

DRAFT AGENDA AND DOCUMENTATION

for the meeting of the

PLANNING COMMITTEE

to be held at 10h00 on Tuesday

05 OCTOBER 1993

. CONTENTS OF THE PLANNING COMMITTEE PACK
FOR THE MEETING TO BE HELD ON
05 OCTOBER 1993 AT 10H00

Item

Draft Agenda for the Planning Committee
meeting to be held on 05 October 1993 at
Proposed Resolution (Addendum A)
Proposed Resolution (Addendum B)

Lebowa Government Request (Addendum C)

First Report from Task Group
Repeal Of Discriminatory Legislation (Addendum D)

Meeting with Traditional Leaders (Addendum E)

PAC of Azania : Northern Tvl Education Crisis
(Addendum F)

Republic of Namibia, Ministry Foreign Affairs
Walvis Bay (Addendum G)

Womenâ\200\231s National Coalition (Addendum H)
ANC Lebowakgomo Branch (Addendum I)

Womenâ\200\231s National Coalition (Addendum J)

St Johns Church (Addendum K)

Documents to be discussed by Management Committee
of LGNF on Monday 4 October 1993 (Addendum L)

General Council of the Bar of South Africa
(Addendum M)

SA Youth Movement for Peace : Picket Thursday
23 September (Addendum N)

Radio and TV Promotion Services (Addendum O)

Reportback by Administration (Addendum P)

DRAFT AGENDA FOR THE MEETING OF
THE PLANNING COMMITTEE TO BE HELD ON
5 OCTOBER 1993 AT 10H00
AT THE WORLD TRADE CENTRE

Chairperson : R Cronje
Moment of prayer/meditation
Welcome and attendance
Ratification of agenda

Minutes (already distributed in a separate pack)

4.1 Ratification of the minutes of:

4.1.1 23 August through to 26 August 1993

.1.2 30 August 1993

31 August 1993

1 September 1993

6 September 1993 to 7 September 1993

.1.6 13 September 1993

.1.7 14 September 1993

Matters arising out of the minutes of:

4.2.1 23 August through to 26 August 1993

4.2.2 30 August 1993

4.2.3 31 August 1993

4.2.4 1 September 1993

4.2.5 6 September 1993 to 7 September 1993

4.2.6 13 September 1993

4.2.7 14 September 1993

Minutes to be distributed during the course of the meeting for noting to be
dealt with at a future meeting of the Planning Committee

Substantive Issues

5.1 Constitutional Issues referred to bilateral meetings:

5.1.1 Issues related to SPRâ\200\231s:

9.21 1 Citizenship and citizenship laws

Competencies (including the provision of electricity)

Taxes and fiscal arrangements

Constitutions

Name

TBVC States

PLANCOMM/DOCUMENT/AGEN0510

5 October 1993

Boundaries

The powers of the Constitutional Assembly with regard to the number, boundaries and competencies of SPRâ\200\231s

5.1.1.9 The fleshing out of the adopted Constitutional Principles

.1.2 Self-Determination and confederalism

.1.3 Languages

1.4 The deadlock-breaking mechanism in Chapter 5 of the Draft Constitution

5.1.5 The composition and functioning of the Constitutional Court

Constitutional Issues referred to the Planning Committee:

5.2.1 Independent non-partisan statutory body on rationalisation of existing administrations (plus recommendations by the Planning Committee at the appropriate time)

5.2.2 Technical group on financial and fiscal matters with regard to SPRâ\200\231s

5.2.3 Local Government:

5.2.3.1 Recommendation on the informal establishment of a

multi-party co-operation mechanism with regard to local government

e A e Proposed Resolution (see Addendum A, p5 and Addendum B, p6)

National Electrification Forum

Linking interim and transitional measures into the Transitional Constitution:

"The Planning Committee on behalf of the Negotiating Council should look into a holistic mechanism which would cater for, in the first instance transitional measure between now and the election and in the second instance, provisions in the constitutional transition. The proposals from the Planning Committee might even facilitate the work of the LGNF" - Extract from Transcription of from the Negotiating Council meeting of 28 September 1993

Lebowa Government Request (see Addendum C, p7)

The establishment of the Transition Structures: (Sub-Committee)

5.4.1 The TEC

5.4.2 The IEC

5.4.3 The IMC

5.4.4 The IBA

Commissions: (Sub-Committee)

5.5.1 Regional demarcation/delimitation

5.5.2 National Symbols

Technical Committees and Task Groups: (Sub-Committee)

5.6.1 Fundamental Human Rights during the Transition

5.6.2 Repeal or Amendment of Discriminatory Legislation:

PLANCOMM/DOCUMENT/AGENO0510

5 October 1993

5.6.2.1 First Progress Report from the Task Group (see Addendum D, p12)

5.6.3 Violence

5.6.4 Effective co-ordination of overlapping areas between the Draft Constitution and the Draft Electoral Bill

Processing of the Draft Bills through Parliament:

Report from the Task Group on the IBA and other legislation scheduled for the November session of Parliament

5.9 Voter Education

5.10 Telecommunications/Cellular Telephones (ANC & SA Government)

Procedural issues

6.1 Meeting with Traditional Leaders (see Addendum E, p17)

6.2 Liaison Committees:

6.2.1 The National Economic Forum - Postponed until further notice

6.2.2 Local Government Negotiation Forum - Meeting of the Liaison Committee scheduled for Wednesday 6 October 1993 at 09h30

Appeal to participants at present outside the Multi-Party Negotiating Process to rejoin

Administrative and Financial matters

7.1 Security

7.2 Correspondence to be noted:

7.2.1 PAC of Azania : Northern Transvaal Education Crisis (see Addendum F, p18)

7.2.2 Republic of Namibia, Ministry of Foreign Affairs : Walvis Bay (see Addendum G, p19)

7.2.3 Women's National Coalition (see Addendum H, p20)

7.2.4 ANC Lebowakgomo Branch (see Addendum I, p23)

7.2.5 Women's National Coalition (see Addendum J, p25)

7.2.6 St Johns Church (see Addendum K, p26)

7.2.7 Documents to be discussed by Management Committee of LGNF on Monday 4 October 1993 (see Addendum L, p27)

7.2.8 General Council of the Bar of South Africa (see Addendum M, p93)

Correspondence to be dealt with:

7.3.1 SA Youth Movement for Peace : Picket Thursday 23 September (see Addendum N, p124)

7.3.2 Radio and TV Promotion Services (see Addendum O, p125)

PLANCOMM/DOCUMENT/AGEN0510

5 October 1993

7.4 Financial Matters:

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

7.5 Reportback by Administration (see Addendum P, p128)

Agenda and Programme for the Negotiating Council (available in the meeting)
Schedule of Meetings (available in the meeting)

Closure

PLANCOMM/DOCUMENT/AGEN0510

5 October 1993

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DRAFT RESOLUTION

UNILATERAL RESTRUCTURING/AMALGAMATION
AT LOCAL GOVERNMENT LEVEL

The Multi-Party Negotiating Council;

Having noted:

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

and

Believing:

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

Therefore resolves:

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

Moved by A Rajbansi

NEGCOUNS/DOCUMENTS/RES.SAG
5 October 1993

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SF-108 SERIES â\200\224 FAX

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JAHONAL PEOPLES PARTY OF SOUTH AFRIC

30 September 1993 76 Trisula Avenus
Arena Park
Chatsworth
4030

Dr. T. Eloff

Management

Multi Party Negotiation Council
Wworld Trade Centre.

Dear Dr. cloff

Resolution on the unilateral restructuring/ amalgamation
of Local Autioritiocs. ;

\$

Tt would be very much appreciated if you would bring %o the
sttention of the Planning Committee that the draft resolution

be given urgent attention &s the amalgamation process in
Natal is proceeding with haste.

We are convinced that this lis definitely affecting the

levelling of pluying fields.

Wij;/gind Regards

N A

A Rajbansi

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~ THE ADMINISTRATIVE HEAD
DR. T. ELOFF
MULTI-PARTY NEGOTIATIONS PROCESS

ISANDO

Sir

A MEMORANDUM FOR CONSIDERATION AND DISCUSSION
BY THE NEGOTIATION COUNCIL

In view of the existing and the escalating political tension between the South African Government and Lebowa Government Service which came about as a result of some political differences between the National Party and the United people's Front, and which have now developed into a political victimization and marginalisation of our Administration but in

particular the leadership of our party;

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

it by any other law:

RECONCILIATION AND RECONSTRUCTION
ONE S.A. ONE NATION.

And having regard to the powers and duties in particular of the

Subcouncil or Finance:-

The Lebowa Cabinet and the United People's Front submit as follows:-

The South African Government and the National Party cannot be allowed to continue directly or indirectly marginalising, victimising and oppressing other political parties and in this specific case Lebowa and U.P.F. The Government and the National Party continue to abuse its Legislative and executive powers granted to it by the minority whites in this country.

The T.E.C. shall not achieve its objectives if and until the Government refrain from its wicked ways and methods of exercising its powers to its own advantage and prejudice of the underprivileged people in South Africa.

' The South African Government cannot be allowed to use its Internal Stability Units in harassing and torturing our people in order to achieve its selfish political goals.

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

That the Financial Administration of Lebowa which cannot be withdrawn from the Lebowa Government as it is the case now be placed under the direct control of the T.E.C.

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and be monitored by the Subcouncil on Finance upon its establishment and not by an oppressive and Autocratic Minister of Regional and Land Affairs.

That the Subcouncil on Finance immediately on its inception be assigned with a task of investigating or requiring the investigation of Minister Andreâ\200\231 Fourieâ\200\231s specific allegations of so-called corruption, inefficiency or deterioration of Lebowaâ\200\231s Financial Management, "which may have an adverse effect on the attainment of the objects of the T.E.C. in the course of the preparation of the 1994/1995 budget of Lebowa, and to conduct such research as necessary and that there be immediate investigation and consultation on all matters contained in sub-section 3 of Section 17 of the Transitional Executive Act", which has recently been passed by Cape Town Parliament.

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

effect.

Mr. Andreâ\200\231 Fourie and officials cannot be allowed to

continue being a referee and a player in the allocation and control of funds especially where there is a dispute between a self-governing territory and his department and in this specific case between Lebowa and the Minister, whose department of Development Aid has always been disgraced

and discredited as a result of its record of financial mismanagement., It is a disgrace and in fact very much alarming that the same officials of the department whose credibility and efficiency has always been questionable are now send to investigate into he financial affairs of Lebowa.

U.P.F. and Lebowa submit that an impartial authority should be in-charge of the financial management and not Minister Fourie who clearly abuses his powers to victimise his political opponents, and whose functions and duties are meant to perpetuate the old administrative order over blacks in South Africa.

Minister Andreâ\200\231 Fourie and his department are virtually distabiling the Northern Transvaal Region by discrediting one of the strongest apponsnts of his party in the region and this is not in the best interest of the T.E.C. and the levelling of a political field for all the political parties, in

having fair and free elections in April 1994.

The present situation in Lebowa is undoubtedly very much political and being used as an election campaign e.g. Minister Fourie has today, 28 September 1993 addressed businessmen, traditional leaders, community leaders, leaders of political parties and organisations and all interested parties on the present situation in Lebowa, which has to do with administrative problems and nothing else but a political posturing. Minister Andreâ\200\231 Fourieâ\200\231s behaviour

SO

and attitude is clearly indicative of a National Party Minister who plays double standard especially after having summoned Gazankulu and Venda to a meeting in Pretoria to persuade them to accept this proposal that portions of Ellisrus, Potgietersrus and Waterberg be incorporated in the proposed so-called Boerestaat.

U.P.F. and the Lebowa Government propose that the sub-council on Finance should assume full responsibility and functions in the allocation, control or monitoring of funds in conjunction with the Minister of Finance and Minister of State Expenditure and not the Minister of Regional and Land Affairs whose functions and duties are in our opinion a duplication of the duties and functions of other departments in the R.S.A. Government. This calls for the total disestablishment or dismantling of this department.

CHIEF MINISTER AND LEADER OF U.P.F.
1993/09/28

FIRST PROGRESS REPORT

TO THE PLANNING COMMITTEE OF THE TASK GROUP
ON THE REPEAL OF LEGISLATION IMPEDING FREE
POLITICAL ACTIVITY AS WELL AS DISCRIMINATORY
LEGISLATION - 4 October 1993

1.

On 6 September 1993 the Planning Committee made a recommendation to the Negotiating Council, namely to propose a two person overall Task Group which would be responsible for identifying legislation in the S.A. Statute Book, as well as setting up and coordinating four sub-groups charged with identifying legislation in each of the four TBVC territories. In setting up sub-groups, the overall Task Group had to ensure that in the case of each of the TBVC territories a person seconded by the Ministry of Justice from the respective territory is included. In terms of the proposal, the overall Task Group would consist of a person seconded from the South African Minister of Justice, and Professor Johan van der Westhuizen of the Centre for Human Rights and of the Law Faculty of the University of Pretoria.

The Planning Committee's proposal was apparently thereafter accepted by the Negotiating Council. Adv. Jaap de Bruyn was seconded by the Ministry of Justice. Prof van der Westhuizen has acted as the de facto convenor of the group.

Due to the absence of several persons involved in the Multi-Party Negotiations because of the special session of Parliament in Cape Town, as well as some related administrative difficulties, the Task Group has had a somewhat slow start, especially as far as the establishment of the sub-committees is concerned. Some progress has been made, however, and more substantial progress will hopefully soon be reported.

3.1 On 13 and 15 September 1993 short telephone discussions with Dr Theuns Eloff took place.

3.2 During the week of 13 - 17 September copies of the relevant documentation were received in Pretoria.

3.3 On Friday 17 September the convenor was briefed by Mr Mac Maharaj, on behalf of the Planning Committee's sub-committee, as to the purpose and functions of the Task Group.

During the week of 20-24 September an office and administrative facilities were set up for the Task Group. However, Dr Eloff as well as the relevant members of the Planning Committee were in Cape Town and thus not present at the WTC.

On Wednesday 22 September Mr de Bruyn, Prof van der Westhuizen, Prof Christof Heyns and secretarial assistant Ms Natalie Mgudlwa met at the WTC to discuss strategical and practical considerations.

On Tuesday 28 September the first meeting of the convenor and Dr Eloff took place, specifically to deal with the financial remuneration and other practical aspects regarding the appointment of members of the sub-committees, a time schedule, and the secondment of the relevant persons from the TBVC administration? which had to be facilitated by the MPNP Administration.

3.7 Between Thursday 30 September and Monday 4 October the Task Group's documentation and other facilities were moved to another office, with some resulting difficulties such as the absence of telephones and (initially) furniture in the new offices, etc.

3.8 On Friday 1 October a further meeting of Mr de Bryun, Prof van der Westhuizen, Prof Heyns and Mr Danie Brandt took place in Pretoria. The identification and implications of specific laws were discussed.

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On 30 September 1993 the following names for the sub-committees were received Attig

MPNP Administration::

VENDA: Mr S.N. Mahada
Senior Law Advisor
Department of Justice

BOPHUTHATSWANA: Mr S.G. Mothibe
Department of Justice

CISKEI: Mr M Bulube
Supreme Court (Bisho)

As far as TRANSKEI is concerned, no name has yet been received. We are currently trying to establish contact with the above-mentioned persons.

As far as the other members of the envisaged sub-committees are concerned, some progress has been made.

Prof Christof Heyns of the Centre for Human Rights and of the Law Faculty at the University of Pretoria was asked to attend to Bophuthatswana (partly as a result of a request conveyed by Dr Eloff) and has started working.

Concerning Ciskei, Mr Dumisani Thabata, a practising attorney of Grahamstown with considerable practical experience as to the contents and application of statutes and decrees in this territory, has agreed to be involved. Other persons with specialised knowledge, will also be approached if necessary. With regard to Transkei and Venda a number of suggestions have been received from various sources and attempts are being made to contact these persons.

