



## INNOVATIONS FOR SUCCESSFUL SOCIETIES

### NEGOTIATING DIVISIONS IN A DIVIDED LAND: CREATING PROVINCES FOR A NEW SOUTH AFRICA, 1993

#### SYNOPSIS

As South Africa worked to draft a post-apartheid constitution in the months leading up to its first fully democratic elections in 1994, the disparate groups negotiating the transition from apartheid needed to set the country's internal boundaries. By 1993, the negotiators had agreed that the new constitution would divide the country into provinces, but the thorniest issues remained: the number of provinces and their borders. Lacking reliable population data and facing extreme time pressure, the decision makers confronted explosive political challenges. South Africa in the early 1990s was a patchwork of provinces and "homelands," ethnically defined areas for black South Africans. Some groups wanted provincial borders drawn according to ethnicity, which would strengthen their political bases but also reinforce divisions that had bedeviled the country's political past. Those groups threatened violence if they did not get their way. To reconcile the conflicting interests and defuse the situation, the Multi-Party Negotiating Forum established a separate, multiparty commission. Both the commission and its technical committee comprised individuals from different party backgrounds who had relevant skills and expertise. They agreed on a set of criteria for the creation of new provinces and solicited broad input from the public. In the short term, the Commission on the Demarcation/Delimitation of States/Provinces/Regions balanced political concerns and technical concerns, satisfied most of the negotiating parties, and enabled the elections to move forward by securing political buy-in from a wide range of factions. In the long term, however, the success of the provincial boundaries as subnational administrations has been mixed.

*Tumi Makgetla and Rachel Jackson drafted this policy note based on interviews conducted by Makgetla in Pretoria and Johannesburg, South Africa, in February 2010. A separate policy note, "Refashioning Provincial Government in Democratic South Africa, 1994-1996," focuses on the two-year mandate of the Commission on Provincial Government. Case originally published August 2010. Case revised and republished October 2012.*

## INTRODUCTION

By 1990, South Africa's National Party (NP) government saw the writing on the wall: a government based on the racial segregation policy of apartheid was unsustainable. Faced with mass rioting, international sanctions and a determined underground resistance, President F.W. de Klerk unbanned the African National Congress (ANC) – the anti-apartheid movement led by Nelson Mandela – and entered into secret negotiations with Mandela and other ANC representatives to formulate a plan for transition to a post-apartheid government.

The new government was to preside over a unified South Africa of equal citizenship for all regardless of ethnicity, thereby ending the practice of using segregated homeland territories, or Bantustans, to divide the black African majority from the white and other minority populations. Under apartheid, the government did not recognize residents of Bantustans as full citizens of South Africa, as part of a broader strategy of racial segregation and discrimination. Apartheid had marginalized the black South African population – 79% of the population in the 2001 census – and elevated the 9.6% white South African population to govern the country, with limited representation of mixed-race individuals and individuals of Asian descent. The apartheid government used the homelands to further divide the black South African population into language groups (the largest of which, Zulu, constituted only 23.8% of the population in 2001) and at times worked at creating conflict between the groups.

In September 1991, the National Peace Accord, signed by 27 political groups and territory governments, established a negotiating process in order to draft a new constitution for South Africa. But subsequent party talks proceeded fitfully, stalling amid civilian fighting and violent protests throughout the country. Ultimately, the ANC accused the NP government of involvement in civilian clashes and withdrew from the talks.

In 1992, the NP government and the ANC to agree to return to the negotiating table to seek a political settlement after the deaths of more than 60 people in civilian violence. The assassination of popular ANC leader and general secretary of the Communist Party Chris Hanu in April 1993 by a man tied to South Africa's Afrikaner far right accelerated the pressure on negotiators to reach a settlement. "The outcome of the Chris Hanu assassination was that there was then a consensus between the government and the ANC [that we] would have to move forward very quickly," said Roelf Meyer, a chief negotiator for the NP government. "If we didn't do that, the masses would have taken to the streets and demanded immediate takeover."

The ANC and the NP began bilateral talks, and by 1993, other parties had returned to the table as well. Formally known as the Multi-Party Negotiating Forum (MPNF), the negotiators, representing a broad swath of political constituencies, adopted an interim constitution and set April 1994 as the deadline for a new constitution and election. They also agreed that the new constitution would divide the country into provinces.

Initially, the ANC had resisted a decentralized state structure, preferring consolidation in a central government they were likely to control. On the other side, the political parties whose support bases rested largely on a single ethnic or cultural identity—the NP, the largely white Democratic Party (DP) and the Zulu-based Inkatha Freedom Party (IFP)—had pushed for a decentralized system that would enable them to retain power in smaller areas of the country where they could win the vote. In an essay published on his foundation’s website after the end of apartheid, de Klerk called the provincial system “one of the new constitution’s great compromises: on the one hand, [the provinces] were not nearly as strong as the IFP, the NP and the DP wanted; on the other hand, they provided much greater devolution of power to regions than the ANC originally advocated.”<sup>1</sup>

## THE CHALLENGE

In mid-1993, with elections looming, the post-apartheid map of South Africa was still largely undecided. Where the apartheid government had used internal boundaries for an agenda of racial segregation, MPNF negotiators were faced with the task of dividing the country for provincial rule without reinforcing old wounds or creating new ones. Any discussion about new borders would open the door to groups that wanted ethnic enclaves with strong degrees of independence from South Africa. Many of those groups used violence to gain attention from the larger negotiating parties, which tended to have more-inclusive outlooks and more-widespread support. For negotiators, the key challenge lay in dividing the country

into governable areas without reinforcing the racial segregation that had been practiced by the apartheid regime or rewarding fringe groups that used violence to advance their agendas while still keeping them part of an inclusive process.

