

DRAFT AGENDA AND DOCUMENTATION

for the meeting of the

PLANNING COMMITTEE

to be held at 08h30 on Wednesday

13 OCTOBER 1993

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FOR THE MEETING TO BE HELD ON
13 OCTOBER 1993 AT 08H30**

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**DRAFT AGENDA FOR THE MEETING OF
THE PLANNING COMMITTEE TO BE HELD ON
13 OCTOBER 1993 AT 08H30
AT THE WORLD TRADE CENTRE**

Chairperson : PJ Gordhan

1. **Moment of prayer/meditation**
2. **Welcome and attendance**
3. **Ratification of agenda**
4. **Minutes (already distributed separately)**
 - 4.1 **Ratification of the minutes of:**
 - 4.1.1 23 August through to 26 August 1993
 - 4.1.2 30 August 1993
 - 4.1.3 31 August 1993
 - 4.1.4 1 September 1993
 - 4.1.5 6 September 1993 to 7 September 1993
 - 4.1.6 13 September 1993
 - 4.1.7 14 September 1993
 - 4.1.8 24 September 1993
 - 4.1.9 28 September 1993
 - 4.2 **Matters arising out of the minutes of:**
 - 4.2.1 23 August through to 26 August 1993
 - 4.2.2 30 August 1993
 - 4.2.3 31 August 1993
 - 4.2.4 1 September 1993
 - 4.2.5 6 September 1993 to 7 September 1993
 - 4.2.6 13 September 1993
 - 4.2.7 14 September 1993
 - 4.2.8 24 September 1993
 - 4.2.9 28 September 1993
 - 4.3 **Minutes to be distributed during the course of the week to be dealt with at a future meeting of the Planning Committee**
5. **Substantive Issues**
 - 5.1 **Constitutional Issues referred to bilateral meetings:**
 - 5.1.1 **Issues related to SPR's:**
 - 5.1.1.1 **Citizenship and citizenship laws**

- 5.1.1.2 Competencies (including the provision of electricity)
- 5.1.1.3 Taxes and fiscal arrangements
- 5.1.1.4 Constitutions
- 5.1.1.5 Name
- 5.1.1.6 TBVC States
- 5.1.1.7 Boundaries
- 5.1.1.8 The powers of the Constitutional Assembly with regard to the number, boundaries and competencies of SPR's
- 5.1.1.9 The fleshing out of the adopted Constitutional Principles
- 5.1.2 Self-Determination and confederalism
- 5.1.3 Languages
- 5.1.4 The deadlock-breaking mechanism in Chapter 5 of the Draft Constitution
- 5.1.5 The composition and functioning of the Constitutional Court
- 5.2 **Constitutional Issues referred to the Planning Committee:**
 - 5.2.1 Independent non-partisan statutory body on rationalisation of existing administrations (plus recommendations by the Planning Committee at the appropriate time)
 - 5.2.2 Technical group on financial and fiscal matters with regard to SPR's
 - 5.2.3 Local Government:
 - 5.2.3.1 Recommendation on the informal establishment of a multi-party co-operation mechanism with regard to local government
 - 5.2.3.2 Proposed Resolution (see Addendum A, p5 and Addendum B, p6)
 - 5.2.3.3 Linking interim and transitional measures into the Transitional Constitution
 - 5.2.4 National Electrification Forum:
 - 5.2.4.1 The meeting that had been scheduled between the liaison committee and representatives of the NELF had to be postponed
- 5.3 **Lebowa Government Request** (see Addendum C, p7)
- 5.4 **The establishment of the Transition Structures:** (Sub-Committee)
 - 5.4.1 The TEC
 - 5.4.2 The IEC
 - 5.4.3 The IMC
 - 5.4.4 The IBA
- 5.5 **Commissions:** (Sub-Committee)
 - 5.5.1 Regional demarcation/delimitation:
 - 5.5.1.1 Tabling of the Report
 - 5.5.1.2 Date of in-depth discussion of the Report
 - 5.5.2 National Symbols

- 5.6 **Technical Committees and Task Groups: (Sub-Committee)**
 - 5.6.1 Fundamental Human Rights during the Transition
 - 5.6.2 Repeal or Amendment of Discriminatory Legislation (Report available at the meeting)
 - 5.6.3 Violence
 - 5.6.4 Effective co-ordination of overlapping areas between the Draft Constitution and the Draft Electoral Bill
 - 5.7 **Processing of the Draft Bills through Parliament:**
Report from the Task Group on the IBA and other legislation scheduled for the November session of Parliament
 - 5.8 **Voter Education**
 - 5.9 **Telecommunications/Cellular Telephones (ANC & SA Government)**
 - 5.10 **Traditional Leaders:**
 - 5.10.1 Memorandum relating to the further handling of the Traditional Leaders' proposals on Constitutional Issues (see Addendum D, p34)
 - 5.10.2 Discussion document on Constitutional Proposals presented by Traditional Leaders (see Addendum E, p38)
 - 5.11 **Issuing of Election Documents (see Addendum F, p44)**
6. **Procedural issues**
- 6.1 PAC of Azania : Attack on PAC Members in Transkei by the SADF (see Addendum G, p45)
 - 6.2 The National Economic Forum Liaison Committee - Meeting postponed until further notice
 - 6.3 Appeal to participants at present outside the Multi-Party Negotiating Process to rejoin
7. **Administrative and Financial matters**
- 7.1 Security
 - 7.2 Correspondence to be noted:
 - 7.2.1 General Council of the Bar - Comment on the 10th Progress Report on Fundamental Rights during the Transition (see Addendum H, p46)
 - 7.3 Correspondence to be dealt with:
 - 7.3.1 Panel of Religious Leaders for Electoral Justice (see Addendum I, p53)
 - 7.3.2 National Association of Democratic Lawyers (see Addendum J, 54)

7.4 Financial Matters:
7.4.1 Financial assistance to groups/individuals submitting oral evidence to the Commission on Regions

7.5 Reportback by Administration on the distribution of documents (see Addendum K, p56)

8. **Agenda and Programme for the Negotiating Council** (available in the meeting)

9. **Schedule of Meetings** (available in the meeting)

10. **Closure**

DRAFT RESOLUTION

**UNILATERAL RESTRUCTURING/AMALGAMATION
AT LOCAL GOVERNMENT LEVEL**

The Multi-Party Negotiating Council;

Having noted:

the progress made in respect of proposed establishment of Democratic Local Government at this Council and also at the Local Government Negotiating Forum

and

Believing:

that any unilateral restructuring/amalgamation of local authorities would be detrimental to the negotiation process and can have a negative impact on the levelling of playing fields

Therefore resolves:

that the South African Government, through its Provincial Executive Committee immediately halts all unilateral restructuring/amalgamation of local authorities such as what is happening in respect of the proposed amalgamation of the borough of Unhlanga, the area of Town Board of Umhloti Beach and Glen Anil (all so-called White Areas) to the detriment of the adjacent areas such as Verulam, Amontama, Amoaxi, Osindisweni in Natal (all so-called Non-White Areas).

Moved by **A Rajbansi**

Appendix B

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NATIONAL PEOPLE'S PARTY OF SOUTH AFRICA

30 September 1993

76 Trisula Avenue
Arena Park
Chatsworth
4030Dr. T. Eloff
Management
Multi Party Negotiation Council
World Trade Centre.

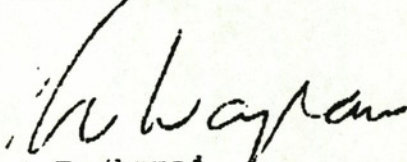
Dear Dr. Eloff

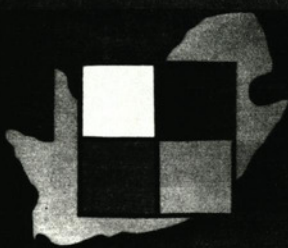
Resolution on the unilateral restructuring/ amalgamation
of Local Authorities.

It would be very much appreciated if you would bring to the attention of the Planning Committee that the draft resolution be given urgent attention as the amalgamation process in Natal is proceeding with haste.

We are convinced that this is definitely affecting the levelling of playing fields.

