article needs to read only as follows:

1. Every person has the right to freedom and security of their person which includes the right not to be detained without trial.

2. No person may be subjected to torture of any kind neither physical, mental or emotional nor brutal, inhuman or humiliating treatment or punishment.

Art. 12

1. No person may be subjected to slavery or forced labour.

Art 13 and 14 is acceptable.

Art 15 is unacceptable. We propose:

1. Every person has the right to freedom of speech and expression, which includes freedom of the press and other media, and freedom of artistic creativity and scientific research.

2. The above mentioned freedom is subject to a person not being slandered through exercising the right to freedom of speech and expression.

3. The freedoms in par 1 does not include the freedom to engage in sexual abuse, or distribution of humiliating or child pornography or to make the human body the object of humiliation or bestiality.

4. All media financed through or under control of the state must be regulated in a non-partisan manner and must ensure the expression of a diversity of viewpoints.

Art. 16 is acceptable.

Art. 17. We would improve this article as follows:

1. Every person has the right to freedom of association to associate freely in a national union, to live, school, worship and find political expression.

Art. 18 is acceptable.

Art. 19 cannot be an absolute right because every country must have legislation which makes provision for loss of citizenship, e.g. if a person willingly accepts citizenship of another country and uses that passport. We propose that the article be scrapped.

Art. 20 We propose the following provisions:

20(1). Every person has the right to freedom of movement.

20(2). Every person has the right to lawful residence wherever

they can express their right to freedom of association and cultural convergence.

Sub-articles 20(2)-20(4) is acceptable.

Art. 21. We propose the following provisions:

(1) Every person has the right to participate freely in the local and international economy.

(2) No regulations must apply, that exclude certain persons or classes from certain jobs, appointments, professions, determined positions, work opportunities or promotions, or discriminates particularly on grounds of historical reasons or maintenance of quotas based on race or colour.

(3) No arbitrary or petty regulation must apply which limits the rights of a person to participate in local or foreign trade.

4. The above stipulations do not prohibit materials produced for the protection and improvement of quality of life, economic growth, human development, social justice, basic service provision, reasonable labour relations or the promotion of equal opportunities for all provided that such material is justifiable in an open democratic society based on freedom, equality and merit.

Art. 22 is acceptable provided that sub-article 3(c) is included.

Art. 23 can be accepted.

Art. 24 is unacceptable. This applies to all options. We propose the following:

> (1) Every person has the right to obtain and maintain property rights and to dispose of such rights in the extent where the nature of these rights make it susceptible to it.
>
> 2. No direct or indirect deprivation, decline or rendering useless of any property rights is allowed, other than that corresponding to a law.
>
> (3) Where any property rights from sections of a law in sub article are dispossessed, reduced or rendered useless, such dispossession is only permissable for public objectives and is subject to the payment of agreed compensation,or the payment of this compensation and within this time frame that a court of law proclaims as fair and reasonable with consideration for all factors concerned, including, in the case of determining the compensation, the purpose for which the property was used, the history of its purchase, its market value, the value of its investments by the affected person and the interests of this person.

Art. 25 This article is unacceptable because it sets an unachievable obligation for the state. Human rights usually limit

the power of the state over the individual. This limitation really holds a positive obligation on the state to do something for which it does and will not have either money or resources. Must the state also provide housing for legal or illegal immigrants? Must the state provide independent housing for children who choose to live independently from their parents? This article could easily encourage illegal squatting. Does Article 25(2) actually protect people squatting illegally on other people's land? Only legal housing can and may be protected by the state else the state will neglect its duty to persons who obtained their property legally. Must the state provide housing to a person wherever he wants to live even if he had accommodation elsewhere? Or can the state establish where the housing will be provided? This article must be scrapped.

Art. 26 This article is once again unacceptable. The objections to the previous article are also applicable here. Who must pay for these rights? Must they be provided free of charge by the state? This is the implication if it is a right. If this article is to work horizontally as aimed at in the draft, then every person may now take food and water where they wish; from the state, a private person, farmer, etc. If one person gets free rights, then everyone should get it. It means that nobody needs to pay for water, food or medical services. Can such nonsense really be included in the constitution, and in particular in a Bill of human rights?

Art 27 We propose the following article:

(1) Every child has the right-

(a) to a name and a nationality, from birth.
(b) to parental care
(c) to security, basic nutrition and basic health and social services.
(d) not to be subjected to neglect or abuse.
(e) not to be subjected to exploitative labour practices and not to be compelled or allowed to do work which is dangerous or harmful to his or her development, health or well-being.
(f) to attend school in his/her own language group and the right not to be discriminated against on account of own national teaching.

(2) Every child held in detention has the rights together with that contained in article 25, to be held under conditions and to be treated in a manner fitting their age.

(3) In the application of this article a child means a person under the age of 18 years, and in all matters affecting such a child his/her interests are paramount.

Art. 28 Option 2 is reasonably acceptable but we prefer the following and want to emphasise sub-article (c):

1. Every person has the right-

(a) to basic instruction and equal access to training institutions with the understanding that exercising this right does not disadvantage or undermine the right of a culture- or language group to own instruction.

(b) the right to instruction in his own language and within his own cultural group of his/her choice; and

(c) to create training institutions based on a social culture, language or religion, with the understanding that there will be no state discrimination, based on race or colour, against such institutions.

Art. 29 on academic freedom can be accepted subject to art. 29(2) giving the right to academic freedom to every person. The following must be added to article 29(2):

AND THE RIGHT TO EXPRESS HIS BELIEFS

Art. 30. We regard the concept as a watering down of language and cultural rights and propose the following:

(1) Every person must have the right to use the language of his/her choice and to participate in the cultural life of his/her choice.

(2) Every person has the right to be instructed in his own language and cultural group, at pre-primary, primary, secondary and tertiary level.

(3) Every person has the right to receive university education in his own language.

(4) Every person has the right to be served in his own language by the state and public institutions and the media in particular.

(5) Every person and nation has the right not to have its own training-, language-, and cultural institutions discriminated against by way of financial support from the state, based on the fact that the particular institution only provides for a specific language- and cultural group.

Art 31. This article is to broad and invades a person's right to privacy. We propose the following wording:

Every person has the right of access to all information held by the state or any of its organs at any level of government, in so far as this information is required for exercising or protecting any of his/her rights.