At the time, South Africa was divided into four provinces and 10 homeland areas. Two of the provinces were former British colonies—the Cape of Good Hope and Natal—and the others had previously been independent Boer republics—Orange Free State and Transvaal—established by Afrikaners, descendants of Dutch colonial settlers. The four provinces had been joined as a single country, the Union of South Africa, in 1910. The South African government began the practice of apartheid in 1948 and created the homelands in order to segregate the black South African population into ethnic enclaves that would function as legally distinct autonomous or semiautonomous nation states, thereby denying South Africa citizenship and voting rights to their residents. The autonomous homelands of Transkei, Bophuthatswana, Venda and Ciskei had been designed by the apartheid regime to function completely independently from the South African government and economy. The remaining six—Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa and Qwaqwa—were considered only partially autonomous.

In the 1993 talks, the main parties agreed to move away from ethnically defined boundaries, though they were not yet able to come up with a single, mutually acceptable map.

The ANC rejected the homelands as fictions of the apartheid regime. Unable to

sustain themselves independently, homelands existed only to fulfill the government's segregationist vision. Although South Africa was rich in minerals, the homelands shared little of that natural wealth and also lacked land well suited to commercial agriculture. Many of the homelands were non-contiguous scattered in pieces across several provinces reflecting the government's desire to unite all speakers of a given language, with little regard for the practicality of the borders. Few had the ability to administer themselves, collect taxes or provide social services.

The NP did not oppose the idea of doing away with the homeland system. Interested mainly in maximizing its power in the new South Africa, the NP based its position on its expected success at the polls primarily in the forms of the number of provincial governments and the number of seats in the upper house of the country's parliament it hoped to win.

Drafting a new constitution and ensuring a peaceful transition from minority rule to majority rule in South Africa, however, required balancing a wide range of moderate and extreme positions that were beyond the positions of the two major negotiating parties. Most important for the delimitation debate, the two center parties had to weigh voices from the fringes or smaller constituencies that threatened to act as political spoilers in the process.

Homeland political leaders did not want to give up their ethnically defined spheres of influence, and they argued for division along ethnic or linguistic lines that would allow them to continue in power, because in an

ethnically diverse community, they stood little chance of winning election to political office. Long-serving homeland leaders Mangosuthu Buthelezi of primarily Zulu-speaking KwaZulu and Lucas Mangope of majority Tswana-speaking Bophuthatswana were particularly strong advocates of ethnically defined provinces centered on their homelands. Buthelezi commanded considerable influence in KwaZulu through the IFP, a Zulu cultural movement that had turned into a political party; and he agitated for a province that would keep his political influence intact.

Negotiators for the ANC, the NP, and their respective allies could not ignore Buthelezi's demands for a strong province due to ongoing violence between ANC and IFP supporters in South Africa's urban slums. Thousands had died in the violence between the two parties from the late 1980s to 1993, primarily in the area that eventually became the KwaZulu-Natal province and in the regions around Johannesburg, where migrant workers from KwaZulu often lived in cramped hostels. From 1990 to 1994 alone, at least 14,000 people died in political violence, according to a later report by South Africa's Truth and Reconciliation Commission.<sup>2</sup> Adding to the tensions were newspaper reports in July 1991 that security forces of the NP government had funded and trained IFP supporters involved in the violence in order to undermine the ANC, a scandal that became known as Inkathagate.

Similarly, Mangope wanted to retain the boundaries of his homeland to preserve his political base. The apartheid government had appointed Mangope to lead the government of Bophuthatswana in the

1970s. Lacking widespread political support within the homeland, Mangope relied on his police and army to maintain control.

To bolster their bargaining positions, the homeland leaders teamed up with another group advocating segregation: conservative Afrikaners who demanded an Afrikaner homeland, which they referred to as a *volkstaat*, to protect their culture and language. Conservative Afrikaner leaders threatened to bring South Africa to its knees if post-apartheid plans failed to provide for the establishment of a whites-only territory. Former general Constand Viljoen led the Afrikaner Volksfront, or Afrikaner People's Front, which included leaders of railway workers, farmers and mine workers who threatened to use their collective power to damage the country's economy if the ANC did not set aside a territory for white speakers of the Dutch-like South African language, Afrikaans.

White extremist groups also used threats of violence to gain more influence than their level of national support warranted – estimated in media reports to represent a minority of South Africa's roughly 3 million Afrikaners. Many of the Afrikaner right-wing leaders had come from the army, and their movements adopted a military culture. During the MPNF constitutional negotiations, members of the Afrikaner Weerstandsbeweging (AWB, or Afrikaner Resistance Movement) rampaged through the conference center, committing acts of vandalism to intimidate participants. While their actions did little to advance the cause of the white extremists, the incidents made clear that the extremists were capable

of unpredictable violence to achieve their objectives.

To advance their common interests, Mangope, Buthelezi and leaders of the conservative Afrikaners, who were less extreme in their tactics than the AWB, formed in 1993 the Concerned South Africans Group (COSAG), later called the Freedom Alliance. Through the COSAG alliance they sought to preserve or augment the power they held under apartheid.

Even though the ANC in particular was vehemently opposed to the plans advocated by these factions, they needed the conservative Afrikaners and the homeland leaders to buy into the process in order to avoid further violence.

#### FRAMING A RESPONSE

Recognizing the need for technical expertise, as well as for the representation of different viewpoints, MPNF negotiators set up the Commission on the Demarcation/Delimitation of States/Provinces/Regions (CDDR) in May 1993. Creating the CDDR enabled negotiators to delegate the debate to a body representative of party viewpoints while freeing up major-party politicians to work on the drafting of the constitution.

