

THESE MINUTES ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF  
THE TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES

MINUTES OF THE MEETING OF THE TECHNICAL COMMITTEE ON  
CONSTITUTIONAL ISSUES HELD ON 12 MAY 1993 AT 11H00 AT THE WORLD  
TRADE CENTRE

PRESENT: F Cachalia  
A Chaskalson  
GE Devenish  
B Ngoepe  
F Venter  
M Wiechers

Chairpersonship

Dr Venter Chaired the meeting.

Report on written inputs by members

As was agreed at the previous meeting of the Technical Committee, the following  
members submitted the following reports:

\* F Cachalia: Regionalism and the Process of Constitution-Making  
(see Addendum A)

A Chaskalson: On: Constitutional Principles, Constitutional Making  
Body/Constituent ~ Assembly, Transitional/Interim  
Constitution (see Addendum B)

F Venter: Commission for Regional Government  
(see Addendum C)

M Wiechers: Self Determination (see Addendum D)

BM Ngoepe gave notice that his written input would be available some time  
next week.

TECCOM/CONSTITUTIONAL/MINUTES/12 MAY 1993.TCCI

## Report to the Planning Committee

### 3.1

### 3.2

#### Report on Borders, Functions and Powers of Regions

Messrs Venter and Cachalia's inputs were integrated into a composite report -on the issue of the Borders, Functions and Powers of Regions. This report will be finalised and submitted to the Planning Committee on Thursday, 13 May.

#### Report on Remaining Constitutional Issues Resolved:

That the remaining constitutional issues, namely, Constitutional Principles, Constitution Making Body/Constituent Assembly, Transitional/Interim Constitution and Self Determination, be addressed in a report to the Planning Committee, tomorrow, 13 May.

#### Meeting Schedule:

It was agreed that the Technical Committee on Constitutional Issues should meet as often as possible to expedite their work. The following dates were agreed upon (see Addendum E)

THE FOLLOWING ADDITIONAL DOCUMENTS WERE DISTRIBUTED IN THE MEETING:

1. Submissions by participants in the Multi-Party Negotiating Forum:  
(see Addendum F)

Constituent Assembly/Constitution Making Body

.Constitutional Principles and Form of State

Status of the Consolidated Document

On the appointment of technical sub-committees

and their proposed terms of reference on certain

matters arising from the Consolidated Document

Dispute resolving and deadlock breaking mechanisms

Standing rules and procedures

Constitution making process

Governments amendment to proposal two:

Regulation and promotion of broadcasting and

telecommunications and monitoring of the electronic

media : SA GOVT

Governments amendment to proposal one:

Independent Election Commission : SA GOVT

Recommendation by the Democratic Party to

ad hoc sub-committee in respect of Standing Rules : P

Input on participation : PAC

Amendment and/or repeal of laws militating against free

political activity, including the elimination

of all discriminatory legislation : PAC

The election date : PAC

The TEC and its SUB-COUNCILS : PAC

State controlled and statutorily instituted media : PAC

The Independent Elections Commission : PAC

Position on the pace of progress : AZANYU

Criteria for participation in the Multi-Party

Negotiating Process : SOLIDARITY

Recent violent attacks on journalists : UPF

Position paper on violence : VENDU

Issues causing violence/threatening the negotiating process

and undermining the implementation of the

National Peace Accord : SOLIDARITY

Contact details of members of the Technical Committee on Constitutional Issues (see Addendum G)



## REGIONALISM AND THE PROCESS OF CONSTITUTION-MAKING

### Popular Government and Constitutional Restraints - the Emerging Consensus

Constitutional constraints curtail the vices of popular government: self-interested representation (the potential abuse of power by officials) and faction (majority and minority domination). These objectives are achieved without racial restrictions on the electorate or any other system of unequal liberties since constitutional constraints apply to all equally. Constitutional constraints also protect popular government by entrenching basic political and civil liberties. They thus have a dual character.

The emerging consensus within the negotiations process on the desirability of adopting a system of constitutional constraints has great potential to contribute to national unity in South Africa based on a common commitment to basic values and institutions in our otherwise divided society. This is in part so because a system of non-racial constitutional constraints makes it possible to belong simultaneously to a common political community based on citizenship and within communities of choice based on language, religion, culture and history.

#### Democracy and Distrust

But we continue to differ crucially on how to introduce a system of constitutional constraints. Some parties have insisted that since such constraints require both

justification and legitimation they should be adopted by a democratic process in which all citizens have an equal right to take part. Their insistence on an electoral process has, however, increased anxieties among some parties, particularly important parties with regional constituencies regarding their future role. This insecurity may explain

why some parties have insisted upon a pre-election\_agreement on the boundaries.

powers and functions of regional governments and more recently. on a decision on

the Form of State. In our view, all citizens, whatever community they belong to, or place they live in or party they support, have a legitimate interest in representation in

a future national, non-racial, non-ethnic government.

#### Overcoming Uncertainty

Within what limits can this uncertainty be overcome? One way would be to guarantee the present incumbents's office in a future system. This would amount to creating a political cartel. It is not democracy's way. One of the purposes of the constitution is

to set up a form of fair rivalry for political office. The uncertainty that stems from political competition is thus unsurmountable. But the uncertainty regarding the basic, relatively permanent institutional framework within which competition is to occur may be reduced by (i) binding the elected constitution-making body (CMB) to principles negotiated by consensus in the Multi-Party Forum and (ii) structuring a fair process to achieve broadly based representation within the CMB. Both these methods have been under consideration in the Multi-Party Forum and both are capable of further

elaboration.

## Constitutional principles

The principles thus far embodied in the Codesa Declaration of Intent and the document recording areas of Commonality include, inter alia, the following: equal and universal franchise, multi-party democracy, free association and assembly, and free speech. These "process" principles guarantee rights of political participation to all individuals - regardless of their social background and political choices: they also guarantee a fair framework of political contestation, and therefore offer all political interests, including present incumbents fair opportunities to earn the right to govern legitimately within a restructured political arena. Since the equality principle and the implied rights of participation are intrinsic to the democratic process, they should in principle govern beyond the CMB.

The CMB should not have the power to abrogate them.

These principles are, however, not sufficient from a representational

point of view in a country of South Africa's size and diversity. It is important to build complexity into the system in order to enhance its representation. The following principles - checks and balances, separation of powers, and entrenched vertical division of powers - already included in the Codesa documents - would have this effect. They create multiple arenas for political representation, participation and contestation.

While these principles are compatible with a limited range of institutional

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options, they will, without further elaboration, determine the basic institutional design of the future system. Furthermore, while they will not and should not pre-determine the allocation of institutional places, they will impact upon political outcomes probabilistically. They make it unlikely in the extreme, for instance, that a single political party could establish an effective monopoly of political power under cover of

democracy.

#### Constitutional Principles and Form of State

All the principles thus far agreed upon will have an impact on the form of state. The principles of multi-party democracy and constitutionalism are examples. The principle on regionalism, in its present form, will also have an impact on the Form of State and the distribution of powers. It

is capable, with some elaboration, of meeting the actual concerns of

regionally-based parties. It is submitted that an artificial attempt at conceptual classification will not take matters any further. Rather, it will

make the process of reaching agreement unnecessarily more difficult.