Art. 32. The current draft is a watering down of the rights that existed against the administration in accordance with the Interim Constitution. This watering down is unacceptable. We therefore propose the following:

Every person has the right-

(a) to valid administrative conduct where any of his/her rights or interests are affected or threatened;

(b) to procedurally reasonable administrative conduct where any of his/her rights or lawful expectations are affected or threatened.

(c) to be provided in writing with reasons for administrative conduct that affect any of his/her rights, unless reasons for such conduct is made public.

(d) to administrative conduct that is justifiable with regard to the reasons given, where any of his/her rights are threatened.

Art. 33 is acceptable.

Art. 34. We do not think it necessary to discuss the question of amendment of bonds since the courts have already set it out in the Interim Constitution, and its interpretation is generally acceptable. We therefore propose that the article, as previously formulated, be retained. We want to focus on sub-art. 4 which should read as follows:

1. Every person who is detained, including condemned prisoners, have the right to-

(a) be informed without delay, in a language that he/she understands, of the reasons for his/her detention;

(b) be detained under humane conditions that includes at least the provision of adequate food, reading material and medical care;

(c) consult with a legal practitioner of their choice, to be informed of this right without delay, and where otherwise it may lead to fundamental injustice, the state should provide the services of a legal practitioner;

(d) be given the opportunity to make contact with, and receive visits from his/her spouse or partner, relatives, religious advisor and a medical doctor of his/her choice; and

(e) contest the legality of his/her detention, in person, in a court of law, and to be released if such detention is not legal.

(2) Every person arrested on account of an alleged plea of misconduct, has besides his/her right as a detained person, the right to-

(a) be informed without delay, in a language that h/she understands, that he/she has the right to remain silent and to be warned of the results of taking oath on any declaration;

(b) be brought before an ordinary court of law, as soon as is reasonably possible, but no later than 48 hours after arrest, unless the said time, falls outside normal office hours on a day when there is no court sitting, expires, then the first court day after such expiry, to be charged or informed of the reasons for his/her continued detention, failing which he/she is entitled to be released;

(c) not be compelled to make a confession or admission that could be used as evidence against him/her; and

(d) be released with or without bail unless otherwise required in the interest of justice.

(3) Every accused has the right to a reasonable hearing which includes the right-

(a) to a public hearing in an ordinary court of law within a reasonable time after he/she is charged;

(b) to be informed adequately of the details of the charge;

(c) to be declared innocent and to remain silent during plea proceedings or hearing and not to give evidence at the hearing;

(d) to supply evidence and contest and not be an obligatory witness against him- or herself;

(e) to be represented by a lawyer of his/her choice, or unless otherwise it would lead to injustice, to be legally represented at state cost, and to be informed of these rights;

(f) to be found not guilty of a misdemeanour in respect of an act or omission which was not an offence at the time when it was committed, and not to be punished more severely than was applicable at the time when the crime was committed;

(g) not to be tried anew for a crime for which he/she was found guilty or innocent;

(h) to have access to a higher court than the court in the first instance, by way of appeal or review;

(i) to be tried in a language that he/she understands, or if not possible, that the proceedings be interpreted for him; and

(j) to be sentenced within a reasonable time after being found guilty.

(4) Every person held in detention, including sentenced prisoners has the right to be held in and with his own cultural-, language-, gender-; religious- and national group.

Art. 35. The wording of the draft is unacceptable. We propose the following:

(1) The entrenched rights in this Chapter could be restricted right with the understanding that such a limitation-

(a) is only permissable to the extent where it-

(i) is reasonable; and

(ii) is justifiable in an open and democratic society based on freedom and equality; and

(b) is in accordance with the right of nations, on which this constitution is based, to self-determination; and

(c) does not deny the basic content of the right concerned and with the further understanding that any limitation of-

(aa) entrenched right in article 10, 11, 12, 14(1), 21,25 or 30(1)(d) or (e) or 2; or

(bb) an entrenched right in article 15, 16, 17, 18, 23, 24, **31 and 32,** in so far as a right is in accordance with free and fair political **and cultural activities,**

together with the requirement that it must be as reasonable as the requirement in paragraph (a)(i), and essential.

(2) Except as stipulated in sub-article (1) or any other stipulation of this Constitution, no rule of law restricts any right entrenched in this Chapter, neither a common, customary or legislative right.

(3) Entrenchment of the rights including this Chapter are not presented in a way that detracts from any other rights or freedoms by recognition or granting of the common-, customary- or legislative, to the extent that they are not incompatible with this chapter.

(4) This chapter does not prohibit measures created to prevent unreasonable discrimination by other bodies and persons than those in accordance with article 7(1), with the understanding that such legislation may not affect any rights granted in this chapter.

Art. 36. We prefer the provision in the Interim Constitution as amended by us. The provision is as follows:

(1) An emergency is declared by virtue of Parliamentary Law and is only declared where the safety of the Republic is threatened by war, attack, civil war or general collapse of law and order, or at times of national disaster and if the state of emergency is necessary for restoring peace and order.

(2) The declaration of a state of emergency and any steps motivated by it, including any regulations issued as a result, is in force for a maximum period of 21 days, unless it is extended to a maximum period of three months, or consecutive maximum periods of three months at a time, by decision adopted in the National Assembly by a two third majority of its members.

(3) Any higher court is authorised to investigate the validity of a declaration of a state of emergency, extension thereof and any steps enforced by such a declaration, including a regulation issued under this act.

(4) The entrenched rights in this Chapter, can be suspended only as a result of a state of emergency, and only to the extent that it is necessary in order to restore law and order.

(5) Neither any law that provides for the declaration of a state of emergency, nor any steps as a result, including a regulation issued under this act permits or authorises-

(a) the creation of offenses with reactionary power;

(b) safeguarding of the state or persons authorised by the state to deal with illegal activity during the stat of emergency; or

(c) the suspension of this article, and articles 7, 8(2), 9, 10, 11(2), 12, 14, 27(1) and (2), 30(1)(d) and (e) and (2) and 33(1) and (2).

(d) the removal of civil rights with reactionary force.

