

**FINAL REPORT TO THE PLANNING COMMITTEE ON THE  
CONSTITUTIONAL PROPOSALS PRESENTED BY THE TRADITIONAL  
LEADERS**

**1. BACKGROUND INFORMATION:**

This appears on pages 34 to 43 of the Planning Committee documentation prepared for the meeting of the 13th of October 1993.

**2. GENERAL COMMENT:**

This matter was referred to a Task Group made up of three Planning Committee members. Unfortunately Mr Eglin could not attend our meetings because he had to leave the country shortly after he had been appointed. The Task Group was joined by two nominees of the traditional leaders. They are also signatories to this document.

The Planning Committee mandated the Task Group 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.

We have refrained from referring to what may happen in the future except where it is absolutely necessary for purposes of this report.

**3. REPORT FROM THE TASK GROUP:**

In this section we outline the proposals of the traditional leaders.

- 3.1 The organogram is essentially the same as that appearing in the documentation of the 13th of October except that the District Council has to be moved towards the right as it will merely discharge a specialised function and is not part of the proposed administrative structure.

**3.1.1 PEOPLE'S ASSEMBLY (IMBIZO/SECHABA, etc.):**

This is not a statutory body and no new proposals are being made in this regard.

### **3.1.2 TRADITIONAL AUTHORITY:**

This authority is already in existence. The only new proposals being made now may be summarised as follows:

- 3.1.2.1 the members of the authority should be elected on a democratic basis. This requirement should not be imposed on the traditional leader who chairs the authority nor on any other traditional leader from the area concerned. These traditional leaders should all serve on the authority irrespective of the position they occupy within the area of the authority concerned and without being subject to the electoral process; and
- 3.1.2.2 the change of the existing statutory names of these structures.
- 3.1.2.3 It is suggested that in future these authorities be empowered to provide basic services to the communities in their areas, and SPR legislatures will deal with this.

### **3.1.3 TERRITORIAL/COMMUNITY AUTHORITY:**

No changes are envisaged to the existing structure and this issue does not call for comment.

### **3.1.4 DISTRICT COUNCILS:**

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.

This is an innovation and is closely linked to the provision of basic services. The relevant background information regarding the further handling of this issue is to be found in the agenda documentation of the 13th of October at page 40.

It was agreed that, by its very nature, this matter can be covered within an appropriate constitutional principle (or principles). On that basis it was agreed to dispense with the District Council at this stage and to utilise constitutional principles No XXII and XXIII as the foundation for future developments and legislation. These principles

read as follows:

3.1.4.1.1 "Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that SPRs and local governments are able to provide basic services and execute the functions allocated to them in the Constitution;

3.1.4.1.2 A Financial and Fiscal Commission, representing inter alia each of the SPRs, shall recommend equitable fiscal and financial allocations to the SPR governments from revenue collected nationally, after taking into account the national interest, economic disparities between the SPRs as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the SPRs".

**3.1.5 TRADITIONAL REGIONAL AUTHORITIES (KING'S COUNCILS):**

These structures exist in certain areas only. No changes are envisaged in this regard at this stage.

**3.1.6 HOUSES OF TRADITIONAL LEADERS AT THE REGIONAL LEVEL:**

The traditional leaders are proposing that these Houses be established within each of the regions where traditional authorities exist. These Houses will have full-blown legislative powers on matters pertaining to traditional leadership, traditional authorities, indigenous law and custom including any other matter having a bearing thereon.

The traditional leaders have indicated that, in the event of a conflict with the regional legislatures, the Houses of Traditional Leaders will merely have delaying powers (a period of 30 days is being suggested).

An alternative to this proposal would be the reservation of a specific number of seats within the appropriate regional legislature for traditional leaders.

**3.1.7 HOUSE OF TRADITIONAL LEADERS AT THE NATIONAL LEVEL:**

The proposals are the same as those outlined in item 3.1.6 except that one House is being proposed.

When it was pointed out that there is a possibility that all the matters to be dealt with by the House at the national level may be assigned exclusively to the regions, the traditional leaders pointed out that section 118 of the Constitution for the Transitional Period would have to be amended by transferring the powers relating to traditional authorities and indigenous law to the list of concurrent powers. The traditional leaders indicated that, should a separate House not be acceptable, then a number of seats will have to be reserved for them within the Senate.

**4. RECOMMENDATIONS:**

- 4.1 Items 3.1.2.1 and 3.1.2.2 should be referred by the Negotiating Council to the appropriate governments and administrations for the introduction of the required legislation.
- 4.2 On item 3.1.4 it is recommended that the constitutional principles already agreed upon be utilised as the basis for the drafting of the appropriate legislation in the future.
- 4.3 On items 3.1.6 and 3.1.7 it is recommended that a political decision be taken and that, depending on the decision taken, the relevant details be worked out later.
- 4.4 It is clear that Chapter 10 of the Constitution for the Transitional Period will have to be amended to deal with the position of the existing traditional local authorities during the transitional period. The Technical Committee on Constitutional Issues should, accordingly, be instructed to amend the said Chapter to provide for the continued existence of all traditional authorities and traditional regional authorities and for any other matters which may have to be added to the said Chapter 10.

**5. CONCLUSION:**

We have been informed by M Nonkonyana and MA Netshimbupfe that these proposals have the support of all traditional leader delegations in the Multi-Party Negotiating Process.

DATE: 20 OCTOBER 1993

**SIGNED BY TASK GROUP MEMBERS:**

1. ....Z TITUS (Convenor)
2. ....SN SIGCAU
3. ....M NONKONYANA
4. .... MA NETSHIMBUPFE