#### The Principle on Regionalism

The Codesa principle on regionalism was deficient, not because it was insufficiently detailed. It does not make any sense to deal with the

boundaries, powers and functions of regions in the form of a legally

unalterable principle. These are all matters which are sensitive to



changing demographic, economic and social forces and therefore must be capable of adaptation through the amendment procedure. The Codesa principle was, however, deficient in that it was insufficiently protective of the representational interests of the social forces that make up our society, and in particular of the parties with regional constituencies. The Codesa principle could therefore be elaborated to include the following:

(a) The idea of a special role for regions in the formal amendment procedure of the constitution, especially on matters affecting regions;

The concept of regional representation in the central legislature; and

A list of justiciable criteria conditioning the exercise of the override to prevent the party at the centre from exercising such powers for

the sole purpose of penalising regional opponents.

The rationale of these suggests is that they are necessary to create secure representation for regional interests, which is not vulnerable to a potentially hostile power at the centre.

#### Creating a Fair Process

A purely majoritarian process is inappropriate in constitution-making.

The process therefore which creates a CMB must offer fair opportunities

for all interests to achieve representation and thereby secure their

objectives within a democratic forum. We suggest the following:

#### Boundaries

The ANC insisted in Codesa that the boundaries, powers and functions of regions have to be determined in an elected CMB. We submit that it is necessary, for representational regions for the Multi-Party Forum to decide upon boundaries for electoral purposes and on the powers and

functions of regional administrations in the interim period. We therefore

recommend the setting up of a commission, with the following terms of reference:

(INSERT))

#### Regional Lists

The election for the CMB should be based on a system of national and regional lists. This will increase regional representation both within parties and within the CMB.

#### Special Majorities

All constitutional decisions should require special majorities. The purpose of this technique is to ensure that regional interests and other

minorities are not simply out-voted on matters having a crucial bearing  
on their interests.

#### CONCLUSION

The combined effect of these proposals will be to ensure that the negotiations begun  
in the Multi-Party Forum will be continued in the elected CMB and that the constitution  
will be the product of a considered, deliberative process rather than the naked  
preferences of particular parties.

FC/gp:D-00149

## INTRODUCTION

1.1 Our instructions require us to prepare systematic documentation to facilitate discussion in the Negotiating Council. It has been made clear to us that we are not ourselves to engage in negotiation. What is expected is that we should address the issues raised in the Codesa documents, the discussions in the Negotiating Forum and the Negotiating Council, and the submissions and inputs of the participants in the current negotiating process which are relevant to the terms of reference of our committee, and on the basis of such information prepare documentation for the Negotiating Council which will enable the debate to be taken forward in that forum. For that purpose we can also have regard to submissions that may be made to our committee in writing by individual experts and interest groups.

1.2 On one issue we have been asked to go beyond these instructions and to make recommendations to the Planning Committee. That issue concerns the process to be followed in dealing with the debate on the boundaries, powers and functions of regions. This is clearly a core issue in the negotiations and directly relevant to the disputes which exist in relation to the form of the state and self determination. The way in which this matter is dealt with will have a bearing on several matters that are included in our terms of reference.

1.3 We have been asked to make our first report to the Planning Committee by Thursday 13 May, and to deal with the process for taking the regional debate further in that report.

1.4 We are of the opinion that the debates in the Planning Committee and the Negotiating Council will be facilitated by a brief analysis of the constitutional issues that have been identified in our instructions as being the concern of our committee. The issues are interrelated and reflect in particular the concerns of the different participants in respect of the legitimacy of the constitution making process, and the position of minorities in any new constitutional order. The process for determining the boundaries, powers and functions of regions could be crucial to finding an acceptable solution to these fundamental concerns.

1.5 The framework within which the debates have taken place, and the particular issues that have been raised appear from the documents with which we have been briefed. They include three documents dealing with deliberations at Codesa. These are a bundle of Codesa agreements, a summary of these agreements and a consolidated document based on Codesa reports. We will refer to these documents as the agreements, the summary and the consolidated document respectively. We have also been briefed with a resolution on the transition process taken by the Negotiating Forum on the 1st and 2nd April, extracts from minutes of the Negotiating Council of the 26th April, 30th April and the

## 1.6

7th May, the declaration of intent on the negotiating process made by the Negotiating Council on the 30th April, and a transcript of discussions held in the Negotiating Council of matters relating to the transitional process.

We will deal with the specific issues referred to our committee in the light of these documents.

## THE FORM OF STATE

### 2.1

## CONSTITUTIONAL PRINCIPLES

### 3.1

## CONSTITUTION MAKING BODY/CONSTITUENT ASSEMBLY

### 4.1

The process initiated in Codesa of developing constitutional principles had as its object the establishment of a framework within which the constitution making body/constituent assembly would be required to function. As appears from paragraph 3 of this report these principles were directed towards the development of a constitutional structure which would offer a democratic form of government, protection of minority interests, and safeguards against the abuse of power. They would provide guarantees in respect of such matters to minority parties in an elected constitution making body/constituent assembly.

It appears to have been accepted by working groups 2 and 3 at Codesa that the final constitution would be drawn up by an elected constitution making body/constituent assembly within the framework of agreed constitutional principles, and that the body/assembly would also be vested with powers enabling it to act as an interim legislature. The negotiations broke down because of an inability to reach agreement on the details of the principles and in particular on the manner in which the elected body would take decisions on particular matters. See: The report on the status of discussions in working group 2 at page 33 of the agreements (page 49 of the file), and paragraph 2 of the section dealing with the constitution-making body process at pages 34 to 36 of the consolidated document (pages 152 to 154 of the file).

The Declaration of Intent on the Negotiating Process adopted by the Negotiating Council on 30 April 1993 records a commitment by the Council to reach agreement on binding constitutional principles, the constitutional framework and the constitution making process in terms of which elections

will be held. It contemplates that a date will be set before the end of May 1993 for an election to be held not later than the end of April 1994. This is consistent with the framework for constitution making developed at Codesa. The submissions made by the PAC to the Negotiating Council are also consistent with the Codesa framework.

If the Negotiating Forum agrees in due course that the final constitution will be drawn by an elected constitution making body/constituent assembly within the framework of agreed constitutional principles, then in addition to agreement upon the relevant principles, agreement will also be required on the following matters:

#### CONSTITUTION MAKING

4.4.1, How the constitution making body/constituent assembly will be composed - i.e. will it be unicameral or bicameral

How many members will it have.

What electoral system will be adopted.

Who will be entitled to vote.

How will decisions be taken.

Will timeframes be set for the taking of decisions.

How will deadlocks be broken.

How and by whom will decisions be made concerning the application of the constitutional principles.

#### ACTING AS A LEGISLATURE

4.4.9 How will the body/assembly be composed, how will

it function as a legislature, and what will its territorial jurisdiction be.

#### A TRANSITIONAL/INTERIM EXECUTIVE

4.4.10 How will the transitional/interim executive be appointed and how will it take decisions

#### LEGISLATIVE FRAMEWORK

4.4.11 A legislative framework dealing with the above matters will be required. This will have to be done either through an amendment to the existing constitution or through the adoption of a transitional/interim constitution.

#### TRANSITIONAL/INTERIM CONSTITUTION

If the process that was being developed at Codesa is completed and adopted by the Negotiating Forum a transitional/interim constitutional structure will be required to ensure constitutional continuity and provide the legislative framework for a constitution making body/constituent assembly with legislative power.

The Negotiating Forum will have to reach agreement on the constitutional structure, which will require it to give consideration to and take decisions on the following matters:

5.2.1 The constitutional principles by which the constitution making body/constituent assembly will be bound.

5.2.2 The legal framework governing the functioning of the body/assembly when it sits as a constitution making body/constituent assembly.

5.2.3 The legal framework governing the functioning of the body/assembly when it sits as a legislature.

5.2.4 The way in which the transitional/interim executive will be composed, what its powers will be and how it will function.

