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DEMOCRATIC PARTY SUBMISSION TO THE TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES TO THE NEGOTIATING COUNCIL

(Refer to Fourth Report dated 3 June 1993)

TRANSITIONAL ARRANGEMENTS FOR SPR'S

1. TIME PERIODS INVOLVED

Pre-Transition Period:

Effectively this period extends from the present to the date of an election for a constitution-making body and the subsequent formation of such constitution-making body/Parliament and government of national unity.

The Transition Period:

The period between the election for a constitution-making body/ Parliament and the adoption of a new constitution by that body.

2. INSTITUTIONAL FRAMEWORK

During the pre-transition period present governments will be in place, but if the formation of a Transitional Executive Council (TEC) is approved, substantial sections of government will be put under the supervision of the TEC and its various sub-councils. One of the sub-councils will be the Sub-Council on Regional and Local Government. According to the Fifth Report of the Technical Committee on the Transitional Executive Council, the said sub-council will have the power to "set up committees to assist it in the exercise of its power and functions".

During the transition period, an elected constitution-making body, doubling up as a parliament, will be in place on the national level. On SPR level, the Fourth Report of the Technical Committee on Constitutional Issues submits two models of interim SPR's:

- a) "The first envisages the establishment of interim regional administrations within existing provincial boundaries for the purpose of phasing out apartheid structures, rationalising existing administrations and ensuring the provision of services in the transitional period.
- b) The second contemplates the establishment of fully fledged transitional regional governments within boundaries demarcated for the purposes of the elections, and with elected legislative executive structures".

3. POLICY

The Democratic Party believes that fully fledged SPR's¹ with constitutionally entrenched powers and functions, separate elected political authorities and separate administrations should be created at the earliest opportunity. We thus fully support alternative (b) referred to above.

The Democratic Party believes that the following policy aims should guide the transition from current structures to fully-fledged SPR's:

- 3.1. Maximum powers and functions should be devolved to SPR's or their precursors at the earliest opportunity. At the same time, maximum powers should be devolved to local government structures, taking cognisance of available capacity at local government level, as well as any interim arrangements being generated at local government level;
- 3.2. Workability and practicability;
- 3.3. Ensuring the uninterrupted delivery of social services;
- 3.4. The accommodation of the plurality of administrative procedures and the integration of the diverse administrative systems currently in existence, into coherent structures;
- 3.5. Regional bureaucracies should be minimised, and local government structures should be strengthened.

4. REGIONAL BOUNDARIES

On 28 May 1993 the Negotiating Council of the Multi-Party Negotiating Process (MPNP) appointed a commission on the demarcation/delimitation of regions. The commission has declared its intention to submit a report to the Negotiating Council by the end of July. It can thus be assumed that regional boundaries will be set within the next two to three months.

5. EXISTING STRUCTURES

The following structures/regional governments are currently in existence within the boundaries of greater South Africa:

- 5.1 Four so-called independent states (TBVC states)

¹The Democratic Party favours full Federal States with entrenched powers. The powers which we believe should be exercised on SPR level, are set out in Annexure A.

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- 5.2 Six self-governing territories
- 5.3 Four provincial administrations
- 5.4 An existing co-operative structure in Natal-Kwazulu, the Joint Executive Authority, as well as proposed Joint Executive Structures to be created in terms of the Joint Administration of Certain Matters Act and the Regulation of Joint Executive Action regarding Certain Land Act, passed by Parliament in June this year.
- 5.5 Multi-lateral structures existing between the SATBVC states, as administered by SECOSAF.

The Technical Committee on Constitutional Issues of the MPNP currently works on the assumption that the TBVC States and the self-governing territories will have been reincorporated into South Africa at the time of the coming into operation of the constitution for the transitional period.

6. PROPOSALS FOR TRANSITIONAL ARRANGEMENTS

Throughout the pre-transition and transition periods, administrative and political responsibility at SPR level should, as far as possible, go hand in hand.

6.1 Pre-Transition Period:

The Democratic Party bases its proposal regarding transitional arrangements during this period on the following assumptions:

- (a) A TEC will be formed, will have a Sub-Council on Regional and Local Government, which Sub-Council will have the power to form sub-committees. Further, that the TEC will have the powers and functions in relation to regional and local government as set out in the Fifth Report of the Technical Committee on the Transitional Executive Council, including those powers set out in Addendum A to the said Fifth Report. (Powers regarding proposed legislation and executive action by any participating government or administration.)
- (b) That the TBVC States and self-governing territories will be re-incorporated de jure on the day of the election for the constitution-making body.

The powers referred to in (a) above, would require careful supervision by the Sub-Council of the TEC. As the transitional period will be particularly volatile and liable to instability, it is proposed that a sub-committee of the Sub-Council of the TEC on Regional and Local Government be appointed for each of the TBVC states, each of the self-governing territories, each of the four provincial administrations, and that the sub-committee for Kwazulu and sub-committee for Natal jointly supervise the JEA. Similar arrangements can be made for other joint executive structures to be created.

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These sub-committees should be constituted by members of the political parties represented on the TEC, provided that the members of any particular sub-committee should be representative of the most important political parties of that particular territory or state or province. Moreover, the secretary to the sub-committee should be the most senior government official of the territory, province or state concerned.