With Kind Regards


A. Rajbansi



U.P.F.
UNITED PEOPLES FRONT
LOVE & PEACE

MEMORANDUM

**THE ADMINISTRATIVE HEAD
MULTI-PARTY NEGOTIATIONS PROCESS
ISANDO**

Sir

**MEMORANDUM FOR CONSIDERATION AND DISCUSSION BY
THE NEGOTIATION COUNCIL**

1. It is common course that there has always been maladministration, inefficiency and corruption in the disgraced and discredited Department of Regional and Land Affairs previously known as the Department of Native Affairs, Bantu Administration, Plural Relations, Co-operation and Development and later Development Aid. The Changes made in the name or the title of this department and the successive Ministers may have changed the complexion and not the character of this notorious department.
2. It is also common course that this department was established for the purpose of a cosmetic decentralisation of Administrative powers and functions to the Bantustans which was of course the corollary of political decentralisation aimed at so-called self-determination or separate development, and this has now dismally failed. The concentrated power for the Administration of Bantustans or Homelands remained and is still vested in a

Minister in-charge of Black Affairs and the R.S.A. Government still has the last or final word in all the decisions.

3. **DEVOLUTION OF POWER OR POLITICAL DECENTRALISATION.**

Whereas the South African Government referred to the devolution of power by way of so-called decentralised representative local and regional political institutions with demarcated areas of ethnic jurisdiction and authority over certain aspects, the Government merely shifted the political responsibility and accountability to the so-called homeland leaders and retained upto this stage, a dominant role, and powers as opposed to the Bantustan institutions in respect of decision-making with the result that the practical reality of the situation is that of a government system based on a premise halfway between a centralised system and a decentralised system. The South African decentralisation in terms of Homeland Legislative and Administrative powers and functions infers a system where elected black authorities exist between the electorate and the highest authority which operates under the auspices of a Black Affairs Minister or now a Minister of Regional and Land Affairs, who wields executive powers authority and functions and command the Homeland leaders to carry out his instructions and the Legislative Assembly to rubberstamp his decisions or the decisions of the R.S.A.

Government. The present situation in Lebowa is a good example.

4. The R.S.A. Government has taken a decision sometime ago that the various departments in the so-called Self-Governing Territories should have line functions with the mother departments of the Central Government. The line functions of all the other departments of the R.S.A. Government with the Self-Governing Territories are not redundant except for the duplication of services.

It remains however unthinkable and in fact undesirable during this transitional period to still have a department or a Minister whose main function is to supervise the Homeland Administrations over the political and all the administrative functions, which is nothing else but a perpetuation of the autocratic, maladministrative incompetency, and corruption in this disgraced, discredited and notorious department whose existence is not only unwarranted but rejected by the majority blacks in our country.

It has however become worse that this department abuses its powers by indirectly and directly using its officials to misuse tax-payers money and corruptive ways and methods in the distribution and utilisation of the resources e.g. Funds and Land.

5. As a sequel to the history of the Department of Regional and Land Affairs, and the present attitude and actions of Minister Andre' Fourie, which may render the aims and objectives of the T.E.C. and the various sub-councils ineffective and which may also jeopardise the economy of our region, U.P.F. and Lebowa Administration submit as follows:-

6. In view of the existing and the escalating political tension between the South African Government and Lebowa which came about as a result of some political differences between the National Party and the United People's Front, and which have now developed into a political victimization and marginalisation of our Administration but in particular the leadership of our organisation and which is no doubt a political opportunism aimed at gaining support for the N.P. in the Northern Transvaal Region;

and in view of the pending establishment of the T.E.C., whose objects shall be to facilitate and promote, in conjunction with all Legislative and executive structures at all levels of government in South Africa, the preparation for and transition to a democratic order in South Africa, by - inter alia exercising such powers and performing such duties as may be conferred upon or assigned to it by any other law;

And having regard to the powers and functions given to the

sub-councils in terms of the new T.E.C. legislation recently passed by Parliament.

The Lebowa Cabinet and the United People's Front hereby request that the Multi-Party Negotiating Process consider and give serious attention to the following:-

- (a) The South African Government and the National Party cannot be allowed to continue directly or indirectly marginalising, victimising and oppressing other political parties, but in particular the political parties or organisations which are members of the Patriotic Front. The Government and the National Party continue to abuse their Legislative and executive powers and in particular the misuse of Security Forces and the Financial Institutions.
- (b) The T.E.C. shall not achieve its objectives if and until the Government refrain from its wicked ways and methods of exercising its powers to its own advantage and to the prejudice of the underprivileged people in South Africa.
- (c) The South African Government cannot be allowed to continue to use the Internal Stability Units comprising inter alia of foreign elements to harass, torture and kill our people in this country in order to achieve the National Party's selfish political goal.



- (d) The South African Government cannot further be allowed to use the disgraced, discredited and the most notorious Department of Regional and Land Affairs to continue administering the affairs of the majority people in this country and thereby using wicked methods to woo the community leaders, Traditional Leaders, Businessmen, etc. by using their positions and powers to garner support for the National Party

The United People's Front and the Lebowa Administration propose consequently as follows:-

1. That the Department of Regional and Land Affairs refrains completely from controlling Administrative functions in the Self-Governing Territories, or that it be totally disestablished, and as regards the present impasse in Lebowa that the Financial Administration and related matters be placed under a neutral body or arbitrator to be appointed by the Multi-Party Negotiating Process to evaluate the promotions of Public Servants, investigate and report on the alleged irregularities and to normalise the situation.
2. That the Financial Administration of Lebowa be placed under a direct control of the Ministry of Finance or the Ministry of State Expenditure since the Departments

of Finance of the Self-Governing Territories are having line functions with the R.S.A. Departments of Finance and State Expenditure. These departments have manpower that has relevant training and expertise unlike the Department of Regional and Land Affairs whose Senior Officials are the old officials of the then Bantu Affairs Department who have little or no financial background. It is alarming to note that most of the Accounting Officers are ex-Bantu Affairs Commissioners, ex-Agricultural Officers, ex-Magistrates who hardly have junior degrees. The T.E.C.'s Sub-Council on Finance shall also have a line function with the Departments of Finance and State Expenditure and the out-dated disgraced, discredited, and a notorious department whose record of corruption is not questionable, and whose function is nothing else but a perpetuation of the unpopular administration and control of black people in South Africa. The continuous changing of the title of this department and its ministers is a testimony of the confusion, maladministration, harassment of black people, and rejection of this department by the majority of our people, and the undesirability of its existence, especially during this period of transition.

3. That the Sub-Council on Finance immediately on its inception be assigned with a task of investigating or requiring the investigation of Minister Andre' Fourie's

specific allegations of so-called corruption, inefficiency or deterioration of Lebowa's Financial Management, "which may have an adverse effect on the attainment of the objects of the T.E.C. in the course of the preparation of the 1994/1995 budget of Lebowa, and to conduct such research as necessary and that there be immediate investigation and consultation on all matters contained in sub-section 3 of Section 17 of the Transitional Executive Act", which has recently been passed by Cape Town Parliament.

4. That the S.A.P. Internal Stability Unit which is presently interfering in the duties and functions of the Lebowa Police be withdrawn by Minister Harnes Kriel with immediate effect.

5. **BACKGROUND TO THE CRISIS**

- 5.1. Normally in terms of the Exchequer Act the budget (Appropriation Bill) should be finalised within 5 months of the beginning of the financial year i.e. within the period 1 April to 31 August of each year.

- 5.2. In this particular instance the Lebowa Legislative Assembly Session whose main object is to pass the budget (Appropriation Bill) was opened officially by Minister Andre' Fourie, Minister of Regional and Land Affairs of the R.S.A. on 13 August 1993.
- 5.3. Before the 31st August 1993 the Lebowa Finance Amendment Bill was passed by the Legislative Assembly to make provision for expenditure to be incurred until the disposal of the budget, C/F Annexure "A". Such arrangements were made in the past with Minister Andre' Fourie's predecessors. It is common course that it usually takes some months before the Appropriation Bill is assented to by the State President. C/F Annexure "B". Minister Fourie neglected to submit the Lebowa Finance Amendment Bill to the State President for assentment. If a Bill is not acceptable or approved by the State President the procedure is that it be referred back to the Legislative Assembly and this has not been done by the R.S.A. Government upto this date.
- 5.4. The delay in finalising the budget was due to negotiations between the Lebowa Cabinet and the RSA Government for an increase in the budgetary allocation. At first an amount of R1,2 Billion was allocated, but after negotiations which lasted up to

the beginning of August 1993 the amount was increased to R3,6 Billion. The Lebowa Cabinet had finally to make an appeal to the State President for intervention during the process of negotiations.