In view of the urgency of the situation, the work which has already been done by the relevant Technical Committee, and the appointment of the overall Task Group, it was thought best to approach members of the sub-committees with a basic explanation and to request them to start working immediately, on their own, without unnecessary and time-consuming, formal meetings of the entire group. It was also deemed to be practical to try to make use of persons who are professionally active in the relevant territories, because of the difficulties experienced in order to get hold of the latest amended versions of legislation by someone outside such territories.

As soon as substantial reports have been compiled by individual members, the entire group could meet at the WTC, if necessary. As far as reports to the Planning Committee and Negotiating Council are concerned, it may be necessary for the members of sub-committees to be present in person. The two person overall Task Group will try to coordinate progress, however.

The overall Task Group furthermore decided to solicit the services of Mr Danie Brandt, a senior law student, as an administrative assistant. Mr Brandt earlier assisted the Technical Committee on Discriminatory Legislation, and his experience has proved to be most valuable. Due to academic duties related to the up-coming examinations, he is not available on a full-time basis though.

Mr De Bruyn is planning to be out of the country between 8 and 23 October 1993. It is hoped that his knowledge and experience could be sufficiently put to use before his departure, on that another contact person in the Department will be available in his absence. Prof Heyns will be in the USA between 4 and 16 October, and same arrangements may have to be made in his case as well.

Although Kwa-Zulu is not one of the TBVC territories and forms part of South Africa for the purposes of the Task Group's investigation, it may be most helpful to appoint a sub-committee for this territory as well, especially in view of the lack of access, from Pretoria or Kempton Park, to legislative material which seems to be relevant in the area. Should this idea be acceptable, the name of a contact person from the Kwa-Zulu Administration would be very useful.

The Technical Committee (no.7) on Discriminatory Legislation (in several reports) identified a number of discriminatory laws and laws impeding on free political activities, but found that a comprehensive study of all such laws would take enormous time and was beyond the resources of the Committee. The Committee thus proposed a "higher code" with "supreme legal status".

The Task Group agrees with the Technical Committee that the identification, repeal or amendment of all discriminatory legislation is an enormous task which could not possibly be fulfilled in a few weeks' time. However, in accordance with its brief, the

Task Group will try to concentrate on legislation which is deemed to be the most crucial as far as impediments to free political activity are concerned.

Thus an attempt will be made to identify and put forward for repeal or amendment, a few crucial and urgent aspects of legislation, with the necessary motivation, in a more substantial report by Friday 22 October (which date was agreed on in the above-mentioned discussion of time-tables with Dr Eloff),

Thereafter, if necessary and required, further recommendations will be made to the relevant structures and authorities.

The value and viability of the "higher code" will be considered, in addition to the above-mentioned.

As far as the numerous possibly discriminatory regulations, proclamations, ordinances and other local legislative measures which may be impossible to deal with comprehensively are concerned, the effects of the envisaged interim bill of Fundamental Rights, as well as other existing and future possibilities will be considered.

The authority and functions of the TEC and Independent Electoral Commission, the draft Electoral Bill, the draft bill of Fundamental Rights and the Goldstone draft on free assembly will also have to be studied in order to determine its effects on the mandate of the Task Group.

Short progress reports will be submitted where feasible.

J vd Westhuizen
CO-CONVENOR

4.10.1993

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DRAFT AGENDA FOR THE MEETING BETWEEN THE PLANNING COMMITTEE
AND THE TRADITIONAL LEADERS TO BE HELD ON TUESDAY 5 OCTOBER
1993 FROM 10H00 - 11H00

Moment of prayer/meditation.

Welcome and attendance.

Ratification of agenda.

The participation of Traditional Leaders at:
4.1 Local level government.

4.2 SPR level of government.

4.3 Central level of government.

(Input by Traditional Leaders)

The way forward.

Closure.

PLANCOMM/AGENDA/TRADLEAD
4 October 1993

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CHUODERNEMINGS P .at

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Enquiries C. Kgepa
Tals 01521 - 71139

AFRICANIST CONGRESS: Te
(P.A.C) OF AZANIA' .. -~

NORTHERN TRAN SVAAL REGION

- P.O. Box 5447
- - PIETERSBURG NORTH
0750
Tel: 01521 - 915021
Faxes 01521 - 914145

14 September 1993

SAPA P.R.WIRE: SERVICE

FOR MEDIA

Attention: DR. EIOFF FAX: (011) 397 2211)

THE NEGOTTATING QOUNCIL
MULTT PARTY TALKS
WORLD TRADE CENTRE

KEPTON PARK

- NCRTHERN TV, EDUCATION CRISIS.
A LU ECAIR 3 O

We ara bringing this matter to your attention with the hope that this
should ba under facus at the Negotiating Council meeting, as early as

possible,
It {3 almost two

months now that oducation at the Lebowa bantustand

has been brought tc a stand still because of a dispute betwaen Sadtu
and the Lebowa education department. '

The issue that has hrggĩ~\201g: this crisis is the fact that Sadtu demands

repayments of monics
1991 strike, on tha other hand, the Lebowa Government seems unwi ling

cted from their members salaries during the

to comply with the demand. This is frustrating to the parents and

gtudents and othar concerned community organisations which want a solution
in this matter because the victims here are students who are caught

on & cross fire. It is even more serious because final examinations
are around the corner,

The PAC Northern

TVL Region with the backing of parents is calling on
the negotiating council to discuss and get solutions to the crisis.

PUBLICITY & INFORMATION SECRETARY
NORTHERN TVL. REGION

CK/dm

ALL CORRESPONDENCE TO THE REGIONAL SECRETARY

/8

REPUBLIC OF NAMIBIA

MINISTRY OF FOREIGN AFFAIRS

Tel.: (061) 2829111 Privat Bag 13347

Telex: 656 MINFA

Telegrams: MINFORA - WINDHOEK

Fax: (061) 223937 / 221145 / 35664

19th August 1993

Ref.:

Enquiries:

Chairperson

Negotiating Council
Multi-Party Negotiation Process
World Trade Centre
JOHANNESBURG

Chairperson,

Further to my letter dated 16th August 1993 addressed to the previous Chairperson, it is my singular honour and privilege to, on behalf of the Namibian Government and people, convey to all the distinguished members of the Multi-Party Negotiating Council our heartfelt thanks and indeed a sense of immense indebtedness of us all for your historic and timely decision on the transfer and reintegration of Walvis Bay and the Off-Shore Islands into Namibia. :

This extraordinary act of statesmanship and fair play, representing, as it does, the collective resolve and political wisdom of the participants, has earned both your esteemed Council and no less the South African Government itself renewed goodwill and respectability in the eyes of the Namibian people and the global community at large.

At the end of your admittedly difficult and, perhaps at times, even acrimonious deliberations, you came through as women and men of vision and determination to resolve the dispute, in the service of the future of your own country as well as the rest of the sub-region, especially the consolidation of Namibia's independence.

Let me once again wish your Council and each and everyone of the constituent delegations an expeditious and amicable conclusion of your important negotiations for a democratic, non-racial and united South Africa.

In this context, let me assure you, my distinguished neighbours, of Namibia's wholehearted expectation that the existing bonds of history and common outlook towards further promoting mutually beneficial co-operation between our two countries and peoples must continue to grow from strength to strength now and in the future.

Sincerely yours,

EO-BEN GURIRAB, MP
MINISTER OF FOREIGN AFFAIRS

All official correspondence must be addressed to the Permanent Secretary / ?

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RooErpe:

WOMEN'S 'NATIONAL COALITION -~

AR TR T Ot 2RI 0 A ST 5 Rl i

â\200\230 Suite 3609 Â® Carlton Office Towers * Commissioner Street Â® Johannesburg * 2001
P.O. Box 62319 * Marshalltown * Tel: (011)-331 5958/9 * Fax: (011) 331 5957

TO : ALL MEMBERS OF THE PLANNING COMMITTEE

DATE: 22 SEPTEMBER 1993

The Women's National Coalition is requesting the members of the
Planning Committee to 3join our March Against Violence on 23
September 1993 as per attached invitation.

We are aware of your strict time schedule, but nevertheless
request that you be there along with all South Africans who wish
to make this symbolic stand against violence against women.

Yours sincerely

DATRG L

S8andra Botha

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Convenor ; Frene Ginwala Â» Co-Convenor ; Anne Letsebe Â® Secretary General : Thoko Msane

Deputy Secretary General ;: Sandra Botha Â© Co-Treasurers : Miriam Stein ; Jennifer Kinghor
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*\?fvoms;% "NATIONAL COALITION

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Suite 3609 * Carlton Office Towers Commisswno; Street Â¢ Johnnnesburg Â° 2001
@ F.O.Box 62319 Â® Marshalltown * Tel: (011) 331 5958/9 = Fax: (011) 331 5957

15TH SEPTEMBER 1993.

TO: ALL mEmRers oF THE PLANNING COmm(Te e .
FROM: THE WOMEN'S NATIONAL CCALITION

Dear

The Women's National Coalitien is organising a Peace March
against violence against women for the 23 September 1993.

In our country 1 out of every 2 women (baby, girl, adult) will
be raped in her lifetime. One of every 4 women is forced to flee
a violent partner. It is time we all said "NO MORE".

In this month dedicated to declaring peace in our country, we ask
you to join us to ensure peace for all pecople - men and women in
our country.

\
We ask you to help lead this march to highlight public oppositlon
to violence against women. We must build peace in our land, in
our streets and in our homes!

DATE: September 23, 1993,
TIME: Gather Qith candlÃ@a Âfrom Sph to BtÃ©rt i~\201arch at
: 5.30pm. R _
VENUE: .hHighpoint 6; EZE;;-EL;;;Ã©â\200\234Ei~\201'i~\201;ili~\201fbw.;
ROUTE: The march will wind through Hlllbrow and conclude'â\200\235

in Joubert Park.

PARKING: Parking 15 available Erom Spm at the parklng lot
- in De Korte Street, next to the Argyle Clinic and

opposite the South African InStitute of Medical
Research. Security will be provided.

SECURITY: Peace monlt:ors and marshalls w:..ll escort the--
march. .
PROGRAMME ; The march will end with a candle - lighting

ceremony and short rally. Speakers will address
the crowd and entertainment will follow.

POST MARCH: Peace monitors and marshalls will escort people
to taxi ranks and Hillbrow.

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Convenor ; Frene Ginwala * Co-Convenor : Anne Letsebe * Secretary General : Thokp Msane
Deputy Secretary General : Sandra Botha * Co-Treasurers : Miriam Stein ; Jennifer Kinghorn

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SEP 22 93 12:19PM WOMENS AT LONAL COALITION

We anticipate a large and dynamic event, and look forward to your participation and support.

Please contact Merle or Deborah at (013) 331 - 5958/9 to confirm your availability.

Sincerely yours

PREGS GOVENDER
PROJECT MANAGER

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19--September-1993

The Chairman Wi Vr. Elogy ; %0640â\200\235â\200\231_7

Negotiating Council â\200\234*â\200\23050*â\200\234:&\â\200\230:Â« Qt.mt-\c\\
world Trade Centre

Kempton Park

JOHANNESBURG

Dear Sir T DIV A TGN

Re: EducÃ©tion crisis in Lebowa:

At a mass meeting held in Tebowakgomo on Friday,17â\200\224September-1993,the
community of Lebowakgomo regolved that we should communicate the following

to you. That:

1, Zducation in Lebowa ground to 2 halt_gincgâ\200\2300?â\200\224August-1993,owing to the
Government's refusal %o meet the teachers demands l.e. repayment of

nonies deducted during the 1991 and
Union (SADTU) strikgaĩ-\201Ã©_ SGERCY cind

1992 South African Democratic Teachers

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The 1991 and 1992 strikes were "3parxed off by arbitrary transfer and
dismissals of teacherssand recognition of SADTU.

Realising that the deductions effected on their salaries were illegal,
4ADTU took the matter to the supreheucourtudÃ©hd'fhÃ©fbourt'decided in
favour of SADTU, ' 7

To date,the Lebowa government Education Department has failed to comply
with the court ruling.

The prolonged strike impacts negatively on the education of the black
children.Moreover ,exams are just around the 'corner and we fear for the
worst matric results in Lebowa,

The people of ILebowa do not think that their future can be shaped by the
Lebowa Government because its representatives do not have their interests
at heart.This can bes attributed to the failure of the Lebowa Government
40 resolve the education crisis in a peaceful manner.InateÃ©d,the gaid
government has responded to peaceful protests against its reluctance to

comply with the court order through teargas,brutal assaults and indiscrimi

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nate 'uâ\200\230reats =

It is against this backdrop that we request the Negotiating Council to withdraw representative of the Lebowa Government, Mr M.J. Mahlangu

(who is one of the rotating chairperson) in particular, until they resolve the education crisis in Lebowa.

This matter is of national importance and we hope you will treat this

patter with the urgency it deserves and we look forward to hearing from you

Yours in the struggle e â\200\224â\200\224â\200\224

az\oa\\n % D\O\MO"\ "*

Champ Sepuru e M, Kgati

Head of Education Department Chairperson

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* Fax: (011) 331 5857

STATEMENT TO TR NEGOTIATING council

We the women's National Coalition, representing over 60 National women's organizations across the country, in an effort to articulate the needs of all the women of this country and help to pave the path to effective equality for all, call upon the Negotiating Council to ensure that the country's laws recognize equality for all the country's citizens,

at equality is indivisible, and thus unequivocally urge the negotiating council to deliver equality to all women

irrespective of race, colour or creed at the same time,

time as all
in light of

While we support the right of people to exercise their choice we believe that in terms of women's legal position, customary law should be subject to the Principle of equality.

Frene Girnuala and Anne Letebe

For the Women's National Coalition

General : Thoko Msane
0 -, Jennifer Kinghorn

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. Anno Litsebe * Secretary G

+ (p-Convenor ' .AÃ@â\200\234o"hesutm<:M\â\200\234â\200\234â\200\230â\200\234 S

StJamesChurch 7225
Church of England inSouth Africa

August 1993

Dear Sir

After the recent tragedy at St James Church you and your organisation kindly sent us your condolences.

This letter seeks to convey our gratitude to you for sharing in our time of grief. As you can imagine we received hundreds of letters, faxes and telegrams which makes it almost impossible to answer each one individually and we therefore seek your understanding.

Please convey to your organisation our deep gratitude for the spontaneous way in which you have responded to the tragedy which struck us on 25 July.

With best wishes

Qe Retif?

BISHOP FRANK J RETIEF

Office 61-7070, 114 Third Avenue, Keniworth, 7700.

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(')ber 1, 1993

FOR INFORMATION OF PLANNING COMMITTEE MEMBERS OF
MULTI-PARTY NEGOTIATION FORUM

COPIES OF DOCUMENTS TO BE DISCUSSED BY MANAGEMENT
COMMITTEE OF LOCAL GOVERNMENT NEGOTIATION FORUM ON
MONDAY, OCTOBER 4, 1993

Dear Theuns,

At the meeting between Mr Pravin Gordhan and members of the LGNF on September 29,
it was agreed that we would circulate documentation to members of the planning committee
of the multi-party negotiation forum, in particular, Messrs Gordhan, Cronje and Titus. I ha
ve
enclosed three sets of our latest documents. Please could you distribute them as you see fi
t.

Please note that these documents are still in draft form, and have not been agreed to by th
e
parties to the LGNF. They are:

1. Proposals for Chapter 10 of the Interim Constitution from the statutory and non-
statutory delegations;
2. Draft of Local Government Transition Bill;
3. Draft agreement on services and finances.