These sub-committees should also supervise the rationalisation of the SPR administrations into administrative authorities for each of the SPR's demarcated in terms of 4 above.

In addition the DP suggests that the possibility should be considered of establishing functional (as contrasted with area-bound) sub-committees of the Sub-Council on Regional and Local Government to oversee the rationalisation of the delivery of social services e.g. Health, Welfare and Education, on SPR level.

It is further suggested that the Commissions for Administration of the central government, the self-governing territories and the TBVC states should begin meeting together as soon as possible under the supervision of a sub-committee of the Sub-Council on Regional and Local Government with a view to facilitating the rationalisation of services.

Government administration on SPR level should be rationalised as soon as:

- SPR's are demarcated, and
- the Transitional Executive Council is installed, and
- regional powers and functions are known and agreed to by the MPNP.

6.2. Transition Period

The DP believes that:

- 6.2.1 The constitutional principles that will apply to, as well as the powers and functions of SPR's during the transition period, should be decided upon by the MPNP;
- 6.2.2 Such principles, functions and powers should be embodied and written into the constitution for the transition period together with other checks and balances, including a Bill of Rights;
- 6.2.3 Legislatures with such original legislative powers as decided in terms of 6.2.1 should be elected for each of the SPR's for the transition period, and the respective executives of the SPR's should be drawn from such elected legislatures;
- 6.2.4 Transitional arrangements at national level should, as far as possible, be mirrored on SPR level in respect of, inter alia;

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- 6.2.4.1 SPR constitutions for the transition period, provided that such constitutions shall be compatible with the national transitional constitution;
- 6.2.4.2 Governments of "national unity" at SPR level;
- 6.2.4.3 Powers given to SPR legislatures, in conjunction with the national constitution-making body, to change SPR constitutions with a requisite majority.

SPR legislatures should be elected on the same day as representatives to the constitution-making body are elected. It is important that voters be given a separate vote on national and on SPR levels, as it is very likely that some voters may wish to support different political parties on the national and SPR levels respectively. This would imply that each political party would have at least a national list of candidates and a list of candidates for each of the SPR's which that political party wishes to contest.

From the votes cast for political parties on SPR level, there can be constituted, on a proportional representation basis:

- (a) SPR representatives who are full members of the national Transitional Parliament and constitution-making body, and/or;
- (b) SPR representatives who are members of the Transitional Parliament sitting as the constitution-making body, or only when sitting as a national legislature; and/or;
- (c) an upper house with equal legislative powers, and/or;
- (d) SPR legislatures, doubling up as constitution-making bodies for their respective SPR's, subject to 6.2.4.1 above.

The DP firmly believes that:

1. *SPR representatives who are full members of the national transitional parliament and constitution-making body should be elected (alternative (a) above);*
2. *In addition, separate SPR legislatures, doubling up as constitution-making bodies for their respective SPR's, should be elected on the same day as the national transitional parliaments (alternative (d) above).*

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ANNEXURE A

The Democratic Party believes that the federal or central government should exercise only those powers essential to the national interest. All other powers should be exercised by the SPR/state and local government.

The state governments could, inter alia, handle the following powers:

- Health services
- Local government
- licensing
- Town planning
- Management of urbanisation
- Housing
- State taxation
- Nature conservation and environmental services
- Tourism promotion
- Regional development (rural and industrial)
- Agriculture
- Forestry
- Manpower
- Roads
- Education
- Culture
- Police
- Prisons
- Administration of Justice
- Gaming
- Land settlement.

**FURTHER SUBMISSION OF THE DEMOCRATIC PARTY ON THE
FOURTH AND SEVENTH REPORTS OF THE TECHNICAL COMMITTEE ON
CONSTITUTIONAL ISSUES TO THE NEGOTIATING COUNCIL**

RE:SPR'S DURING THE TRANSITION PHASE

1. The M.P.N.P. will decide on the powers, functions and structures of governments for SPR'S during the transitional period.

Thus, the first constitution (the Constitution for the Transitional Period) must include the following:

Constitutional Principles

- 1.1 Principles regarding the powers and functions of SPR'S, including principles setting out procedures for any amendment to SPR powers, functions and boundaries
- 1.2 **Provision for**
 - 1.2.1 The boundaries of SPR'S
 - 1.2.2 The powers, functions and structures of SPR legislatures and executives
 - 1.2.3 The election of members of SPR legislatures.
2. At the time of the election of the first national parliament/constituent assembly, elections will also take place for members of SPR legislatures. The members of the SPR legislatures would also represent the interests of the SPR'S in the national parliament/constituent assembly.
3. During the transitional period the legislatures will have the power to determine the composition and structures of the SPR legislatures and executives in the post-transitional period ie. in the "final" constitution.
4. The SPR legislatures in determining the composition of the SPR legislatures and executives in the final Constitutional Principles shall be bound by:
 - 4.1 the Constitutional Principles
 - 4.2 the general procedures and percentages laid down in the Constitution for amendments to the Constitution

- 4.3 Special procedures involving the national parliament/constituent assembly to ensure that such structures are not in conflict with the national interest.