In giving the CDDR its mandate in May 1993, the MPNF negotiators instructed the commission to (1) take into account specific criteria, (2) hear and evaluate proposals from interested parties around the country, and (3) report its conclusions and recommendations to the broader negotiators of the MPNF. The CDDR was divided into two committees: the technical committee,

which was responsible for formulation of the initial proposal based primarily on geographic and economic considerations, and the main body of the commission, charged with balancing the technical proposal with party viewpoints and other political considerations. The technical committee was to make its proposal to the political commission, which would then make changes and vote on a final proposal before forwarding it to the main negotiating body for incorporation into the new constitution.

The CDDR was made up of 15 commissioners, with wide representation among the negotiating parties. The ANC and the NP retained significant influence over the process and nominated the commission's co-chairmen. The ANC chose economist Bax Nomvete, the secretary-general of what became the Common Market for Eastern and Southern Africa. Philip "Flip" Smit, vice chancellor of the University of Pretoria, was the NP's choice for Nomvete's co-chair. The ANC and the NP appointed the majority of the commissioners; the DP and the Pan-Africanist Congress also made appointments. The ethnically and linguistically organized groups were represented among the commissioners as well. COSAG nominated to the commission architect Koos Reyneke, who had drawn up the volkstaat proposal. Another commissioner, Ann Bernstein, then executive director of the Urban Foundation and an expert on development, was chosen because she could speak to South African business interests.

The commissioners then nominated members of the technical committee. Renosi Mokate, who headed the technical committee, noted that its members were chosen to reflect the political, gender and racial makeup of South Africa. For example, both Mangope's daughter and Carel Boshoff joined the technical committee, according to commissioners. Boshoff would later form a whites-only community in the northern part of the country. Though the size of the technical committee fluctuated throughout the process, the committee retained a core team of roughly 10 economists, political scientists and sociologists. "The biggest problem was not so much finding the skills per se, but finding the people from a broad political spectrum who had the skills, to get the mix right," Mokate said.

Even though both the commissioners and their technical committee members had clear political affiliations, all agreed to begin their work by devising a single interpretation of the criteria they had been given to determine the new provincial boundaries. They generally used this interpretation of their mandated criteria to frame their discussions, a practice that encouraged the commissioners to make decisions based on facts rather than on political considerations, particularly at the technical level.

Commissioners recalled later that despite their political differences, they were united by the desire to find a solution that would enable the elections to move forward. "You had to get a balance, because if you had somebody that was so hell-bent on their own political view, then you would never have been able to come up with a consensus

document,” Mokate said. “Because of the time that we were in and [because] we were all trying to arrive at a workable solution for the country...people also tempered their own ideological and political agendas.”

To facilitate decision making, the commissioners operated on the basis of “sufficient consensus,” upon which the broader MPNF negotiations were predicated. Though vaguely defined throughout the negotiations, the principle enabled a slight majority to carry a decision.

The commissioners’ first task was to decide how to apply the criteria for evaluation of boundary proposals. The MPNF mandated that the CDDR take into account historical boundaries, the availability of infrastructure and service delivery, existing government structures, demographics, economic viability, potential for development, and “cultural and language realities,” and that it limit financial costs, inconvenience to citizens and dislocation of service.<sup>3</sup>

Interpretation of those criteria, however, was in the hands of the commissioners themselves. They organized the criteria into four categories—economic aspects, geographic coherence, institutional and administrative capacity, and sociocultural issues—and agreed to evaluate each proposed boundary on its merits within each of those four categories.

The commissioners referenced the experiences of other countries—specifically, the United States, Canada, Australia, India, Nigeria, Belgium, Germany, Spain and Italy—in balancing similar delimitation criteria. The commissioners concluded that the criteria should be equally applied. In the

guiding principles they drafted, the commissioners stressed the potential drawbacks of giving too much weight to cultural/linguistic considerations over administrative ones but acknowledged the need to avoid breaking up existing, cohesive language communities.

The “cultural and linguistic realities” criterion posed a particular challenge for the commission. “We had to take into account that in demarcating the provinces, we must not reinforce the legacy of apartheid—either the ethnic divisions from the Bantustan era or [through] provinces that would reinforce the apartheid spatial economy,” Mokate said.

The commission, faced with navigation of a minefield of political tensions, was also ill equipped technically to carry out its mandate. The government of South Africa had never produced a census on the entire population, and other official statistics did not include the homelands, reflecting the apartheid government’s desire to excise the homelands from South Africa. The commission had to find demographic information from other sources to make good on its commitment to use objective criteria to determine the country’s new provincial borders.

With the deadline of the April 1994 elections looming ahead, time was critical. The commission first met in May 1993 and had about three months to gather data, hold public hearings and complete its work.

## GETTING DOWN TO WORK

Once the commissioners agreed on the criteria, the members of the technical committee were given only a few weeks to draft a proposal to pass on to the political

commission for broader deliberation. As a starting point for their analysis, the members of the technical committee decided to base their provincial borders largely on a map created by the government-funded Development Bank of South Africa (DBSA) in the 1980s. The bank had drawn up the map to plan its own investments, dividing the country into nine economic regions that cut across existing homeland and provincial boundaries. The commission adopted the map as a basic tool because it reflected economic criteria without regard for politics, existing government boundaries or other factors.

Making sure the proposed provinces would be governable presented a challenge because the new constitution was still being drafted. The MPNF negotiators had not yet decided whether the constitution would imply a centralized or decentralized state structure, and the CDDR's final proposal had to be flexible enough to fit with either outcome while still creating a long-term solution. "We had to understand this is not something that you are going to change after two years," Mokate said.

