

**D. TRANSITIONAL EXECUTIVE COUNCIL
(TEC)**

VOLUME TWO

D: TRANSITIONAL EXECUTIVE COUNCIL (TEC)

SUBMISSIONS RECEIVED BY THE TECHNICAL COMMITTEE: TRANSITIONAL EXECUTIVE COUNCIL (TEC) BY 10.00 A.M. ON FRIDAY 21 MAY (AND NOT INCLUDING SUBMISSIONS AND DOCUMENTATION DISTRIBUTED TO THE NEGOTIATING COUNCIL ON TUESDAY 18 MAY 1993)

13.	Venda	14/05/93	Submission
14.	NIC	14/05/93	Outline of submission
15.	Gender Advisory Committee		Report to Codesa
16.	Kangwane	19/05/93	Submission.
17.	IFP	18/05/93	Position paper.
18.	Intando Ye Sizwe	19/05/93	Submission.
19.	TIC/NIC	19/05/93	Submission.
20.	ANC	19/05/93	Proposal for submission.
21.	ANC	19/05/93	Proposed terms of reference for TEC sub-council on Defence.
22.	ANC	19/05/93	Restructuring local government political, financial and administrative structures during the pre-interim period.
23.	Ximoko Progressive Party	16/05/93	Submission.
24.	National Peoples Party of SA	19/05/93	Submission.
25.	DP	19/05/93	Comments on First Report.
26.	PAC	21/05/93	Submission: Relationship between the Independent Media Commission (IMC) and the Transitional Authority (TA)

D13**VENDA GOVERNMENT****THE TRANSITIONAL EXECUTIVE COUNCILS**

1. The Transitional Executive Council will be established to reflect Multi-party character, which will include TBVC States representatives to participate unconditionally.
2. The TEC will be vested with effective executive powers sufficient to fulfil its terms of reference.
3. It will have Sub-councils which will be given specific responsibilities in relation to areas of particular concern.
4. TEC will have access to all information which may be required by it for the purpose of exercising its functions.
5. TEC will be able to delegate powers to the Sub-councils.
6. The following Sub-councils should be established.
 - 6.1 regional and Local Government.
 - 6.2 Finance.
 - 6.3 Law and Order.
 - 6.4 Defence.
 - 6.5 Foreign Affairs.

D14

NATAL INDIAN CONGRESS

Founded by Mahatma Gandhi in 1894

P.O. Box 19172, Durban, 4015
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MEMORANDUM

TO: PLANNING COMMITTEE
MULTI - PARTY NEGOTIATIONS

FROM: NATAL INDIAN CONGRESS
TRANSVAAL INDIAN CONGRESS

DATE: 13 MAY 1993

RE: SUBMISSIONS TO TECHNICAL COMMITTEE

1. We refer to the circular from the Planning Committee dated 11 May 1993 inviting participants to make submissions to the Technical Committee (TC).
2. At this stage we wish to submit an outline of our submissions to the TC's. Our submissions will be made to the following TC's.

Violence, Constitutional Matters, Fundamental Rights During the Transition, Transitional Executive Council.

3. The following is an outline of our submissions to the above mentioned Technical Committees:-
4. **VIOLENCE**

- Causes of Criminal and Political Violence
- Mechanisms to Combat Violence
- Mechanisms for an Anti-Crime Coalition
- Mechanisms for Community Policing
- Mechanisms to Combat Political Violence

National Peace Accord

Joint Control

Improving Policing Resources

Retraining of Police

Independent Monitoring of Investigations.