5.5. The Legislative Assembly passed the budget (Appropriation Bill) on date September 1993 and sent it to the Minister for assentment by the State President and to date the Lebowa Cabinet has had no feedback from his office about it.

5.6. To our surprise the Lebowa Cabinet was summoned to Pretoria by Minister Andre' Fourie on 31 August 1993 where the Cabinet was told by Minister Fourie about the unilateral RSA Cabinet decision, then already taken for the taking-over of the financial administration of Lebowa with effect from 1 September 1993. Minister Fourie insisted that despite the financial administration take-over the Lebowa Legislative Assembly should continue with its session to pass the budget (Appropriation Bill) which was subsequently passed by the Legislative Assembly on September 1993 as indicated in paragraph ~~4.3~~^{5.5} above.

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6. ALLEGED REASONS FOR THE TAKE-OVER.

6.1. Alleged failure by the Lebowa Legislative Assembly to pass the budget (Appropriation Bill) within the prescribed period.

Our response to the allegation: See paragraph ~~4.3~~^{5.4}
above.

6.2. So-called lack of financial control as exemplified by requests for additional fund.

Our response:

6.2.1. There are several instances involved in the drawing up of Lebowa budget, inter alia, DBSA, RSA Departments of Regional and Land Affairs, Finance, State Expenditure, National Education, etc. which together with Lebowa make-up SAPRO.

6.2.2. The practice has been and still is that the Lebowa budget has been based on the guideline amount given by the RSA which guideline amount does not fully address/satisfy the needs of Lebowa as exemplified by the following extract from the SAPRO Chairman's report dated 25 June 1993 on the underlying causes



for the worsening budgetary picture, which are outside the control of the Lebowa Government:

- " - Extensive territory and growing population,
- Deteriorating economic situation and the resulting increase in unemployment and poverty,
- Drought situation,
- Strong indications of under funding and backlogs".

6.3. Alleged back-dated promotions of the deserving officials as per Cabinet decision No. 220/1993 . Annexure "C"

Our response:

6.3.1. Backlogs in the promotions of the public servants promotions were created by the non-revision of organograms/structures of Departments dating as far back as 1982/83 despite the increase in demand for more services by communities, the upgrading of academic achievements, long-service and experience, expertise etc.

6.3.2. As a result officers/public servants were not merit assessed for promotions and this led to

dissatisfactions and grievances which were not expressed because of the then prevailing political situation.

6.3.3. With the unbanning of political organisations, freeing of political prisoners, return of exiles and the general freedom of expression that dawned in 1990 the hitherto bottled grievances of our public servants found expression in the form of not less than 92 protest marches, industrial action, affiliation to trade unions and other related avenues.

6.3.4. The protest marches were accompanied by demands for long overdue promotions and all memoranda which emanated from the above activities and actions were all sent to the RSA/Central government, and the relevant Minister, Andre' Fourie in most cases never responded.

6.3.5. The Lebowa Cabinet appointed an Interdepartmental Committee to investigate into public servants grievances which Committee discovered that indeed most public servants in this territory had been disadvantaged and prejudiced ^{and} recommended that these promotion backlogs be addressed and this was

communicated accordingly to the RSA through several channels including SAPRO, and here again the Lebowa Cabinet got no response from the Minister, Mr. Andre' Fourie.

6.4. Alleged exceeding of overdraft facility of R185 m by R60m.

Our response:

- 6.4.1. When the present Chief Minister came to power he inherited an overdraft of R367m which he worked very hard to reduce to R185m and instead of Minister Andre' Fourie congratulating the present Lebowa Cabinet for this achievement he comes up with the Financial Administration take-over move when the total overdraft is only R245m. This is certainly not a problem that is insurmountable.
- 6.4.2. The financial administration of Lebowa has always, to date, been controlled and managed by seconded RSA government officials sent by Mr. Andre' Fourie and his predecessors and these seconded officials are in a habit of investing Lebowa Government funds in private own banking accounts in order to reap the interests accrued. A case in point is one under

investigation by Lebowa government of one seconded official who has invested R63m of Lebowa funds in private banking accounts.

6.4.3. These seconded officials are said to be experts who are sent to Lebowa to train local public servants, but in reality they are not only underqualified but require training from the very people they are supposed to train, hence their high levels of incompetence and output.

6.5. Alleged salary payment of officers whose posts have not been budgeted for e.g. the alleged new 1 147 teachers posts in the Department of Education which are not on the budget.

Our response:

6.5.1. The creation of new posts is determined by norms prescribed for use nationally by all relevant Departments; for instance, the Pupil: Teacher ratios in the Lebowa Department of Education justified the creation of the above additional teaching posts and this was communicated accordingly to all relevant RSA instances indicated under 6.2.1 above which made money available for this essential and urgent service through the relevant seconded officials.

7. CONSEQUENCES OF THE TAKE-OVER.

Since so-called Minister Andre' Fourie's take-over of Lebowa financial administration the following incidents occurred:-

- 7.1. Pensioners were not paid.
- 7.2. Government petrol depots dried up and as a result essential services suffered including those at hospitals and police stations.
- 7.3. Hospital stores are not replenished e.g. medicine and oxygen facilities which lead to loss of lives.
- 7.4. Cheques issued for August 1993 salaries were stopped for payment by Minister Fourie's officials. These include cheques for Contractors and Suppliers who are further picking up problems with various bank institutions.
- 7.5. Cheques earmarked for payment of insurance premiums, housing bond repayment, medical aid premiums, etc were stopped for payment thus exposing the government to claims for losses as a result of the stoppages by Minister Fourie's officials.
- 7.6. The unilateral payment of salaries of all officials for

September 1993 based on their March 1993 salaries created fertile ground for industrial unrests, work stoppages, bedeviling of employer-employee relations, etc. and does not auger well for the good administration of Lebowa Government.

7.7. The Lebowa Government keeps various state accounts among which there are accounts in which monies belonging to para-statal Government Institutions are kept. These accounts were also stopped by minister Fourie's officials resulting in serious inconveniences, embarrassment and anger of the owners.

7.8. Lebowa Government Officials are tortured and kept at hostage day and night. Homes of some of the officials were searched and their family members harassed in the night.

7.9. Some cheques issued by Minister Fourie's officials were dishonoured in the bank, thus creating a contradiction to his declared efficiency of financial administration.

7.10 The Economy of the Northern Transvaal in particular the towns has now begun to deteriorate than ever before because business transactions have now virtually collapsed. Some members of Minister

Fourie's Task Teams are discredited as their services were withdrawn from Lebowa for various forms of incompetence but they are now being brought back and show arrogant attitudes towards Lebowa.

- 7.11. The Task Teams do not consult with relevant officials of Lebowa Government and are as a result complaining of receiving no co-operation from Lebowa.
- 7.12. The Task Teams are racial and unilateral because they are comprised of only white officers from the Central Government and exclude neutral independent personalities; and we, therefore, doubt their impartiality moreso that they have been appointed by the RSA alone which has political interests in this region.
- 7.13. Minister Andre' Fourie's attitude and actions do not auger well with the current negotiations at The World Trade Centre and this is of course may be a recipe for disaster and instability in the region.

8. CONCLUSION

We would like to appeal to the Multi-Party Negotiating Process to intervene as a matter urgency to avoid

instability in Lebowa and the whole region which is being fomented by Minister Andre' Fourie and his Nationalist Party for narrow and selfish political gains at the expense of the well-being of the public servants, the people and the rendering of services in the territory.

This unilateral take-over of Lebowa Financial Administration defies the imminent introduction of the T E C and its Sub-Councils and furthermore this unilateral restructuring makes a mockery of negotiations as practised by the Multi-Party Negotiating Process.

M. J. MAHLANGU

SIGNED: UPF LEADER AND LEBOWA ADMINISTRATION.

DATE:.....05/10/93.....