5.2.5 The question of regional government in the transitional/interim period, including the position of the selfgoverning territories and the TBVC states prior to and subsequent to the election of the body/assembly.

5.2.6 The question of local government in the transitional/interim period including the periods prior to and subsequent to the election of the body/assembly.

5.2.7 The question whether provision should be made in the transitional/interim constitution for the protection of certain fundamental rights. This issue is being considered by a technical committee constituted for that purpose.

5.2.8 The question of constitutional amendments during the transitional/interim period.

5.2.9 The structure, functioning and powers of the judiciary, including whether there should be a special constitutional tribunal to deal with matters arising out of the provisions of the transitional/interim constitution.

5.2.10 National symbols

5.2.11 Miscellaneous provisions including transitional

provisions needed to ensure constitutional continuity and effective government

notwithstanding the constitutional changes that have been made. Under this heading would be included any special structures or procedures that the Negotiating Forum may require to be included in the interim constitution.

These matters will have to be addressed in the Negotiating Council as a matter of urgency if the commitment made in

- the Declaration of Intent is to be met.

If we receive instructions to that effect we would be able to prepare a draft transitional/interim constitution for discussion and development by the Negotiating Council. The instructions should contain sufficient detail to direct us in regard to the main structures of the contemplated constitution.

#### TRANSITIONAL REGIONAL/LOCAL GOVERNMENT

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#### FUTURE OF THE TBVC STATES

#### SELF DETERMINATION



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## Appointment

Upon agreement having been reached by the Negotiating Council on the membership and the terms of reference of the Commission, the Commission shall be appointed and formally established by proclamation in the Government Gazette.

## Composition

The Commission shall at no time consist of more than ten members. Two or more of the members shall be appointed on account of their expertise concerning geography or development planning, two or more shall be appointed on account of their expertise in constitutional law and two or more shall be appointed on account of their expertise in public administration.

The Negotiating Council shall appoint from among the members of the Commission a chairman and vice-chairman.

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

## Terms of Reference

The Commission will be required, on a basis of urgency, to make recommendations to the Negotiating Council on the delimitation of regions for the purposes of the election of Parliament in terms of the transitional Constitution. For this purpose the Commission shall take into account the following criteria:

3.1.1 historical boundaries, including provincial, magisterial and district boundaries and infrastructures

3.1.2 administrative considerations including the availability or non availability of infrastructures and nodal points for services

3.2

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3.5

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3.1.3 the need to rationalise existing regional structures (including the TBVC states, self-governing territories and regional governments)

3.1.4 the necessity of limiting financial and other costs as much as is reasonably possible

3.1.5 the need to minimize inconvenience to the people

3.1.6 the need to minimize the dislocation of services

3.1.7 demographic considerations

3.1.8 economic viability

3.1.9 developmental potential

3.1.10 cultural and language realities

The Commission shall invite all interested parties and persons to submit their views and recommendations regarding the delimitation of regions either in writing or orally on or before a date determined by the Commission.

The Commission shall submit its recommendations regarding the delimitation of regions to the Negotiating Council not later than 13 August 1993.

The Commission will furthermore be required to submit not later than 13 August 1993 recommendations to the Negotiating Council on the structures, procedures, functions and powers of regional governments under the transitional Constitution.

In the performance of this task the Commission shall take due cognizance of the progress made in the Negotiating Council regarding the formulation of consensus regarding the content of the transitional Constitution.

The continuation, appointment, composition and terms of reference of the Commission, as well the procedures regarding the acceptance, rejection or

referral of its recommendations by Parliament, shall be regulated by provisions especially included in the transitional Constitution.

The terms of reference of the Commission shall in terms of the transitional Constitution include inquiry into and the making of recommendations to Parliament regarding the final boundaries, powers, functions and constitutional structures of regions in the future constitutional dispensation.

#### 4 Functioning of the Commission

##### 4.1.

The Commission will determine its own procedures for gathering and considering evidence, provided that evidence and representations must be gathered from all parts of the country, and that cognizance must be taken of ongoing negotiations in the Negotiating Council.

The Commission will have sufficient staff and resources to perform its task as expeditiously and impartially as possible.

REGNCOMM. DOC  
12 May 1993

## SELF-DETERMINATION

1. Self-determination, in the sense of making one's own choices, developing one's own potential, securing one's own well-being and of not being subjected to undue external pressures and domination, is certainly a very basic human need and aspiration. Similarly, it has to be conceded that nations and national sub-groups have similar aspirations. It is therefore only natural that the law, which is a normative system to define and regulate human freedoms and aspirations, will also give recognition to this very essential need. For this reason it is unproductive and unnecessary to debate and contest the existence of the general right of self-determination of individuals, organised groups and nations. Stated succinctly, self-determination, being the expression of a basic urge to be master of one's own destiny, is recognised in law. What is of extreme importance for the purposes of this report, is not the existence of such a right, but the actual content, scope, application and protection of this right.

2. In international law, the right of self-determination has been one of the strongest factors in promoting the liberation of countries and peoples from colonial rule, foreign subjection and external domination. In recent years many countries and peoples, especially in Eastern Europe, have exercised their right of self-determination to liberate themselves from foreign rule.

3. In national legal systems the right of self-determination manifests itself at different levels of society and of the life of the nation, as regards the individual as well as groups. It would be wrong to assert that the right of self-determination is a right which finds application in only one sphere of life or pertains only to some individuals or groups. In order to understand the scope of the right of self-determination and its manifestations in a national legal system, it is necessary to distinguish between the recognition and the protection of the right of self-determination and, at the same time, to appreciate the limitations which the law imposes on this right ( in the same way that

all rights and freedoms have certain limits).

3.1 In a democratic legal system, the right of self-determination is recognised in different ways:

3.1.2 Generally, when mention is made of the right of self-determination, one immediately thinks of the right of organised and other national groups to protect themselves from undue influence or coercion. It is often forgotten that the individualâ\200\231s

right to self-determination takes precedence and that virtually no collective right of self-

determination can be recognised effectively without ensuring the individualâ\200\231s right to

freedom, own choice and self-fulfiment. Individual self-determination covers a whole range of human activities: thus, the right to life, liberty and property and public freedoms of contract, conscience, movement, association, etc, all serve to secure the individualâ\200\231s right to self-determination, in one way or another. (It is noteworthy that the German Constitution goes even further and expressly recognises the right to the full development of every personâ\200\231s personality).

3.1.3 A collective right of self-determination necessarily requires preceding constitutional rights and freedoms such as freedom of association, assembly, conscience, etc. to give effect and meaning to that right. It is self-evident that no group or groups will be able to maintain their identity and pursue their interests if they are not

allowed to contract freely, associate at will, disseminate their views openly, etc. Collective rights of self-determination, either separately or conjunctively, are exercised in different ways: in the labour field, trade unions, either on their own, or with employersâ\200\231 organisations, exercise collective rights of self-determination by means of

collective bargaining, the withholding of labour, etc; in the civic field citizen organisations also exercise their collective rights of self-determination in various recognised forms of group activities, be they of social, cultural or religious nature; in the political field collective rights of self-determination are best ensured by a pluralistic electoral system which allows free participation in elections and institutions of government. ( In this respect it might very well be necessary to create institutions on different levels of government to give greater recognition to political parties who enjoy less support on the national level, for it is clear that a political party with stronger regional support will feel more comfortable in the exercise of its right of self-determination if it is well-represented in the regional institutions where its support lies .)

What needs to be emphasised, is that collective rights of self-determination in a democratic society are not singular, solitary rights which can be claimed and exercised as such, but entail a totality of specific legal rights and freedoms which groups can rely

on in the context of predetermined social, economic and political relationships.