Yours sincerely,

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Andrew Boraine
LGNEF secretariat

CHAWR 10: INTERIM CONSTITUTION
DRAFT PROPOSALS: NON STATUTORY DELEGATION

SEPTEMBER 30, 1993

1. The third tier of government shall consist of autonomous local governments in various forms and sizes for metropolitan, urban and rural areas.
- 2 The powers and functions of local governments shall be set out in national statute, and/ or SPR legislation: Provided that the said powers and functions shall not be less than those existing powers and functions of local governments.
3. Every local government shall be a body corporate with perpetual succession capable in law of doing all those things and performing all those acts which a local government may and shall by law do and perform.
4. Local government shall have appropriate and adequate legislative powers to make by-laws not inconsistent with laws at national and SPR levels as well as executive powers to function effectively.
-) The council of a local government shall ensure that its administration is based on sound principles so as to render cost effective services to the inhabitants within its area of jurisdiction.
6. Existing laws applicable to local government shall continue to be in existence until

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.ey are amended or repealed by the competent legislature and references in such laws to any government shall be deemed to be references mutatis mutandis to the national or the SPR government.

The council of every local government shall govern and represent the residents within its area of jurisdiction.

The members of the council of a local government shall be elected democratically according to the national Electoral Act (or a Local Government Electoral Act).

The members of a council of a local government shall be elected at intervals of not more than four years.

No person may become a member of a council of a local government if he is disqualified to become a member of the National Assembly, in terms of clause 42 of the Constitution.

Every -
natural person who is:
a South African citizen;;

ii. of or over the age of 18 years;

iii. residents within the area of jurisdiction of a local government;

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â\200\230 . iv. registered on the voterâ\200\231s roll of that local government; and

V. not subject to any of the disqualifications set out in the Electoral Act,

1993;

shall be entitled to vote in an election for members of the council of such a local government.

Each local government shall be competent to levy such property rates, fees, tariffs and charges as may be necessary to enable it to exercise its powers and to perform

its duties and functions, and to levy and claim such fees, tariffs and charges.

There shall be a justiciable ethical code of conduct for councillors of local governments.

The members of the council of a local government shall be accountable to SPRâ\200\231s and the enrolled voters within the area of jurisdiction of such local government for their operational and financial administration.

The Finance and Fiscal Commission shall recommend equitable fiscal and financial allocations to local government from revenue collected on SPR and national levels.

The following criteria shall be applied in the allocation of powers and functions to the local governments:

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geographical scope of benefits;
distributional equity;
administrative efficiency;
accountability;

financial viability;

economies of scale in providing services.

The SPR government shall not exercise their powers so as to encroach upon the geographical, functional or institutional integrity of the local governments.

SPR governments shall have powers, inter alia -

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ii.

for the purposes of development and promotion of local government and the delivery of services;

in respect of aspects of local government dealing with specific socio-economic and cultural needs and the general well being of the inhabitants of the local governments in its area of jurisdiction.

A local government shall be entitled to approach the Constitutional Court in any matter relating to the encroachment or threatened encroachment upon its competencies under this Constitution or any other law.

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le: Â© 22 SEPTEMBER 1993

COMMENTS ON THE THIRTEENTH REPORT OF THE TECHNICAL
COMMITTEE: CONSTITUTIONAL ISSUES, OF THE NEGOTIATING
COUNCIL DATED 16 SEPTEMBER 1993

% The contents of the document is not only vague, but also very theoretical.

2. This document promotes the principle of centralisation of local government atfairs.

3. The principle of the devolution of power is negated.

4. There are no definite constitutional principles in the document.

3. The nature, status, functions and powers of local government are stated ambiguously and vaguely.

6. The regulation of local government is inconclusive.

i Unusual terminology is used, for example "physical environment".

8. In clause 140 (5) third tier government is placed above first and second tier government.

IT IS SUGGESTED THAT:

Firstly it is suggested that the words "and local government" where it appears in clause 6 of the Technical Committee on Constitutional Issues Combined Reports of 20

August 1993, be deleted and substituted by clause 140 (10) hereunder.

2. Chapter 10 should be scrapped and substituted by the following:

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ESTABLISHMENT AND STATUS OF LOCAL GOVERNMENT

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Subject to the other matters contained in this Constitution and Schedule 7 thereto pertaining to local government, the following principles will be adhered to:

The third tier of government shall consist of autonomous local governments in various forms and sizes for metropolitan, urban and rural areas, and shall provide for different models to be executed as local options as determined by SPR legislation.

Every local government shall be a body corporate with perpetual succession capable in law of doing all those things and performing all those acts which a local government may and shall by law do and perform.

Local government shall have appropriate and adequate legislative powers to make by-laws not inconsistent with laws at national and SPR levels as well as executive powers to function effectively.

The council of a local government shall ensure that its administration is based on sound principles so as to render cost effective services to the inhabitants within its area of jurisdiction.

Existing laws applicable to local government shall continue to be in existence until they are amended or repealed by the competent legislature and references in such laws to any government shall be deemed to be references mutatis mutandis to the national or the SPR government.

The council of every local government shall govern and represent the residents within its area of jurisdiction and act generally for the maintenance of good rule and government as well as for the convenience, safety and comfort of the afore-said areas of jurisdiction.

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3.

The members of the Council of a local government shall be elected democratically |
according to SPR legislation.

The members of a council of a local government shall be elected at intervals of not
less than three and not more than five years.

No person may become a member of a council of a local government if he is
disqualified to become a member of the National Assembly, in terms of clause 24 of
the Constitution.
Every -

(a) natural person who is:

(i) a South African citizen;

(i) of or over the age of 18 years;

(iii) resident within or the owner of immovable property within the area of
jurisdiction of a local government;

(iv) registered on the voters' roll of that local government; and

v) not subject to any of the disqualifications set out in the Electoral Act,
1993; and

fictitious person who is:

(i) the owner of immovable property within the area of jurisdiction of a
local government; and

(i) registered on the voters' roll of that local government,

shall be entitled to vote in an election for members of the council of such a local
government: Provided that if the area of jurisdiction of the local government
concerned is divided into wards, a person referred to in paragraphs (a) and (b) shall
be entitled to vote for each ward in which he so owns immovable property.

(a) Each local government shall be competent to levy such property rates,
fees, tariffs and charges as may be necessary to enable it to exercise
its powers and to perform its duties and functions, and to levy and
claim such fees, tariffs and charges.

. (b) Essential services shall be rendered on a regular basis in accordance with the principle of affordable services: Provided that consumers pay for such services.

(<) The principle of uniformity in tariffs for different services shall apply to all consumers in the area of jurisdiction of a local government.

(d) Tariffs should be based on the agreed standard of service in the area of jurisdiction of a local government.

(12) There shall be a justiciable ethical code of conduct for councillors of local governments.

(13) The members of the council of a local government shall be accountable to SPR's and the enrolled voters within the area of jurisdiction of such local government for their operational and financial administration.

(14) SPR legislation on local government shall promote a government of local unity to maintain and promote the well-being of the residents of the area of Jurisdiction of the local government for a period of five years in the interim phase on the following

matters -

(a) Special majorities in the areas of -

(i) financial matters including approval of budgets;

(i) personnel matters and employment policy;

(iii) land usage matters.

(b) participation of minority political parties/groupings in the decision-making of a local government;

(c) criteria for the demarcation of wards; and

(d) a multiple committee system.

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(15) The powers and functions of local governments shall be set out in SPR legislation: Provided that the said powers and functions shall not be less than those existing

powers and functions of local governments.

(16) Each SPR legislature shall be responsible for local government, bring about reform at the local level and shall recommend equitable fiscal and financial allocations to local government from revenue collected on SPR and national levels.

(17) The following criteria shall be applied in the allocation of powers to the local governments:

(a) The allocation of powers between different levels of government shall be made according to the principles of subsidiarity on a basis which is conducive to financial viability at each level of government, to effective public administration and which promotes local unity, legitimate local autonomy and cultural diversity.

(b) The SPR government shall not exercise their powers so as to encroach upon the geographical, functional or institutional integrity of the local governments. (A©) SPR governments shall have powers, inter alia -

(i) for the purposes of local government planning and development and the delivery of services; and

(i) in respect of aspects of local government dealing with the specific socio-economic and cultural needs and the general well being of the

inhabitants of the local governments in its area of jurisdiction.

(18) Alocal government shall be entitled to approach the Constitutional Court in any matter

relating to the encroachment or threatened encroachment upon its competences under this Constitution or any other law.

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(19) The Local Government Reform Act shall regulate reform at the local government level until after elections at local level have taken place in terms of the said Act, whereafter the function of regulating local government reform shall vest in SPR legislatures and such legislatures may amend, supplement or repeal the said Act: Provided that SPR legislatures shall maintain the principles contained in this Chapter and Schedule 7 of the Constitution Act when amending, supplementing or repealing the Local

Government Reform Act.

PROPOSED DRAFT

For discussion only
(1993-10-01)

LOCAL GOVERNMENT TRANSITION BILL

DRAFT BILL/1993-10-01

BILL

To provide for revised interim measures with a view to promoting the restructuring of local government; and for that purpose to provide for the establishment of Regional Local Government Committees in respect of the various provinces; to provide for the recognition and establishment of forums for negotiating such restructuring of "~ local government; for the issuing of proclamations by the Administrators of the various provinces; for the establishment of appointed transitional councils in the pre-interim phase; to provide for the delimitation and election of transitional councils of local unity in the interim phase; for the establishment of Local Government Demarcation Boards in respect of the various provinces; to provide for the exemption of certain local government bodies from certain provisions; and for the repeal of certain laws; and for matters connected therewith.

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:â\200\224

DRAFT BILL/1993-10-01

PART I
APPLICATION OF ACT

Definitions

1.(1) In this Act, unless the context indicates otherwise-

"administrator" means the administrator as defined in section 1 of the Provincial Government Act, 1986 (Act No. 69 of 1986), acting in concurrence with the Committee concerned: Provided that where the administrator is required to exercise any power in respect of any local government body which is situate within that part of the province which forms part of a Self-governing Territory, the administrator shall act also with the concurrence of the Chief Minister of that Self-governing Territory: Provided, further, that at the establishment of an SPR Government for the province concerned, any reference to the administrator shall be construed as a reference to the elected executive authority of that province and any reference to a province shall be construed as a reference to the corresponding state, province or region;

"Board" means the Local Government Demarcation Board established for a state, province or region in terms of section 10(1) (a);

"committee" means the Regional Committee for Local Government established for a province in terms of section 3(1) (a);

"interim phase" means the period commencing immediately after elections for transitional councils of local unity as envisaged in section 9 and ending with the implementation

of final arrangements to be enacted by any competent

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legislative authority;

"local government body" means any institution or body contemplated in section 84(1)(f) of the Provincial Government Act, 1961 (Act No. 32 of 1961), and includes-

(a) any local government body established by or under any law in force in a Self-governing Territory;

(b) any local authority as defined in section 1(1) of the Black Local Authorities Act, 1982 (Act No. 102 of 1982);

(c) any local government body established by virtue of the provisions of section 30(2)(a) of the Black Administration Act, 1927 (Act No. 38 of 1927); _

(d) a board of management or board referred to in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987);

(e) any committee referred to in section 17 of the Promotion of Local Government Affairs Act, 1983 (Act No. 91 of 1983);

(f) any local council established under section 2 of the Local Councils Act (House of Assembly), 1987 (Act No. 84 of 1989);

(g) the Local Government Affairs Council established by section 2 of the Local Government affairs Council Act (House of Assembly), 1989 (Act No. 84 of 1989);

(h) any regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act No. 109 of 1985);

(i) any joint services board established under section 4 of the Kwa Zulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990);

(j) any Joint decision-making body; - Joint local authority or single local authority referred to in paragraphs (c), (e) and (f) of section 8 of the Interim Measures for Local Government Act, 1991(Act

DRAFT BILL/1993-10-01

No. 128 of 1991), and established by proclamation issued under that Act;

(k) any person, institution or body declared under subsection (2) to be a local government body for the purposes of this Act;

"metropolitan area" means any area -

(a) which has multiple local government jurisdictions;

(b) which is densely populated having an intense movement of people, goods and services within the

area; and

(c) which is extensively developed or urbanised having more than one central business district, industrial area and concentration of employment; and

(d) which, economically, forms a functional unit comprising various smaller units which are interdependent economically and in respect of

services;

"Minister" means the Minister of Local Government;

"negotiating forum" means any negotiating forum referred to in section 5;

"official Gazette" means the Official or Provincial Gazette of the province concerned;

"pre-interim phase" means the period commencing at the date of commencement of this Act and ending with the commencement of the interim phase;

"province" means any existing province, and at the establishment of a SPR Government for the province concerned, shall mean the corresponding state, province or region;

DRAFT BILL/1993-10-01

"self-governing Territory" means any area declared under the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), to be a self-governing territory within the Republic;

"transitional council" includes both a transitional local council and a transitional metropolitan council;

"Transitional Executive Council" means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993 (Act No. XX of 1993);

"transitional joint council" means a joint council for the preâ\200\224-interim phase performing specified powers, duties and functions of local government bodies as contemplated in

section 6(1)(c);

"transitional local council" means a single council for a non-metropolitan area of local government as contemplated in section 6(1)(b)(i) for the pre-interim phase and as contemplated in section 8(1)(a) for the interim phase;

"transitional metropolitan council" means the upper tier council of a two tier system of local government for a metropolitan area of local government as contemplated in section 6(1)(b)(ii) for the preâ\200\224-interim phase and as contemplated in section 8(1)(b) for the interim phase;

"transitional metropolitan substructure" means the lower tier council of a two tier system of local government for a metropolitan area of local government as contemplated in section 6(1)(b)(ii) for the pre-interim phase and as contemplated in section 8(1)(b) for the interim phase.

DRAFT BILL/1993-10-01

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(2) The Administrator may, in respect of the province for which he is appointed, by notice in the Official Gazette declare any person who or institution or body which in his opinion performs local government functions in respect of a particular area to be a local government body for the purposes of this Act.

Inclusion of Self-governing Territories

2. The provisions of this Act or any proclamation or regulation issued thereunder-

(a) shall, notwithstanding anything to the contrary contained in the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), be of force and effect

in any Self-governing Territory;

(b) shall be construed as if the legislative assembly and the executive government of any Self-governing Territory do not have legislative and executive powers over matters dealt with in this Act or any such proclamation or regulation.

PART II REGIONAL COMMITTEE FOR LOCAL GOVERNMENT

Establishment of Regional Committee for Local Government

3.(1)(a) The Transitional Executive Council shall establish for each province a committee to be known as the Regional Committee for Local Government (hereinafter referred to as the Committee) which shall exercise the powers and functions and perform the

DRAFT BILL/1993-10-01

duties conferred or imposed upon it by this Act.

(b) For as long as the Transitional Executive Council is in existence, the Committee shall, subject to the provisions of this Act, be deemed to be a subcommittee contemplated in section 7(1)(h) of the Transitional Executive Council Act, 1993 (Act No. XX of 1993).

(c) The Committee shall be disestablished on the day immediately preceding the day determined in terms of section 9(1) of this Act.

(2) The Committee shall consist of not more than seven members appointed by the Transitional Executive Council: Provided that a member shall both reside within the province concerned and be " a representative of a participant in the Transitional Executive Council: Provided, further, that not more than one representative of any such participant shall be appointed as a member of the Committee.

(3) The Committee shall from among its members appoint a chairperson and a vice-chairperson and other office-bearers either on a fixed or rotational basis.

(4) When the chairperson is absent or unable to perform his functions in terms of this section, the vice-chairperson shall act in his stead, and while so acting he may exercise all the powers and shall perform all the duties of the chairperson.

(5) (a) A member of the Committee shall hold office as a member during the pleasure of the Transitional Executive Council, and, at the establishment of a SPR Government for the province concerned, at the pleasure of the elected executive authority of that SPR Government.