In evaluating proposals, the technical committee and, by extension, the larger commission struggled to find accurate information about the country's regions and cities. Because of the lack of concrete census data, the commissioners relied on unofficial sources, such as the DBSA, for population estimates. The ANC representatives also used information from World Bank missions to supplement their knowledge of South Africa's demographics and infrastructure. A few years earlier, ANC members working on local government issues had accompanied

World Bank officials on missions around South Africa. World Bank officials had the resources to conduct aerial surveys and extract information from institutions such as the army. One of the members of the technical committee, Trevor Fowler, said that the members' experience in working with the World Bank gave the ANC "deep insight into all of the cities and what their governance structures were like."

### *Involving the public*

To give South Africans a voice in the process, the commission asked the public to propose ideas. Individuals could send their suggestions directly to the commission or attend forums around the country. Members of the technical committee and the commissioners formed representative groups to travel to each of the hearings. They advertised the meetings over radio and in newspapers, inviting people to participate. Research organizations often helped run the gatherings, which were in the form of either town hall debates or closed-door talks.

Commissioners recalled engaging members of the public in lively discussions during those events. "Our job was to be there, to listen, to take notes but to also interrogate," Mokate said. For example, the commission grilled a leader of the Xhosa people when the leader proposed an ethnically Xhosa-centered province. The commissioners asked whether that leader's province would be economically viable, and they questioned him about the implications of creating provinces elsewhere on an ethnic basis.

Although public consultation aimed to make the process inclusive, the

commissioners and their researchers recognized that many people could not participate. Discussions were often dominated by people who were well organized and who had the money and education to engage in the issues. By contrast, people in poor, far-flung and weakly organized communities—often ones in the homelands—were less involved. The Xhosa leader, for example, could not muster much of an argument beyond a cultural claim, Mokate said, and he was not prepared to make arguments along economic lines. “Even though it was designed to enable as many people as possible to access the process, in the end it was the well-organized, well-resourced people that were able to put together those submissions, and come and make their case,” she said. “We were building a democracy, but the people who had been historically disenfranchised were disenfranchised, in a way, in that process as well.”

Once the public consultation phase was complete, the technical committee summarized and cataloged the arguments: 304 written submissions and 80 oral presentations in total. The technical committee then compiled a report for the commissioners, highlighting the major issues for their consideration. The report noted particularly that many of the proposals spoke explicitly to the CDDR’s criteria and that many used the DBSA’s development regions as starting points, though all advocated some changes.

“The administrative and logistical issues were also critical because if they were not done correctly, then people could have challenged them,” Mokate said, explaining

the care taken to process each submission. “Anything could have been used to derail the process, so you had to be very careful how you did things, whether it was from the research side or from the logistics and administrative side.”

*Ethnicity versus language: dividing communities*

One of the commission’s most important tasks was to move South Africa beyond racial segregation while remaining sensitive to the danger of dividing cohesive communities. Even though the commission had decided not to use ethnicity as an explicit criterion, its consideration of language groups raised many of the same issues.

The requirement that each province be contiguous eliminated many proposals advocating the creation of provinces centered on linguistic majorities. The submission from the Bophuthatswana leadership included several unconnected regions, so the commissioners quickly eliminated it. Initial proposals to set up a volkstaat also did not meet tests of administrative rationality. Paul Daphne, a commissioner and ANC party leader, recalled, “The people proposing a volkstaat outcome were battling to find a map which would show any part of the country with a majority of whites in it. It was a real struggle; you had to draw a really strange-looking map to find a part of the country which you could call a region or province which had a majority of whites.”

COSAG in particular continued to push for majority single-language communities. Reyneke, recalling the debate, said his plan had been inspired by linguistically organized

provinces in Belgium and by the cantons of Switzerland, and he still believed that language should be the primary criterion for the delimitation of provinces. As for the other mandated criteria, he said, “almost any place can be economically viable if there are peace, stability, [and a] low crime rate,” thereby dismissing the position of many committee members that those criteria should be of greater concern.

When a more viable proposal did not emerge from the public consultations, the technical committee forwarded to the commissioners its recommendation for eight provinces, based primarily on the DBSA map and, therefore, on the potential for economic development and administrative capacity.

With that proposal as a guide, an argument then raged among the commissioners over whether to split the Eastern Cape into two provinces and whether to create a Northern Cape province. In the debate over splitting the Eastern Cape, economic considerations won out over political pressures. The argument in favor of splitting the Eastern Cape was based on its inclusion of two former homeland areas: Transkei and Ciskei. The Transkei leader, an important supporter of the ANC, urged the party to create a separate province based on his homeland, but Transkei and Ciskei were relatively undeveloped, and the commissioners weighed whether it would be better to unite the former homelands in a single province together with economically vibrant coastal cities in the non-homelands area, said Daphne, who lived in the Eastern Cape region.

Businesses in the region were nervous about joining economically prosperous areas such as the city of Port Elizabeth with Transkei and “its sea of unemployment,” Daphne added. Ultimately, the commission decided to unify the two former homelands into a single province.

In the debate over whether to create a separate Northern Cape province, politics triumphed over economic arguments. Both the NP and segments of the conservative Afrikaner contingent supported the creation of a Northern Cape province, but for different reasons. The NP was concerned about its chances against the ANC in the upcoming election, and the party was convinced that the demographics of the proposed territory would give the NP a better chance of winning provincial elections than in any other proposed province. The commissioners recalled that conservative Afrikaners, for their part, said they thought that a Northern Cape province might vote in favor of hosting an Afrikaner homeland.