(6) Where a person is detained under a state of emergency, the detention is subject to the following conditions:

(a) An adult family member or friend must be informed of the detention as soon as is reasonably possible;

(b) the names of all detainees and a reference to the measures in accordance with their detention, must be published in the government Gazette five days after their detention.;

(c) When rights entrenched rights in articles 11 or 25 are suspended-

(i) the detention of a detained person must be

reviewed by a court of law, as soon as is reasonably possible, but not later than 10 days after detention, and the court must release the detainee unless it is convinced that the detention is necessary to restor law and order;

(ii) At any time after the lapse of 10 days after a review, according to sub-paragraph (i), a detainee is entitled to apply for further review of his/her detention by a court of law, and the court must release the detainee if it is convinced that the detention is no longer necessary to restore law and order;

ii) a detainee is at any moment after the expiration of a time period of ten days in accordance with sub- paragraph (i) entitled to a court of justice to further review his or her detention, and the court must order the release of the detainee in the event that the court is convinced that the detention is no longer necessary to restore peace and order;

(d) the detainee is entitled to appear in person in court, to be represented by a legal practitioner, and to present evidence against his or her continued detention;

(e) the detainee is entitled an any point in time access to a legal representative of his or her choice;

(f) the detainee is entitled to have access at any time to a medical practitioner of his or her choice; and

(g) the state must, for the purposes of a review as referred to in paragraph (c(i) or (ii), provide written reasons to justify to the court the detention or continued incarceration of a detainee and to supply the detainee with these reasons no later than two days before the review.

(7) In the event that a court of law discovers that the grounds for the detention of a detainee is not justified and orders his or her release, then such a person cannot be re-detained on the same grounds unless the state provides a court of law with sound reasons for it, prior to the re-detention.

Art 37. We prefer the following stipulations which also make provision for the actio popularis:

(1) Wherever an infraction or threat to any of these acts are alleged, any nation, body or person in par 37.2 is entitled to request suitable legal aid from a competent court of law, which could include a declaration of rights.

37.2 The legal aid as referred to in par 37.1 can be requested by:

(a) A person acting in his or her own interests;
(b) An organisation acting in the interests of its members;
(c) A person who acts on behalf of somebody else who is not in a position to request such legal aid in his or her own name;
(d) A person who acts on behalf or in the interests of a group or class of people;
(e) A person who acts in the interests of the public; or
(f) A person or a body that acts as a chosen or appointed representative of a community or people, or a governmental body, cultural body or society, a religious society or church, a language association or teaching board that consists of a distinct community that acts on the basis of *actio popularis*.

Art 38. Art 38(1) is unacceptable. The main aim of an act dealing with human rights, is to restrict the state's power and not to limit individual freedom. Such an act must thus in no way whatsoever have any horizontal workings considering that it is solely other people's rights which are restricted and will result in a complicated process of demarcation between individual rights. The state's powers are limited because it is powerful and because state powers can easily be abused. These considerations do not apply to the individual because they are on an equal footing.

Art 38 (2) and the option under art 38(3)is acceptable.

Art 39. The present stipulation in the Interim Constitution needs to be preserved since it has already been accepted by the courts and does not present any problems. In this respect, it is unnecessary to construct a new law. The previous stipulations reads as follows :

(1) In the explanations of the provisions of this Chapter a court of law must lay the foundation and promote the values of an open and democratic society based on freedom and equality, and where applicable, must consider the rights of the people to protection of the rights entrenched in this chapter, and the court may consider similar foreign court decisions.

(2) No law that restricts the rights entrenched in this Chapter is constitutionally invalid simply because the wording used is prima facie beyond the limits set by this Chapter, unless such a law is reasonably acceptable for a more specific interpretation which does not exceed such limits, in which case the law is set to have meaning which corresponds with the intended more specific explanation.

(3) With the interpretation of any law and the application and development of the intended law and common law, the court takes the spirit, meaning and intentions of this

Chapter into consideration.

Ad chapter 3:

Art 40. Our understanding is that the existence of a parliament consisting of two houses is absolutely necessary for the broadening of democracy in SA and is the only possible way to give the various groups and regions adequate representation on a national level. The parliament must thus consist of a legislative assembly and a senate.

Art 41-51 does not deal with the structure of the state and can be commented upon at a later stage.

Art 52 shall be commented upon after the draft has been expounded upon.

Art 53. This article can be accepted provided the Senate is involved in the modifications.

Ad chapter 4:

Art 57-65.

Option 1: This option is entirely unacceptable for the following reasons:

1. The entire provincial structure is watered down and becomes liable to the Legislative Assembly.

2. The provinces as represented in the Provincial Council is watered down to simply an advisory and a consulting body. Regional and group interests are thus no longer effectively promoted and protected on a national level.

3. The Provincial Council has no real legislative influence over general legislation.

4. There is no real boundaries of legislative authority between the central parliament and the provincial governments. Legislation of provincial affairs can be accepted by the Legislative Assembly without the agreement of the provinces. On the so-called mediation committee we do not quite understand this problem. The provinces are thus effectively stripped of their so-called provincial legislative competencies. Power is thus all wound up and centralised in one body.

5. A specific province's legislative ability, e.g. Kwazulu-Natal, can be removed and be acted out either through the legislative Assembly taking action with a two thirds majority, or through the mediation committee wherein such a committee is naturally the minority.

6. This option also appears to be in conflict with the constitutional principles XVIII-XX.

Option 2:

In our understanding, there must be a senate such as in the basis of this option.

Art 66. We agree that the provincial legislators, including the volkstaat, must appoint 10 senators. Our understanding is that there must be provision made for the volkstaat as a province, and as a result the senate will consist of 100 senators. We would also like to suggest that each province's premier has the right to attend and address the Senate, but without the right to vote, this would mean a restriction similar to that of art 49.

Art 67. This article is generally acceptable. Art 67(7) must be expanded to ensure that any legislature that affects provincial legislative abilities must be approved by the senate. It shall have relevance to those instances where concurrent legislative ability exists between parliament and the province. In our understanding, art 67(7) must be thus modified:

> Bills GENERALLY affecting the boundaries of provinces or the exercise or performance of the powers and functions of the provinces must be passed by both Houses and, if it is a Bill other than a Bill referred to in subsection (8), affecting the boundaries or the exercise or performance of the powers or functions of a particular province or provinces, it must also be approved by a majority of the senators of the province OR PROVINCES SO EFFECTED.