(b) Any vacancy in the membership of the Committee shall be

filled by a person appointed by the Transitional Executive

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Council in accordance with the provisions of subsection L2391
Provided that if any vacancy OCCuUrIS when the Transitional
Executive Council is not in existence, it shall be filled by a
person appointed by the elected executive authority of the SPR
Government concerned: Provided, further, that any person soO
appointed shall reside within the province concerned.

(6) (a) The Administrator shall in writing notify the Committee
of his intention to exercise any power Or function or to perform
any duty conferred or imposed upon him by this Act.

(b) On receipt of a notice referred to in paragraph (a), a
meeting of the Committee shall be held within a reasonable time
for the purpose of furnishing the Administrator with the written
decision of the Committee in regard to the exercise of a power
or function or the performance of a duty referred to in paragraph

(a) .

(7) Sections.2, 3,4, 5 and 6 of the Commissions Act, 1947 (Act
No. 8 of 1947), shall apply mutatis mutandis to the Committee in
so far as they are applicable to the functions of the Committee.

(8) (a) A meeting of the Committee shall be held at such time and
place as the chairperson may determine.

(b) A decision of the Committee shall be taken by a two-thirds
majority.

(c) The Committee may make rules in relation to the holding of
and procedure at meetings of the Committee.

(9) (a) The conditions of service, remuneration, allowances and
other benefits of members of the Committee shall be determined
by the Minister in concurrence with the Minister of Finance.

DRAFT BILL/1993-10-01

(b) Any member of the Committee who receives remuneration,

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allowances or other benefits by virtue of his employment by or position in any government or public service or any transitional executive structure and who continues to receive such remuneration, allowances or other benefits while serving on the Committee shall not receive any remuneration, allowance or other benefits in terms of paragraph (a), except to the extent required to place such member in the position in which he would have been were it not for such employment or position. :

(10) (a) The Committee may appoint one or more subcommittees consisting of one or more members of that Committee and such other persons as the Committee may co-opt as it deems fit to serve in any such subcommittee to advise and make recommendations in writing to the Committee regarding the exercise of any power or function or the performance of any duty conferred or imposed upon the Committee by this Act, subject to the directions of the Committee, and -

(i) where such subcommittee contains more than one member

of that Committee, the Committee shall designate one such member to be chairperson; or

(ii) where such subcommittee contains only one member of

that Committee, such member shall be chairperson,

of such subcommittee.

(b) The provisions of subsections (7), (8) and (9) shall apply mutatis mutandis in relation to a subcommittee appointed under - paragraph (a) of this subsection and any member of such subcommittee.

(11) The administrative work incidental to the performance of the functions of the Committee shall be performed by officers of the respective provincial administrations designated for this purpose by the director-general concerned.

DRAFT BILL/1993-10-01

PART III
EXEMPTION FROM CERTAIN PROVISIONS

Administrator may exempt certain local government bodies from certain provisions of Act

4.(1) The Administrator may in writing exempt any local government body referred to in paragraph (j) of the definition of local government body, from the provisions of Parts IV and V of this Act if the Administrator is satisfied that such local government body is non-racial and inclusive and has brought about stability at local level through effective government, orderly financial management and a single local government administration.

(2) From the date of an exemption granted by the Administrator as contemplated in subsection (1) -

(a) Parts IV and V of: this Act shall not apply to an exempted local government body referred to in subsection (1) and any proclamation issued under the Interim Measures for Local Government Act, 1991 (Act No. 128 of 1991), whereby such local government body was established, shall subject to the provisions of this Act, continue to be of force up to the day immediately preceding the day determined in terms of section 9(1);

(b) the local government body concerned shall be deemed to be an institution or body contemplated in section 84(1)(f) of the Provincial Government Act, 1961 (Act No. 32 of 1961);

(c) the provisions of the law applying to local authorities in the province concerned shall mutatis mutandis apply to

DRAFT BILL/1993-10-01

such local government body; and

(d) any reference in any law to a local authority shall, unless clearly inappropriate, be deemed also to be a

reference to any such local government body.

PART IV

PRE-INTERIM PHASE

NEGOTIATING FORUMS

Recognition and establishment of forums

5.(1) The Administrator may, on the written application of any forum established before the commencement of this Act, recognise such forum if the Administrator is satisfied on a balance of probabilities on the evidence presented in the application that

such forum has been established substantially in accordance with

the principles and procedures embodied in Schedule 1, whereupon

such forum shall be deemed to be a negotiating forum for the purposes of this Act.

(2) (a) Any negotiating forum established after the commencement of this Act shall be established substantially in accordance with the principles and procedures embodied in Schedule 1.

(b) Any negotiating forum established after the commencement of this Act shall refer any dispute within the forum as to whether such forum has been established substantially in accordance with the principles and procedures embodied in Schedule 1, to the Administrator for a final decision which shall be binding on the forum.

Negotiating matters

6.(1) Notwithstanding anything to the contrary contained in any

other law, a negotiating forum shall -

(a) negotiate on the forum area contemplated in Schedule 1;

(b) subject to the principles and procedures embodied in Schedule 1, negotiate on the establishment of -

(i) any transitional local council for "a non-metropolitan area of local government;

(ii) any transitional metropolitan council with metropolitan substructures for a metropolitan area of local government,

within the forum area by a proclamation contemplated in section 7(1) as a possible option for the pre-interim period: Provided that where any such option is agreed upon, the following matters shall, where applicable, also be negotiated:

(i) the powers, duties and functions of any transitional metropolitan council and substructures: Provided that the powers, duties and functions of any transitional metropolitan council shall be at least the powers, duties and functions referred to in items 1 & 21 of Schedule 2 to the Regional Services Councils Act, 1985 (Act No. 109 of 1985);

(ii) the total number of seats in a transitional local or metropolitan council and substructure, taking the number of existing seats of all local government bodies within the forum area as a point of departure;

(iii) the nomination of persons for appointment as members of a transitional local or metropolitan council and substructure; and

(iv) the delimitation of the areas of jurisdiction of any transitional local or metropolitan council and substructure into wards, the establishment of ward

DRAFT BILL/1993-10-01

councils for such wards, and the powers, duties and functions of such ward councils;

(c) negotiate on the establishment of a transitional joint council of the local government bodies within the forum area having certain specified powers, duties and functions with the individual councils of the local government bodies retaining all other powers, duties and functions within " their areas of Jjurisdiction: Provided that where such option is agreed upon, the following matters shall also be negotiated:

(i) the powers, duties and functions of the transitional joint council: Provided that the powers, duties and functions of any transitional joint council shall be at least the following powers, duties and functions:

(aa) the approval of and control over the implementation of the budgets of the individual councils of the local government bodies;

(bb) decisionmaking in regard to the financial resources of the individual llocal government bodies, including the allocation of accumulated surpluses of the individual llocal government bodies, the allocation and distribution of intergovernmental grants to the individual local government bodies, the allocation of funds from the llocal government bodies referred to in paragraphs (h) and (i) of the definition of local government body to the individual local government bodies, and the approval of tariffs for services rendered within the areas of jurisdiction of the individual local government bodies;

(cc) the approval of the by-laws of the councils of the individual local government bodies;

(dd) the alienation and disposal of land; and

(ee) the management of the process of urbanisation;
 (ii) the total number of seats in such transitional joint council and the representation on such council of the local government bodies within the forum area and such other persons nominated by the forum;
 (iii) the nomination of persons for appointment as members of such transitional joint council; and
 (iv) the delimitation of the area of jurisdiction of any local government body within the forum area into wards, the establishment of ward councils for such wards, and the powers, duties and functions of such ward councils,

and shall submit any agreement reached to the Administrator within such period as the Administrator may determine or within any extension of such time which the Administrator may allow, whereupon the Administrator shall exercise the powers conferred upon him by section 7(1) incorporating the provisions of such

agreement in the proclamation contemplated in section 7(1).

(2) Where an agreement as contemplated in subsection (1) is not submitted to the Administrator within the period determined by the Administrator as contemplated in that subsection, or within any extension of such time which the Administrator may allow, the Administrator shall determine which option referred to in paragraphs (b) and (c) of subsection (1) shall be applied to the local government bodies within the forum area concerned and shall thereupon exercise the powers conferred upon him by section 7(1) incorporating the provisions of such determination in the proclamation contemplated in section Tk1)s

PART V
TRANSITIONAL MEASURES
FOR BOTH THE PRE-INTERIM AND INTERIM PHASES

Powers of Administrator

7.(1) For the purposes of this Act the Administrator concerned may in respect of the area of jurisdiction of the province for which he is appointed -

(a) by proclamation in the Official Gazette, make enactments not inconsistent with this Act with a view to the transitional regulation of any matter relating to local government;

(b) provide in any such enactment for the amendment or repeal of any law, including any Act of Parliament or the legislative assembly of any Self-governing Territory, in so far as it relates to any such matter and applies in the province; and

(c) provide in any such enactment that any law, including any Act of Parliament or the legislative assembly of a Self-governing Territory, or any provision of any such law, pertaining to local government affairs shall, subject to the adjustment or amendment of such law or provision as he may make in such enactment, apply to any local government body, transitional council or metropolitan substructure referred to in section 15 or to any category of such local government body, transitional council or metropolitan substructure,

and he may make different such enactments in respect of different areas, agreements, local government bodies, transitional councils or metropolitan substructures.

DRAFT BILL/1993-10-01

(2) The Administrator may in like manner by proclamation in the official Gazette amend or repeal a proclamation made under subsection (1).

(3) Without derogating from the generality of the power conferred by subsection (1), a proclamation contemplated in that subsection may provide for -

(a) the establishment, under a name set out in the proclamation, of any transitional council or metropolitan substructure;

(b) the termination of the terms of office of members of any local government body and the appointment of persons as members of any transitional council or metropolitan substructure;

(c) the termination of the terms of office of members of any local government body, transitional council or metropolitan substructure and the appointment of one or more persons or any body to manage and control the affairs of such local government body, transitional council or metropolitan substructure and on behalf of such local government body, transitional council or metropolitan substructure to exercise, perform and fulfil the rights, powers, functions, duties and obligations of such local government body, transitional council or metropolitan substructure;

(d) the application to any such local government body, transitional council or metropolitan substructure of any law which in the opinion of the Administrator relates to local authorities or local authority matters to the extent stated in the proclamation, Or the regulation with reference to any such local government body, transitional council or metropolitan substructure of any matter

contained in any such law;

(e) the suspension of or exemption from any provision of any law which relates to the establishment, dissolution or combination of local government bodies or the determination

or alteration of the areas or regions thereof;

(f) the dissolution of any local government body, including- 3

(i) the transfer or admission of persons to or in the service of any transitional council or metropolitan substructure, subject to conditions not less favourable than those under which they serve;

(ii) the winding-up or transfer of the assets, liabilities, rights and obligations of any local government body, including the protection of such assets from attachment and sale in execution; and

(iii) the continued application of the resolutions, by-laws or regulations of such local government body;

(g) the delimitation of the area of jurisdiction of any local government body, transitional council or metropolitan substructure into wards, the establishment of ward councils for such wards, and the powers, duties and functions of such ward councils;

(h) the disestablishment of any local government body referred to in paragraph (h) or (i) of the definition of local government body and the establishment of a transitional metropolitan council with metropolitan substructures for a metropolitan area of local government, including the delimitation of such an area, and the constitution, functioning, functions, powers, duties, assets, rights, employees and financing of such transitional metropolitan councils and substructures:

Provided that the powers, duties and functions of any transitional metropolitan council shall be at least the powers, duties and functions referred to in items 1 - 21 of Schedule 2 to the Regional Services Councils Act, 1985 (Act No. 109 of 1985): Provided, further, that such transitional metropolitan council shall have the power to levy and claim the regional services levy and the regional establishment levy referred to in section 12(1)(a) of the Regional Services Councils Act, 1985, or section 16(1)(a) of the KwaZulu and Natal Joint Services Act, 1990, as the case may be, which the disestablished local government body referred to in paragraph (h) or (i) of the definition of local government body would, but for its disestablishment, have levied and claimed;

(i) the disestablishment of any local government body referred to in paragraph (h) or (i) of the definition of local government body and the establishment of a body to be known as a services council, sub-regional council or district council to jointly exercise and carry out powers and duties in relation to certain local government functions for a non-metropolitan area of local government by transitional local councils, transitional joint councils or local government bodies within such areas, including the delimitation of such an area, and the constitution, functioning, functions, powers, duties, assets, rights, employees and financing of such body: Provided that the powers, duties and functions of any services council, sub-regional council or district council shall be at least the following powers, duties and functions:

(1) the approval of and control over the implementation of the budgets of the individual councils of the local government bodies;

(ii) decisionmaking in regard to the financial resources of the individual local government bodies, including the allocation of accumulated surpluses of

the individual local government bodies, the allocation and distribution of intergovernmental grants to the individual local government bodies, the allocation of funds from the local government bodies referred to in paragraphs (h) and (i) of the definition of local government body to the individual local government bodies, and the approval of tariffs for services rendered within the areas of jurisdiction of the individual local government bodies;

(iii) the approval of the by-laws of the councils of the individual local government bodies;

(iv) the alienation and disposal of land; and

(v) the management of the process of urbanisation:

Provided, further, that such services council, sub-regional council or district council shall have the power to levy and claim the regional services levy and the regional establishment levy referred to in section 12(1)(a) of the Regional Services Councils Act, 1985, or section 16(1)(a) of the KwaZulu and Natal Joint Services Act, 1990, as the case may be, which the disestablished local government body referred to in paragraph (h) or (i) of the 'definition of local government body would, but for its disestablishment, have levied and claimed;

(j) the protection of the rights, benefits, remuneration and allowances of employees of a local government body.

PART VI

INTERIM PHASE

TRANSITIONAL COUNCILS OF LOCAL UNITY

Delimitation of transitional councils of local unity

8.(1) A transitional council of local unity for which elections

shall be held as provided for in section 9, shall be known as a -

(a) transitional local council for a non-metropolitan area of local government;

(b) transitional metropolitan council with metropolitan substructures for a metropolitan area of local government.

(2) The Administrator shall -

(a) after considering the advice and written recommendations of the Board, delimit the area of jurisdiction of transitional councils of local unity and metropolitan substructures;

(b) determine the powers, duties and functions of any transitional metropolitan council and substructures;

(c) determine the number of seats in a transitional local or metropolitan council and substructure in accordance with the formula embodied in Schedule 2;

(d) after considering the advice and written recommendations of the Board, delimit the areas of jurisdiction of any transitional local or metropolitan council and substructure into wards; '

(e) determine the basis on which ward councils for wards shall be elected; and '

(f) determine the powers, duties and functions of ward

councils.

(3) After making a delimitation and determination contemplated in subsection (2), the Administrator shall thereupon exercise the powers conferred upon him by section 7(1) incorporating the provisions of such delimitation and determination in the

proclamation contemplated in section & i i 30

Elections for transitional councils of local unity

9. (1) Notwithstanding anything to the contrary contained in any

law, the first election, after the commencement of this Act, of

22

the members of any transitional council of local unity and metropolitan substructure in the province concerned, shall take place on a day determined by the Administrator by notice in _the Official Gazette.

(2) Notwithstanding anything to the contrary contained in any law,

the Administrator may by proclamation in the Official Gazette -

(3)

(a) make regulations regarding -
(i) the determination of wards and polling districts;
(ii) voters and voters' lists, including determination of the qualifications of voters;
(iii) members of transitional councils of local unity and metropolitan substructures, including the qualifications and term of office of members;
(iv) the conducting of and procedures at the election;
(v) election expenses;
(vi) corrupt and illegal practices and other related offences; and
(vi) any other matter which the Administrator considers necessary or expedient to prescribe in order to achieve or promote the objects of this section, and the generality of this provision shall not be limited by the preceding subparagraphs of this paragraph;
(b) declare that any law or any provision of any law pertaining to the election of members of any local government body in the state, province or region concerned shall, subject to the adjustment or amendment thereof set out in that proclamation, for the purposes of an election referred to in subsection (1), apply to any transitional council of local unity and metropolitan substructure

referred to in subsection (1).