5. CONSTITUTIONAL MATTERS

Form of state: Central & Regional Government

Constitutional Principles:

- * Affirmative action
- * "Minority Rights"
- * Other Constitutional Matters

6. FUNDAMENTAL RIGHTS DURING THE TRANSITION

7. TRANSITIONAL EXECUTIVE COUNCIL

Additions to the Terms of Reference: a) Levelling the Playing Field
b) Creating a Climate of Free Politi-

cal Activity

Composition

Sub-Councils: to include Education

Decision Making

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**GENDER
ADVISORY
COMMITTEE**



REPORT OF THE GENDER ADVISORY COMMITTEE TO CODESA 2

Due to enormous public pressure about the lack of representation at CODESA of women, who form 53 % of the population, and subsequent suggestions and submissions by women's organisations, political parties and other organisations, the Management Committee of CODESA decided to form the Gender Advisory Committee. The GAC is a subcommittee of the Management Committee charged with the special task of looking into the Terms of Reference, minutes and decisions of each of the Working Groups, and those of the Management Committee, and advising on their gender implications. All CODESA participants have so far sent representatives to the GAC with the exception of the Bophuthatswana and Venda Governments.

The GAC met for the first time on 6 April and has diligently studied the Terms of Reference, minutes and most of the decisions already taken by the Working Groups as well as internal and external submissions from women's organisations and political parties, with an unusual spirit of unity. The GAC has reached consensus on many issues, but consensus was not reached on others.

1. RECOMMENDATIONS AND ADVICE ON THE GENDER IMPLICATIONS OF ISSUES RAISED IN WORKING GROUP 01

1.1 The Free Political Participation of Women

Noting the Terms of Reference of Working Group 01, Items 1.1.4 (k), (p) and (o), the GAC recommends the following:

- 1.1.1 The rights of access of women to public facilities and meeting venues should be ensured, as should their right to meet with political organisations. This recommendation is necessary so that women can participate without fear and on an equal footing in the political process.
- 1.1.2 The right of access of political organisations to public facilities, and their right to meet with potential voters, is meaningless unless women may participate in the democratic process on an equal footing without fear of public or private harassment and intimidation.
- 1.1.3 That the roles mentioned here (Item 1.1.4 (o) of the Terms of Reference of Working Group 1) concerning educative and informative campaigns should be broadened to include specific educational campaigns informing women of, inter alia, their right to vote, particularly in areas where women are unlikely to be reached by usual media.

1.2 Agreements on Political Intimidation and Women

With regard to the agreement reached by sub group 2 of Working Group 1 on the Definition of Political Intimidation, the GAC recommends that the following additions be made to the activities which would, as per the aforesaid agreement, be considered, in particular, as forms of political intimidation (refer to Item 4.2 of the Minutes of the meeting of Sub-Group 2 of Working Group 1, 2 March):

- 1.2.1 To compel women, both within and outside the home, by virtue of the "power" vested in men with whom they may associate, to adopt a particular political position; or to similarly prevent women from engaging in free political activity.
- 1.2.2 To use political patronage in any form that threatens or denies an individuals political, social and economic rights, especially noting that women are frequently the victims of such practices.
- 1.2.3 To sexually harass any individual and thereby prevent him/her from the freedom of the right of expression/opinion, association and movement.

With regards to item 1.3.3 above the GAC defines sexual harassment, in general terms, as sexual advances without express consent, including innuendos or language of a defamatory or offensive nature, in all spheres, including political, social and economic life and in the media.

1.3 Agreements of the Interpretation of the National Peace Accord

With regards to agreements reached by Sub-Group 2 of Working Group 1 re the implementation and interpretation of the National Peace Accord, the GAC recommends that the following additions be made (refer to Item 6.1.6 and Item 6.4.1, respectively, of the minutes of Sub-Group 2 of Working Group 1, on 7 April):

- 1.3.1 That the reference to "Business representatives" in clause 7.4.4.3 of the NPA be interpreted to include representatives from professional and women's organisations.
- 1.3.2 The NPA make special efforts to include representatives of relevant local and tribal authorities as well as local women's structures into all RDRC and LDRC structures.
- 1.3.3 With regards to item 1.4.2 above (and with specific reference to items 6.1.6, 6.3.2, 6.4.2, 6.5.2, 6.6.2, 6.6.3 and 6.8 of the minutes of the meeting of WG1 SG2, 7 April) the GAC recommends that as part of its input on the interpretation and implementation of the NPA Working Group 1 recommend that women be included in all structures created by the NPA, RDRC's and LDRC's to ensure that gender implications of all decisions and functions of these structures, are considered.

