

SENT BY:ANC

:19- 5-83 :11:05AM : ANC NEG COMMISSION-

MCH91-13-5-2

Mandate from the Negotiating Council to the Technical Committee on Constitutional Issues : 18 May 1993

The Negotiating Council commends the Technical Committee on Constitutional Issues. We agree with the constructive approach of the Technical Committee to these issues and accordingly note the first report, and, hereby mandate the Technical Committee to:

1. Take into account the concerns and views of delegates in formulating its second report.
2. Provide the Negotiating Council with a report on constitutional principles.
3. Consider and report on the structures, powers and functions of regions.
4. Present proposals on various issues pertaining to the constitution-making process.
5. Provide the Negotiating Council with recommendations on how best the discussions within the Negotiating Council on these issues should be structured.

SENT BY: JNC

:19- 5-93 :11:05AM : JNC NEG COMMISSION-

**PLANNING COMMITTEE REPORT ON REGIONS
TO THE MEETING OF THE NEGOTIATING COUNCIL ON 13 MAY 1993**

1. On 7 May 1993 the Negotiating Council agreed that the Planning Committee would submit to it recommendations on the appointment, terms of reference and time frames of either a commission or a committee on regions (boundaries and functions of regions/states). The Planning Committee asked the Technical Committee on Constitutional Issues for recommendations in this regard. The recommendations of the Technical Committee were received on 14 May 1993. A copy is attached.
2. The Technical Committee, in its Interim Report based on submissions received to date, reported that there appeared to be broad agreement that the most suitable form of state for the future will be one which involves an allocation of powers to a central government and regional governments. The differences that exist relate essentially to the boundaries, powers and functions of the regions and the process whereby such differences may be resolved. Boundaries will be relevant to the electoral process, as well as to the structures of the Constitution. The powers and functions of regions are crucial to issues such as the form of state and self determination, and will be a fundamental part of the constitution.
3. The Technical Committee considered that as far as demarcation of boundaries is concerned, there seems to be a clear role for a commission, because the task is one which appropriately should be performed by a broadly based body of suitably qualified people, who will hear representations and possibly conduct public hearings. As far as powers and functions of regions are concerned, the issue could be dealt with by the Technical Committee itself, or another committee, but because of the centrality of the issue, it felt that there may be an advantage in having this issue allocated to the Commission as well.
4. From a broad overall perspective, three distinguishable alternative approaches to the process that will lead to a new democratic constitutional dispensation, seem to have emerged from the constitution making process:
 - a) The election, as soon as possible, of a constituent assembly that will write and enact a new constitution.
 - b) The seeking of agreements within the MPNP on a new constitution and the enactment of that constitution by the present Parliament.
 - c) That seeking of agreement within the MPNP on a transitional/interim constitution, the enactment by the present Parliament of that constitution, the election of a legislature under that constitution, and the formulation and enactment of a new constitution by that legislature according to predetermined constitutional principles.

5. Having considered and discussed the recommendations of the Technical Committee: having taken into account the way in which the negotiating process has progressed up to now and the needs of the negotiating process on the way forward: and being aware of the need for any new constitutional dispensation to be accepted as legitimate by the broadest possible spectrum of the population: the Planning Committee is of the opinion that a Commission can be of invaluable assistance to the negotiating process, irrespective of which of the three roads to a new constitution is taken. It is however recommended that at this stage of the process, a commission will be of maximum help as far as the boundaries of regions are concerned, while the more technical aspects, like powers and functions are attended to by the Technical Committee on Constitutional Matters.

REGIONAL DEMARCATION AND RELATED ISSUES

Report to the Planning Committee: 13 May 1993.

1 Instructions

The Planning Committee has requested this Technical Committee to give priority to considering to the best way of addressing the issue of the demarcation of borders, functions and powers of Regions, the following alternatives being suggested as possible mechanisms for handling the matter:

- the Technical Committee on Constitutional Issues;
- an additional technical committee specially appointed for the purpose;
- a special commission on regional government.

2 Introductory considerations

2.1 There appears to be broad agreement that the most suitable form of government for the future will be one which involves an allocation of powers to a central government and regional governments. The differences that exist relate essentially to the boundaries, powers and functions of the regions and the process whereby such differences may be resolved. Boundaries will be relevant to the electoral process, as well as the structures of the Constitution. The powers and functions of the regions are crucial to issues such as the form of state and self-determination, and will be a fundamental part of the Constitution.