Regulations made under subsection (2) (a) may prescribe penalties for a contravention thereof or a failure to comply

DRAFT BILL/1993-10-01

57

therewith, of a fine or imprisonment for a period not exceeding two years.

(4) Any regulation made under paragraph (a) of subsection (2) and any declaration contemplated in paragraph (b) of that subsection, shall be in accordance with the principles listed in Schedule 3.

PART VII

LOCAL GOVERNMENT DEMARCATION BOARDS

Establishment of Local Government Demarcation Board

10.(1) (a) There is hereby established for each province a board to be known as the Local Government Demarcation Board (hereinafter referred to as the Board).

(b) The Board shall be disestablished on the day immediately preceding the day determined in terms of section 9(1) of this Act.

(2) The Board shall consist of such number of members as may from time to time be determined and appointed by the Administrator in accordance with the criteria listed in Schedule 4.

(3) The Administrator shall designate a member of the Board as chairperson and another member as vice-chairperson.

(4) When the chairperson is absent or unable to perform his functions in terms of this section or if no person has been designated as chairperson, the vice-chairperson shall act in his stead, and while so acting he may exercise all the powers and shall perform all the duties of the chairperson.

DRAFT BILL/1993-10-01

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(5) A member of the Board shall hold office as a member, and a

24

member designated as chairperson or vice-chairperson shall hold office as chairperson or vice-chairperson, during the pleasure of the Administrator.

(6) (a) The Board shall, notwithstanding the provisions of any other law, at the request of the Administrator investigate and make recommendations in writing regarding any demarcation, redemarcation or the withdrawal of the demarcation of any area pertaining to local government affairs, including the area of any negotiating forum and the area of jurisdiction of any local government body or transitional local or metropolitan council and the delimitation of wards within the area of jurisdiction of any local government body or transitional local or metropolitan council.

(b) When the Board advises the Administrator as contemplated in paragraph (a), it shall do so within a reasonable time and take into account the criteria listed in Schedule 5.

(7) Sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act No. 8 of 1947), shall apply mutatis mutandis to the Board in so far as they are applicable to the functions of the Board.

(8) (a) A meeting of the Board shall be held at such time and place as the chairperson may determine.

(b) The majority of the members of the Board shall form a quorum for a meeting of the Board.

(c) The decision of the majority of members of the Board present at any meeting thereof, shall be a decision of the Board: Provided that in the event of an equality of votes the chairperson shall have a casting vote in addition to his deliberative vote.

DRAFT BILL/1993-10-01

(d) The Board may make rules in relation to the holding of and

25

procedure at meetings of the Board.

(9) The provisions of section 3(9) shall apply mutatis mutandis in relation to the remuneration, allowances and other benefits of a member of the Board.

(10) (a) The Board may appoint one or more committees consisting of one or more members of that Board and such other persons as the Board may co-opt as it deems fit to serve in any such committee to investigate any matter referred to in subsection

(6) (a), and -

(i) where such committee contains more than one member of that Board, the Board shall designate one such member to be chairperson; or

(ii) where such committee contains only one member of that Board, such member shall be chairperson, of such committee, and any such committee shall for the purposes of any such investigation exercise all the powers conferred and perform all the duties imposed upon that Board in respect of any

such investigation.

(b) A committee appointed under this subsection shall submit to the Board a written report in respect of any investigation by it in regard to any matter which the Board is in terms of subsection (6) required to investigate, and the Board may thereupon act in regard to that matter as if the Board had itself undertaken such

investigation.

(c) The provisions of section 3(9) shall apply mutatis mutandis in relation to the remuneration, allowances and other benefits of a member of a committee appointed under this subsection.

(11) The administrative work incidental to the performance of the functions of the Board shall be performed by officers of the respective provincial administrations designated for this purpose

DRAFT BILL/1993-10-01

by the directorâ\200\224-general concerned.

PART VIII
GENERAL

Regulations

11. The Minister may, after consultation with the Administrator, make regulations in respect of any matter referred to in this Act which in his opinion are necessary or expedient for the effective carrying out or furtherance of the provisions and objects of this Act.

Repeal of Act 102 of 1982, and transitional measures connected therewith

12.(1)(a) Subject to the provisions of this Act, the Black Local Authorities Act, 1982 (Act No. 102 of 1982), is hereby repealed.

(b) Where the Administrator has in terms of section 8 of the Local Authority Affairs Amendment Act, 1991 (Act No. 127 -6f 1991), declared certain provisions of the Black Local Authorities Act, 1982, applicable to any other local authority or committee as provided for in that section, such provisions shall form part of the law applying to such local authority or committee.

(c) Notwithstanding the provisions of paragraph (a), any council or committee established under the provisions of the repealed Act, shall continue subject to the provisions of this Act, and shall for all purposes be deemed to be an institution or body contemplated in section 84(1)(f) of the Provincial Government Act

DRAFT BILL/1993-10-01

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(Act No. 32 of 1961).

(2) The provisions of the law applying to local authorities in the province concerned shall, subject to the provisions of a proclamation contemplated in section 7(1), apply mutatis mutandis to any local government body referred to in paragraph (b) of the definition of local government body.

(3) Any resolution, by-law or regulation of a local government body referred to in subsection (2), shall continue to be of force until amended or repealed by a proclamation contemplated in section 7(1) or by a resolution, by-law or regulation of a transitional council or metropolitan substructure.

(4) (a) The Administrator may by notice in the Official Gazette define for the purposes of this subsection an area outside the area of a local government body referred to in paragraph (b) of the definition of local government body and exercise in such area the powers conferred upon a local authority in a local authority area under the laws applicable to local authorities in the

province concerned.

(b) An area defined by the Administrator in terms of section 2(11) of the Black Local Authorities Act, 1982, and an area deemed to be so defined in terms of section 2(12) of that Act, shall, subject to the provisions of this Act, be deemed to be a defined area referred to in paragraph (a) of this subsection.

(c) Any reference in any law, including this Act, to a local government body referred to in paragraph (b) of the definition of local government body shall be deemed, in respect of an area referred to in paragraph (a) of this subsection, also to be a reference to the Administrator of the province concerned.

DRAFT BILL/1993-10-01

Repeal of Act 128 of 1991 and sections 28 and 29 of Act 134 of 1992

28

13.(1) Subject to the provisions of subsection (2), the Interim Measures for Local Government Act, 1991, and sections 28 and 29 of the Provincial and Local Authority Affairs Amendment Act, 1992 (Act No. 134 of 1992), are hereby repealed.

(2) Notwithstanding the provisions of subsection (1), any proclamation issued under the Interim Measures for Local Government Act, 1991, in connection with any matter referred to in section 8 of that Act, shall, subject to the provisions of this Act, continue to be of force until amended or repealed by a proclamation contemplated in section 7(1).

Repeal of other laws

14.(1) Subject to the provisions of subsection (2), the

Regulations governing the Administration and Control of the Areas Clermont and Edendale, 1974 (Proclamation No. R. 163 of 1974), the Regulations for the Administration and Control of certain Urban Areas in Natal, 1982 (Proclamation No. R. 86 of 1982), the regulations for the Administration and Control of certain Urban Areas in Natal, 1983 (Proclamation No. 67 of 1983), and the Regulations for Local Authorities, 1988 (Government Notice No. 405 of 1988), are hereby repealed.

(2) Any area in respect of which the laws referred to in subsection (1) applied shall, subject to the provisions of this Act, be deemed to be a defined area referred to in section 12(4) (a).

DRAFT BILL/1993-10-01

Transitional provision

29

15.(1) Any transitional council or metropolitan substructure established by a proclamation contemplated in section 7(1) of this Act, shall be deemed to be an institution or body contemplated in section 84(1)(f) of the Provincial Government Act, 1961.

(2) Subject to the provisions of this Act and any proclamation issued thereunder, the provisions of the law applying to local authorities in the province concerned shall mutatis mutandis apply to any transitional council or metropolitan substructure referred to in subsection (1): Provided that, notwithstanding anything to the contrary contained in any law, any resolution of such transitional council or metropolitan substructure shall be taken by a two thirds majority.

(3) Any reference in any law to a local authority shall, unless clearly inappropriate, be deemed also to be a reference to any transitional council or metropolitan substructure referred to in subsection (1).

Short title

16. This Act shall be called the Local Government Transition Act, 1993.

DRAFT BILL/1993-10-01

SCHEDULE 1

principles and procedures referred to in section 5

Area of forum

1.(1) Subject to the provisions of the Act, a forum shall be established for each economically and historically bound urban area, ranging from a stand alone town with its satellites to a complex metropolis.

{2) Criteria. for . the establishment of a forum include commercial/industrial linkage, daily commuting patterns, provision of services, the areas of jurisdiction of local government bodies, including pre - 1971 areas of jurisdiction of such local government bodies, where applicable.

2.(1) Where a negotiating forum is not recognised by the Administrator as contemplated in section 5(1) of the Act or not established spontaneously as contemplated in section 5(2)(a) of the Act, the Administrator may determine the area of a forum and submit it to the town clerks of the local government bodies falling within such forum area.

(2) In determining the area of a forum, the Administrator shall take into consideration the criteria referred to in paragraph 1(2), including -

- (a) the area of any existing forum;
- (b) the area of jurisdiction of any local government body referred to in paragraph (3j) of the definition of local government body in section 1(1) of the Act established by a proclamation in terms of the Interim Measures for Local Government Act, 1991 (Act No. 128 of 1991).

DRAFT BILL/1993-10-01

(3) Upon receipt of a submission contemplated in subparagraph (1), the town clerks concerned shall -
(a) arrange an inaugural meeting of the forum with all potential members and observers contemplated in paragraph 2: provided that the Administrator may nominate one town clerk to arrange such inaugural meeting; and

31

(b) submit the submission to their respective councils for information.

(4) within 30 days of the receipt of a submission contemplated in subparagraph (1), the forum shall either confirm the forum area determined by the Administrator, or subject to the provisions of paragraph 1(2), propose a new area for the forum and submit such proposal to the Administrator who may -
(a) confirm the proposed area; or
(b) refer the matter to the Board established in terms of section 10(1)(a) of the Act to investigate the matter and make written recommendations to him as contemplated in section 10(6) of the Act.

(5) The decision of the Administrator -
(a) to confirm the proposed forum area as contemplated in subparagraph (4)(a); or
(b) on the written recommendations of the Board as contemplated in subparagraph (4)(b),

shall be final and binding on the forum.

' Membership of forum

2.(1) Membership of a forum shall be in accordance with the principle of inclusivity and representativity: Provided that the process shall continue despite the refusal or neglect of any person, body or organization to participate in any such forum.

(2) Observers, which shall be entitled to attend and to

DRAFT BILL/1993-10-01

participate fully in forum meetings, but shall not be entitled to vote, may be appointed to the forum.

(3) To qualify for membership or observer status, such prospective member or observer shall, where applicable, submit in writing to the forum its constitution, a list of office-

bearers and details of activities and membership.

(4) (a) Membership of a forum shall be available to -

(i) local government bodies;

(ii) local organizations representing substantial sectors of the wider community having a vested interest in the political restructuring of local government, such as civic associations, residents associations and the local structures of political parties.

(b) Bodies such as local chambers of commerce and industry and stakeholders, the Development Bank of Southern Africa and supplier bodies such as Eskom and Water Boards, shall have observer status. i

Negotiating matters and objectives

3.(1) A forum shall negotiate on the matters referred to in section 6(1) of the Act.

(2) A forum may generally, as local circumstances dictate, explore and propose short, medium and long term practical solutions to the problems of local government in the area of such forum to be submitted to the Administrator for consideration.

DRAFT BILL/1993-10-01

transitional councils

4.(1) For the purposes of negotiating the nomination of members of a transitional council and metropolitan substructure as contemplated in section 6(1)(b) and (c) of the Act, members of the forum may be required to indicate whether they are to be regarded as part of -

(a) the statutory component, comprising the existing local government bodies and the political parties or organisations represented on such local government bodies;

(b) the non-statutory component comprising any other bodies not contemplated in subparagraph (a) having a vested interest in the political restructuring of local government and as approved by the forum;

(c) the observer component which fall into neither category contemplated in subparagraphs (a) and (b).

(2) The statutory and the non-statutory components shall each complete a list of potential candidates, whereupon a representative committee comprising members from each component shall meet to attempt to reach consensus on the persons to be nominated by the forum for appointment as members of any transitional local or metropolitan council and substructure: Provided that at least half of the persons nominated should be acceptable to the statutory component and at least half to the non-statutory component: Provided, further, that a list of additional candidates in order of preference, shall be submitted by the statutory and non-statutory components to facilitate the filling of any vacancy which may occur.

(3)(a) One half of the nominations shall, as far as possible, not disturb the pre-existing proportionate representation of parties in the local government bodies concerned.

(b) The other half of the nominations shall comprise equitable representation of all those sectors of society which in the past did not participate in the electoral process in the area of that

34

forum.

(4) Any person nominated as a member of any transitional council and metropolitan substructure shall meet the qualifications of a member of one of the participating local government bodies.

(5) Lists of persons nominated as members of a transitional council and metropolitan substructure by the forum shall be submitted to the Administrator as part of an agreement

contemplated in section 7(1) of the Act.

(6) If the forum fails to reach agreement on whether a member is to be regarded as part of the statutory or non-statutory

components contemplated in subparagraphs (a) and (b) of subsection (1), the forum shall refer the matter to the Administrator for a final decision which shall be binding on the

forum.

(7) If the forum fails to reach agreement on the nomination of persons as contemplated in subparagraph (2), the forum shall refer the matter to the Administrator who may appoint a mediator or mediators to assist the forum to reach consensus.

Secretarial services

5.(1) The forum shall appoint a secretariat to provide for the secretarial services.

(2) The local government bodies concerned shall be jointly and severally responsible for the expenses incurred by the

secretariat.

DRAFT BILL/1993-10-01

(3) The secretariat shall submit certified copies of all resolutions passed by the forum pertaining to matters referred to in section 6(1)(a) - (c) of the Act to the Administrator.

Procedures at meeting of forum

6. The standard rules of procedure embodied in the Annexure are recommended for adoption by each forum as its rules of procedure for meetings of the forum.

DRAFT BILL/1993-10-01

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ANNEXURE

STANDARD RULES OF ORDER OF FORUM

Chairperson

1.(1) The inaugural meeting shall be convened by a person to be nominated by the Administrator for that purpose.

(2) At its first meeting the Forum shall designate a chairperson or co-chairpersons who need not be a member of the forum:
Provided that any reference in this document to the chairperson shall also be deemed to be a reference to the co-chairperson.

(3) A chairperson shall not, after being so designated remain a member of the delegation of any of the members.

(4) A chairperson may for good cause be removed from office by the Forum by a vote of no confidence. If a chairperson is removed from office, another person shall be designated in his place.

(5) Whenever both chairpersons is for any reason absent or unable to act at a meeting, the Forum shall by a majority of the members present in person, designate a person from among its members to take the chair for that meeting.

Meetings and minutes

2.(1) In addition to their delegations, members and observers may bring officials and advisers to meetings of the Forum, and such persons may with the consent of the chairperson participate in the proceedings. All such persons are hereinafter referred to as "participants".

DRAFT BILL/1993-10-01

(2) Meetings of the Forum shall be open to the media or the public unless it on any occasion otherwise decides.

(3) If negotiations on any matter are contemplated any member may request that the meeting go into committee, and the meeting shall comply.

(4) The agenda for any meeting of the Forum may be made available to the public or the media before or at that meeting. The secretariat may in its discretion withhold any particular document from the press and public until otherwise directed by the chairperson or the meeting.