3.1.4 The rights of self-determination of linguistic, cultural and religious groups are of particular importance, especially if these groups constitute minorities vis-a-vis the general population. These groups are often well-organised and influential which allows them to exert influence and demand protection in all spheres of life and levels of society. This is not always the case, however, and especially in the face of an unsympathetic and even hostile majority the law would require special recognition and safeguarding of linguistic, cultural and religious expression (e.g. allowing mother-tongue instruction, special schools, support of cultural activities, etc). In this respect Article 27 of the International Covenant on Civil and Political Rights still provides the most useful criterion: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

4. In a democratic state, individual and collective rights of self-determination (which are, as explained, a totality of multi-faceted rights and freedoms pertaining to individuals and groups) are protected and safeguarded by various legal instruments and state institutions, the most important being:

4.1 A justiciable bill of rights and an independent judiciary

4.2 Watchdog bodies, such as ombudsmen, independent human rights commissions and generally a free press and an open society

4.3 Regional and local institutions as well as national bodies (e.g. a second chamber of the national legislature) in which collective interests can be accommodated more effectively.

4.4 Specially recognised and accredited linguistic and religious bodies of a representative nature which can act in conjunction with governmental bodies and institutions to safeguard the interests of cultural, linguistic and religious groups.

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5. Rights of self-determination, whether they are individual or collective, and which indeed form the basis of a democratic society, have certain limitations. They may not be exercised in such a way that they impinge upon the rights and freedoms of others or endanger national safety or the integrity of the state. It is for the latter reason that international law is extremely hesitant to recognise any unilateral secession from national state territory.) What is of the utmost importance is that the law will not recognise or enforce rights of self-determination which may lead to discrimination or unequal treatment on the basis of colour, race, gender, etc. In other words, this means that the law does not recognise one person's right of self-determination in such a way that it infringes on another's rights, particularly where issues of colour, race, gender, ethnic origin or creed are concerned. (It may be worth mentioning that Article 1.3 of the International Convention of the Elimination of All Forms of Racial Discrimination does allow differentiated treatment as far as nationality, citizenship or naturalisations is concerned. It must, however, be pointed out that this provision can certainly not be invoked to justify discrimination against a country's own citizens.)

6. Conclusion: The Technical Committee on Constitutional Matters included this general introduction on the right, or rather, rights of self-determination, not to denounce the existence of such rights, but in order to show that these rights cannot be viewed in isolation and out of their proper context. The Committee is convinced that, bearing in mind what has been said about the contents, scope and limitations of these rights, a much more fruitful and constructive discussion will follow in the Council if these rights are viewed and assessed under the headings of concrete topics such as the recognition and protection of fundamental rights and freedoms; regionalism and the form of state; representative institutions; free political activities; etc.

Addendum â\202¬

MEETING SCHEDULE : MAY 1993

DATE

GROUP

TIME

THURSDAY 13 MAY

TECH COM  
CONSTITUTIONAL  
ISSUES

9H00-20H00

FRIDAY 14 MAY

TECH COM  
CONSTITUTIONAL  
ISSUES

FRIDAY 14 MAY

PLANNING  
COMMITTEE

08H00-13H30

MONDAY 17 MAY

PLANNING  
COMMITTEE

14H00-17H00

TUESDAY 18 MAY

TECH COM  
CONSTITUTIONAL  
ISSUES

9H00

TUESDAY 18 MAY

NEGOTIATING  
COUNCIL

09H1S - 18H00



WEDNESDAY 19 MAY

TECH COM  
CONSTITUTIONAL  
ISSUES

9H000

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3.1,

CODESA basically reached a common understanding that

1.1. an interim constitution be negotiated in terms of which elections be held for an interim government which will also draft a new Constitution and;

1.2. a second phase from such election untill the new constitution is adopted and a new government installed in terms of the provisions of the new constitution.

1.3. the agreement on Constitutional principles be binding on the final Constitution.

B.A.C. INEUT  
We believe that

. An Executive Transitional Authority be negotiated in the negotiations process and take control over critical areas having a direct bearing on the transition such as I.E.C, I.M.C, SECURITY and defined areas of the budget. The E.T.A. is not a sub-council of the government but has full executive authority over the matters under its jurisdiction through enabling legislation. Meanwhile the government control other areas and amendments to the constitution may take place. This does not lead to a new permanent or new interim constitution but the same existing constitution as amended. It is not a new or different constitution because the same parties will remain in parliament. Therefore it is the same system albeit with possible amendments. There is therefore no need to negotiate an interim constitution. This is our response to the question of constitutionality during the transitional period.

. An operational Constitution is the Supreme Law and not the interim law.

The B.E.T.A. through its commissions should prepare for elections for an unfettered Constituent Assembly with the sole aim of drafting a new Constitution. This task should be completed within 18 months. The Constitution

should enshrine the Constitutional principles agreed upon.

The Negotiations Council should appoint a Technical Sub-Committee to Draft proposals on the bringing about and functioning of an elected Constituent Assembly/C.M.B. bearing in mind the aforementioned views.

Addamdam F

Constitutional Issues

B adendum G

Secretary: Kim Morgan Telephone: (011) 852-5766

Members (8)

1. Mr F. Cachalia

Tel (office)

Tel (home)

Fax:

Address:

2. Adv. A. Chaskalson

Tel (office)

Tel (home)

Fax:

Address:

3. Prof. G.E. Devenish

Tel (office)

Tel (home)

Fax:

Address:

4. Adv. E. Moseneke

Tel (office)

Tel. (home)

Fax:

Address:

b Adv. B. Ngoepe

Tel (office)

Tel (home)

Fax:

Address:

(011) 403-6918

(011) 614-5686

(011) 403-2341

CALS

Room 139

Law Building

Wits University

BRAAMFONTEIN

3 Tyne Street

KENSINGTON

(011) 836-9831

(011) 884-3456

(011) 836-8680/833-1747

8th Floor

Elizabeth House

18 Pritchard Street

Corner Sauer Street

JOHANNESBURG

(031) 816-2549/816-2488

(031) 21-7237

(031) 816-2559

565 Moore Road

DURBAN

4001

(012) 322-1511

(012) 322-2460

(012)

(012) 322-1535

(012) 322-1511

(01214) 80472

(012) 322-1511 X 2613

Advocateâ\200\231s Chambers

Momentum Centre

East Tower

343 Pretorius Street

PRETORIA -

0002

Prof. W. Olivier  
Tel (office)

Tel (home)  
Fax.  
Address:

Dr. F. Venter  
Tel. (office)  
Tel. (home)  
Fax.

Address:

Prof. M. Wiechers  
Tel (office)

Tel (home)

Fax:

Address:

2972 Block L  
SOSHANGUVE  
0152

(051) 308-839  
(051) 303-567  
(051) 313-033  
(051) 474-228

Advocates Chambers  
Iustitiagebou  
Aliwal Street  
BLOEMFONTEIN

9301

(012) 341-2400

(012) 343-7902

(012) 442-200

Room 202

260 Walker Building

Corner Celliers & Walker  
Streets

SUNNYSIDE

(012) 429-8335  
(012) 546-4636  
(012) 429-3321  
96 Dani Theron Street  
PRETORIA -NORTH

Department of Constitutional  
& Public

International Law

Room 325

Samuel Pauw Building

UNISA

P.OO. Box 392

PRETORIA

0001

FROM PAC

The CODESA Declaration of Intent ( page 30 of the Consolidated Document) contains 6 Constitutional Principles namely:

. S.A. will be united, democratic, non-racial and non-sexist state in which sovereign authority is exercised over the whole of its territory.