Art 67(11) ought to be stated more strongly in order to allow the senate to play a greater and more meaningful role in the appointment of judges and ambassadors. Simple participation in the nomination of such a person does not have any sense or purpose. The Senate's approval must be set out as a condition. We propose that the first line of this sub-art. must be changed as follows:

> the Senate OR SPECIFIC SENATORS AS PROVIDED FOR IN THIS CONSTITUTION must participate in the nomination AND CONFIRM THE appointment of ... .

Art 67-72 is non-structural limitations and appear to be in order.

Art 73 in our understanding can have an amendment to the service of the Senate to authorise it to request from any minister or deputy minister, i.e. any member of the central government, to personally give the State any stipulated information in case such a person is obliged to appear before and address the Senate. The following is suggested:

73(6) Any minister or deputy minister must on request attend and inform the Senate about matters within his particular knowledge affecting the provinces or the general administration of his department.

Art 74 can be accepted.

Art 75. This stipulation holds great possibilities for the resolution and mediation of the problems between the central government and the provinces, between provinces, the provinces and local governments, between local governments and even between formal organs of state and minority groups and people entitled to self-determination. As currently worded, this article is powerless. It only makes provision for the understanding of a legal matter and comes down to a policy statement. There is no obligation on parliament to accept such a legislature. No contents for the suggested legislation is prescribed. Subart (2) only makes provision for a Forum which must be appointed by the Senate. This forum has no legislative basis since the Senate cannot singly adopt legislation. As the article is currently worded, the decisions and the similarities of these intergovernmental bodies are also suspect and doubtful. Such decisions and similarities has no constitutional value and legal power. The stipulation as currently worded thus appears to be of no value. The article also refers to bodies which, according to the draft constitution, has no content and is also not named or defined such as the Inter-governmental Forum etc. We would therefore suggest that substantial content must be added to the stipulations to include the following:

1. That the constitution now already sets up a inter-governmental forum.

2. This forum must have the duty of addressing and resolving the problems between the stated government bodies as well as between the government bodies and the named minority groups or people, and to make decisions and agreements that will solve such problems. The aims and purpose of this forum must thus be clearly set out.

3. Provision must also be made for the legal power and the following decisions and agreements which are made and the constitutional role and functions thereof must be set out. in our understanding, this article must also rule and determine the constitutional power and its role which led to and formed the current dispensation and constitution.

This stipulation can be systematically worked into chapter seven, since it contributes to the support of constitutional democracy.

We suggest the following wording:

75(1)(i) An Inter-Governmental Forum is hereby established.
(ii) The purpose of this Forum is:

(a) To promote good relations between central government and the provinces, including the volkstaat.

(b) To solve problems and to mediate disputes between central government and the provinces, including the volkstaat.

(c) To draft and conclude agreements between central government and the provinces, including the volkstaat

(iii)(a) Parliament must adopt legislation to provide for the procedures, mechanisms, processes of and equal representation in this Forum.

(b) This legislation must also provide for representation of cultural and language minorities dispersed throughout South Africa and traditional leaders.

(iv) The aim of the Forum is in particular to solve problems flowing from:
the movement of persons between the provinces, the demarcation of finances, taxes and resources, the existence of different legislation, border and boundary matters,
the existence of minority language and cultural people widely dispersed throughout South Africa and other concerns

(v) The Forum has the additional powers and functions prescribed by national legislation.

(2)(i) A premier Forum is hereby established:

(ii) The purpose of this Forum is:

(a) To promote good relations between the province including the volkstaat mutually

(b) To solve problems and to mediate disputes between the provinces including the volkstaat

(c) To draft and conclude agreements between the provinces including the volkstaat concerning those matters in respect of which the provinces and the volkstaat have legislative competencies

(iii)(a) Parliament must adopt legislation to provide for the procedures, mechanisms, processes of and equal representation in this Forum.

(b) This legislation must also provide for representation of cultural and language minorities living in a particular province

(iv) The aim of this Forum is in particular to solve problems flowing from:
border matters effecting local government the exercise of legislative competencies by local governments set out in schedule 5 and which may effect other provinces
The presence of minority cultural and language groups living in neighbouring provinces

(3) Provincial legislatures are empowered to create Provincial

Forums to deal with problems between the particular province and local governments and local governments mutually and minority cultural and language groups within the said province.

(4)(i) Agreements not violating the express provisions of this constitution Concluded between the various parties in the above-mentioned different Forums are binding on the parties and can be enforced and applied by the Constitutional Court as constitutional conventions.

(ii) Agreements forming the basis of the existing constitutional dispensation in particular the Interim Constitution 200 of 1993 and this Constitution and the essence of which was incorporated in the said constitutions are binding and must be enforced and applied by the Constitutional Court as constitutional conventions.

Ad Chapter 5:

Art 76-77 appears to be acceptable.

Art 78 Subart 3 is unacceptable. The President as we understand simply has the right in conjunction with Senate to participate in the nomination of ambassadors. The Senate needs to have the right to enforce the consequent nominations. It is unheard of that the President has the exclusive right without the slightest influence of cabinet in the appointment of ambassadors. Also a power such as accreditation of foreign representatives needs to be done in conjunction with his ministers. The article in no way refers to the competency to deal with foreign matters in general. This power needs to be given to the President in consultation with his ministers. It is a good policy to subject the exercising of foreign duties to the control of the senate. This contributes to the dissemination of democracy and also permits the provinces to have an indirect say in matters relating to foreign affairs. This applies exclusively to the opportunities such as the conclusion of agreements that does not only affect the country as a whole but may also affect the provinces and their respective powers.

We propose the following:

1) Subart 78 (3)(i) and (j) should thus be scrapped.

2) We further suggest that a provision be considered to give the Senate a supervisory function over the conducting of foreign affairs.

3) An addition of a subart (5) to the following effect:

Decisions pertaining to matters referred to in section 67 (11) and relating to the conduct of foreign affairs must be countersigned by the President of the Senate.