1.4 On the Security Forces, Free Political Activity and Women

Noting that the many acts of violence committed against women allegedly by the security forces are a source of grave concern, the GAC recommends that:

- 1.4.1 any such crime be immediately investigated;
- 1.4.2 violent crime against women be treated with stricter and more stringent disciplinary action;
- 1.4.3 when searches of homes are conducted, women police must accompany male police;
- 1.4.4 the position of high ranking officers who are unable or unwilling to maintain adequate control over their forces be urgently reviewed;
- 1.4.5 any peace keeping force should include women within their structures at all levels;
- 1.4.6 the gender sensitivity of these forces (refer to item 1.5.5) be monitored;
- 1.4.7 all individuals be informed of their rights with regard to the role and functions of these forces (refer to item 1.5.5);
- 1.4.8 these forces (refer to item 1.5.5) be trained to be gender sensitive and to ensure that they do not violate the rights of women.

Noting the lack of agreement in Working Group 1 over the definition of political prisoners, no recommendations with regards to the gender implications of this issue could be agreed upon.

The GAC also recommends that any Security Force established in the country, including the TBVC states, must begin to immediately redress race and gender imbalances both in their composition and functioning at all levels and introduce a Code of Conduct and norms which will create confidence among all the people of South Africa.

1.5 Working Group 01 Terms of Reference

The GAC proposes that Item 1.1.4 (c) of the Terms of Reference of Working Group 01 should be amended to read as follows:

"The amendment and/or repeal of any remaining laws militating against free political

activity including the elimination of racial and gender discriminatory laws."

1.6 The Media in the Transition (Recommendation to Working Groups 01 & 03)

The GAC recommends that Working Group 1 and Working Group 3 agree upon a politically neutral Independent Communications Authority which shall:

- include gender conscious persons;
- facilitate media access for women;
- monitor and discourage sexist programmes, articles and advertising;
- encourage non-sexist, non-discriminatory publications;
- ensure the participation of women on all media bodies, at all levels;
- organise that radio and television programmes which educate women about the democratic process and their right to participate therein without fear of intimidation, are prepared as a matter of urgency

2. Recommendations and Advice on the Gender Implications of the Issues Raised in Working Group 02

2.1 Constitutional Principles

The GAC advises that:

- 2.1.1 It fully supports a Justiciable Bill of Fundamental Human Rights to be attached to the constitution.
- 2.1.2 It fully supports the concept of a qualified Equality Clause in the Bill of Rights and the Constitution.
- 2.1.3 It recommends that Working Group 2 address the problem of redressing and eliminating gender inequalities.
- 2.1.4 It recommends to WG 2 that they take note of the desirability of a document containing a set of ideals regarding gender issues, which should be accepted by a future Constitution Making Body as a document to be used by the courts to assist women in claiming and exercising their rights under the constitution and Bill of Rights to ensure gender equality.
- 2.1.5 The GAC further recommends to Working Group 02 that the Bill of Rights include some form of rights and protection for children.

2.2 Constitutional Language

The GAC recommends that the terms "men and women" and "men, women and children" be used wherever respectively appropriate, in the drafting of the Constitution, in place of the terms "people" or "persons".