. the Constitution will be the supreme law and it will be guarded over by an independent, non-racial and impartial judiciary.

. that there will be a multi-party democracy with the right to form and join parties and with regular elections on the basis of universal suffrage on a common voters role; in general the basic electoral system shall be that of proportional representation.

. separation of powers between the legislature, executive and judiciary with appropriate checks and balances.  
the diversity of languages, cultures and religions of the people of S.A. shall be acknowledged.  
all shall enjoy universally accepted human rights...etc.

In addition CODESA Working Group 2 produced almost similar Constitutional Principles to be binding on a Constitution Making Body (P.48 Consolidated Report)).

PAC INPUT

In our new input we wish to stress that we support the idea to have constitutional principles to ensure that the settlement is internationally acceptable. To this end we refer to the Constitutional Principles of the U.N. Consensus Declaration of December 1989.

We furthermore believe that the question of Provinces and regions should be decided upon by the elected Constituent Assembly. At this point we may note that we are not opposed to anybody raising the issue in the Constituent Assembly.

MAY FORWARD

\_ Bearing in mind the Consolidated Report, the U.N. Declaration and the PAC input, the Negotiations Council should appoint a technical Sub-Committee to produce Constitutional Principles for discussion in the Negotiating Council.



The Consolidated document arises from the Planning Conference decision on

'How the CODESA agreements can serve as a constructive foundation for the resumed/commenced Negotiations Process to build on and how to accommodate the views of those participants who were not in CODESA.'

The status of the document is therefore a without-prejudice, non binding reference which makes the CODESA agreements easily manageable for easy reference. This idea is to see whether and how these non-binding views can be useful as a constructive foundation to build on.

This in fact means that the Planning Conference decision accepted that there are other views not covered by the CODESA agreement and which views must be canvassed. The sub-committee was not mandated to cover these other views and they correctly only compiled the CODESA report.

The Negotiating Forum of 17 April however identified the substantive matters which may or may not be covered by CODESA agreements and listed them as follows for consideration by the Negotiations Council.

Form of State and constitutional Principles  
\*Constitution-Making body/Constituent Assembly  
\*Transitional/Interim Constitution  
\*Fundamental Human Rights during the Transition  
\*PRC, its sub-councils, the IEC and IMC  
\*Future of the TBVC states  
\*Self-determination

It therefore becomes necessary in determining the way forward on substantive issues to bear in mind both the Planning Conference decision on the Codesa reference compilation and the Negotiations Forum decision on substantive matters to be dealt with by the Council. It follows therefore that

the Council alone is not sufficient in

referring to technical committees.

For that reason the P.A.C. wishes to make the following proposals regarding the substantive issues:

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AFR 29 Â°S3 16:94

CONSERVATIVE PARTY OF SOUTH AFRICA'S SUBMISSION WITH REGARD TO THE PROPOSALS TO THE NEGOTIATING COUNCIL ON THE APPOINTMENT OF TECHNICAL SUB-COMMITTEES AND THEIR PROPOSED TERMS OF REFERENCE ON CERTAIN MATTERS ARISING FROM THE CONSOLIDATED DOCUMENT,

It is important to note that the sub-committee, reports on page 60, that it has not completed its work.

The draft minutes of the meeting of the Planning Committee held on 1 April 1993 at the world trade centre refers in paragraph 6.2.1 on page 4 to the sub-committee as the Sub-Committee on Constitutional Issues, This is clearly incorrect. When was it decided and by whom to call this committee the Sub-committee on CONSTITUTIONAL ISSUES ? The draft minutes on page 5 paragraph 6.2.2 in this regard is also incorrect.

The draft minutes of the Negotiation Forum of 1 April 1993 on page 21 paragraph 6.2.0 reads as follows: "That a without prejudice (consolidated Document be drafted that will together with the Document of CODESA Agreements and the summary of CODESA Agreements form a trilogy of documents to facilitate the work of the Negotiating Council in their deliberations, and would further enable all participants to address the issues in full. It was noted that the Consolidated Document does not in any way pre-empt agreements by the Negotiating Council and that it is not a binding document."â\200\235

It is important to note that this consolidated report was to be drafted

a) without prejudice to anyone,

b) to facilitate the work of the Negotiating Council,

c) to enable all parties to address issues in full,

d) not to pre-empt any decisions the council might take, orâ\200\231

e) to bind anyone.

As a matter of fact it was stated by one of the delegates at the Negotiating Forum that such a consolidated report on what exactly transpired at Codesa could act as a "treasure chestâ\200\235 to be used or ignored if necessary. It was also clearly stated that there were no so called CODESA Agreements and was the sub-committee instructed by the Negotiating Forum to refer only to CODESA Reports.

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The Conservative Party was not part of Codesa and therefore Aot part to any so called agreements or underscandzngs between certain pbarticipants at that specific Forum, Therefore we Jook at thig ronsolidated report on what apparently happened at Codesa purely as a background and information document and not 2Â\$ 4 Sspecific point of departure on which any future process should necessarily ke built.

We lin the Conservative Party and this present negotiating brocess are therefore not bound by say process proposed by a previous Codesa Forum or by any bi-lateral agreements between any parties. We are therefore of the opinmion that 4 request for inputs and proposals to the Negotiating Council on the proposgsd appolintment of sub-committees and their Terms of Reference on matters arising from a non binding, non Pre-empting information document of what happened in the past are tetally premature and unnecessary. If ever there was an example or pre-empring the negotiation brocegs this ls it.

The Consgrervative Party therefore urges the NEGOTIATING COUNCIL and the PLANNING COMMITTEE in the interests of negotiations and a peaceful solution to the problems of Southern Africa not to proceed lin this fashion. The Negotiating Council was instructed by the Negotiating Forumn (see Addendum K page 48 - minutes) to conglider and report on certain lssues. The sequence with which this will]l pe done is off the utmost importance. Surely we can not merely continue with this process and take decisions while 20 parties and organisations who legitimately applied to Jjoin this process remains excluded. To report time and again that this matter has not veen settled ls simply no longer good enough.

The Conservative Party submits +that it ls unpractical and incorrect to reflect on matters flowing from the forming of @ state before decisions on the form of state itself and the Constitution thereof are arrived at.

It speaks for itself that to form sub-comittees on natters such as the election process, the handling of the media and even A Transitional Executive Council before firm decisions on the features of the State itself are taken, is putting the cart before the horses.

It is imperative that & correct, logical! and sensible course of action should be decided and embarked upon.

23 MAR 93 18:06 PAC

4.2. after the word "plenary" add a new sentence

'It is however advisable that maximum effort be employed in the Negotiating Council to attend to deadlocks which has arisen. To this end a standing Appeals Committee should be established with balanced representativity and acting as a sub-organ to which all structures from the Negotiating Council upwards can refer matters for proposed consensus formulation. The Appeals Committee may also propose bilateral discussions with or without mediators between parties after due consultation with them.

4.3. Add new sentence.

'This is subject to the agreed upon role of the international community.'

232 MAR 93 18:86 PAC

add new 10.4 to read

'should the item under discussion be a fundamental cornerstone of the approach to constitution making of one of the parties and no decision can be reached, a deadlock shall be deemed to exist . Such deadlock will be dealt with in terms of the

deadlock=breaking machinery.

IIEM 113

after the word 'appropriate' add  
having regard for the provisions of the dispute resolving and  
deadlock breaking mechanisms.,

CONSTITUTION-MAKING PROCESS  
{Based on CODESA\_Report)

MPF must agree on Constitutional Principles which must form the basis of first non-racial (Interim/Transition) Constitution and any subsequent amendments thereto

MPP must draw up first non-racial (I/T) constitution based on above Constitutional Principles and incorporating the concept of an interim/transitional government of national unity.