Opponents argued that such a province would not be economically viable and that administration by a provincial government would be difficult. In their report to the full CDDR, the technical committee members did not envision a Northern Cape, instead drawing a boundary between the Western Cape and North-West province. ANC members on the technical team noted that the Northern Cape had no history of local administration and that the cost of governing the sparse population, coupled with the region’s modest local revenue, would make a provincial government’s work additionally difficult.

In the end, the fate of the Northern Cape proposal came down to a show of hands, late at night, with the clock ticking: The commission had to turn in its report the next morning to the MPNF negotiators drafting the constitution. Reyneke initially refused to vote. He had been present at the hearings in the region, and the vast majority of the participants wanted the commission to include them in the Western Cape. Despite his inclusion as a representative of the conservative Afrikaner community and of certain homeland leaders, he did not want to vote against the wishes of the local population.

In the first round, the vote was evenly split, but NP-nominated chairman Smit then asked Reyneke to support the creation of a Northern Cape province. Reyneke said he agreed, in part because of a bargain he had brokered with other conservative Afrikaners to support his proposal for an Afrikaner homeland near Pretoria.

The pro Northern Cape vote won the day, but Daphne said history might have been otherwise had one ANC-nominated commissioner not been absent.

Other popular proposals for provincial boundaries did not hold up against the agreed-upon criteria. Daphne said that progressive groups, for instance, favored many small regions with minimal powers. The commissioners determined that those proposals were not as viable economically or administratively when compared with a smaller number of provinces.

The commission submitted its report to the MPNF on July 31, 1993—about three months after beginning its work

recommending in broad strokes a nine-province map. Thirteen of the commissioners signed the report, while two, Reyneke and Bernstein, submitted their own minority reports, dissenting from the CDDR's proposal. The majority report acknowledged that certain highly contested border towns and communities might warrant further investigation and noted the need for provisions for future border amendments in South Africa's final constitution. The commissioners also discussed a volkstaat in the report, noting that the groups that advocated one had been unable to unite behind a single proposal for its location, and therefore one had not been included.

In his dissent, Reyneke argued that while cultural and linguistic concerns had been considered in certain regions, the commission had not weighted the criteria enough. He argued that "conflict-reducing sociocultural borders" were of primary importance to avoid future violence, and he praised the commission for demarcating such a border in the North-West province. "Unfortunately, similar improvements in other parts of South Africa were not included because of overriding 'cohesion reasons' like economy, geographic coherence and so called homogeneity or regional identity," he wrote.<sup>4</sup> Reyneke also voiced objections to the exclusion of a volkstaat in the proposal but thanked the commission for accommodating him on other points.

Bernstein's dissent was more critical: "I would strongly urge the negotiating parties not to impose an undemocratic map on the

country,” she wrote, arguing that the commission needed more time for public consultation in order to produce viable regional boundaries.<sup>5</sup> “To try and actually produce a regional map for the country in such a short time and think that this will resolve the differences that exist between all the many interests on this matter is to my mind totally unrealistic and dangerous,” she said.<sup>6</sup> Bernstein argued that the criteria were insufficient: they did not include a position on small versus large provinces and did not ask the CDDR to consider the electoral implications of the regional boundaries. She also argued that the consultation period revealed a need for greater study of the map rather than settling border questions.

The map proposed in the report, she said, represented a political settlement, brokered in order to move negotiations forward as quickly as possible, but it did not represent a viable blueprint for regional administration and development. “What I do know is that apartheid is now dead and that a new government elected by the majority of South Africans will need to address the many important issues that have been ignored for so long,” she wrote. “This new government will be fighting for its political and economic survival and it will have to reverse the past four decades’ failure with respect to development generally and regional development in particular...[S]ome fundamental rethinking is necessary.”<sup>7</sup>

### OVERCOMING OBSTACLES

The party representatives at the MPNF, in the midst of drafting South Africa’s final constitution and preparing for elections less than a year away, accepted the CDDR’s

report but identified eight “sensitive areas” in the proposal that had not been fully resolved. Apparently agreeing, in part at least, with Bernstein’s concerns, the negotiators extended the CDDR’s deadline, sending the commissioners back to gather additional citizen input on the “sensitive areas,” including whether the Eastern Cape should be split, whether a Northern Cape province should be created or included in the Western Cape, and where Pretoria should fall.

In August 1993, the commission reissued a call for proposals and commentary and received 467 written submissions and 177 oral statements. The CDDR began meeting again in September 1993, with only one month to reformulate its proposal. Smit refused to participate in the second round, and the CDDR replaced him as co-chair with A.S. du Plessis, whose brother Barend had been minister of finance under President P.W. Botha. Du Plessis had participated in secret talks in the late 1980s between Afrikaner political interests and the ANC that preceded the transition negotiations and was already a CDDR commissioner.

In their revised submission in October, the CDDR commissioners noted that they had not revisited the boundaries but, rather, tried “to provide further information to the [MPNF] Negotiating Council on issues relating to possible boundaries.”<sup>8</sup> In particular, the commissioners argued that their proposal should serve as a jumping-off point for a more inclusive process to settle delimitations. The party negotiators then accepted the CDDR’s second report, concluding the commissioners’ work.