Art 79-84 does not at this stage require any commentary except that we feel that the Senate should have a role to play in the

election and dismissal of the President. We suggest that the election and dismissal of the President in Arts 79 (1) and 84 (1) must take place in a joint sitting of the National Assembly and the Senate. This will ensure that the regional interests (group interests) represented by the Senate will also be considered. Furthermore, we also wish to point out that Art 79 (1) discriminates against homosexuals and hermaphrodites. They should thus also be included as possible candidates for president.

Art 85: In our understanding the VSR ought to support an option which makes provision for cabinet participants through minorities and especially people who claim self-determination. Even option (3) which makes provision for a government of national unity will apparently be chosen above one that is ruled by a single party.

Art 86-88 shall not be commented on at this stage.

Art 89 ought to make it clear that the government is not only politically responsible to the parliament for its deeds, but that it also has juridical responsibility for its deeds and accountability for its deeds towards its ordinary citizens, and that this accountability is determined and can be enforced by the courts. We suggest the following additions:

(3) The President, Deputy-President, all the ministers and deputy-ministers are subject, in the execution of their duties, to this constitution and the law of the Republic and are liable in law for their actions.

(4) Actions performed wilfully in disregard of the law of the Republic or with gross negligence give rise to personal liability of the person responsible for such action irrespective of whether the acts were performed by a person in his\her official capacity.

Art 90-92 will not be commented on.

Art 93 should also appoint a role in this respect for the Senate. We suggest the following additions:
(5) If the Senate requests a joint sitting of the National Assembly and the Senate to discuss and pass a vote of no confidence as envisaged in sub-sections (1) to (4), the joint sitting must be held and the provisions of sub-sections (1) to (4) will mutatis mutandis apply.

Ad Chapter 6:

Art 94 is acceptable

Art 95. This article should make provision for a defined province or the volkstaat to be able to appoint its own provincial courts. Without this right, the Afrikaner's right to self-determination cannot be realised or expanded. The right to self-determination always includes at least, the right to autonomous government. An innately autonomous government must have all 3 pillars of a state order namely legislative, executive and administrative bodies of justice. This would thus mean that the provinces of a volkstaat,

should it be based on the right to self-determination, has the right to its own legal administrative powers.

We suggest the following additions to art 95:

(2) Every province and the volkstaat has the right if it so desires to establish the courts mentioned in section 95 (d) to (f) by its own legislation in order to adjudicate all disputes arising within its jurisdiction and to regulate all matters pertaining to such courts.

Art 96. Our understanding is that it is constitutionally incorrect and rather dangerous to equate the activities of the President who is only an executive person with the backing of parliamentary law as is done in art 96 (3)(b). Any court should have the ability to declare the executive activities of the President as unconstitutional. The Constitutional Court should thus not solely have the ability to decide over the validity of the President's actions. Any law can with respect to art 78 (1) can convey power to the President. It can be simple administrative power with respect to the army, for example the appointment of a task group or the calling up of particular citizens. These activities should be examinable in an ordinary court. Art 96 (3)(b) should give concurrent power to the provincial courts and not exclusively to the constitutional courts. It is unreal that a court sitting does not have to decide over the validity of a law unless it is necessary for the arbitration of a point of difference between individuals. If it is not like that, then it means that the hearing must be stopped for the arbitration of the difference through the constitutional court. This does not only have delaying implications, but also cost implications. It also results in an unnecessary labouring of the constitutional court.

Art 96 (4) is totally unacceptable from a democratic point of view. The constitutional court has exclusive power over the validity of legislature and even over the behaviour of the President, but according to art 96 (4) a person only has the right to approach the constitutional court when it serves the interests of justice and with permission of the court. Since a person cannot rectify unconstitutional legislature and the President's behaviour in an ordinary court, this means that there is no general court to rectify these events. This is simply not acceptable in a democratic system and also clashes with art 33.

Art 98 needs to adapted so that it provides the ordinary courts with concurrent jurisdiction over events wherein the validity of legislature is in question and also to declare it invalid. Our understanding is that it is ridiculous that a law of parliament cannot grant the power to enable the constitutional legal powers to question the behaviour of the president or delve into the details of parliamentary law. This means that a law cannot even empower a court such as a labour court to investigate the validity of a particular law or the conduct of the President. This means that the courts do not have the authority to question the validity of law that it is expected to enforce, or to

adjudicate. Why is such a regulation necessary? Art 98 (3) must be scrapped.

Art 99 (2) is unacceptable. Firstly, the conduct of the President must be, like any other state employee, able to be tried and tested by any court of law. The reference to the President's conduct is unacceptable and gives rise to visions of typical dictatorial Africa constitutions. The Supreme Court must have the ability not only to investigate the constitutionality of a law, but also to effect its decisions to practically declare a law invalid. The person that fails to agree with this can appeal to the Constitutional Court. The regulation as it is outlined in this concept is going to cause an escalation of cost for the ordinary litigant and no legal surety is going to be effected that is of a temporary nature and only the investigation's findings are tabled. In the event that a provincial court does declare a law invalid and the state does not take liking to it, the state can immediately appeal to the constitutional court whereby the decision of the provincial court can be temporarily suspended pending the outcome of the decision of the constitutional court. If for example the state accepts the decision, why does the state have to approach the constitutional court which this concept wants to suggest? A regulation can thus only be applied or added to art 99 (2) in the event that the appeal court or Supreme court declare a law of parliament invalid, the invalidness is suspended for a period of three months and if the state's order to the constitutional court for a scrapping does not come into effect, the law will be final.

Art 100. We would like to show, as already indicated by our commentary on art 79 (1) that art 100 (1) discriminates in both options against homosexuals and hermaphrodites. We suggest that this option is simply referred to that a qualified citizen who is a suitable person, can be appointed as a judge.

Option 2 of art 100 appears to be unacceptable and represents various interests in its appointment of judges. We also feel that art 104 (1)(h) this would mean the Senate's representation on the Judicial Service Commission must be maintained. Furthermore, we feel that it should be made clear that the President must act on the advice of the Judicial service Commission. He would thus in such an instance not be able to exceed that advice. Also, regional interests as represented by the Senate should be taken into consideration when appointing judges for and in the stipulated provinces. An addition to option 2 of art 100 ought to be that the Senators of a stipulated province must prove the appointment of judges to that area. With reference to art 100 (6) option 2, the Senate should also be maintained.