1/12/3/3/A37

**LYRICS/SHEET MUSIC/
DEMONSTRATION TAPE**

**Annexures to the United People's Front
"Memorandum for consideration and discussion by the Negotiation Council"**

5 October 1993

- 1 Annexure A: Amendment of Section 1 of Act No. 9 1990
- 2 Annexure B: Lebowa Appropriation Bill 1993
- 3 Annexure C: Decision on Memorandum 148/93

ANNEXURE A

ACT

To amend the Lebowa Finance Act, 1990; as to provide for the extension of the period for the granting of an authorization for the withdrawal of moneys out of the Revenue Fund for the area for which the Lebowa Legislative Assembly has been established for a particular period after the commencement of a financial year until moneys have been appropriated by an Appropriation Act; and for incidental matters.

BE IT ENACTED by the Lebowa Legislative Assembly, as follows:-

Amendment of Section 1 of Act No. 9 of 1990

1. The Lebowa Finance Act, 1990 (Act No. 9 of 1990), is hereby amended by the substitution for section 1 of the following section:

"1. For the purposes of section 38 of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), section 4 of the Exchequer Act, 1975 (Act No. 65 of 1975), is hereby amended by the substitution for the provisos to subsection (1) of the following proviso:

"Provided that until moneys have been appropriated for the requirements of Lebowa as a charge against the Revenue Fund for the area for which the Lebowa Legislative Assembly has been established by an Appropriation Act or other law in respect of any financial year, but during a period not exceeding eight months after the commencement of such financial year, the Chief Minister may authorize in writing the withdrawal of moneys from that Revenue Fund without an appropriation made by law, in order to meet expenditure on services in respect of which there was an appropriation in the immediate preceding financial year, or in respect of which provision is made by any law."

Short title

2. This Act shall be called the Lebowa Finance Amendment Act, 1993.

ANNEXURE B.

LEBOWA

MOAOKAKANYWA WA LEBOWA
WA DITEKANYETSO, 1993

LEBOWA- WETSONTWERP OP
DIE BEGROTING, 1993

LEBOWA APPROPRIATION
BILL, 1993

BILL

To appropriate an amount of money towards the requirements of Lebowa for the financial year ending 31 March, 1994

BE IT ENACTED by the Lebowa Legislative Assembly, as follows:-

Revenue Fund charged with certain amounts of money

1. Subject to the provisions of the Exchequer Act, 1975 (Act No. 66 of 1975), the Revenue Fund of Lebowa, is for the financial year ending on 31 March, 1994, hereby charged with the amounts of money shown in Column 1 of the Schedule.

Short title

2. This Act shall be called the Lebowa Appropriation Act, 1993.

SCHEDULE

VOTE		Column 1
No.	Designation	
		R
1.	Chief Minister	93 358 000
2.	Home Affairs	53 972 000
3.	Public Works	245 538 000
4.	Education	1 575 945 000
5.	Agriculture and Environmental Conservation ..	273 207 000
6.	Justice	51 573 000
7.	Health and Social Welfare	1 033 200 000
8.	Finance	99 998 000

9. Law and Order	147 509 000
10. Economic Affairs and Technology.....	38 206 000
	<hr/>
TOTAL	R3 612 506 000

LEBOWA GOVERNMENT SERVICE**DEPARTMENT OF THE CHIEF MINISTER****DECISION ON MEMORANDUM 148/93: FILLING OF POSTS ON THE ORGANOGAMS OF THE DEPARTMENT OF THE CHIEF MINISTER AND THE COMMISSION FOR ADMINISTRATION.****DECISION**

The Cabinet decides that the officials who have been prejudiced in any way in respect of promotions should be considered for promotion or translations of specified personnel units in order to normalise the situation in all the Government departments which arose as a result of the organograms and merit assessments which were not updated for sometime.

The Cabinet finds it necessary that there should be some retrospectivity in promotions since it becomes evident that the organograms of all the departments except the Department of Law, Order and Traffic have all the time been overloaded and it would consequently be unscientific to ignore the extent of the facts which were not brought to the fore by the Administrative Heads of departments and the Public Service Commission which has resulted in an abnormal situation as referred to by the PSC.

1. The Cabinet accepts recommendation by the PSC that deserving officials be promoted to the next higher ranks on the updated organograms.
2. That there be no skipping of ranks in effecting the promotions and that there should be uniformity in all departments in this regard.
3. That measures contained in the various Personnel Administration Standards (PAS'es) should be adhered to.
4. That in all cases the seniority list of officials be adhered to.

The Cabinet decides in conclusion that Treasury Approval be obtained concomitantly with the updating of the organograms for each and every department.

Chauvane
CHIEF MINISTER
LEBOWAKGOMO
1993/07/05

FILE NO. S7/2
6/4/2/1
6/4/3/1

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

**DISCUSSION DOCUMENT : ON CONSTITUTIONAL PROPOSALS
PRESENTED BY TRADITIONAL LEADERS**

(Compiled by Z Titus)

1. BACKGROUND :

Informal discussions on this matter took place on 6 October 1993. Miss S N Sigcau, M Nonkonyana, M A Netshimbupfe and myself were present at those discussions. The main purpose of these discussions is set out more clearly in items 3.1, 4.1.4, 6.2, 6.6, 7 and 8 of the memorandum I compiled on this matter on 5 October 1993. In particular we had to focus our attention on the organogram setting out the proposed structures and to consider whether all the proposals were clear and could be implemented without any problems. We also had to look into the implications of each one of the proposals and also at any alternatives which may emerge.

For purposes of facilitating further debate and also to enable traditional leaders to digest and reevaluate what we debated on the 6th, it was suggested by M A Netshimbupfe, who was seconded by Miss Sigcau and M Nonkonyana, that I prepare this discussion document taking into account all the issues raised in the discussions of the 6th, including any concessions or new proposals arising therefrom.

2. OVERVIEW :

It became clear at the meeting that :

- (a) certain issues may be tackled by the MPNP, the present Administrations, the proposed Regional Legislatures, the Constitutional Assembly or any other future Parliament;
- (b) the document prepared by traditional leaders on 13 August, 1993 covers not only innovations but also matters which are there already and thus do not require to be mentioned or reconsidered;
- (c) reference is made in the traditional leaders' document to certain structures which may not be acceptable on a uniform basis to individuals resident in different parts of the country;
- (d) some of the functions of the suggested bodies have not been defined clearly or with precision and in other instances there is no clarity as to whether any changes to the current situation are in fact intended or contemplated;
- (e) the compilers of the document did not intend to deal with the existing judicial powers of traditional leaders (however see the 12th Report of the Technical Committee on Constitutional Issues), and also that institutions such as that of headmen would not be interfered with although this has not been mentioned

specifically in the traditional leaders' proposals.

3. ANALYSIS OF EACH PROPOSAL IN THE LIGHT OF YESTERDAY'S DISCUSSIONS :

3.1 An organogram prepared by M Nonkonyana is attached. I will deal with each of the bodies set out in the organogram.

3.1.1 PEOPLE'S ASSEMBLY(IMBIZO/SECHABA/etc)

It was agreed that, since this is not a statutory body, reference ought not to have been made to it. This body is merely an informal gathering of people whose objective is to consider matters of common concern.

3.1.2 TRADITIONAL AUTHORITY

It was agreed that this body already exists in terms of the law and that, since there is no threat at this stage that bodies similar to these may be disbanded, the only issues emerging from the traditional leaders' proposals which ought to receive consideration at this stage are :

3.1.2.1 the democratisation of the traditional authority (this of course relates to the structure itself and not the traditional leader who heads the authority); and

3.1.2.2 the change of existing statutory names of these structures.

It was pointed out that both these issues may be dealt with locally by the present administrations or governments. Further comment is invited.

3.1.3 COMMUNITY (TERRITORIAL) AUTHORITIES

We were advised that these hold sway in rural areas which do not fall under the authority of a traditional leader. No changes are envisaged. Nothing more needs to be done.

3.1.4 DISTRICT COUNCIL

This body will be responsible for :

- 3.1.4.1 coordination of services;
- 3.1.4.2 drawing up of budgets; and
- 3.1.4.3 development planning.

It was agreed that all these three issues are interlinked and the latter two are entirely dependent on the first one. The first one though is linked to the provision of services, a function not discharged by traditional authorities at this stage (note also that the District Council would have a rural and an urban component).

Argument then followed. It was pointed out that the problem sought to be addressed by the creation of the new structure had to be identified. It appeared that this proposal is closely tied up with future developments which may take place in the field of rural local government.