(5) The Forum shall, from time to time, set a programme of dates, times and venues for its ordinary meeting.

(6) Leave of absence from any meeting may be applied for by or on behalf of a member or observer either before or at the meeting concerned.

Notices of meetings

3.(1) The secretariat shall give each member and observer written notice of each meeting.

(2) Each notice shall set out the time, date and place of such meeting and shall include an agenda and any other information which the secretariat deems necessary to enable the participants to prepare for the meeting.

(3) Meetings shall be convened on not less than 7 calendar days notice.

(4) Not fewer than one quarter of the members of the Forum may submit to the secretariat a written request for a special meeting

to be convened on the grounds set out therein. The secretariat shall within 7 calendar days thereafter issue a notice convening such a meeting.

(5) Service of such notices shall normally be by hand delivery or by telefacsimile to numbers supplied to the secretariat by members; but notices may be mailed to members whose offices are more than 10 kilometres away from the Secretariat's office and which have not provided telefacsimile addresses. Changes of address should be notified to the secretariat in writing.

(6) The accidental omission to serve notice on any member or observer shall not affect the validity of the meeting concerned.

Quorum

4.(1) At least half of the total number of members, each represented by one or more delegates personally present, shall constitute a quorum for a meeting of the Forum.

(2) Whenever during a meeting there is no quorum, the chairperson shall suspend proceedings for twenty minutes and if at the end of that period there is still no quorum, he or she may declare the meeting to be at an end.

Attendance register

5. The Secretariat shall keep an attendance register, in which every participant present at a meeting shall sign his name and indicate the member or observer body which he is representing.

DRAFT BILL/1993-10-01

order of business

6.(1) The order of business at a meeting shall be as follows:

- (a) Opening;
 - (b) Application for leave of absence;
 - (c) Statements and communications by the chairpersons;
 - (d) Settling the agenda, including decisions on the release of documents to the media and public;
 - (e) Confirmation of minutes of previous meeting;
 - (f) Matters arising from the minutes (if not covered by agenda item);
 - (g) Consideration of report by a joint technical committee referred to in paragraph 12, including its working groups and task teams (if any);
 - (h) Consideration of any matters of common concern Or interest relating to the region;
 - (i) Matters of urgency or necessity in terms of subparagraph (4);
- (3) Possible press statement.

(2) The chairperson may give preference to any item on the agenda with the consent of the meeting.

(3) No business shall be transacted at a meeting other than that specified in the agenda relating thereto.

(4) The chairperson may as a matter of urgency or necessity accept a matter which could not have been notified to the secretariat in terms of paragraph 7 in which case a properly motivated written request for such a matter to be raised shall be conveyed to the secretariat a reasonable time before the meeting.

(5) A request in terms of subparagraph (4) may be submitted to the secretariat immediately before the meeting, or during an

adjournment called for the purpose.

40

(6) The chairperson shall rule on the acceptability of any urgent request, and on the need for other participants to be given

appropriate time to prepare for discussion thereof.

Notice of matters for discussion

7.(1) Written notice of any matter contemplated in paragraph 6(1)(h) shall be given to the secretariat not fewer than 10 days prior to the date of each meeting of the forum and such notice shall be sent by the secretariat to each member in terms of paragraph 3.

(2) A notice of matters for discussion shall deal with one matter only and shall be relevant, which relevance shall be determined by the chairperson at the meeting where it is to be considered. Proposals during the course of a meeting

8.(1) The following proposals may also be made during a meeting:

(a) To amend a motion, proposal or recommendation of a joint technical committee or a working group.

That the Forum do now adjourn.

That a debate be adjourned.

That a matter be referred back to the joint technical

committee or a Working group.

That consideration of the matter be deferred or held

over.

DRAFT BILL/1993-10-01

- (f) That a decision be taken on the matter under consideration.
- (g) That it be accepted that consensus cannot be reached.
- (h) That the meeting go into committee, i.e. by excluding media and the public.
- (i) That the media and the public be allowed back into the meeting.
- (2) Every proposal in terms of subparagraph (1) shall be seconded.
- (3) Any business uncompleted at an adjourned meeting shall be dealt with at the next meeting unless the Forum decides otherwise or the chairperson convenes a special meeting to dispose thereof.
- (4) Any proposals to refer a matter back shall indicate to which body the matter shall be referred and the aspect on which reconsideration is required.

Proceedings at meetings

- 9.(1) The chairperson shall have all powers necessary to control and conduct a meeting and may for such purpose issue directions to any participant or person, and in his discretion adjourn the meeting at any time.
- (2) Whenever the chairperson speaks during a meeting, any participants then speaking or intending to speak shall be silent and all persons present shall be silent so that the chairperson may be heard without interruption.
- (3) A participant who speaks shall address his speech strictly

to the motion or proposal under discussion or to an explanation or point of order and no discussion shall be allowed which will anticipate any matter on the agenda.

(4) Any participant may ask the chairperson for permission to address the meeting -

(a) on a point of order with a view to calling attention to any departure from the prescribed procedure; . or

(b) in personal explanation, in order to explain some material part of his former speech which may have been misunderstood,

and any participant so asking shall be entitled to be heard forthwith unless the chairperson rules the point of order or explanation to be inadmissible.

(5) (a) If a participant misconducts himself, behaves in an unseemly manner or obstructs the business of any meeting or challenges any ruling of the chairperson, the chairperson shall direct such person to conduct himself properly and if speaking to discontinue his speech.

(b) In the event of a persistent disregard of the directions of the chairperson, he shall direct such person to retire from the place where the meeting is held for the remainder of the meeting, failing which the chairperson may direct that he be removed.

(6) Any other person who misconducts himself, misbehaves in an unseemly manner or interrupts proceedings at any meeting, shall, if the chairperson so directs, leave the place where the meeting is held, failing which the chairperson may direct that he be removed.

(7) Any interpretation by the chairperson of these Rules of Order

DRAFT BILL/1993-10-01

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shall, if any participant present so requests, be recorded in the

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minutes.

Decisionâ\200\224-making

10.(1) In carrying out its functions, the Forum shall seek to achieve consensus. In cases where consensus cannot be achieved,

differing views may be expressed and recorded.

(2) Should consensus not be achieved regarding designation or removal from office of a chairperson then such matter may be decided by a concurrent majority of two thirds in both the statutory and non-statutory components of members present.

(3) Should consensus not be achieved on an issue in any of the following categories -

(a) conferring or withdrawing observer status;

(b) budgets for the spending of whatever funds may be available to the forum; â\200\231

(c) contracts; â\200\230

(d) matters concerning any staff of the Forum,

then consideration of such matter shall be deferred until the next meeting, at which the matter may be decided by a two thirds

majority of members present}

(4) The admission of new members and observers shall be by a two thirds majority of members present.

(5) The delegation of each member shall be entitled to one vote.

(6)'Where a vote has to be taken on any matter, such vote shall be by a show of hands unless any member requests a secret ballot.

DRAFT BILL/1993-10-01

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(7) Where the membership totals fewer than six members, the two-thirds majority rule shall be interpreted as requiring support

from such total minus one.

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Minutes

11.(1) . The secretariat shall keep an attendance register and proper minutes or other appropriate records of . the Forum's decisions and transactions in a minute book and other appropriate books. Minutes shall, unless other arrangements are made with any members, be sent to each member as soon as possible after each meeting, and at latest with the agenda for the next meeting.

(2) A copy of minutes certified by the chairperson as a true copy or extract of minutes, confirmed by the Forum, shall constitute

prima facie proof of the accuracy thereof.

Joint Technical Committee and working groups

12.(1) A standing committee to be known as the joint technical committee (JTC) may be appointed by the Forum from the statutory and non-statutory side. Each member and observer shall be

entitled to nominate representatives to serve thereon.

(2) The JTC shall attempt to reach consensus on all matters, but where this cannot be achieved, any dissenting views shall be

recorded.

(3) The JTC shall designate and may remove from office a chairperson by resolution passed by a simple majority of members and observers represented at a meeting, each delegation having

one vote.

(4) The JTC may, subject to review by the Forum, co-opt any

DRAFT BILL/1993-10-01

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person to serve on it for one or more meetings or part thereof.

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(5) The JTC or, if there is no JTC, the Forum, may create working groups, task teams and sub-committees.

(6) The JTC shall meet as often as is necessary and shall determine the dates of meetings.

(7) The chairperson of the JTC may, and shall at the request of two members, call a special meeting of the JTC.

(8) Meetings of the JTC and of its working groups, task teams and sub-committees shall not be open to the public or the media.

(9) Notice of a JTC meeting shall be given by the secretariat to members at least 48 hours prior thereto, in the manner referred to in paragraph 3(2).

(10) A majority of all the members and observers represented on the JTC shall constitute a quorum.

(11) The JTC shall regulate its own procedure, which shall as far as practicable follow that of the Forum.

(12) The JTC, and its working groups and task teams through it, shall make recommendations to the forum on all matters considered by them.

DRAFT BILL/1993-10-01

SCHEDULE 2

Formula referred to in section 8(2)(c)

The number of seats in a transitional council for local unity shall be determined as follows:

(1) the number of voters in the particular areas of jurisdiction of local government bodies falling or which fell within the area of jurisdiction of the transitional council of local unity expressed as a percentage of the total number of voters in the area of jurisdiction of such transitional council, shall represent half of the total number of seats in the transitional council of local unity; and

(2) the valuation of all private residential improvements on land in the particular areas of jurisdiction of local government bodies falling or which fell within the area of jurisdiction of the transitional council of local unity expressed as a percentage total valuation of such improvements in the area of jurisdiction of such transitional council, shall represent the other half of the total number of seats in the transitional council of local unity: Provided that estimates may be made by the Administrator as to the valuations referred to above.

DRAFT BILL/1993-10-01

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SCHEDULE 3

Principles referred to in section 9(4)

Any -

1.1 natural person who is -

2 [FIH O a South African citizen;

1132 at least 18 years of age;

15023 resident within or the registered owner of

immovable property within the municipal area

of jurisdiction: Provided that any person

may only indicate one place of residence for

the purposes of exercising his vote; and

1.1.4 not subject to any of the disqualifications

set out in the Electoral Act, 1993; and

1.2 juristic person who is the owner of immovable property

within the municipal area of jurisdiction,

shall be entitled to be included in the appropriate

municipal voters' roll and shall be entitled to vote in an

election for members of a local authority: Provided that a

person referred to in paragraphs 1.1 and 1.2 shall be

entitled to exercise a vote for each ward of the local

authority in which he so owns immovable property.

Voters' rolls shall be prepared by the local authority and
divided according to wards.

A voters' roll shall lie for inspection, but the onus to be
enrolled as a voter shall rest on the voter concerned.

only a competent court shall be entitled to make
alterations to an approved voters' roll which shall be

updated at regular prescribed intervals.

Identification for voting purposes shall be by production

DRAFT BILL/1993-10-01

of an identity document or by such other means of identification as may be prescribed at national level.

Any person who is entitled to be included in the appropriate municipal voters' roll as contemplated in paragraph 1.1, shall be entitled to be nominated or elected as a member of the council of the local authority unless -

6 he is a member of Parliament;

6.2 he is an unrehabilitated insolvent;

6.3 he is disqualified to be elected by any competent court;

6.4 . within 'a petiod: of .35 years immediately preceding nomination:

6.4.1 he was convicted of an offence of which dishonesty is an element; or

6.4.2 he was convicted of any other offence and sentenced in respect thereof to imprisonment without the option of a fine, unless amnesty was subsequently granted to him;

6.5 at 15h00 on the day immediately preceding nomination day, he is indebted to the local authority concerned in respect of any assessment rates, service charges or

any other monies for a period longer than 3 months; or

6.6 he or his spouse is an employee of the local authority concerned or any other local authority: Provided that the Administrator may exempt any such person if the Administrator is satisfied that such exemption is in the public interest and proof of such exemption

accompanies the nomination.

Half of the members of a local authority for a non-metropolitan area shall be elected on the basis that each member shall represent a ward of such council and the other

DRAFT BILL/1993-10-01

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half of the members shall be elected according to a system

of proportional representation on closed party lists:
Provided that the simple quota and highest remainder system
with no threshold shall apply.

8. Half of the members of a local authority for a metropolitan
area shall be elected according to the system of
proportional representation contemplated in paragraph 7,
and the other half of the members shall be nominated by the
metropolitan substructures from among their members on a
pro rata basis according to the number of regional voters
in the areas of Jjurisdiction of the metropolitan
substructures: Provided that each metropolitan substructure
shall be entitled to at least one representative.

DRAFT BILL/1993-10-01

SCHEDULE 4

Criteria referred to in section 10(2)

The chairperson of the Board shall be a person with a background in law.

The other members of the Board shall have knowledge of -

rural, town and regional planning;
development economics;

municipal finance;

municipal services and administration; and
other disciplines as the need may indicate.

The membership of the Board shall be structured in such a manner as to be balanced, representative, non-racial and gender inclusive.

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SCHEDULE 5

Criteria referred to in section 10(6)(b)

Topographical characteristics.

Existing demarcation of areas pertaining to local government affairs and services, including existing areas of local government bodies, regional services and joint services boards.

Population in relation to residential patterns of association.

Existing land usage, town- and transport planning, including industrial, business, commercial and residential usage and planning.

Economy, efficiency and financial self-sufficiency with regard to the administration and rendering of services.

Sources of income in relation to local government expenditure.

Development potential in relation to the availability of sufficient land for a reasonably foreseeable period to meet the spatial needs of the existing and potential residents of the proposed area for their residential, business, recreational and amenity use.

whether the local or metropolitan council to be established will possess the necessary technical, professional and administrative capacity to perform its function and render its services or whether it has or can obtain the capacity to obtain these functions by agreement from any other body or institution.

DRAFT BILL/1993-10-01

9. Interdependency and community of interest between residents

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in respect of residency, work, commuting and recreation.

10. The sharing of income on the basis of contributions directed to areas where the greatest needs therefor exist.

11. Commercial and industrial linkages.

DRAFT BILL/1993-10-01

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We, the undersigned parties, acknowledge that:

a. There is a need to introduce stability, viability and sustainability to local government services and finances as soon as possible;

The adoption of the Local Government Transition Act by Parliament in November 1993 will mark the formal start of the process of restoring stability to local government services and finances;

We therefore agree to the following:

1. Services

New local government structures, established in terms of section of the Local Government Transition Act, should immediately commence with a programme to:

1.1 restore existing municipal services;

1.2 improve the rendering and maintenance of existing services;

1.3 start planning the upgrading the extension of services in the area of jurisdiction. Priorities should be determined in consultation with local

residents, and should be based on the overall viability of the new local authority;

The primary political responsibility of ensuring the availability of all essential services shall be vested in local government. The financing, planning and implementation may be a local, and/ or regional, and/or national government responsibility.

All citizens are entitled to access to water, sanitation, transportation facilities, electricity, primary health, education, and housing and security, providing that it is physically and practically possible for such services to be rendered.

The immediate priority is to provide services to a level that meets basic health and functional requirements for each person.

The medium term goal (approximately five to ten years) is to provide access to services to a level that meets the basic requirements for sustained economic activity for each person, and the community as a whole.

The long term goal (approximately 10 - 15 years) is to provide services to a level that promotes equal access for all persons.

Residents need to experience a visible improvement in the quality and quantity of services rendered over a period of time. It is therefore agreed that there should be a

200\231 public commitment on the part of all parties to the agreement that resources will be mobilised at local, regional and national level to address the historical backlog.

2. Finance

The responsibility of redressing historical backlogs with respect to municipal services lies with all tiers of government.

Arrears owed by residents to black local authorities shall be written off up to the date of the establishment of new local government structures, according to procedures provided for by the Local Government Transition Act.