MPF must agree on  
3.1 procedures and percentages whereby a new parliament shall amend the first constitution to produce a final constitution

the independent Dbody which will adjudicate  
whielhivy any amenuaments rererred to in 3.1 above

are in line with the constitutional principles  
agreed to in 1.

a time-scale and mechanisms to ensure that  
parliament will produce a final constitution.

Wwhile the MPF is doing the above it must agree upon a

Transitional Executive Council (TEC) which will 'level the playing fields' and ensure free and fair elections for the new parliamont which will function in tesws uf Lhe first non-racial constitution.

Once the MPF has completed i. and 4. above a TEC can be brought into being.

Once the MPF has completed 1,2,3,4,and 5 a firm election date will be proclaimed and the formal election process Will commence.

Once the election has been held :  
7.1 the new parliament will be installed

7.2 the new multi-party interim government will be structured

the new structures at regional and local  
government level will be phased in.

When parliament amends the first constitution to produce a  
final constitution, the new structures of such final  
constitution could also be subject to a phasing in  
process.

GOVERNMENT' S AMENDMENT TO PROPOSAL TWO: REGULATION AND PROMOTION OF  
BROADCASTING = AND TELECOMMUNICATIONS AND MONITORING OF THE ELECTRONIC  
MEDIA

ta view of the fact that a free and fair election has to be held as soon as possible, it is necessary that credible structures should regulate telecommunications and to monitor the electronic media be created urgently to, inter alia, ensure the levelling of the political playing field. Such structures should be statutorily enacted and it is therefore proposed that a technical committee be appointed to formulate draft legislation for consideration by the Negotiating Council.

The technical committee should consist of suitably qualified persons and the following guidelines should be used as points of departure in drafting the aforesaid legislation:

The structures should consist of:  
1.1 A Licensing Authority

- to regulate the utilisation of the electromagnetic spectrum, including the allocation of licences and the determining of licence conditions, standards and codes of conduct.

An Independent Media Commission

- to monitor the electronic media to ensure compliance with licensing conditions, standards and codes of conduct.

#### Regulating Policy

The Act should set out the broad policy guidelines in terms of which the Licensing Authority must perform its functions.

such policy guidelines should inter alia compel the Licensing Authority to as far as possible ensure:

(1) that there will be a diversity of sound and television

broadcasting services available for all cultural and

language groups on a national and regional level, that

will provide in a balanced, equitable, and expert manner recreation, education and information; and

the impartiality of the electronic media regarding political issues and fair treatment of political parties.

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The Act should contain a procedure for the appointment of the members of the Licensing Authority that will ensure that they will generally be regarded as impartial and independent, as well as having the required expertise.

It is envisaged that the members of the Licensing Authority shall; be appointed by the State President on the recommendation of the TEC.

4. Pow â\200\230 o bl i Au

The Licensing Authority shall -

(i) apply the policy guidelines embodied in the Act;

(ii) formulate criteria to be applied in considering applications for licences;

(iii) prescribe and enforce licencing conditions (including prescribed standards and codes of conduct);

(iv) with the aid possibly of sub-committees, inter alia, perform the following functions -

(a) administering the electromagnetic broadcasting spectrum;

(b) issuing and withdrawal of broadcasting licences;

(c) monitoring the technical standard of broadcasting;

(d) advising the government of the day on broadcasting matters;

(e) settling disputes and acting as arbiter between broadcasters;

(f) application of the code of conduct and the punitive measures for transgressions thereof with the aid of Independent Media Commission; and

(g) determining guidelines for programme content of broadcasters regarding offensive, slanderous and racist material.

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(1) Provision should be made that the members of the Independent Media Commission be appointed by the State President on the recommendation of the TEC.

(i4) The chairman should be a jurist with 10 years' experience

in a legal environment such as an advocate, attorney lecturer in law or a judicial officer.

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The Independent Media Commission shall -

(i) monitor -

(a) the programme content of the electronic media for

breaches of licencing conditions and the provision of any code of conduct;



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(b) government publications for such favour or  
prejudice to any party that could jeopardize free  
elections.

serve as adjudicator for the hearing of complaints  
against inaccuracies or partiality or the denial of fair  
access on the part of the electronic media, and shall

have the power to order the rectification of any  
offensive conduct.

function and execute its powers in a manner determined by  
itself and which it considers as effective and may  
whenever it deems it necessary -

(a) consult any person for purposes of obtaining expert  
advice on any matter; and

(b) appoint sub-committees to perform such functions  
and duties as determined by the Independent Media  
Commission from time to time.

Provisions should also be made that the Independent Media  
Commission may, in its discretion, refer any matter involving a  
transgression by a licensee of its licensing conditions to the  
Licensing Authority for such action as it may deem fit.

#### CODE OF CONDUCT

A keystone of and pre-condition for the proper functioning of  
the Independent Media Commission is the existence of a Code of  
conduct (COC) for all licensed broadcasters.

such

a COC could form part, together with other conditions, as  
licensing conditions by the Licensing Authority.

Matters which could be contained in any COC, could refer to the  
following:

(a)

(b)

(e)

(a)

(o)

(f)

(g)

The broadcasting of obscene and lascivious matter and the  
protection of moral standards.

The privacy of sources of information.

Impartiality in dealing with news, news commentary and political interviews.

Equitable and fair access for all political parties to air time.

The exercising of due care and responsibility with regard to the reporting of crime, violence, brutality and atrocities.

The recognition of the cultural and language diversity of South Africa and its accommodation in programmes.

The recognition of the right of freedom of religion and conscience and the accommodation of the needs of religious programmes.

PR 29 33 15:01 MINISTRY HOME AFFAIRS 4612359

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The Licensing Authority and the

shall have a budget to perform their duties as allocated to them  
from. time to time and shall be accountable to the executive of  
provided that once  
it

the interim constitutional authority,  
representative Parliament comes

accountable to Parliament.

into being,

Independent Media Commission

shall be

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sâ\200\231nmu â\200\230s . AMENDMENT TO PROPOSAL ONE: INDEPENDENT RLECTION  
COMMISSION â\200\230

In view oof the fact that a free and fair election has to be held as soon as possible, it is necessary that credible election structures Âfor such an election be created urgently. Such structures should be statutorily enacted and it is therefore proposed that a technical committee be appointed to formulate draft legislation for consideration by the Negotiating Council.

The technical committee should consist of S5 suitably qualified persons and the following guidelines should be used as points of departure in drafting the aforesaid legislation:

#### 1. Election structures

Tl The structures should consist of:

Independent Election Commission (IEC)  
The Administrator of the Election  
Election Monitoring Authority  
Adjudication tribunal

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Trate The establishment of the aforementioned structures would require an Act of Parliament subject to prior approval by the

Multi Party Forum (MPF) or the Transitional Executive Council (TEC) .

A maximum of 11 members to be appointed by the State President on recommendation of the MPF or TEC.

#### 2.2 Qualificationa Of mambers

South African citizenship and the necessary expertise and experience to achieve the main objectives successfully.

#### 2.3 chairman

Option 1: To be designated by the MPF or TEC from the ranks of the Independent Election Commission.  
Option 2: The members of the IEC on a rotational basis.

#### 2.4 Eunctions

(1) Drafting of the [Electoral Act, regulations and instructions which will have to be formulated in such a manner that it will ensure the holding of a free and fair election;

3.