The question then arose whether, before a study had been conducted relating to the extension of the powers of these authorities, it would be prudent to provide for the establishment of a body such as this one at this stage. It was also, in this context, mentioned that the District Council would not really be part of the administrative machinery at the rural level but would be performing a specialised function in respect of an area which has been clearly defined.

It should also be pointed out that the current proposals do not suggest an extension of the existing powers to cover the rendition of services. Secondly, this issue was deliberated upon extensively and specific reference made to certain clauses in the proposals having a bearing on services.

The attention of everyone was drawn to clauses XXII and XXIII of the constitutional principles and a proposal was put forward that, instead of suggesting the establishment of a body, it may be wiser to enshrine what is sought to be achieved within a constitutional principle which will then form the basis of whatever will be done in the future (see also principles VII, XV, XVI, XVII, XIX, XXI, XXIV4 and XXIV9).

If this approach is agreed to then there may be no need for a District Council.

4. **TRADITIONAL REGIONAL AUTHORITY
(KINGS COUNCIL) :**

We had to determine whether here one was dealing with a "King's" or "Kings'" Council. After debate it became clear that we are here dealing with a "King's Council, a body which already exists". Then focus turned on the name. It was pointed out that a change of name was being mooted and that this could be tackled further in the same way in which "Traditional Authorities" would be tackled.

The issue which led to a fair amount of debate was the question whether the

traditional leaders sought to extend the jurisdiction of a king. It was agreed that the existing powers, at this stage, will not be extended. With regard to territorial jurisdiction M Nonkonyana suggested that this be extended to those villages and towns which fall within the districts under the control of a king.

The practical difficulties flowing from this proposal were discussed and it was pointed out that such an innovation and the necessary adjustments which would have to be made to the law would have to be negotiated with the affected communities.

It appeared that the traditional leaders would not press ahead with the latter proposal and this will have to be confirmed.

5. HOUSES OF TRADITIONAL LEADERS :

Clarity first had to be obtained on whether the powers of the two Houses would be purely advisory in nature or whether one or all of them would have full-blown legislative powers. This question arose as a result of the wording used in item 5.4 of the traditional leaders' proposals which does not indicate clearly whether the powers of the two Houses are the same or not.

Regarding the House of Traditional Leaders at the national level it is clear that the powers of the "House" are purely advisory and are limited in scope to what is specified on pages 20 and 21 of the traditional leaders' proposals (note that the term "traditional or indigenous organisation" on page 21 will have to be explained further). Since these powers appear to be clear, limited in scope and purely advisory, it was tentatively agreed that these proposals could merely be reported upon in the Planning Committee and thereafter leave it to the Negotiating Council to take the final political decision thereon. The exact details can be worked out later after approval has been obtained. This will have to be confirmed (note also what appears in (4) and (5) on pages 21 and 22 of the traditional leaders' proposals).

The proposal relating to a House of Traditional Leaders at the regional level led to a lot of debate. It became clear that full-blown legislative powers were being suggested. We considered the scope of these powers. Initially it was pointed out that the House would consider all legislation contemplated in Clause 118 of the Constitution for the Transitional Period. After debate, and after considering the principles of equality, democracy and non-racism, the suggestion was made that the scope of the powers should be limited as is the case with the "House" at the national level. This will have to be confirmed.

Regarding the question of full-blown legislative powers there are two options :

- (a) the extension of absolute veto powers to the House in respect of the matters falling within its jurisdiction; and

- (b) the extension of a power to the House to delay the passage of legislation.

Paragraph (a) may lead to a constitutional crisis and tension between an elected and a non-elected body and, consequently, adequate deadlock-breaking mechanisms will have to be put in place. Paragraph (b) would be less contentious and would accord with the delaying power of the "House" at the national level (see page 21 of the proposals).

This matter will have to be considered further after taking into account the political implications. The option of having an advisory body at the regional level is still open. If the two "Houses" will be given advisory powers then consideration will have to be given to the possibility of establishing a single advisory body. Secondly, further alternatives in this regard need to be explored. Thirdly, if full-blown legislative powers are being proposed more details will have to be added to the proposals. Fourthly, when compiling proposals, the provisions of Clause 118 of the Constitution for the Transitional Period will have to be borne in mind. If all the issues pertaining to traditional leaders will, for example, be dealt with exclusively at the regional level then there will be no need for a "House" at the national level.

6. CONCLUSION :

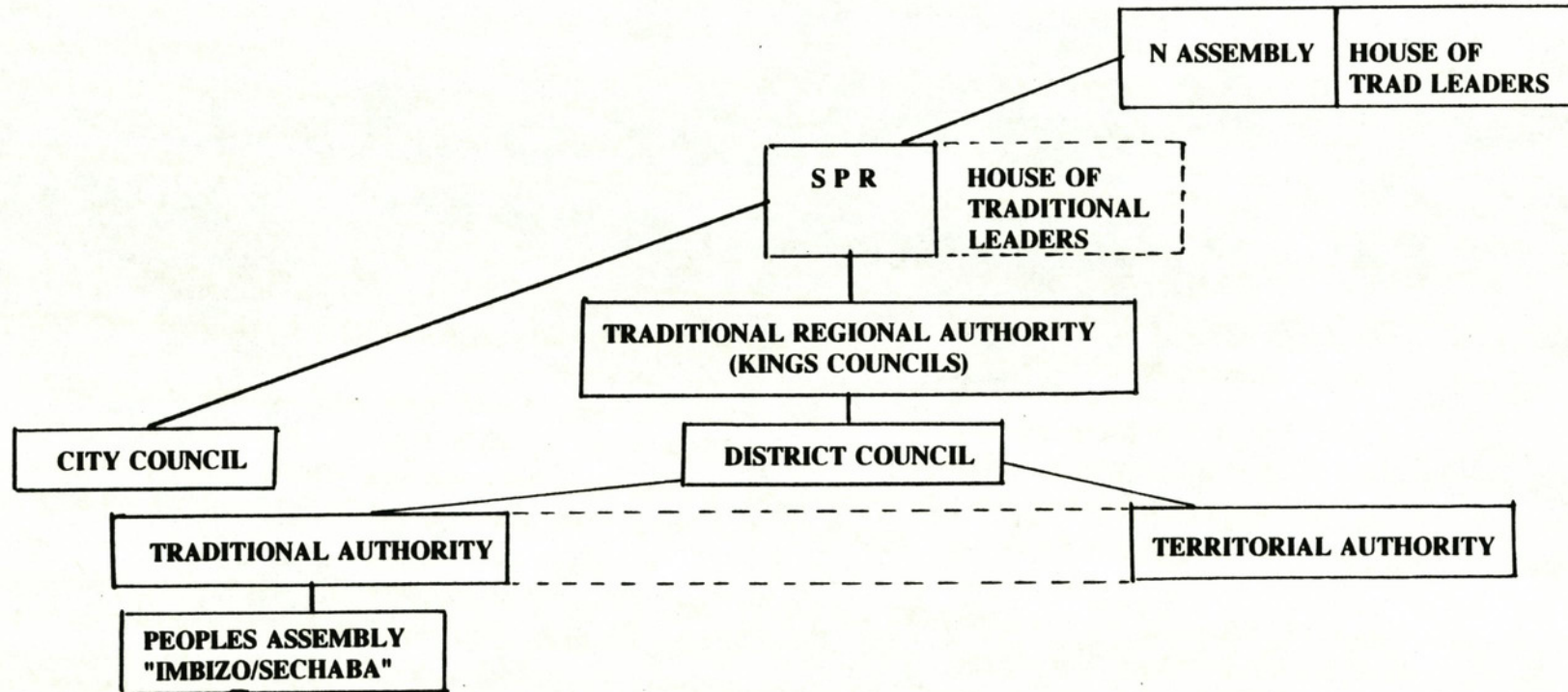
- 6.1 There is a need now to conclude the "informal" discussions and come up with concrete proposals. One more "informal" meeting is necessary. This can be held on Wednesday next week. A formal meeting can then be held next Thursday. The Planning Committee and the Negotiating Council would then be informed of the outcome of our deliberations next Friday.
- 6.2 The way forward should now be mapped out. It now appears that we are merely looking at constitutional principles and a provision similar to Chapter 10 of the Constitution for the Transitional Period instead of a legal provision setting up formal structures.
- 6.3 This document should be studied in conjunction with the memorandum of the 5th of October and on Wednesday we should endeavour to come up with concrete suggestions. Comments will also be invited on the principles formulated by the Local Government Negotiating Forum.
- 6.4 I thank you for the positive spirit which has prevailed so far.