Ad Chapter 7:

It can also be considered in art 106 (1) that a protectorate for a minority people be appointed, especially for those people who are a minority in the country a s a whole or in a specified province. It should be added to art 106 (5):

CONCERNING THOSE MATTERS IN RESPECT OF WHICH PARLIAMENT HAS EXCLUSIVE LEGISLATIVE POWERS

A further addition as far as this article goes should be that the provinces themselves can create officials in such a way that, and in respect of those matters over which the provinces have exclusive jurisdiction, especially Public sponsor, an Auditor-General, a Provincial Electoral Commission and a Provincial sponsor of Minority Rights. These aspects need to be included in a new sub-clause. The following articles can then only be amended "mutatis mutandis". In the case where a provincial post is introduced, the national official does not need to have the capacity to handle matters which fall in the province's jurisdiction.

We propose that a Commission for the Protection of Minority Groups be introduced. This commission should be appointed via an electoral college and composed of the leaders of all minority parties who nominated candidates for the election of members for the provincial legislature of those who are represented in the provincial legislature. The function of such a commission should be to make sure that the internationally accepted principles regarding the protection and rights of the minority and the right of self-determination is maintained through the administration and provincial legislators as opposed to members of minority groups and for that purpose it should have the ability to make investigations, to write reports and to take steps to ensure that the appropriate legal action is taken in order to maintain minority rights.

Ad Chapter 8:

Provision(j) must be added to art 117(1):

THE VOLKSTAAT

Art 118 option 1 is important and is seen as a necessity by the Volkstaat Council. The stipulation should be formulated in such a way that it is clearly an empowerment provision for the provinces to draw up their own basic laws. The so-called stipulation on Provincial Homogeneity concerning this content is acceptable subject to certain revisions. The heading of the stipulation should also be changed to PRINCIPLES OF PROVINCIALISM. The following changes or additions to this stipulation is recommended. To sub art (1) the following should be added.

ON CONDITION THAT THE PRINCIPLE OF SELF-DETERMINATION OF THE DIFFERENT PEOPLES OF SOUTH AFRICA IS RECOGNISED AND RESPECTED BY THE GOVERNMENT AND PARLIAMENT OF SOUTH AFRICA.

We propose that the last sentence of sub art 2 is deleted. It contains a reference to a vague and undefined principle which is in any case peculiar to popular law and general governmental legal principles. The last sentences of sub art

(3) and (8) should also be deleted because they have no specific meaning or purpose and are merely tautologous.

Furthermore it is proposed that the following sub art(9) is added:

THE PRINCIPLES OF ASYMMETRY IS RECOGNISED AND ENSHRINED IN THIS CONSTITUTION TO THE EFFECT THAT SPECIFIC PROVINCES ARE ENTITLED IN VIEW OF THEIR NATURE AND HISTORY TO DIFFERENT POWERS AND COMPETENCIES.

Art 119 to 132 can be accepted subject to the precondition that these articles apply to the extent that it is not revised by a province's own constitution.

Art 133-147 should also be subject to stipulated provincial basic laws. Specifically art 140 lends itself to criticism. Provincial governments, i.e. Executive councils should be representative and responsible governments in terms of the chosen members in the provincial legislators. This means that the executive councils should consist of members of the provincial legislators. Art 148 is unacceptable because it makes the provinces completely financially dependent on central government. It is further supported by art 150(2). Without an own source of income the provinces will have difficulty in functioning as independent entities and provincial autonomy as required by Constitutional Principle XX is impossible. Decentralisation of power only makes sense if there are also independent financial sources available to the provinces.

According to art 85(a) of the South African Law, 1909, the provinces could impose the following taxes:

Direct taxation within the province in order to raise a revenue for provincial purposes.

This article was carried over directly to the 1961 Constitution. According to VerLoren of Themaat, Government Law, 2nd Edition, on pg 390, personal tax and company tax is included. Personal tax and or income tax may not be imposed unless a person has resided in the province for at least 3 months. The stipulations of the draft constitution places the provinces, therefore, in a weaker position than the 1909 Constitution or the 1961 Constitution.

The stipulations of 148-150 of the draft constitution is therefore unacceptable. This unacceptability is, amongst others, rooted in the fact that there is no real functional distinction between fiscal and financial powers between the provinces and the national government. These articles in the draft constitution do not comply with the spirit and requirements of Constitutional Principles XX-XXVII. These stipulations must be replaced to make provisions that the provinces have independent sources of income with the power to impose direct, indirect and personal tax. The power of the

provinces to generate own income, must not only be independent of the national parliament, but must also be thoroughly formulated, separated, demarcated and be exclusive in contrast with parliament's powers. The fear that provinces might overtax their subjects, does not take into consideration that such a provincial government will be voted out by the electorate. Total overtaxation by the national government and the provincial government can be avoided and any problems with relation to this may be resolved in negotiations in the Intergovernmental Forum as proposed by us in art 75. Furthermore, the division of income between the national government and the provinces can take place in the light of recommendations of the Financial and Fiscal Commission.

Art 151 is likewise unacceptable in so far as the lending capabilities are subject to national legislation in parliament. This ability should be independent and original. Surely provinces have enough responsibility to act independently and responsibly. Loans will normally, in any case, be granted only if the national government can guarantee such paybacks. This does not, however, mean that the provinces do not have to have the capability to make such loans independently, in case they want to.

Art 152 can be accepted considering the independent power to raise taxes does not prevent the provinces from still receiving financial awards from parliament.

Art 153 is also acceptable because it once again makes the Provincial Income Fund liable to parliamentary legislation. We propose that art 159 of the Interim Constitution 200 of 1993 be adopted as is.

Art 154: The alternative wording of art 154 is totally unacceptable considering it places too many limitations on the capabilities on a province to adopt its own constitution. In reality, this also places the provincial constitution subject to the approval of parliament and thus does not promote autonomy as is required in Constitutional Principle XX. The initial wording of art 154 can be accepted with certain modifications. To art 154(2) the following sub-paragraph can be added:

> (c) establish different development regions within which a specific cultural and language group can enjoy limited legislative and executive powers consistent with that of, and delegated by, a province.
>
> (d) may recognise and institutionalise cultural diversity.