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(il) training and guidance of the voters corps by way of, inter alia:

- the development of training programmes and the . distribution of information in that regard;
- the monitoring of information programmes of political parties and other interested groups and the taking of correctional steps when necessary;

(441) supervising and co-ordinating of election structures referred to in paragraphs 1.1.2 and 1.1.4}

(iv) certifying at the end of the election that the election had been free and fair, or not.

WMMISM  
Election

composition

Chief Electoral Officer assisted by two deputies to be appointed by the IEC.

Qualifications

Suitable persons, fully conversant with election matters and able to properly conduct elections.

Functions

To conduct all the facets of the election in terms of an

Electoral Act and regulations, which could entail the following:

- the arrangement for the allocation of sufficient funds for the holding of the election;

the proper identification of voters;

the recruitment and appointment of sufficient and suitable personnel for the effective conducting of the election;

the formulation of an ethical code for political parties;

the registration of political parties and their emblems;

the registration of candidate lists;

the composition of the ballot paper;

the identification of suitable venues for polling stations

and the furnishing of sufficient equipment and stock;

the safeguarding of ballot boxes and ballot papers;

the fixing of suitable venues for the counting of votes;

and

- the determining of the result of the election.

4.  
4.1

4.2

4.3

5.2

5.3

Composition and powers of the Monitoring Authority  
" o

The appointment of three respected and knowledgeable persons by the IEC as a committee managing the monitoring function,

the National Peace Secretariat could be commissioned to perform this function.

Chairman  
Members of the committee on a rotational basis.

Functions

The monitoring action shall be focused on all levels of the election hierarchy to determine whether the rules of the game are being complied with.

This Monitoring Authority can in particular be made responsible for the following matters:

accreditation of local and foreign observers;  
co-ordinating of all local monitors; '  
appointment of own monitors where necessary;

considering and accepting of monitors of organisations insisting on monitoring.

Membership  
composition

A tribunal consisting of (five persons who either hold a judicial office, or who have gained experience as an advocate, attorney or lecturer in law at an university, for a period of at least 10 years to be appointed by the IEC.

Chairman

Option 1: Designated by the MPF or TEC.  
Option 2: Designated by the IEC.  
Option 3: On rotation.

Functions

- to strive to settle election disputes in an independent and impartial manner.

- to settle any question in connection with the holding of a free and fair election referred to it, and make its decision known in public.

- to settle election disputes speedily and effectively.





- to establish a panel of persons with expertise and experience on all levels of the election hierarchy to settle election disputes.

- to, of its own accord, take notice of any circumstances or events that may obstruct the conducting of a free and fair election, lodge an investigation, summon and question

witnesses, make a finding and take or recommend the necessary action.

Financing of structures

To be provided by the Department of Home Affairs.

General

The technical committee will consider such other matters that

will be conducive towards a climate of tolerance, democratic values and an ultimate free and fair election.

23 March 1993

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IN \_RESPECT OF STANDING RULES

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1.1 The rules relating to Consensus/Sufficient Consensus decided upon at the Mulli Party Planning Conference of 6/6 April should apply in order to determine whether there is Consensus/Sufficient Consensus.

#### Procedures on Issues

2.1 In the event of there not being sufficient consensus the matter would be referred to the technical committee.

The technical committee would consider the views expressed and try to find a consensus position. In this process, the technical committee could:

(a) request MPC delegations and/or outside experts to give evidence;  
and/or

(b) set up sub-committees consisting of technical committee members and/or outside experts and/or other MPC delegates and advisers.

The technical committee would report to the mrC on what it believes is the consensus position or as close to it as is achievable at that stage.

If the MPC is still unable to reach sufficient consensus, the matter will be referred back once more to the technical committee to see whether, having heard the MPC debate, it is able to propose an amended report (after taking further evidence if necessary) to the MPC.

If the MPC is unable to reach sufficient consensus after it has considered the technical committee's second report, the MPC will then have to decide how to proceed further.

#### Use of Indicative Secret Ballots

Decisions should be made on the basis of consensus / sufficient consensus. However, provision should be made for indicative secret ballots both in respect of appointments (e.g. to agenda and technical committees) and on issues. These ballots would not be decisive or binding, but would help to guide the MPC towards finding sufficient consensus more quickly than the procedures used at CODESA.

DIKMAMKWETLA PARTY CF SOUTH AFRICA

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SUBMISSION OF cnxmuâ\200\230\',â\200\231\mnxsstou TO PARTICIPATE IN THE  
MULTT-PARTY NEUOTIATION PROCESS.

ro q@ity for admission the applicant must show:

1.1 ' That it is indeed a political party or organisation intending  
to purticipate as such in the first election under a transi=  
tional/new constitution.

fheth it has proven substantial support in a national and  
regional context.

That its admission will enhance the peaceful ncgotiating  
srocess .

That to assist in the application of the criteria, the applicant  
political parties and organisations be free to submit whatever facts  
or argupents they would wish %, but that they be required to at  
laalt:g respond to the questionnaire annexed to this report. For  
this pufpose it is proposed that in paragraph 6 of the questionnaire  
"Legiglative Assembly" is added after â\200\234parliamentâ\200\235 to the list of  
organtsations.

Parties. that have taken part in previous elections regional or  
national should be admitted, if preaf therefore can be produced.

Deleggtions of traditional leaders from the Transvaal, the Orange  
Free iï-\202u and the Cape Province are presently participating. Ve  
have pellr tpld that representation on this basis creates a number  
of prebleas., It was suggested that this form of representation he  
sublt:tuâ\200\231;tgð by one delsgation each from thc two main national  
ormiâ\200\230.'lï-\202m of traditional leaders. It is recommended that  
conOMm be given to this proposal.

TCTAL P.@2

7â\200\2301.3.

after item (C) add a new paragraph.

'A political party or organisation is one which intends to contest for political power and not just any structure with a political characterâ\200\231

add a new item:

(d) it must submit a llist of at least 500 names, signatures and addresaes of persons over the age of 17 who intog?,d voting for it.

that this paraqraph?%be deleted.

1. We endorse the appointment of a Technical Sub-Committee  
to work on the terms of reference Proposed by the Sub-  
Committee.

TOTAL P.11

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ADDENDUM 'G

THE ELBCTION DATE.

Since the election of representatives with due mandates to to draf a new Constitution in a elected Constituent Assembly/ Constitution Making Body is a prerequisite to the drafting of a new constitution and the hearlding of stability, justice and equality for all, and since steps need to be taken to this end as a matter of urgency.

We propose that the Negotiating Council appoints a Technical Sub-Cammittee of 4 persons to investigate the most feasible date for such elections and to report back to the Negotia- tions Council through the planning Committee within 10 days.

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3.

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We have read and understood the CODESA agreement on the T.E.C. and we have fresh inputs to make in accordance with the Planning conference decision. These fresh inputs will point out where the CODESA agreements are useful and and where it could be changed to be improved.

IIILE

we believe that the structure should be called the Transitional Executive Authority (T.E.A.). It is an authority with full executive powers for the issues under its jurisdiction and not merely a council under the current government. The government, through legislation, will relinquish its executive powers over the issues the T.E.A. will deal with and the T.E.A. assumes equal executive powers with the government only in respect of the issues under its jurisdiction, thereby becoming an effective executive authority.

The T.E.A. exists alongside the current government subject to possible amendments to the current constitution. These changes to the constitution constitute amendments and not a new or interim constitution.

STRUCTURE

The structure of the T.E.A. will be constituted by legislation agreed to in negotiations. It will have

. - a multi-party Executive including 1 representative per identified world body in a non-voting capacity.

. - the following Commissions and sub-structures

elections & shall be independent of the government but not of the T.E.A. The T.E.A. will ratify and/or amend decisions of the I.B.E.C

3.2.2. Independent Media Commission and Independent Electoral Commission

3.2.3. COMELOS

cations board. Its relations to the current government and the P.B.A. will be the same as that of the independent Elections Commission.