Z TITUS
(CONVENOR)
7 OCTOBER 1993

DRAFT

CONSTITUTIONAL ROLE OF TRADITIONAL LEADERS

ORGANOGRAM



RESOLUTION

ADOPTED BY THE NEGOTIATING COUNCIL ON 5 OCTOBER 1993

The Negotiating Council resolves that the Planning Committee be mandated to investigate, and thereafter recommend to the Negotiating council on:

1. The practical steps which need to be taken to ensure that those South African citizens qualified to vote will be in possession of the requisite documents when the next election is held on 27 April 1994; and
2. The steps which need to be taken to ensure that citizens of the TBVC States, who may qualify to vote at the next election, are issued with the requisite documents as urgently as possible.

The Planning Committee is authorised to recommend appropriate structures or task teams should this be thought necessary to facilitate the process.

Anderson G



PAN AFRICANIST CONGRESS (P.A.C.) OF AZANIA

OFFICE OF THE SECRETARY GENERAL

PO BOX 25245
FERREIRASTOWN
2048
TEL (011) 836-0407/42/57
FAX (011) 838-3705

YOUR REF:

OUR REF:

8 OCTOBER 1993

DR FRITZ ELOFF
ADMINISTRATION
MULTI-PARTY NEGOTIATING PROCESS
KEMPTON PARK

Dear Dr Eloff


ATTACK ON PAC MEMBERS IN TRANSKEI BY THE SADF

Please be informed that the SADF attacked and brutally murdered innocent school children who are alleged members of the PAC during the early hours of this morning.

They were brutally murdered with assault weapons equipped with silencers whilst in bed.

The PAC of Azania requests that a special session of the Negotiating Council be convened on Tuesday 12 Oct to discuss this matter and to hear a report from the PAC on the one hand as well as the regime and its security forces why it perpetrated this evil deed and to discuss appropriate measures to deal with the regime.

We are not requesting the inclusion of the issue on the agenda. We are requesting a special session.


BENNY ALEXANDER
SECRETARY GENERAL

**GENERAL COUNCIL OF THE BAR
OF
SOUTH AFRICA**

**COMMENT ON THE TENTH PROGRESS
REPORT (DATED 5 OCTOBER 1993)
OF
THE TECHNICAL COMMITTEE ON FUNDAMENTAL
RIGHTS
DURING THE TRANSITION**

INTRODUCTION

1. The General Council of the Bar submitted a memorandum on the Seventh Progress Report of the Technical Committee on Fundamental Rights During the Transition. The present submissions, like those previously made, have been compiled on behalf of the General Council of the Bar under the direction of the chairman. On this occasion, contributions from advocates E Cameron and G J Marcus have been taken into account.

2. The report presently under consideration is dated 5 October 1993. It became available to the Bar on Thursday 7 October. These submissions had to be made at the latest by Monday morning 11 October. As in the case of our previous submissions, we record our regret at the haste under which our comments have had to be prepared.

3. These submissions are compiled in the recognition that the committee's Tenth Progress Report appears in not insubstantial measure, to have taken into consideration submissions in our previous memorandum. In general, we therefore refrain in this memorandum, from repeating the views we earlier expressed, even where they were either disregarded or in our view insufficiently taken into account. We repeat our earlier submissions only where they appear to us to be of central significance to the task the committee attempted to address - that of constitutional regulation under law.

APPLICATION OF THE CHAPTER: CLAUSE 7(2)

4. We noted in our previous memorandum that the chapter on Fundamental Rights is made applicable only to administrative decisions taken during the period of operation of the chapter. The addition in the latest draft, of the words 'or acts performed' does not meet the complaint.

5. We repeat that in our view there can be no justification for the exclusion of administrative decisions taken (or acts performed) before the chapter comes into operation, from constitutional scrutiny. It is, after all, the current efficacy and implications of those acts which will be subjected to constitutional challenge. A uniform standard of administrative constitutionality should apply, regardless of when the decision was taken or the act performed.

ACCESS TO INFORMATION: CLAUSE 23

6. This clause entitles the citizen only to such information as is 'required for the protection or exercise of any of his or her rights'. Although some limitation is understandable, this one is unduly onerous because it imposes an onus on the person seeking information, to prove that it is 'required' for the protection or exercise of a right. This will often be impossible to do, precisely because the citizen is denied access to the very information he or she requires to prove the point.

7. Citizens should moreover be entitled as of right, to all information held by the State relating specifically to the subject himself or herself. There is no justification for the limitation of the citizen's access to such information. This can be achieved by amending the clause to entitle the citizen 'to all information... insofar as such information concerns himself or herself or is required for the protection or exercise of his or her rights'.

ADMINISTRATIVE JUSTICE: CLAUSE 24

8. The present clause has been substantially redrafted. The formulation and the content however remain unacceptable. We infer from the ungrammatical 'is' in sub-clauses (a) and (b) and the incongruent 'action' and 'such actions' in sub-clause (c), that the clause was prepared in extreme haste. Whatever the cause, the product is in our submission not appropriate for inclusion in a constitution.
9. We repeat that a right to 'lawful administrative action' is devoid of meaning. It goes without saying that every person is entitled to "lawful administrative action".
10. We further suggest that the formulation 'rights or interests' be retained throughout (and thus that the substitution of 'legitimate expectations' in relation to the requirement of procedural fairness in sub-clause (b) be removed).

11. But the kernel issue remains the committee's failure to recognise a right to reasonable administrative decisions. We fail to understand why it should be so important to preserve for government, the freedom to act unreasonably to the detriment of the subject. We find ourselves unable to appreciate what conceivable justification there could be for this position. 'Unreasonableness' has a well defined and somewhat narrow meaning in administrative law. It requires proof of an absence of rational warrant, before the administrative decision can be overturned. To require that the administration make only 'reasonable' decisions, will in our view therefore not act as an undue restraint on governmental decision-making.

12. The inclusion of this ground would also bring our administrative law in line with modern systems throughout the world, and would accord with the recommendations of the South African Law Commission in its Working Paper 15 of August 1986.

PROPERTY: CLAUSE 28

13. Sub-clause (4) is appreciably clearer and more precise than its predecessor. But we point out that the width of the provision's wording appears to confer a right to restoration or compensation or other remedy, not only on the victims of discrimination but also on those who might have benefitted from it. It might for instance include a white farmer whose land may have been expropriated for black urban or rural development, but who received full and adequate compensation. This is because (a) the words 'any racially discriminatory policy' do not specify that only the victims of that policy are envisaged in the restoration provision and (b) the clause does not say that compensation received for the dispossession suffered, must be taken into account in assessing the relief granted to the dispossessed.

14. Sub-clause (4) should be redrafted along the lines of clause 8(3) (affirmative action) so that it does not itself confer rights, but provides merely that nothing in the clause shall preclude parliament from making provision for the restoration of rights in land as stipulated. The legislation itself can then, in conformity with the proviso and the other directions in the sub-clause, limit its benefits to the properly intended beneficiaries.

LIMITATION: CLAUSE 34

15. This is the most important provision of the chapter. It qualifies every other provision. It defines the extent to which it would be open to government to derogate from every other right entrenched in the chapter. Its provisions are accordingly vitally important.
16. The loophole created by the clause should at least be tightened by requiring in subclause 34(1)(a)(ii) that the limitation be 'demonstrably justified', rather than merely 'justifiable', in an open and democratic society based on freedom and equality.

SUSPENSION AND DETENTION WITHOUT TRIAL: CLAUSE 35

17. We restate our implacable opposition to any form of detention without trial.
18. We note that the committee has even failed to include an express limitation on the maximum permissible period of detention without trial. We consider that the absence of an expressly stated limit is inexcusable.

INTERPRETATION: CLAUSE 36

19. We would point out, regarding sub-clause (2), that a constitutional presumption of validity is quite different from a constitutional enactment specifying a level of scrutiny, and that the conjunction of these two disparate issues is inappropriate. The matter could be remedied simply by constituting the proviso a separate sub-clause.