2.2 As far as demarcation of boundaries is concerned, there seems to us to be a clear role for a commission. The task is one which appropriately should be performed by a body of suitably qualified people, who will hear representations and possibly conduct public hearings. We will have our hands full in this Committee in dealing with the many issues referred to us. But apart from that, we are of the opinion that demarcation issues are more appropriately dealt with by a broadly based commission than a small technical committee.

TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES

- 2.3 As far as powers and functions of regions are concerned, the issues could be dealt with by ourselves or another technical committee, but because of the centrality of the issue, there may be an advantage in having this issue allocated to the Commission as well.
- 2.4 The precise terms of reference of the Commission will be influenced by the views of the Negotiating Council in regard to the process of constitution making, the constitutional principle on regions, and the electoral system.
- 2.5 A constitutional principle on regions was developed at Codesa, but it has not yet been adopted by the Negotiating Council, and it seems to us that the principle could usefully be expanded to accord greater security to all involved, and in particular to those that have regional interests at heart. We suggest that consideration be given to whether the Codesa principle could therefore be elaborated to include the following:
- The idea of a special role for regions in the formal amendment procedure of the Constitution, especially on matters affecting regions:
 - The concept of regional representation, possibly in a Senate in the central legislature; and
 - A list of justiciable criteria conditioning conflicts between central and regional governments to guard against the possibility that the party or parties at the centre might exercise governmental powers for the purpose of penalising regional opponents.
- 2.6 It is clear from the Codesa documents that there is substantial support for an electoral system based on proportional representation, with a regional component. This, however, has not yet been debated in the Negotiating Council.
- 2.7 We suggest that the issues that we have raised be debated in the Negotiating Council as a matter of urgency so that the terms of reference of the Commission in so far as demarcation is concerned can be formulated, and a final decision be taken in regard to the desirability of including the issue of powers and functions of regions in the terms of reference of the Commission.

TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES

2.3 If decisions are taken on these issues we would be able to formulate terms of reference of a Commission for consideration by the Negotiating Council. Because of the urgency of the matter, we have addressed some of the considerations that may have to be taken into account in the appointment and functioning of the Commission. These are set out below.

3. A Commission on Regional Government

3.1 Appointment

The Negotiating Council should seek agreement on the membership and the terms of reference of a Commission for Regional Government. Regarding the establishment of the Commission, the following alternatives may be considered:

- formal appointment and instruction by proclamation in the *Government Gazette*; or
- appointment and instruction by the Negotiating Council.

3.2 Composition of the Commission

The Commission should in our view consist of ten members. The members should be persons suitably qualified for the various tasks of the Commission and be persons whose personal integrity is generally acknowledged.

The Negotiating Council could either appoint from among the members of the Commission a chairperson and vice-chairperson or such appointments could be left to the members of the Commission itself.

The Commission may, within its discretion, divide into committees for the purposes of performing its functions regarding the various elements of its terms of reference.

3.3 The Commission's Suggested Terms of Reference

3.3.1 The Commission should be required, as a matter of urgency, to make recommendations to the Negotiating Council on the delimitation of regions

TECHNICAL COMMITTEE ON CONSTITUTIONAL STATES

for the purposes of elections. For this purpose the Commission may be required to take into consideration the following criteria:

- 3.3.1.1 historical boundaries, including provincial, magisterial and district boundaries and infrastructures
 - 3.3.1.2 administrative considerations including the availability or non availability of infrastructures and nodal points for services
 - 3.3.1.3 the need to rationalise existing regional structures (including the TBVC states, self-governing territories and regional governments)
 - 3.3.1.4 the necessity of limiting financial and other costs as much as is reasonably possible
 - 3.3.1.5 the need to minimize inconveniences to the people
 - 3.3.1.6 the need to minimize the dislocation of services
 - 3.3.1.7 demographic considerations
 - 3.3.1.8 economic viability
 - 3.3.1.9 developmental potential
 - 3.3.1.10 cultural and language realities
- 3.3.2 The Commission should be required to invite all interested parties and persons to submit their views and recommendations regarding the delimitation of regions either in writing or orally on or before a date determined by the Commission.
- 3.3.3 The Commission should be instructed to submit its recommendations regarding the delimitation of regions to the Negotiating Council not later than one month after its appointment.

TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES

- 3.3.4 Depending upon the progress made in the Negotiating Council on reaching agreements regarding the structures, procedures, functions and powers of regional governments under the Constitution replacing the present constitutional dispensation, the Commission might be required, within a specified period, to submit recommendations to the Negotiating Council on such matters.
- 3.3.5 In the performance of all of its functions the Commission should be required to take cognizance of the progress made in the Negotiating Council in the formulation of agreements on constitutional matters.
- 3.3.6 The Constitution replacing the present constitutional dispensation should make special provision for the continuation, appointments, composition and terms of reference of the Commission or a similar commission, as well as for the procedures regarding the acceptance, rejection or referral of its recommendations by a constitution making body.
- 3.3.7 The terms of reference of the Commission should in terms of the Constitution replacing the present constitutional dispensation include inquiry into and the making of recommendations to a constitution making body regarding the final boundaries, powers, functions and constitutional structures of regions in the future constitutional dispensation.

4 Functioning of the Commission

- 4.1. The Commission should be allowed to determine its own procedures for gathering and considering evidence, provided that evidence and representations must be gathered from all parts of the country, and that cognizance must be taken of ongoing negotiations in the Negotiating Council, which should continue notwithstanding the appointment of the Commission.
- 4.2. The Commission should be provided with sufficient and suitably qualified staff and resources to perform its task as expeditiously and impartially as possible.

00:5 51.000
12 MAY 1993

RESOLUTION

Whereas there appears to be broad agreement that the most suitable form of government for the future will be one which involves an allocation of powers to central and regional governments, while the differences that exist relate essentially to the boundaries, powers and functions of the regions and the process whereby such differences may be resolved;

Realising that regional boundaries will be relevant to the electoral process, as well as to the structures of the Constitution;

Accepting that the powers and functions of the regions are crucial to issues such as the form of state and self-determination, and will be a fundamental part of the constitution;

Convinced that while the demarcation of boundaries is a task which appropriately should be performed by a broadly based body of suitably qualified people, who will hear representatives from the public at large and from different areas of the country, issues regarding the functions and powers of regions can at this stage of the negotiations best be dealt with by a smaller technical committee; and

Determined to ensure that we achieve a peaceful and negotiated agreement on the democratic transformation of our country within the time frames we have set for ourselves.

Hereby resolve:

1. That the Technical Committee on Constitutional Issues be charged with formulating as a matter of urgent priority, recommendations on the structures, powers and functions of regions, on constitutional principles and on the constitution making process.
2. That a Commission be appointed to make recommendations to the Negotiating Council within six weeks of its appointment, on the delimitation of regions.
3. That for the purpose of its recommendation the Commission should be charged to take into consideration, inter alia, the following criteria:

- 3.1 Historical boundaries, including provincial, magisterial and district boundaries and infrastructures.
 - 3.2 Administrative considerations including the availability or non-availability of infrastructures and nodal points for services.
 - 3.3 The need or otherwise to rationalise existing structures (including the TBVC States, self-governing territories and regional government).
 - 3.4 The necessity of limiting financial and other costs as much as is reasonably possible.
 - 3.5 The need to minimise inconvenience to the people.
 - 3.6 The need to minimise the dislocation of services.
 - 3.7 Demographic considerations.
 - 3.8 Economic viability.
 - 3.9 Developmental potential.
 - 3.10 Cultural and language realities.
4. That the Commission should be required to allow interested parties and persons to submit their views and recommendations within a specified period which should not be less than one month after an invitation in this regard has been published; and that the Commission should take these into account for the purposes of formulating its recommendations.
 5. That the Commission should also be free to take cognisance of any other material it might wish to collect for the purposes of its recommendations.
 6. That the Commission should also for the purposes of its recommendations take cognisance of any progress made in the Negotiating Council by way of agreements on constitutional matters.
 7. That this Council shall from time to time review the progress made towards the reaching of agreements regarding the structures, functions and powers of regional governments under the Constitution replacing the present Constitution, and consider the advisability of a Commission also being required to submit recommendations on such matters.

SENT BY:JNC

:19- 5-93 :11:11AM : JNC NEG COMMISSION-

8. That the Commission should be composed of ten members agreed upon in this Council; that the members should be persons of acknowledged personal integrity and suitably qualified specifically or in general for the task assigned to the Commission; that participants be called upon to submit names of candidates to the Administration before 12h00 Friday 21 May 1993 and that the Planning Committee make a recommendation in this regard to this Council.

9. That the Planning Committee, with the assistance of the Technical Committee on Constitutional Issues, prepare draft Terms of Reference for the Commission for consideration by this Council.