The following sub art must be added to art 154, namely 154(4):

The Development Areas listed and described in Schedule...are hereby established in the named provinces in accordance with Constitutional Principles XII, XX and XXIV with legislative

and executive powers in respect of the following:

a) Agriculture
b) Language and Cultural opportunities
c) Education
d) Health Services including hospitals and clinics
e) Housing
f) Public Transport
g) Regional Planning and Development
h) Roads
i) Welfare Services including care for the aged and children
j) Regional Industry and local business opportunities
k) Regional radio and television

Ad Chapter 9:

Art 155. Both art 1 and 2 is unacceptable. Both options ignore the urgent stipulations of Constitutional Principles XVIII, XIX and XXI. Firstly, both options give complete legislative powers to parliament. In reality, all legislation complies with such demarcation requirements in option 2(2)(a). The is no summary of competence of the powers of parliament and provinces as required in principle XVIII. Secondly, none of these options give exclusive and concurrent capabilities as required in principle XIX. If parliament, in essence can accept all legislation, still no concurrent legislative capability exists and least of all the provinces will have exclusive capability over anything.

Art 155 should set out the topics around which parliament has exclusive legislative capability as well as the topics around which parliament concurrent capability.

Topics around which parliament has exclusive legislative capability, should be the following:

(i) Foreign affairs and the closing of agreements which fall in the legislative capability of Parliament.

(ii) The external defence and safety of the Republic, the declaration of war and the measures that go along with that including stipulations around the airforce and the navy.

iii) National citizenship
iv) Visas and passports
v) Immigration and emigration
vi) Surrendering
vii) Monetary opportunities including the minting of money and the stipulation of size and weight.
viii) Customs and excise opportunities, toll unions and commercial agreements with foreign states for as far as the Republic is directly affected by such matters.
ix) National railways, national air-, sea- and road traffic as well as national harbours and airports.

x) National elections.
xi) National post- and telecommunication services.
xii) National civil service and national courts including the constitutional court and persons equipped to act in such courts.
xiii) The national police force.
xiv) National community electricity and water networks
xv) National recognition of patent-, business, the authors- and similar immaterial property rights.
xvi) National statistical services.
xvii) The imposing of uniform national tax.
xviii) Money loan qualification.
xix) The Republic's claim to sea and related maritime issues.
xx) Measures on national legislative and executive seats.

xxi) National research-, national tertiary education- and national health issues without separating the province's right to own health-, research- and tertiary education services.
xxii) The erection of a national radio and television service.

xxiii) Punitive law and civil law competencies that are related to and is necessary for exercising all granted competencies.
xxiv) Creation or composition of provinces and revision of the volkstaat's borders.

Topics where parliament has concurrent competencies, should be the following:

i) The taking of monetary precautions in the event of unusual inflation or monetary instability.
ii) The legal system in connection with civil rights and punishable issues as well as the execution of sentences.
iii) Registration of births, marriages, deaths and domiciles.
iv) Bills of fundamental rights.
v) Residential rights and settlement of non-citizens.
vi) Weapons and ammunition.
vii) Pensions.
viii) Economic issues and business including industry, mining, factories, stock exchange, professions, careers, banking, insurance and nuclear power.
ix) Labour rights including social security.
x) Study bursaries and awards.
xi) Expropriation, as far as is necessary, for the execution of stipulated legislative capabilities.
xii) Housing and land issues.
xiii) Fishing issues and the utilisation of the sea.
xiv) Drainage control.
xv) Autonomous areas.

The following must be added to art 156 (1):

in terms of THIS CONSTITUTION AND ITS OWN CONSTITUTION

Art 156(2) should be revised as follows:

Provincial legislatures have exclusive powers to legislate in respect of the following matters:

I) Education and training at pre-primary, primary, secondary and tertiary level.
ii) Health services, hospitals, clinics, old-age homes and special care institutions and welfare services.
iii) Agriculture, abattoirs, animal control and agricultural marketing.
iv) Local governments.
v) Own police force, citizen protection units, home and heart protection units.
vi) Own public media including television, radio and films.
vii) Public transport in the province with the exception of the national road-, sea, rail and air transport.
viii) Own roads and transport infra-structure.
ix) Tourism.
x) The authority to seal agreements with other provinces or foreign states on matters which fall under its legislative competency after consultation with the national government.
xi) The raising and collecting of tax to carry out its legislative, executive and administrative functions.
xii) Courts for the stipulated province and the qualifications of people who may appear in them.
xiii) The introduction and description of volkstaat citizenship.

Provincial legislatures have concurrent power with parliament to legislate on the matters mentioned in section 155 as amended above.

The following stipulation should be added to art 156 to make provision for possible shortcomings:

In respect of all residual matters, parliament and the provinces shall have concurrent legislative powers.

Art 157: Option 1 is accepted and the compilers of the working draft are congratulated for this well thought-out option.

Art 158 may be accepted as is.

Art 159 all 4 options are unacceptable because it does not depend on the demarcation of concurrent and exclusive competencies between parliament and the provinces. It supposes that all competencies are concurrent and that parliament has the ability to formulate legislation on all issues. The objections that have already been mentioned under

art 155, is also valid for all the options under art 159. Option 4 is in all probability the option which leaves the greatest space to provinces to adopt their own legislation even though it is also totally insufficient due to the absence of clear competencies in the provinces. A province will even according to this option, hardly know on what it can formulate legislation. All options will have the effect that the provinces' legislative capabilities are crippled and that existing provincial legislature will always be covered by a cloud of doubt because a stipulated law on the same subject must enjoy preference.

It is proposed that in the case of clashes over those issues which parliament and the provinces have concurrent legislative competencies, the following should apply:

In the case of the execution of concurrent legislative competencies, the legislature of a province and parliament should reconcile and only if they are incompatible, the law of parliament enjoys preference but only if the law is necessary for the uniform execution of the stipulated legislative competencies over the whole of the Republic.
Art 160 the following words should be added to the art: parliament may not encroach on or cause, enable or allow any encroachment on, the geographical, functional, institutional integrity or LEGISLATIVE COMPETENCIES of a province.

Art 161 may be accepted.