20. Regarding the proviso, we submit that the chapter's equality provision (clause 8) should be included in the first category requiring strict scrutiny. Its omission, given that the the equality guarantee is fundamental to the whole notion of constitutional protection in 'an open and democratic society based on freedom and equality', appears to be insupportable.

21. Sub-paragraph (b) of the proviso requires strict scrutiny only insofar as the rights concerned relate to 'free and fair political activity'. The limitation is not warranted. We appreciate that the interim constitution is designed merely to provide for the transition, but we suggest that strict scrutiny should be applicable to derogations from all rights relating to expression, assembly, association and movement, rather than only when political activity is in issue.

WIM TRENGOVE SC
CHAIRMAN

Chambers
JOHANNESBURG
Monday 11 October 1993

PANEL OF RELIGIOUS LEADERS FOR ELECTORAL JUSTICE

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JOHANNESBURG 2000
TEL: (011) 492-1380
FAX: (011) 492-1449

Appendix I

Multi-Party Negotiations Forum
P.O. Box 307
Isalda 1600
ATTN: Working Group of the Negotiations Forum

07 October 1993

To the Working Group of the Multi-Party Negotiations Forum:

I am writing on behalf of the Panel of Religious Leaders for Electoral Justice in South Africa. The Panel is composed of leaders of every major religious faith in South Africa. It is a unique non-partisan grouping which is capable of staying above the political process. For this reason, the Panel is in a special position to monitor the transition to democracy, and to help guarantee a free and fair electoral process. Among its members are Bishop Mogopa, Archbishop Desmond Tutu, and Reverend Frank Chikane.

To help achieve these ends the Panel has produced a Code of Conduct for the elections. The Code includes guidelines on political party behaviour before, during and after the election. The entire Panel is also meeting on 26-27 October to determine how it can contribute to free and fair elections, and to review the legislation for levelling the playing field produced by the Multi-Party Negotiating Forum.

I would like to request a meeting between a delegation from the Panel and the working group of the Multi-Party Negotiating Forum in November. The meeting would provide an opportunity for the Panel to formally present its Code of Conduct, to share the outcome of its 26-27 October meeting, and to offer any contribution it might to both the Negotiating Forum and the Transitional Executive Council. I understand the fact the working group is very busy, but I feel that such a meeting could be extremely important. I would appreciate it if you would reply promptly with any possible date and time in November for a meeting. The Panel is very flexible in this regard because it views a dialogue between itself and the Negotiating Forum as a major priority.

If you have any questions feel free to contact me at the above phone number, extension 255, or fax number.

With thanks
Sincerely,



Jonathan Sacks
Facilitator
Panel of Religious Leaders for Electoral Justice



NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS

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6 October 1993

Dr T. Eloff
The Administrator
Multi Party Negotiating Process
P.O. Box 307
Isando
1600

FAX NO.: 011 - 3972211

Dear Sir

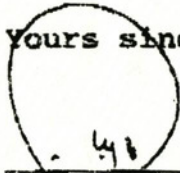
The NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS held a conference on the theme "Reshaping the Structures of Justice for a Democratic South Africa" at the Farm Inn, Pretoria on 30 September and 1 October 1993. This was a widely representative gathering of lawyers, judges, academics and others who are involved in the administration of justice.

A wide range of subjects was discussed and, arising out of that conference, the NADEL Annual General Meeting passed the resolution which is annexed hereto on the subject of "property rights".

We request that the resolution be distributed among the delegates to assist in the discussion on the Interim Bill of Rights. We share the very strong feeling which was expressed at the conference that:

- (a) the Property Clause should be left out of the Interim Bill of Rights, and that
- (b) Parliament ought to be empowered to pass appropriate legislation to regulate both public and private discrimination and that the provisions of the Bill of Rights should be of application both vertically and horizontally.

Yours sincerely


P.N. LANGA (ADVOCATE)
PRESIDENT

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BOARD OF TRUSTEES

President: Adv. Pius Langa; Vice Presidents: Adv. Abdullah Omar, Oqambele Klaas, JB Sibanyoni
General Secretary: Adv. Selby Baqwa; Assistant General Secretary: Poobie Govindarany; Treasurer: Silas Nkanunu
Publicity Secretary: Krish Govender; Other Members: Junaid Husain, Vincent Saldanha, Nontosi Mhlanja, Phumzile Majeke.

RESOLUTION

This Conference of the National Association of Democratic Lawyers

1. Recognising that constitutional provisions should not impede attempts to provide reparation, restitution or compensation with victims of resettlement and other apartheid legislation;
2. Recognising further that access to land and the demand for land redistribution have been central to the demands of the democratic movement;
3. Holds the view that any property clause within the Interim Bill of Rights should not affect the right of a National Parliament to establish a Land Claims Tribunal;
4. Demands that the property clause in the Interim Bill of Rights recognises the need for an equitable balance between public needs and private right in all issues concerning the expropriation of land for public purposes and in computing compensation;
5. Demands further that in the absence of any provision relating to the striking of such a balance between public and private interests, that there should be no property clause in the Interim Bill of Rights;
6. Resolves to submit urgently the text of this resolution and the argument in support of it to the Multi Party Negotiating Process or the Technical Committee dealing with the Bill of Rights as well as to all democratic structures;
7. Reiterates its support for the proposition that the Bill of Rights shall apply to public organs and to all other transactions between persons when it is appropriate and equitable.

REPORTBACK FROM ADMINISTRATION ON THE DISTRIBUTION OF THE 12TH REPORT OF THE TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES

1. On 6 September 1993 the Planning Committee took a decision that the 12th Report should be made available to Advocate W Trengove of the General Council of the Bar by Administration (Addendum A, Item 5.1.3.3).
2. The said report was hand delivered to Advocate Trengove on 10 September 1993 (Addendum B).
3. The last sentence of item 5.1.3.3 of the Minutes of the Planning Committee meeting of 6 September 1993 was understood to mean that the 12th Report should be made available to the other bodies on request (by them).
4. Some time elapsed and the issue arose again on 23 September 1993 when Mr Z Titus enquired whether copies of the 12th Report had been sent to NADEL and the Black Lawyers' Association. This was in reaction to a letter from W Trengove (Addendum C).
5. In following this up, the sub-committee and T Eloff discussed the issue on Monday 27 September and came to the conclusion that copies had not been sent to NADEL and the Black Lawyers' Association, but that as they had copies in their possession the issue was overtaken by events.
6. T Eloff was still under the (erroneous) impression that the 12th Report had, in fact, been sent to the other bodies, i.e. the GCB and Association of Law Societies.
7. When Advocate Trengove raised the issue with Mr Z Titus' on 28 September 1993, Administration was requested to ascertain the facts.
8. It is therefore clear that the 12th Report had been made available to Advocate W Trengove but not to the other bodies. The latter is an oversight for which Administration apologises.

T ELOFF
HEAD: ADMINISTRATION
29 September 1993

following issues until a future meeting of the Planning Committee:

- The name for SPR's
- Definition of the National Territory
- Languages
- Whether the Constitutional Assembly will have the power to alter the number, boundaries and powers of SPR's described in the Constitution for the transitional period
- The issue of the TBVC States
- Submission by the National Electrification Forum
- The fleshing out of the adopted Constitutional Principles
- The Constitutional Court - its composition and functioning
- The deadlock-breaking mechanisms
- The issue of boundaries
- Self Determination
- Confederalism
- Traditional Leaders

5.1.2 Report from R Meyer on K Coetsee's meeting with the Chief Justice:

5.1.2.1 An oral report was presented to the meeting.

5.1.2.2 It was noted that a submission had been received by the Administration from the Chief Justice and this had been forwarded to the Technical Committee on Constitutional Issues.

5.1.3 Meeting with the General Council of the Bar:

5.1.3.1 Z Titus gave a reportback on the meeting held with W Trengove (Chairperson of the General Council of the Bar).

5.1.3.2 It was agreed that, with regard to W Trengove's request/suggestion that he co-ordinates the views of the Advocates, the Association of Law Societies, NADEL, the Law Commission and the Black Lawyers Association, Z Titus conveys the view of the meeting to W Trengove.