New local government structures should not inherit debts and liabilities accumulated by black local authorities. Debts and assets of black local authorities shall be wound up according to the procedures provided for by the Local Government Transition Act. '

The loan costs on loans incurred to supply infrastructure to render certain services to a community should be recovered by means of tariffs from all consumers, based on a progressive scale in an interim non-racial local authority.

Tariffs

New local government structures established in terms of the Act should set interim tariffs.

Uniform tariff structures should be established within the boundary of a new local government.

A progressive tariff structure should be adopted to accommodate the needs of the poor.

The body of consumers of a municipal service should pay for the cost of providing the service.

In principle, the system of flat rates for services is not supported, as this has the effect of subsidising larger consumers. Where possible, therefore, metred accounts should be delivered. Where this is not possible, flat rate tariffs should be introduced until metred accounts can be delivered.

Payment of service charges

Payments for services should proceed or commence as soon as new structures contemplated in the Local Government Transition Act are in place, even where services may be faulty or inadequate. Residents should not be asked to pay for a service that has broken down completely. In these cases, it is therefore essential for new structures immediately commence with a programme to restore services, and to

. improve the rendering and maintenance thereof.

Note: the statutory delegation proposes that the first part of the above paragraph reads as follows: Payments for services should proceed or commence as soon as a local negotiation forum has reached consensus on the implementation of new local government structures...

New local government structures should establish procedures to deal with cases of genuine poverty.

New local government structures should establish a equitable and fair default procedure to deal with cases of non-payment of service charges.

Administration

New local government structures established in terms of the Act should immediately make practical arrangements for the payments for services, in areas where this has broken down or is faulty. This includes, inter alia, the compiling and/ or updating of municipal records, the rendering of accurate accounts on a monthly basis, the establishment of properly-administered offices to receive payments, and the issuing of receipts. Where this administrative process will take time, temporary arrangements should be made.

Promoting the Agreement

All parties to this agreement undertake to promote all aspects of the above agreement as soon as the Local Government Transition Act has been passed by Parliament.

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Cortgtiilony & Forrld
GENERAL COUNCIL OF THE BAR OF SOUTH AFRICA

NEW STREET ADDRESS

z 2260, Johannesburg 2000 "UHESUSII"R[_{"\ATS'I {\URES 1S111ti;eF}111
29-3976 oor
Facsimile: (011) 29-8970 S C H R E I N E R CH,QMB E R S Schreiner Chambers

94 Pritchard Street
Johannesburg 2001

4 October 1993

Ms M Hynd
Multi-Party Negotiating Council
KEMPTON PARK

Dear ms Hynd
GENERAL COUNCIL OF THE BAR OF SA : COMMENT

I refer to our conversation earlier today and I enclose
herewith five copies of the GCBâ\200\231s comment on the Twelfth Report
of the Technical Committee on Constitutional Issues. As
discussed, it is imperative that a copy of the report be made
available to every member of the Technical Committee as well
as all interested parties. Would you accordingly liaise with
dr Theuns Eloff to ensure the necessary distribution of the
report.

Thank you for your assistance.

Kind regards

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GILBERT MARCUS

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All correspondence to be addressed to P.O. Box 2260, Johannesburg 2000

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GENERAL COUNCIL OF THE BAR OF S A

COMMENT

ON THE TWELFTH REPORT

OF THE

TECHNICAL COMMITTEE ON

CONSTITUTIONAL ISSUES

Vs

INTRODUCTION

This report has been prepared by the chairman of the General Council of the Bar of South Africa with the assistance of advocates E Bertelsmann SC, S F Burger SC, H J Fabricius SC, J C Froneman SC, J J Gauntlett SC, G L Grobler SC, A C le Roux SC, G J Marcus and

D N Unterhalter.

The purpose of this report is to comment on the twelfth report of the Technical Committee on Constitutional Issues dated 2 September 1993. We would at the outset respectfully acknowledge and congratulate the committee on the careful consideration, scholarship - and draftsmanship underpinning the twelfth report. It is also our conviction however, that the model it proposes is fundamentally flawed. We are deeply concerned that it will fail in the ideal of securing justice and the rule of law in the simplest, most workable and least costly

way.

The key issues we propose to address are,

whether we should have a single stream, parallel

stream or split stream court structure;

whether the appellate division should be at the apex

of that structure or whether there should be a

specialised constitutional court of final appeal

above it and

- the manner in which judges are to be appointed.

We shall lastly comment on various other important but miscellaneous issues.

SINGLE STREAM, PARALLEL STREAM OR SPLIT STREAM STRUCTURE

5 We agree with the Technical Committee that the possible court structures to be considered are the following :

5.1 A single stream structure

This is a linear structure much like the one we have at present. All cases proceed along the same stream which flows from the magistrate's court to the supreme court and from there to the appellate division. This structure may also include a specialist constitutional court as court of final appeal above the appellate division. Not all cases of course enter the stream at the lowest level and go all the way to the highest. Unimportant cases may be confined to the first or second stage. Important and urgent cases on the other hand, may enter the stream only at the second or third stage.

A parallel stream structure

In this structure, there are two completely separate, parallel streams. The first is the ordinary system of courts in which general issues are adjudicated. The second is a separate system of courts, parallel to the first, with exclusive jurisdiction to deal with constitutional issues.

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The twelfth report does not favour such a system. We agree that it is unworkable. Constitutional issues do not arise in isolation. More often than not, the constitutional issue will merely be one of

a number of issues in the case. This system will

require any such a case to be adjudicated along both

streams. That would be quite unworkable.

A split stream structure

This is a hybrid of the single stream and parallel stream structures. All cases start off along a single stream. Somewhere along the line, the stream however splits with general issues going in one direction and constitutional issues in another.

Many possible models can be devised. The one favoured by the twelfth report is a good example.

A single stream flows from the magistrate's court to the supreme court but then splits into a general stream and a constitutional stream. General issues go from the supreme court to the appellate division as final court of appeal. Constitutional issues go from the supreme court to the constitutional court as final court of appeal. (Certain important constitutional issues leapfrog the magistrate's court and supreme court altogether and go directly

to the constitutional court as court of first and

final instance.) In such a system, cases giving rise to general and constitutional issues may have to go from the magistrate's court to the supreme court and from there to the appellate division for the adjudication of the general issues and to the constitutional court for the adjudication of the constitutional issues.

The twelfth report does not explain its choice of a split stream structure. It advances arguments in paragraph 3.7 in support of a separate constitutional court, but never explains why that court should be positioned alongside the appellate division rather than above it. Its model is in our respectful view fundamentally flawed :

We understand the spirit of the proposed new constitution to be permeated by a determination to restore the rule of law and to secure fundamental human rights. This ideal will not be achieved by any piece of paper, however eloquent the words it might contain. The ideal will only be achieved if we develop a human rights culture, respected, nurtured and enforced at every level of every branch of government.

The most fundamental defect in the model proposed in the twelfth report, is that it fails to recognise that a fully-integrated system which engages our whole court structure including every court and every judicial officer, in the protection and enforcement of the constitution, must as a matter of principle be pursued. We cannot stress too much the need for every judicial officer and indeed every officer of the state, to be faced with and engaged in, the new constitutional order in which all state

action is governed by law.

The model excludes the appellate division from the adjudication of constitutional issues altogether.

This seems to us particularly unwise :

The impression that constitutional issues are not worthy of the attention of the highest court, will tend to undermine the

status of the constitution.

Our best legal talent ought to be in the appellate division. We cannot afford to exclude them from the development of our

constitutional jurisprudence.

There is a certain irony in any system which denies appellate division judges any say in constitutional matters whilst permitting provincial judges and even magistrates to adjudicate on constitutional issues. Provincial judges would be loath to accept appointments to the appellate division if it meant having to withdraw altogether from participation in the development of our constitutional jurisprudence.

The split stream will make for untold complication, delay and cost because cases with general and constitutional issues will often have to proceed along both streams. Take for example a simple case of an accused charged with the unlawful possession of dagga. He raises three defences. His first defence is that the section under which he is charged, is for one reason or another unconstitutional. The second is that the dagga was in any event not in his possession. The third is that the confession upon which the state relies, was extracted from him in breach of his "due process" rights under the bill of rights. It would be a common and relatively simple case which ought to be determined by a trial and perhaps one or at most two

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appeals. Under the system proposed by the twelfth report, the adjudication of this case may on the

other hand proceed as follows :

6.3:3 At his first appearance in the magistrate's court, the accused will raise his three defences and may apply to the magistrate in terms of section 91(3) for a postponement of the proceedings to enable him to make an application to the supreme court.

6.3.2 He will then apply to the supreme court in terms of section 91(4), for his first defence to be referred to the constitutional court. Because it raises the validity of an act of parliament, only the constitutional court may adjudicate on it.

6. 3.3 The first defence will then come before the constitutional court comprising eleven judges. It may be necessary to adduce evidence on the issue. There may in other words be a fully-fledged trial which might

last days, weeks or even months.

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If the constitutional court rejects the first defence and upholds the validity of the section, the case will revert back to the magistrate's court for trial. There will again be a full trial, but this time

on the second and third defences.

If the magistrate should dismiss the second and third defences and convict the accused, he would have a right of appeal to the supreme court. It would in turn adjudicate upon the second and third

defences.

If the supreme court should also reject the second and third defences and uphold the conviction, the accused will be entitled to a further appeal if his defences are arguable. The second defence which raises a general issue, will have to go to the appellate division. The third defence which raises a constitutional issue, will however have to go to the constitutional court. There will in other words be two further court appearances in the appellate division and in the

constitutional court.

There will have been seven court appearances in all, including two full trials, to dispose of what should be a relatively straightforward and rather

minor criminal prosecution.

We are not suggesting that the adjudication of all criminal cases will be as convoluted. They will however often have that potential, a potential which might well be exploited by opportunistic litigants and their lawyers. It would make for untold complication, delay and

cost.

The trend in other countries comparable to our own, with an Anglo-Saxon legal tradition and adversarial system, seems to have been to opt for a unitary structure. We have in mind countries such as the United States, India, Canada and particularly our Southern African neighbours Namibia, Zimbabwe and Botswana. The parallel stream and hybrid structures are common in Europe. We should be slow however to emulate them. Their legal heritage and culture is vastly different from ours. They have an inquisitorial system administered by career judges

- concepts quite foreign to us. They operate by

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and large in relatively affluent and homogenous societies. There is in other words no reason whatever to believe that their solutions would work

for us.

7 We conclude that the hybrid structure proposed by the twelfth report, is unacceptable and that we should opt instead for a fully-integrated single stream structure.

APPELLATE DIVISION OR CONSTITUTIONAL COURT AT THE APEX?

The fully-integrated single stream structure that we propose, would at least comprise the magistrate's court, supreme court and appellate division. It may end there or have a constitutional court above the appellate division as court of final appeal on constitutional issues. The purpose of this chapter is to consider whether there is sufficient justification for the creation of such an additional layer at the top of our court structure.

The twelfth report advances the following arguments in support of a separate constitutional court in paragraph

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9.1 "Adjudication on constitutional issues, including disputes between different organs of the state, requires a specialised knowledge of constitutional law coupled with an understanding of the dynamics of society."

The same can be said of almost branch of law. Our experience and that of all the countries with the same legal heritage and tradition, is that it makes for better jurisprudence to have a single ultimate

court of appeal staffed by the best judges with

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jurisdiction in all matters. It makes for better jurisprudence firstly because the best judges are usually more able than even the specialists and secondly because a single ultimate court of appeal is necessary to harmonise the various branches of

law which do not and cannot exist in isolation.

Constitutional law in particular, impacts upon every other branch of law. It is consequently of fundamental importance that our court of final appeal on constitutional issues, should be staffed by judges expert not only in constitutional law, but

also in all other branches of law.

Every judge requires "an understanding of the dynamics of society." The suggestion that constitutional law experts are more likely to have

such an understanding, is unfounded.

It would in any event not be necessary to create a separate court even if the adjudication of constitutional matters required specialist expertise. Such expertise could be brought to bear upon constitutional issues in other ways, for instance by a constitutional chamber of the appellate division such as the one described in the memoranda of the chief justice of 8 and 13 September

1993.

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wIf the constitutional court is established as a chamber of the appellate division, the chief justice has to decide which chamber will hear cases in which there are both constitutional and non-constitutional issues."

We agree that it would be undesirable to leave this decision up to the chief justice. However, it need not be done. The chief justice could for instance be required to refer every appeal to the constitutional chamber in which a constitutional issue is raised which is not frivolous and might be decisive.

nGiven the crucial nature of its tasks, the constitutional court should be able to establish its own identity and its own legitimacy, distinct from that of the appellate division. It should be the court of final instance for all cases dealing with constitutional issues. It should have its own judges, appointed according to procedures which need not necessarily be the same as those followed in the appointment of other judges. It should have its own rules and procedures, appropriate for constitutional litigation, which need not necessarily be the same as the rules and procedures of the appellate division. It should be able to establish its own identity and its own legitimacy."

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This is a series of assertions which do not seem to us to be self-evidently valid. The court of final appeal in constitutional matters does not need to have "its own identity". It obviously needs to enjoy legitimacy, but does not need to have "its own legitimacy". It similarly does not need to have "jts own judges" or "its own rules and procedures". Whilst some special rules and procedures may have to be created for the exigencies of constitutional litigation, that can easily be accommodated within the existing structures. It does not by any means

necessitate the creation of a separate court.

Under the new constitution with its justiciable bill of rights, our courts will of course have to perform

a new and sometimes overtly political function. It will require a new and markedly different approach. It will nevertheless be vitally important that the constitution be dealt with and be seen to be dealt with, as serious law by a court of law, lest the impression be created of a malleable socio-political

charter at the mercy of a quasi-political tribunal.

"The appellate division ordinarily sits in panels of three to five judges to enable it to deal with its extensive workload. A constitutional chamber should

be composed differently and should function on the

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basis that all the constitutional judges sit in all the cases that come before it."

We agree, but it does not necessitate the creation of a separate court. The Jjudgesâ\200\231 proposal as modified in the <chief Jjusticeâ\200\231s most recent memorandum, for instance meets this point.

10 A new constitutional court will be able to make a fresh start unencumbered by any association with the existing court structure which lacks legitimacy in the eyes of many. It would be able immediately to establish its legitimacy by the appointment of a bench representative of both genders and all the races of our society. This is in our view a valid consideration and an important one, particularly because it offers a solution to the legitimacy crisis in the short term, which would otherwise only be possible in the medium to longer term.

The latter consideration needs however to be weighed against the following countervailing considerations against the creation of a separate constitutional court :

11.1 It would address the lilegitimacy crisis in the constitutional court, but exacerbate the problem in all other courts equally in need of reform. We have a limited number of women and black people qualified

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11.2

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to assume judicial office at the highest level in the short term. If a separate constitutional court were to be created, they would be attracted to its bench. They could be better used for appointment to the appellate division. In that way, we would have the benefit of their talents, not only in the ultimate adjudication of constitutional matters, but also in the ultimate adjudication of all other matters. Their appointment to the appellate division would at the same time address its

legitimacy crisis.

Constitutional law impacts upon all other branches of law. It is consequently essential that the adjudication of constitutional matters be undertaken by judges with expert knowledge, not only of constitutional law but also of all other branches of law. The judges best equipped for the task, ought in other words to be the judges of the appellate

division.

A further layer in our court structure, would be costly. Not only would society have to bear the cost of the court and its staff, but litigants would also have to bear the cost of the further complication and delay brought about by an

additional layer in our court structure.

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11.4 It is again of some significance that the countries

which share our Anglo-Saxon judicial heritage and

our adversarial system, have not opted for separate constitutional courts, either within or at the apex of their court structure. We again point to the examples of the United States, India, Canada,

Namibia, Zimbabwe and Botswana.