Art 162(1)(a) the words past legislation should be scrapped and the words legislative competence should be retained. To art 162(2) shortly after "May" the following words need to be added:

WITH THE APPROVAL OF THE PROVINCIAL LEGISLATURE.

The provincial legislator must be recognised in the transfer of executive competencies to the national executive authority since the executive authorities are still responsible to the legislative authority. It is unheard of that the executive authorities can delegate executive competencies without the permission of the provincial legislator and so in essence to withdraw the executive functions from the control of the legislator.

Ad Chapter 10:

Art 163 the following sub-paragraph must be added to art 163:

(g) enhance cultural development and establish cultural councils for people with a common language and cultural heritage. Through this at least the opportunity is created to comply with the principles XII, XX and XXIV.

(h) ensure that communities sharing a language, culture and interests with the need to nurture, protect and develop their

culture, language and education must be accepted as the basis for local government.

Art 164: Local management has always historically fallen under the legislative competencies of provincial councils. It is unacceptable that these capabilities are now suddenly weakened in that amongst others, it is subject to parliament. Even during the transitional phase legislation was accepted that placed these competencies under the provincial legislative competencies. Therefore it is proposed that art 164(1) is revised as follows and that the words NATIONAL OR and also OR IN BOTH is scrapped:

The structures, powers and functions of government at the local level AND CULTURAL COUNCILS must be provided for in provincial legislation in accordance with this constitution and the different constitutions of the provinces.

Furthermore, it is proposed that art 164(2) is changed to make provision that only provinces demarcate local management areas. This article should read as follows:

Local government structures must be established for the whole territory of the Republic and the provincial legislation referred to
in sub-section (1) must provide for the demarcation of the areas of jurisdiction of local governments.

Sub art 3 can be retained.

Art 165 can be retained. To this article may be added suggestions on citizens councils and their powers and competencies. These powers and competencies appear on page 109-111 of the first report of the Peoples State Council. We mean that it is not necessary to deal with the composition and elections of these councils since it must be done in provincial legislation.

Art 166(3) should make it clear that the legislation referred to in this sub-article is provincial legislation. The word PROVINCIAL must be added before "legislation".

Art 167 is acceptable but it should be added that the stipulation is valid subject to the limitation of a particular province's own constitution.

Art 168 is acceptable but must be placed subject to provincial constitution. To this article must be added the list of powers of the municipal councils in a sub-article 2.

Ad Chapter 11:

In the event that municipal councils cannot be included under local management, it must be placed under that chapter. Municipal councils as suggested by this council for the Afrikaner corresponds with the introduction of traditional

authorities for other population groups. It looks highly discriminatory that only blacks are entitled to the introduction of traditional authorities and not also the Afrikaner.

Ad Chapter 12:

Art 171. The fact that the civil service should be representative of the South African population is adequate and the words AND THE NEED TO REDRESS THE IMBALANCES OF THE PAST TO ACHIEVE BROAD REPRESENTATION is tautologous. These stipulations prove only that there is no such nation like the South African nation but different population groups that must be represented in the broader spectrum.

Art 172. The public administration commission must only be responsible for the administration on national level. It is highly irregular that this commission meddles in provincial issues. The article should only contain a stipulation that the different provinces must also have such an introduction and that these stipulations mutatis mutandis is applicable but subject to the various provincial constitutions.

Art 173(1) the word NATIONAL should be scrapped. This applies also to 173(2). In art 173(3) the word ONLY must be scrapped between the words "prejudiced" and "because".

Ad Chapter 13:

Art 175. This article must also make provision for provincial police forces which can function in agreement with provincial legislation to enforce measures inside the provincial legislator's competencies. It should make further provision for the introduction of civil protection units via provincial legislators and local authorities who can support the national police force and army in the event of an emergency.

Art 178. The words "a woman or a man" is foolish and also discriminatory as already mentioned above and should be replaced with only "a person".

Art 180(1) and Art 180(2) should also make provision that the mentioned issues can be arranged by provincial legislation. Between the words "national legislation" must be added the words OR PROVINCIAL.

Art 182. This article should be revised in such a way that a provincial commissioner is appointed by a province and his functions in accordance with the execution of provincial legislature.

Art 183. Also this article must make provision that provincial legislature can arrange similar issues in terms of a provincial commissioner.

Ad Chapter 14:

Art 186-188. This chapter places the provinces completely under financial dependence of the national parliament as appears in art 186(2) and 188(1)(b). It is unacceptable. Not only must the provinces be boss of their own finances, but the financial treasurers must function in accordance with their own provincial legislature.

Art 189. This article perpetuates the general tendency to view provinces as immature. It creates the impression that the central government means that no provincial government possesses the capable manpower to govern its own matters. It is unacceptable. The provinces must have the power to award their own tenders in accordance with their own legislation and through their own bodies.

Art 191 must make it clear that the stipulation is only applicable in the case where public money comes from the national government. The provinces should keep watch over the use of their own funds.

Art 192 is once again totally unacceptable. Provinces should have the power to determine their own officials and the salaries of members of their legislators. This encroaches on the provinces' functional and institutional integrity as set out in constitutional principle XXII and XXV.

Art 198-200. The South African Reserve Bank's independence must be guaranteed in the constitution. Art 199(2) must therefore not be subjected to national legislation.

Ad Chapter 15:

Art 201 (1) and (2). The references to the senate in these stipulations must be retained. Furthermore, there should be a stipulation added that treaties may not influence or negatively affect the powers of provincial legislators without the permission of the provincial legislators. For such treaties the provincial legislators' permission should be expected before such time that such an agreement can take internal legal effect.

Art 202 it is suggested that a sub-article 2 is added to the following effect:

The right to self-determination of people and the international principles in terms of the protection of the rights of minorities is recognised by this constitution and must be considered in the setting out of the provisions thereof.

Conclusion:

This constitution has the effect that provincial powers have been radically cut and that authority has been centralised. This tendency is not only alien to South Africa but also conflict with the international tendencies for the protection

of minority groups and people. Such protection can only occur if power is filtered down to regions and minority groups. The centralisation of power as reflected in this constitution, is disturbing and this council wants to strongly object to this. The council also wants to strongly object to the disrespect of the Afrikaner people's right to self-determination in the draft. The foundation of this council's activities go contrary to the accord and interim constitution's spirit and provisions.