=

This commission will both level the playing field and create conducive conditions for the holding of free and fair elections. It will concern itself with law and order, security and all armed formations including those in the

T7.B.V.C. states. It will supervise a mutual cessation of hostilities agreement between those who were hostile to each other before entering into such agreement. It will supervise all armed formations according to agreed codes

conduct and roles of armed formations during the transition agreed upon by the Negotiations process.



This commission will ensure that Finances for the tasks of the T.B.A. and its structures, budgetted for by this Commission in Consultation with the T.E.A. Executive and provided by the government, are used in terms of legislative requirements. â\200\230

#### THE WAY FORWARD: FROPOGAL

The Negotiating council should set up 2 Technical Sub-Committee on an Pransitional Executive Authority taking poth the CODESA report and the above proposals as its terence and drafting proposals to facilitate

negotiations at the Negotiations Council. The I.B.C. and ã%gï¬\202g{ could be attended to by gsaparate Tecinical Sub-tees only to facilitate expedituous work but this

does not reflect its total structural separation from

x T.E.A.

EVThERâ\200\224L 00 LU0

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=) hni ub-Committee

We endorse y Â£ a Technical 8

p! e the appointment

} to work on the terms of reference prOp00Qd by the Sub-  
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We endorse the creation of a single Technical Sub-Committee with the following terms of reference:

The Independent Telecommunications Board.  
Independent Media Commission

Investigating the effectiveness of the Media Council of the print media and recommend improved measures (if necessary) in raising complaints against untruthful/biased print media reporting. The aim is the levelling of the playing field in the period leading up to elections.

We further endorse the detailed terms of reference in respect of the ITA and I.M.C. as contained in the sub-committee proposals.

Further PAC views on the Independent Telecommunication Board and Media Commission will be submitted to the Technical Sub-Committee.

we refer to the sub-committees recommendation o the Planning Committee.

We endorse the terms of reference of a Technical Sub-Committee charged with the task of drafting a legislative framework for the Independent Elections Commission.

PAC views on the I.E.C. will be given to the Technical sub-committee.

. AZANIAN NATIONAL YOUTH UNITY  
(PAC) OF AZANIA

PO Bax 25246  
FERREIRASTOWN  
2048 SOUTH AFRICA  
YOUR REF:

OUR REF: Tel: (011) 836-0407/42/57  
Fax (011) 838-3705

27 APRIL 1993  
TO: ALIL MEMBERS OF THE MULTI PARTY PLANNING CONFERENCE.

Dear lLadies and Gentleamen,

The Azanian National Youth Unity - the mainstay of the Azanian liberation wishes to raise its concern to all participants of the

Negotiating Forum in regard to the agreements of the Constituent Assembly.

what we have expected as the people of this country is that, by now there should have been progress as far as voter registration is concerned, because we feel the regime and its allies are playing a delaying tactic in order to prolong the agony of the Azanian masses. -

We therefore demand that there should be voter registration now, and a move towards the agreements on the modalities of the Constituent Assembly. :

If this is not done within a reasonable period of time, your

forum will definitely be subjected to challenge from the youth of this country, of which peaceful means falls out.

Yours in the struggle for settler-colonial destruction.

## CRITERIA FOR PARTICIPATION IN THE MULTI-PARTY MEETING PROCESS

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Whilst it is desirable that all political groupings who intend to participate in the negotiation process should be afforded an opportunity to do so, it is equally important to ensure that the parties seeking affiliation have a reasonable measure of support. Evidence of such support and an indication of the constituency in which they operate should be furnished in support of their applications.

A decision on such an application should be taken after it has been evaluated with due regard having been had for the criteria referred to above and provided the application is supported by at least two thirds (2/3) of the existing participants.

Where an applicant fails to qualify for admission as a fully fledged member of the negotiating forum, the party should nevertheless be afforded the opportunity of making inputs so that their views could be given due consideration by the participants at the Negotiating Forum.

SOLIDARITY PARTY

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SUBMISSION TO NEGOTIATING COUNCIL  
RESPECT 2F RECENT 7ICLENT ATTACKS CH

JOURNALISTS

MR M.J MAHLANGU

SECRETARY GENERAL OF THE UNITED PEOPLES FRONT

STATEMENT

When a British member of Parliament pointed to the Press Gallery  
and declared : " Yonder sits the Fourth Estate, more important  
than them all ", he was hardly exaggerating.

Particularly in South Africa today., the Media are probably the  
most valuable single vehicle for a successful transition to

democracy and this for several reasons :

It is mainly via the Media that the  
complexities of the negotiation  
process can be conveyed to the public.  
The Media play a major role in

shaping and determining the mood of  
the people, in promoting the  
reconciliation so essential to this

nation. |

The Media provide the information and  
insight necessary for that most important

of all qualities : WISDOM.

4) and finally, we emphasize a tragic tendency in this country : While politicians and political parties find it impossible to operate in certain areas, hold political meetings, do door to door canvassing, because of disruptions, hostility, violence - it is mainly via the Media that many people can be informed about significant developments - this maintaining at

least a semblance of democratic Norms.

There are many " hill " slogans being bandied about today by foolish though dangerous people.

Two of them are as foolhardy as the one that proclaims the

" KILLING OF THE MESSENGER "

As we've seen newsmen are being killed, crippled and wounded in this country.

The question of what can be done to stop these despicable acts, is a complex one.

Here are a few suggestions emanating from discussions held with journalists and other concerned people :

AP |



Politicians must not only continue to  
publicly condemn such attacks in the  
strongest possible terms, but must  
spread the message on the ground so

that every township dweller becomes a  
protector of newsmen visiting their  
areas. It must be made clear to those  
who attack reporters and cameramen, that  
communities will assist vigorously in  
hunting down the attackers and handing

them over to the authorities.

( The ANC set an excellent example of this recently, when they  
hunted down some of those who had attacked two SABC Newsmen.)

It is advisable for newsmen not to simply  
barge into a potentially dangerous area -  
although often this is like trying to  
persuade a dog not to bark.

Nevertheless, it would be a good thing for  
them to first consult the police and  
political parties in the area and inform  
them of their intended presence.

It is also advisable not to send into the  
township those who are not " township wise ".  
Specialisation in township reporting is

essential.

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However, as the

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urprise element IS the  
attackers main weapon, attention should  
also be given to more drastic measures.  
Like the Red Cross, I=w newsmen are  
prepared to carry weapons.

For obvious reasons, direct protection by  
the police is not advised, but there can be  
no objections to0 private security companies  
providing protection to journalists in  
dangerous areas.

Again as with the Red Cross, journallists and  
their vehicles should carry identification  
insignia.

The word " PRESS " should be prominently  
displayed on the vehicles and on the  
clothing of journalists.

This should be a UNIFORM sign available to  
all -ournalists, operating in dangerous areas  
It should not indicate for what organization  
the journalist works.

The above are just a few suggestions of what could be done.

It's highly likely that there are many more.

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zowever this is a prcolem, -he soluticn ToO wnlc. we ~ust vigorously  
pursue.

cynics, ( cften quite rightly ) accuse Africans of regarding their  
solitical cpponeents as enemies and of treating them a&s such.

Journalists are not and should not be the enemies cf the people.  
They are the essential messengers.  
Ne do not want to estrange them from us, or make it difficult, or  
impossible for them to do their work properly.

Someone once likened press freedom in Africa to " muffled drums "

In South Africa we want iournalists to pe able to project a clear  
message that will be peneficial to us all.

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