*Political considerations*

In the preface to their second report, the two chairmen argued that at that time, the responsibility “rests with the political leaders” to negotiate further issues and to convince their constituents to accept the subsequent outcome. “The delimitation/demarcation of regions is not a legal or academic exercise dealing only with quantifiable or even logical arguments,” the two chairmen wrote in the preface to their second report. “It deals with the wishes, fears and emotions of human beings and therefore requires a forum capable of reaching consensus and agreement through a process of compromise and ‘give’ and ‘take.’ Certain criteria may have to be sacrificed in order to arrive at this compromise. [The CDDR’s brief and mandate] were not to find compromise between conflicting historical, political and often emotional interests held by various groups, however compelling these may be.”<sup>9</sup>

Party representatives, through the MPNF, took the CDDR’s proposal and brokered compromises as envisioned by the chairmen. Daphne recalled, for example, that certain areas that the CDDR had recommended be placed in Gauteng based on “logical economic linkages” were later moved to the North-West province to keep more areas of former Bophuthatswana together. “I think the view of the commission was that Bophuthatswana itself was a false construct and that we shouldn’t really be using an objective of trying to keep Bophuthatswana together as one of the bases for determining provinces which were going to go 100 years into the future,” he said. “I think, to placate some of those interest

groups, [politicians] actually put those districts back into the North-West province.”

*Public resistance*

Several communities on the proposed provincial borders, including the areas Daphne discussed, were strongly opposed to their placement in certain boundaries. The disputes threatened to hold up the drafting of the new constitution and the elections. Political parties played roles in ensuring that their supporters accepted the proposed boundaries. For instance, after working on the commission’s technical committee, Fowler joined the ANC’s public relations team in the region that became Gauteng province. He received phone calls from unhappy constituents as soon as the negotiating parties published their decision on the provinces. The majority of those dissatisfied by the proposal objected to their areas being placed into a particular province and asked that their areas be moved to different provinces.

Fowler appealed to the callers on the importance of holding elections before dealing with those matters. The constitution contained a provision that allowed communities to dispute the new boundaries within 30 days. “These comrades agreed that they would not voice their concerns now; they would first go through the elections,” said Fowler. “Well, the day after the elections, they called.” Despite the ANC’s promises, however, the government did not address many of the boundary disputes the following month. “Unfortunately, within 30 days it was not resolved; many of these issues which people raised were not resolved – not because of lack of concern but

as a result of the reality of dealing with governance,” Fowler said.

Not all disputes were shelved, however. By the time the CDDR submitted its final proposal, many homeland leaders and pro-volkstaat conservative Afrikaners had left the MPNF talks, arguing that the parties were not accommodating their views. In a last-ditch effort to bring them back into the process, MPNF participants invited the alliance of homeland leaders and pro-volkstaat Afrikaners to suggest adjustments to the final map. Reyneke recalled that Tertius Delpont, an NP parliamentarian deeply involved in constitutional issues, called back both him and other members of the alliance to make minor adjustments to the final boundaries, with the intentions of both broadening the support base for the provincial system and forestalling potential violence.

Other interviewees did not voice knowledge of that specific instance of political intrusion, but they did acknowledge that political horse trading played a role in determining final boundaries. “We provided the technical input,” Mokate said. “Then the politicians got together and did their own carving up.”

Despite giving its advocates a greater voice, the negotiating parties did deflect the issue of an Afrikaner homeland until after the elections by promising to create a *volkstaat raad*, or volkstaat board, that would consider the feasibility of such a territory. The board would make its recommendation to a constituent assembly that was responsible for drafting the country’s final constitution. The ANC’s strategy was to secure buy-in for the process, recognizing

that in the short run, the different pro-volkstaat factions would not agree on a single outcome.<sup>10</sup> Afrikaner leaders relented and dropped the matter for the duration of the elections.

### *Threats of violence*

In Bophuthatswana, however, Lucas Mangope was not satisfied with the CDDR’s final proposal. As the country geared up for elections, Mangope stonewalled, refusing to join his homeland with the territory of South Africa or to permit elections to take place, unhappy that the separation of his non-contiguous homeland into different provinces meant the disappearance of his powerbase. In February 1994, in opposition to Mangope’s position, many government departments went on strike, causing an extensive collapse of social services. In March, the army mutinied and Mangope invited heavily armed conservative Afrikaner paramilitaries of the Afrikaner Volksfront into the homeland to secure the territory. After the paramilitaries did so, members of the extremist AWB also invaded, claiming Mangope’s blessing. The Volksfront troops pulled out after the AWB refused to work with them. In the ensuing conflict between the AWB and Bophuthatswana’s mutinying security forces as many as 100 civilians and combatants were killed, according to reports at the time. Though there were few AWB casualties among the dead, the paramilitary group then withdrew, the national army moved in, and the government replaced Mangope with a caretaker leader.

Mangope had overplayed his hand and, discredited by the affair, was no longer a serious threat to either the national

government or the upcoming elections. He was not the only one. In the preceding months, AWB members had waged a terror campaign, setting off bombs in public places and threatening to take the country by force should their demands for white rule not be met. Their failure to secure the capital of Bophuthatswana and the casualties they incurred assuaged concerns that the AWB had the ability to instigate countrywide violence, should majority elections move forward.

### *South Africa goes to the polls*

On April 27, 1994, South Africa voted as one country for the first time. The ANC, which won a majority of the vote, formed a coalition government with the NP and IFP. The ANC won the majority of votes in seven of the nine provinces. The NP won the Western Cape but failed to win the Northern Cape province despite having pushed for its creation for that reason.

As predicted, Buthelezi easily won a majority in the newly created KwaZulu-Natal province. Realizing that Buthelezi and others like him would attempt to consolidate regional power, the negotiating parties had taken measures to prevent him from using this power base to advance his narrow ambitions. For example, although the provincial governments had a onetime chance to write their own, provincial constitutions after the first elections, their texts could not violate the terms of the national constitution. The KwaZulu-Natal legislature passed a provincial constitution after 1994, but South Africa's Constitutional Court later found it unconstitutional.