5.1.3.3 It was agreed that the Administration should make available the 12th Report of the Technical Committee on Constitutional Issues to W Trengove. It was noted that W Trengove was prepared to make written

X

submissions to the Technical Committee on the 12th Report. It should be noted that the report was still under embargo. It was further agreed that the Advocates, the Association of Law Societies, NADEL, the Law Commission and the Black Lawyers' Association should receive copies of the 12th Report directly from the Multi-Party Negotiating Process Administration and not via W Trengove's office.

5.1.3.4 It was noted that the Sub-Committee was scheduled to meet with the Technical Committee on Constitutional Issues on this issue.

5.1.4 The procedure/process for the drafting of citizenship legislation - recommendation from Sub-Committee:

It was noted that the Sub-Committee was scheduled to meet with Technical Committee on Constitutional Issues on this issue.

5.1.5 Financial Matters in the run up to the elections (transformation and rationalisation) - Recommendation from the Sub-Committee with regard to the technical input on this issue:

It was agreed to defer discussion on this issue until a future next meeting of the Planning Committee.

5.2 Commission on the Demarcation/Delimitation of Regions:

It was noted that there was nothing to report at this stage on the progress of the work of the Commissioners and the Technical Support Team.

5.3 Planning for the implementation and practical application of the three (four) Bills, including informal preparation for the operation of the structures:

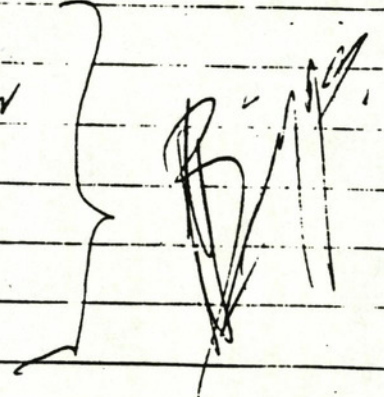
5.3.1 It was noted that the Sub-Committee would report back on this issue to the Planning Committee after Wednesday 8 September.

5.3.2 It was noted that the document prepared by PJ Gordhan and Z Titus was an overview document with regard to the process (see Planning Committee minutes of 30 August 1993 - Addendum A). It was further noted that the Sub-Committee should draw the attention of the Planning Committee to issues that were not in line with the envisaged time frames as laid out in the said document.

10.09.93

ENVELOPES delivered by hand

- 2 small envelopes cheque
- 3 small envelopes: MR. A. CHASKALSON
- 1 Medium envelope ADU. TRENORRE
- 1 big envelope Ms SHELIA SISULU



33) (33)

13.09.93

Ms N.C. Madhala

P. O. Box 738 TORCAAT 11400

Mr Y MOOLA

P. O. Box 202 STADGER 11450

Ms A CHABALALA

" " 1075 Lebouiskgem 075

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21 September 1993

Dr Theuns Eloff
Planning Committee
Multi Party Negotiating Process
World Trade Centre
KEMPTON PARK

Dear dr Eloff

INTERIM CONSTITUTION : ADMINISTRATION OF JUSTICE

I refer to my letter of 10 August 1993 and my subsequent discussions with mr Zam Titus on Monday 6 September 1993.

We have since then received and considered the twelfth report of the technical committee on constitutional issues. We have after consultation with the Association of Law Societies, NADEL, the BLA, the chief justice and other members of the judiciary, decided to request you to facilitate a meeting with the technical committee on constitutional issues as envisaged in my discussions with mr Titus. Our proposal is as follows :

- 1 A meeting as soon as possible on the Witwatersrand on a Saturday or Sunday.
- 2 We suggest that the meeting be attended by the technical committee on constitutional issues and representatives of
 - the GCB
 - the Association of Law Societies
 - NADEL
 - the BLA
 - selected members of the judiciary.

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The GCB, the Association of Law Societies and individual judges have already indicated their support for the proposal. We are still awaiting the response of NADEL and the BLA.

- 3 We would suggest that the meeting be in the nature of a briefing session. Its primary purpose would accordingly be for the technical committee to share with the meeting, its thinking behind the proposals put forward in its twelfth report.
- 4 We have in mind an informal, "off the record" discussion.

Would you please urgently consider our request. I would only be too happy to meet with you or any other members of the planning committee to discuss and develop our proposal. Would you please let me know at your earliest convenience when such a meeting could be arranged.

Yours sincerely



WIM TRENGOVE SC
Chairman
General Council of the Bar of SA

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**DRAFT SUPPLEMENTARY AGENDA FOR THE MEETING OF
THE PLANNING COMMITTEE TO BE HELD ON
7 OCTOBER 1993 AT 08H30
AT THE WORLD TRADE CENTRE**

(Note: This agenda should be used with the documentation distributed for the meeting of 5 October 1993)

Chairperson : P Gordhan

1. **Moment of prayer/meditation**
2. **Welcome and attendance**
3. **Ratification of agenda**
4. **Minutes** (already distributed in a separate pack)
 - 4.1 **Ratification of the minutes of:**
 - 4.1.1 23 August through to 26 August 1993
 - 4.1.2 30 August 1993
 - 4.1.3 31 August 1993
 - 4.1.4 1 September 1993
 - 4.1.5 6 September 1993 to 7 September 1993
 - 4.1.6 13 September 1993
 - 4.1.7 14 September 1993
 - 4.2 **Matters arising out of the minutes of:**
 - 4.2.1 23 August through to 26 August 1993
 - 4.2.2 30 August 1993
 - 4.2.3 31 August 1993
 - 4.2.4 1 September 1993
 - 4.2.5 6 September 1993 to 7 September 1993
 - 4.2.6 13 September 1993
 - 4.2.7 14 September 1993
 - 4.3 **Minutes to be distributed during the course of the meeting for noting to be dealt with at a future meeting of the Planning Committee**
5. **Substantive Issues**
 - 5.1 **Local Government:**
 - 5.1.1 Recommendation on the informal establishment of a multi-party co-operation mechanism with regard to local government
 - 5.1.2 Proposed Resolution (see Addendum A, p5 and Addendum B, p6)
 - 5.1.3 Linking interim and transitional measures into the Transitional

- Constitution
- 5.1.4 Reportback on meeting of the Liaison Committee with representative of the LGNF on Wednesday 6 October 1993 at 09h30
- 5.2 **National Electrification Forum**
A meeting between the liaison committee and members of the NELF is scheduled for Wednesday 13 October 1993 at 10h00
- 5.3 **Lebowa Government Request** (see Addendum C, p7)
- 5.4 **The establishment of the Transition Structures: (Sub-Committee)**
 - 5.4.1 Venues
 - 5.4.2 Composition
 - 5.4.3 Staff
- 5.5 **Effective co-ordination of overlapping areas between the Draft Constitution and the Draft Electoral Bill**
- 5.6 **Processing of the Draft Bills through Parliament:**
Report from the Task Group on the IBA and other legislation scheduled for the November session of Parliament
- 5.7 **Voter Education**
- 5.8 **Telecommunications/Cellular Telephones (ANC & SA Government)**
- 5.9 **Meeting with Traditional Leaders and follow-up**
- 6. **Procedural issues**
 - 6.1 Liaison Committees:
 - 6.2.1 The National Economic Forum - Postponed until further notice
 - 6.3 Appeal to participants at present outside the Multi-Party Negotiating Process to rejoin
- 7. **Administrative and Financial matters**
 - 7.1 Security
 - 7.2 Correspondence to be noted:
 - 7.2.1 PAC of Azania : Northern Transvaal Education Crisis (see Addendum F, p18)
 - 7.2.2 Republic of Namibia, Ministry of Foreign Affairs : Walvis Bay (see Addendum G, p19)
 - 7.2.3 Women's National Coalition (see Addendum H, p20)
 - 7.2.4 ANC Lebowakgomo Branch (see Addendum I, p23)
 - 7.2.5 Women's National Coalition (see Addendum J, p25)
 - 7.2.6 St Johns Church (see Addendum K, p26)

- 7.2.7 Documents to be discussed by Management Committee of LGNF on Monday 4 October 1993 (see Addendum L, p27)
- 7.2.8 General Council of the Bar of South Africa (see Addendum M, p93)
- 7.3 Financial Matters:
 - 7.3.1 Financial assistance to groups/individuals submitting oral evidence to the Commission on Regions
- 7.4 Reportback by Administration on distribution of reports (see Addendum P, p128)
- 8. **Agenda and Programme for the Negotiating Council** (available in the meeting)
- 9. **Schedule of Meetings** (available in the meeting)
- 10. **Closure**