We are on balance not in favour of a separate constitutional court above the appellate division. A model such as the one described in the chief justice's

memoranda, seems to us to be preferable.

THE APPOINTMENT OF JUDGES

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This is a vital issue. The legitimacy of our courts and the quality of our Jjurisprudence, will be vitally dependent upon the process by which our Jjudges are appointed.

The most important qualities of a Jjudge are an independent spirit, impeccable integrity and the highest ability. The process for the appointment of judges, should in other words be one which is not only â\200\230able but also naturally inclined, to select judges with these qualities.

The process for the appointment of constitutional court judges proposed in the twelfth report is in our view wholly inappropriate, whether for appointment of judges to a constitutional court or any other court. Our principal objection arises from the fact that the process

is entirely in the hands of politicians :

15.1 The process would not tend to select Jjudges of independent spirit. On the contrary, it would be inclined to prefer and select judges in favour with

the politicians who select and appoint them.

15.2 The process does not have a built-in ability to assess the integrity or ability of candidates. It would consequently also not be naturally inclined to select judges of highest integrity and ability.

Our experience in South Africa has been that politicians abuse the power to make judicial appointments. The temptation to do so will be infinitely greater under the new constitution which endows our courts with immense powers and requires of them to play a vital and sometimes overtly political role. It becomes more important and not less so, that the politicians not be allowed to dominate their selection and appointment. The process suggested by the twelfth report, will inevitably result in a political horse-trading. Judges will in fact be, and will be seen to be, appointed for their political inclination rather than their judicial qualities. The quality of the bench and its standing would be seriously undermined.

There is in any event in our view no justification for the distinction made by the twelfth report, between the appointment of judges to the constitutional court and the appointment of other judges.

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We would suggest instead that all judges be appointed by an independent Judicial Services Commission. We do not have fixed ideas about the composition of such a body. There seems to be broad consensus that the interest groups represented on it, should comprise the judiciary, the executive, parliament, the legal profession and the law schools. The number of representatives of each of those interest groups and the manner of their selection, is a matter of detail open for discussion. The suggestion embodied in section 93 of the annexure to the twelfth report, seems for instance to be broadly acceptable except for the parliamentary representation

which is unduly loaded.

The twelfth report justifies its proposal for the appointment of judges to the constitutional court, by emphasising that parliamentary participation in the process of appointment "could provide the necessary legitimacy." We have already explained why we do not favour its proposal. If it should however be felt necessary to engage parliament in the process, the same

result could be achieved by a process whereby,
- an independent Judicial Services Commission rather

than a joint parliamentary committee, nominates

judges for appointment and

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those nominees are then submitted to parliament for approval and endorsement.

The latter process would at least ensure that the candidates are nominated for their independence, integrity and ability rather than their political inclination.

MISCELLANEOUS COMMENTS

18 The purpose of this chapter is to raise miscellaneous matters of some importance unrelated to the issues of principle dealt with above. We direct our comments at particular provisions of the draft embodied in the annexure to the twelfth report.

19 Section 87 (2)

In terms of this section read with section 90(4), the constitutional court is made a court of first and final instance, in all matters relating to,

- the validity of an act of parliament;
- constitutional disputes between organs of the state;
- compliance of the constitution with the constitutional principles contained in schedule 7;
- whether any matter falls within its own jurisdiction; and

any other matter provided for in the constitution or
any other law.

We would suggest that this list be reconsidered for the
following reasons :

19.1 It is ordinarily highly undesirable for any court to
be a court of first and final instance. It always
makes for better jurisprudence if the evidence, the
issues and the arguments are sifted and synthesised
in a court of first instance before the matter gets
to the court of appeal. That is so particularly
where evidence needs to be adduced. The
constitutional court ought therefore not to be
constituted as a court of first instance except in
the most exceptional cases where it cannot be done
otherwise.

It is in any event inappropriate and quite
impractical to engage the full constitutional court
comprising eleven judges, in any matters which
require evidence to be adduced. Not only is the
constitutional court an inappropriate vehicle for
that purpose, but it would also risk getting bogged
down in a single case for days, weeks or months.

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19.3 Any provision in terms of which the constitutional court is constituted as the only court with jurisdiction in certain matters, would be open to abuse. For instance, in terms of section 87(2) (c), the constitutional court is constituted as the only court with jurisdiction to determine the validity of an act of parliament. It means that, if a litigant were to contend that an act of parliament is invalid, his mere contention would entitle him to a hearing in the constitutional court, however frivolous and unfounded the contention might be, because no other court would have jurisdiction to adjudicate upon it. Section 87(2) (f) is another example. A litigant need merely contend that some issue falls within the jurisdiction of the constitutional court, to entitle him to a hearing before that court, however frivolous and untenable his contention might be. The potential for abuse is

obvious.

Section 88(2) (4)

This section is ambiguous but seems at least open to an interpretation which would permit people without any legal qualification at all, to be appointed to the

constitutional court. We find it objectionable. An

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appropriate legal qualification is in our view a necessary prerequisite for high judicial office. A variety of other skills obviously often need to be brought to bear upon the adjudication of matters before any court. The necessary expertise can and should however be introduced by way of evidence and need not

vest in the presiding judicial officers.

Sections 88(3) and (4)

We have already voiced our fundamental objection to the procedure for the appointment of judges to the constitutional court described in these sections. We raise them again however merely to point to further

deficiencies.

The proposal in section 88(4), to overcome a deadlock in the parliamentary committee, seems to us unworkable. If the division in the committee should for instance be 60:40, the mechanism would fail because there would not be two defined groups of 75% and 25% of the committee, to exercise the power to nominate the eight candidates and

two candidates respectively as envisaged in the section.

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Section 97

Attorneys-General hold important and powerful positions. It is undesirable that they be subject to executive control. We would suggest that their independence be constitutionally entrenched, for instance by providing for their appointment by an independent tribunal such as the Judicial Services Commission and for some security of tenure.

CONCLUSION

23 Our comment on the twelfth report may in conclusion be summarised as follows :

23.1 The hybrid split stream court structure proposed in the twelfth report is wholly unacceptable. A fully-

integrated single stream structure is preferred.

Such a structure may either have the appellate division at its apex or a separate constitutional court above it as final court of appeal on constitutional matters. There is something to be said for both. The structure with the appellate

division at its apex is on balance preferred.

The appointment of all judges should vest in or at least be controlled by, an independent Judicial Services Commission. It should not be open to

political manipulation.

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23.4 We have various miscellaneous comments on other

aspects of the model proposed in the twelfth report.

We urge the Negotiating Council to permit us to appear
before it to present our report and deal with such issues

as might arise from it.

WIM TRENGOVE
Chairman

Chambers
JOHANNESBURG

4 October 1993

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Dear swm

We are an iorganisation interested in cresting peace among all pecple in oyr land. By picketing at the World Trade Centre we wi)l be Preaching the gospe! of peacs, we hope our dreem of a new peaceful S.A. will be realised. On that "Super â\200\234Thwsfay" the _23dof September we choese peace and prosperity in our beloved countrry by Taunching these campaigns.

"Releasq S.A. Nation from fear and hatred campaign,â\200\235
"Plesse go not Yeave S.A. It is your home campaign.â\200\235
â\200\234Invest ln S.A.'s gold and dlamend campaign,â\200\234
"Symboligally united \$.A. campaign,.

The processfon shall be dccompanied by the singing of peace songs, linking of hands, traditional dence, then we wil) closeby singing a nationa) anthem. The _duration shdll be one hour from 1pm to 2pm, the press conference shall de held

8t 2pm to explain the above mentioned campaigns. A memorandum to the Chairman 3
4t the World: Trade Centre. : .

MANGALISO MNYELE
(CHAIRMAN)

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THE CHAIRMAN

PLANNING COMMITTEE Chamberlainstr/St 707
Deemess, Pretoria

0084
= 40291
Arcadia 0007
: = (012) 329-0714/3
Dear Sir, Fax: (012) 329-0709

PROMOTION OF A FAIR AND DEMOCRATIC ELECTION IN SOUTH
ERICA IN APRIL :

FOR ATTENTION: DR. T. ELOFF

Following on our previous discussion, I enclose herewith a detailed proposal relating to the
above.

It would be appreciated if you could submit the proposal to the Planning Committee not later
than Friday, 24 September 1993.

Thank you for your co-operation.

Sincerely

J.C. NIEWOUDT (MS)
MEMBER

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Jienie Nieuwoudt

Beherends Lid / Controlling Member

ROPOSA R THE ACCEPTAN ND IMPLEMENTATION OF HEME TO PROMOTE A T AND DEMOCRATIC NATIONAL

ELECTION

1. BACKGROUND

It is common knowledge that when South Africa's first democratic election takes place in April 1994, some 20 million people will become part of a national electoral process for the first time in their lives. These people will be totally unfamiliar with the political hype, aggressive campaigning and electoral procedures to which they will be subjected.

If the election is to be contested in a rational, fair and democratic environment, it is absolutely essential that this "new" electorate be comprehensively informed and educated.

2. RENT S1 T1

The above-mentioned objective can be achieved through personal presentations, distribution of printed material, the press and television and radio broadcasts. The most cost-effective and practical vehicle would undoubtedly be radio broadcasts - but only if very eligible voter in the country had access to a radio.

3. PROPOSAL

Our organisation is favourably positioned to obtain sufficient local, overseas & even government sponsorships to ensure that a low-cost radio can be donated to every single member of the "new" electorate, i.e. every person over the age of 18 years.

The appropriate electoral agency can then compile introductory literature in all relevant languages and distribute it together with each radio as a package.

4. ADVANTAGES

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Every eligible voter in the country will be in posession of his/her own radio, thereby ensuring the largest possible audience for official education and information campaigns.

Such broadcasting campaigns can be both extensive and intensive, with the accent on continual escalation and reinforcement, in all relevant languages.

There is no cost whatever to the voter.

Maximum benefeit can be obtained from the ample broadcasting time which the SABC will be making available to all political parties.

REQUIREMENTS AND MODUS OPERANDI

Our organization would need the Election Committee to agree to the following in order to make the proposed scenario a reality:

5.1 We require an official letter of accreditation, autorising us to canvass the necessary sponsorships. A trust fund would be established for the deposit of all sponsorships, and we would abide by any appropriate control measures designed to ensure that such monies are not misappropriated.

At a time or times to be agreed upon, the trust fund resources will be utilised by ourselves to purchase the necessary radios, and delivery of the consignment to the Election Committee will be arranged.

Our organization's remuneration will be obtained by a marginal percentage (to be negotiated and agreed upon) levied on the total value of the consignment. Any funds not utilised for the purchase of radios will be made available to the Election Committee to utilise as they see fit.

We could require official confirmation that our organization has the sole right to obtain the proposed sponsorships and to further implement the entire proposal as described.

CONCLUSION

In the event of any further clarification being required, we can be consulted on a 24-hour basis.

J.C. NIEWOUDT (MS) : 23 September 1993
MEMBER

SHORTBACK FROM ADMINISTRATION ON THE DISTRIBUTION OF THE 12TH
ORT OF THE TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES

i On 6 September 1993 the Planning Committee took a decision that the 12th Report should be made available to Advocate W Trengove of the General Council of the Bar by Administration (Addendum A, Item 5 J:3.3)

2 The said report was hand delivered to Advocate Trengove on 10 September 1993 (Addendum B).

3 The last sentence of item 5.1.3.3 of the Minutes of the Planning Committee meeting of 6 September 1993 was understood to mean that the 12th Report should be made available to the other bodies on request (by them).

4. Some time elapsed and the issue arose again on 23 September 1993 when Mr Z Titus enquired whether copies of the 12th Report had been sent to NADEL and the Black Lawyersâ\200\231 Association. This was in reaction to a letter from W Trengove (Addendum C).

- 5 In following this up, the sub-committee and T Eloff discussed the issue on Monday 27 September and came to the conclusion that copies had not been sent to NADEL and the Black Lawyersâ\200\231 Association, but that as they had copies in their possession the issue was overtaken by events.

6. T Eloff was still under the (erroneous) impression that the 12th Report had, in fact, been sent to the other bodies, i.e. the GCB and Association of Law Societies.

i When Advocate Trengove raised the issue with Mr Z Titus on 28 September 1993, Administration was requested to ascertain the facts.

8. It is therefore clear that the 12th Report had been made available to Advocate W Trengove but not to the other bodies. The latter is an oversight for which Administration apologises.

T ELOFF
HEAD: ADMINISTRATION
29 September 1993

ADMIN/CONVMAN/12REP.CI
29 September 1993

following issues until a future meeting of the Planning Committee: -

The name for SPRâ\200\231s

Definition of the National Territory

Languages

Whether the Constitutional Assembly will have the power to alter the number, boundaries and powers of SPRâ\200\231s described in the Constitution for the transitional period

The issue of the TBVC States

Submission by the National Electrification Forum

The fleshing out of the adopted Constitutional Principles
The Constitutional Court - its composition and functioning

The deadlock-breaking mechanisms

The issue of boundaries

Self Determination

Confederalism

Traditional Leaders

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5:1.2 '-Report from R Meyer on K Coetseeâ\200\231s meeting with the Chief Justice:
Â5.1.2.1 An oral report was presented to the meeting.

- . 5122 It was noted that a submission had been received by the
T Administration from the Chief Justice and this had been
forwarded to the Technical Committee on Constitutional
Issues.

51.3 Meeting with the General Council of the Bar:

5 1.3 Z Titus gave a reportback on the meeting held with W
o Bt et Trengove (Chairperson of the General Council of the
i Bar). - ')
. 5.1.32 It was agreed that, with regard to W Trengoveâ\200\231s

L e request/suggestion that he co-ordinates the views of the
i - - Advocates, the Association of Law Societies, NADEL,
TR the Law Commission and the Black Lawyers
: Association, Z Titus conveys the view of the meeting to
W Trengove. '

5133 It was agreed that the Administration should make
available the 12th Report of the Technical Committee
on Constitutional Issues to W Trengove. It was noted
that W Trengove was prepared to make written

5 27 September 1993

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submissions to the Technical Committee on the 12th Report. It should be noted that the report was still under embargo. It was further agreed that the , Advocates, the Association of Law Societies, NADEL,) & the Law Commission and the Black Lawyersâ\200\231 Association should receive copies of the 12th Report . directly from the Multi-Party Negotiating Process Administration and not via W Trengoveâ\200\231s office.

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

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

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

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

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

Commission on the Demarcation/Delimitation of Regions:

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

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

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

â\200\230It was noted that the document prepared by PJ Gordhan and Z Titus

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

PLANCOMM/MINUTES/MIN0609

6 27 September 1993

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RAL COUNCIL OF THE BAR OF SOUTH AFRICA

NEW STREET ADDRESS
NUbE | STRAKT AORES o
11th Floor

sul
SCHREINER CHAMBERS - Sechvwinnr Cininises

84 Pritchard Street
Johannesburg 2001

21 September 1993

Dr Theuns Eloff

Planning Committee .

Multi Party Negotiating Process
World Trade Centre

KEMPTON PARK

Dear dr Eloff
INTERIM CONSTITUTION 3 ADMINISTRATION OF JUSTICE

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

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

1 A meeting as soon as possible on the Witwatersrand on a
Saturday or Sunday.

We suggest that the meeting be attended by the techniÃ©al
committee on constitutional issues and representatives of
the GCB
the Association of Law Societies
NADEL
the BLA

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The GCB, the Association of law Societies and individual judges have already indicated their support for the proposal. We are still awaiting the response of NADEL and the BLA. , 4

We would suggest that the meeting be in the nature of a briefing session. Its primary purpose would accordingly be for the technical committee to share with the meeting, its thinking behind the proposals put forward in its twelfth report.

We have in mind an informal, "off the record" discussion.

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

a meeting could be arranged.

Yours sincerely

WIM

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Chairman
General Council of the Bar of SA

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