Further, the country's final constitution did not grant control over the police to the provincial minister in charge of safety and security. Instead, a nationally appointed commissioner filled that role. ANC negotiators said they introduced such a provision precisely to prevent Buthelezi from incorporating members of his militia into the local police.

## ASSESSING RESULTS

The CDDR aimed to create a non-segregated map of the country—one that would allow elections to proceed without widespread violence and would begin to undo the physical segregation of the homeland system. The CDDR also aimed to create economically sustainable and logically governable provinces that would be able to provide their own social services and physical infrastructures.

Though the CDDR clearly succeeded in its short-term goals, its long-term record is more mixed. “We did well, given that you were trying to fashion a process that would arrive at a solution in a highly contested environment—and trying to do it within a very short space of time,” said Mokate, coordinator of the technical committee. In broad strokes, the provincial system proposed by the CDDR was widely accepted. Negotiated adjustments by political actors in the months leading up to the election helped broaden the support base for the system, though the forum gave greater weight to factions that could legitimately threaten economic or physical damage. The concerns of communities not posing a threat often fell by the wayside.

The peaceful reception of the commission's recommendations was aided by Mangope's fall and the later fracturing of the pro-volkstaat Afrikaner movement. The council to investigate the possibility of a white homeland lost momentum amid infighting between Afrikaner groups. (One faction wanted a homeland in the Northern Cape, while another advocated a region centered on the country's capital.) The ANC's recognition of the volkstaat board was politically difficult. Initially, the ANC's national leaders lambasted its own negotiators for compromising with the Afrikaner leadership. However, the negotiators argued successfully that the strategy had been designed to exhaust the other side.

History shows that the ANC negotiators were partially correct. Some conservative Afrikaners eventually set up a racially exclusive territory, called Orania, in the Northern Cape. Other communities sprang up as well, reflecting some citizens' underlying support for the idea of a white homeland, but they remain a small movement in national politics.

The most important benefit of the CDDR, participants said upon reflection, was that the commission was able to secure buy-in from the main factions. Though it was important that the proposal reflect a broad range of views, it was even more vital that the different factions remain part of the process and feel that their views were being taken into account either through representation on the commission itself or through public solicitation of proposals. The process was "part of nursing the transitions, because every group, no matter how crazy

their views and their maps may have been, had an opportunity" to participate, Daphne said.

"I don't think anybody in that room got exactly what they wanted...but I think that the people, as a collective, pulled together to the extent that they could—even the people that disagreed with each other," Mokate said. "We're still what we were, but, nonetheless, we are South Africans and we didn't kill each other. We're still here and can talk to each other."

The CDDR was successful in bringing most of the parties to the table, and the MPNF negotiators were subsequently able to make deals that appeased the pro-volkstaat Afrikaners and mitigated Buthelezi's ability to consolidate power. For the most part, nearly two decades later, South Africa's provincial boundaries remain largely unchanged from the original demarcations.

That said, local disputes continued through the publication of this case study, often over provincial boundaries that cut through municipalities or that separated border towns from nearby economic centers. Communities objected to discrepancies in the quality of services across the municipality where the provincial boundary divided it or placed it in a different province from the one it had been in.

According to Mokate, the communities objecting after the elections had usually not had a say in the original process. "It became very clear to me that it was the well-resourced and organized that were really getting their voices heard," Mokate said. "I think that's why we have the problems with the border towns that we have now, because those people are now feeling much more

empowered, much more organized, and are saying ‘But how did this happen? I don’t like this. Now I’ve got a government in power, I must tell them I don’t want this.’ And so you could say, ‘But you were consulted,’ but really, were you consulted?”

While theoretically, the CDDR took into account economic and administrative considerations, at the time of its work the constitutional structure of South Africa had yet to be decided. In their revised submission on the Eastern Cape, for example, the commissioners noted that MPNF constitutional negotiators had not yet decided “the extent to which SPRs [states/provinces/regions] will be expected to rely on their own tax bases in the future, [which] has a bearing on the importance that should be attached to the size of the economic resource and tax base in the demarcation of SPRs.”<sup>11</sup>

In practice, most of the nine provinces relied heavily on central government financial and administrative support to govern their territories, at great expense to the national government. At the national level, much of the country’s wealth and economic growth from 1994 to 2012 was concentrated in two provinces – Gauteng and the Western Cape – while the Eastern Cape was plagued by unemployment and poverty. The sparsely populated Northern Cape struggled with administrative capacity and infrastructure.

## REFLECTIONS

As political nominees, the commissioners and their technical team could not cast aside their political affiliations and loyalties. Still, their common

commitment to a unified South Africa allowed participants to work beyond their narrow interests in the effort to create provinces and provincial boundaries for the new South Africa. “Most of the political parties and the commissioners entered that discussion from a genuine desire to put the best map forward,” said commission member Paul Daphne, who added that he and other commissioners argued delicate issues on technical and factual grounds and did not resort to political power plays.

The commission’s low public profile enabled it to avoid entanglement in many of the hot-button issues that were dominating public attention at the time. Daphne said minimal media coverage enabled the commission to stay out of the limelight.

The commission also played a valuable role as a sounding board for diverse causes that characterized South Africa’s political scene at the time. Even if the commission did not accept the views expressed in submissions, proponents could tell their supporters that their message had been delivered. Political buy-in was essential for keeping parties at the negotiating table and allowing a broad range of constituencies to have a voice in the process, even if they did not get the solution they wanted.

The CDDR benefited from the quality of its chairs, who played important roles in maintaining group cohesion and focusing commission members on their objectives. “Each one of them was respected in the constituencies from which they came,” said Renosi Mokate, coordinator of the technical committee. Philip “Flip” Smit could exercise authority over the National Party and the Afrikaner nationalists, while Bax Nomvete

held sway over the African National Congress, the black nationalist Pan-Africanist Congress and the homeland leaders. “Once they had worked together for a while, they could together pull the lot together,” she said, adding that establishing that rapport took time.

“Nobody got exactly what it is that they wanted, but the people, as a collective, pulled together to the extent that they could,” Mokate said. “Even the people who disagreed with each other fundamentally, they still talked to each other.... They recognized each other as South Africans who participated in a process that contributed to building this country.”

Administration of the provinces, however, later proved difficult. One of the primary NP negotiators, Roelf Meyer, who was appointed minister of provincial affairs and constitutional development after the 1994 elections, said the negotiations were not focused enough on creating the provincial administrations themselves, leaving the hard work of setting up nine new subnational governments for the new ANC-led government in the years to come. “I think what we should have done probably was start up with a process of real planning [for provincial administration] in

conjunction [with] or parallel to the negotiating process,” Meyer said. “In that regard, we failed ourselves by only doing this within the last period of time before the transition. I think we were so consumed, all of us, in our negotiations on finding a constitutional settlement that we didn’t think about the bigger consequences of what we were doing about creating a new state, creating a new administration at the national as well as at the provincial level. You need a proper process of planning to make it happen, which goes much deeper than the political settlement and the political negotiations.”

Participants acknowledged the flaws in the process but argued that their process was what the country needed at the time to make elections and a peaceful transition possible.

Fowler argued that changes through the system indicated political buy-in to the process. “So you at one level could say, ‘No, it was the wrong decision, because you had to change the boundary; people fought for it to be changed,’ but you could also argue that it’s not so easy to determine that it was the wrong decision because it resulted in a peaceful transition,” he said.

---

## Endnotes

<sup>1</sup> F.W. de Klerk, “No Changes to the Provinces Without Provincial Referendums,” as quoted in Greg Ruthers (ed.), *The Fate of the Eastern Cape: History, Politics and Social Policy*, South Africa: University of KwaZulu-Natal Press, 2011, pp. 22-23.

<sup>2</sup> Truth and Reconciliation Committee of South Africa, Final Report, vol. 6, sec. 4, appendix, 21 March 2003, p. 579. Accessed 1 September 2012.

<[http://www.info.gov.za/otherdocs/2003/trc/4\\_3ap.pdf](http://www.info.gov.za/otherdocs/2003/trc/4_3ap.pdf)>.

---

<sup>3</sup> “Report of the Commission on the Demarcation/Delimitation of the SPRs,” *South Africa, Negotiation Council of the Multi-Party Negotiating Process, Commission on the Demarcation/Delimitation of SPRs*, 31 July 1993, pp. 4-5.

<sup>4</sup> *Ibid.*, 82.

<sup>5</sup> *Ibid.*, 96.

<sup>6</sup> *Ibid.*, 88.

<sup>7</sup> *Ibid.*, 93.

<sup>8</sup> “Report on Further Work of the Commission on the Demarcation/Delimitation of the SPRs,” *South Africa, Negotiation Council of the Multi-Party Negotiating Process, Commission on the Demarcation/Delimitation of SPRs*, 15 October 1993, p. 1.

<sup>9</sup> *Ibid.*, 5.

<sup>10</sup> Richard Spitz and Matthew Chaskalson. *The Politics of Transition: A Hidden History of South Africa’s Negotiated Settlement*. Oxford, UK: Hart Publishing, 2000, p. 244.

<sup>11</sup> “Report on Further Work of the Commission on the Demarcation/Delimitation of the SPRs,” p. 44.

Innovations for Successful Societies makes its case studies and other publications available to all at no cost, under the guidelines of the Terms of Use listed below. The ISS Web repository is intended to serve as an idea bank, enabling practitioners and scholars to evaluate the pros and cons of different reform strategies and weigh the effects of context. ISS welcomes readers' feedback, including suggestions of additional topics and questions to be considered, corrections, and how case studies are being used: [iss@princeton.edu](mailto:iss@princeton.edu).

## Terms of Use

In downloading or otherwise employing this information, users indicate that:

- a. They understand that the materials downloaded from the website are protected under United States Copyright Law (Title 17, United States Code). This work is licensed under the [Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License](http://creativecommons.org/licenses/by-nc-nd/4.0/). To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc-nd/4.0/>.
- b. They will use the material only for educational, scholarly, and other noncommercial purposes.
- c. They will not sell, transfer, assign, license, lease, or otherwise convey any portion of this information to any third party. Republication or display on a third party's website requires the express written permission of the Princeton University Innovations for Successful Societies program or the Princeton University Library.
- d. They understand that the quotes used in the case study reflect the interviewees' personal points of view. Although all efforts have been made to ensure the accuracy of the information collected, Princeton University does not warrant the accuracy, completeness, timeliness, or other characteristics of any material available online.
- e. They acknowledge that the content and/or format of the archive and the site may be revised, updated or otherwise modified from time to time.
- f. They accept that access to and use of the archive are at their own risk. They shall not hold Princeton University liable for any loss or damages resulting from the use of information in the archive. Princeton University assumes no liability for any errors or omissions with respect to the functioning of the archive.
- g. In all publications, presentations or other communications that incorporate or otherwise rely on information from this archive, they will acknowledge that such information was obtained through the Innovations for Successful Societies website. Our status (and that of any identified contributors) as the authors of material must always be acknowledged and a full credit given as follows:

Author(s) or Editor(s) if listed, Full title, Year of publication, Innovations for Successful Societies, Princeton University, <http://successfulsocieties.princeton.edu/>