2.3 On Agreements Reached Regarding Constitutional Principles

Regarding the "Provisional Areas of Commonality that Already Exist" in Working Group 02 as adopted by the Steering Committee of WG 02 on 27 April, the GAC recommends the following (refer to Document prepared by the Steering Committee of Working Group 2 on 27 April):

- 2.3.1 Item 1.1.3 should be amended to read "The diversity of languages, cultures and religions will be acknowledged, within the non-racial and non-sexist principles of the Constitution."
- 2.3.2 Item 1.1.7.1 should be amended to read "A judiciary that will be independent, non-racial, impartial, gender sensitive and inclusive of women."
- 2.3.3 Item 1.1.7.2 should be amended to read "An entrenched and justiciable Bill/Charter of Fundamental Rights, which will protect the rights of women and children."
- 2.3.4 Item 1.2.2 should read "At each level there shall be democratic representation, consistent with non-racial and gender sensitive principles."
- 2.3.5 Item 1.3.1 should read "A new constitution shall provide for effective

participation of minority political parties consistent with democracy, non-racialism and non-sexism"

2.4 Constitution Making Body/Process

- 2.4.1 The GAC recommends that when drawing up the electoral procedures, methods should be sought to encourage full participation of women. This should apply to both encouraging women to exercise their political rights to campaign and stand for election as well as to vote. These provisions would include, among others, education programmes, elimination of sexual harassment (refer to item 1.3), drawing up of electoral lists and giving women reasonable exposure in the media.
- 2.4.2 The GAC strongly recommends that all parties include a fair proportion of women in their electoral lists. It is essential that women are evenly distributed within the lists, to ensure their inclusion in the elected body.
- 2.4.3 The GAC recommends that any committees set up by the Constitution Making Body must contain an adequate number of women.
- 2.4.4 The GAC recommends that the Constitution Making Body should consider a sub-committee to monitor and raise gender issues in the drafting of the Constitution and the Bill of Rights.
- 2.4.5 The above 4 proposals should apply to future elections at a local, regional and national government level.

3. Recommendations and Advice on the Gender Implications of the Issues Raised in Working Group 03

3.1 The Funding of Programmes for Women

The GAC advises that Working Group 3 reach an agreement on the principle of funding and programmes to ensure the meaningful participation in, and education about the democratic electoral process.

In order that women be timeously informed about the franchise, and thus enabled to participate in interim elections without fear of pressure or intimidation, it is suggested that such agreement be expeditiously concluded.

3.2 The Technical Report to the Steering Committee of Working Group 3

The GAC advises the Technical Committee, Working Group 3 and its Steering Committee on the following points concerning the Technical Committee's recommendations made on 27 April:

3.2.1 In addition to Item 7.1 of the report:

"* Shall include women in its composition."

3.2.2 Item 10 of the report should state:

"The transitional executive structure will be constituted by legislation agreed to by Codesa, will have a multi-party character, including women and be . . ."

3.2.3 The reference to "persons" in line 14 of Item 10 of the report should be replaced by a reference to "men and women".

3.2.4 Line 5 of Item 14 of the report should read:

"Save for agreement that the TEC must have multi-party character, including women, the precise criteria . . ."

3.2.5 It is also recommended that the proposed TEC should include a Gender Structure, the exact nature of which is still to be determined.

3.3 Women and Local Government

The GAC advises that special mechanisms be created to promote the participation and representation of women in local government structures, so that these structures more closely reflect the gender composition of the populace.

Any projects undertaken during the life of CODESA and the Interim or Future Governments should be aimed at the interests of all groups in local communities including women.

3.4 The Media in the Transition (Recommendation to Working Groups 01 & 03)

The GAC recommends that Working Group 1 and Working Group 3 agree upon a politically neutral Independent Communications Authority which shall:

- * include gender conscious persons;
- * facilitate media access for women;
- * monitor and discourage sexist programmes, articles and advertising;

- encourage non-sexist, non-discriminatory publications;
- ensure the participation of women on all media bodies, at all levels;
- organise that radio and television programmes which educate women about the democratic process and their right to participate therein without fear or intimidation, are prepared as a matter of urgency

3.5 Women and the Foreign Service

Noting that South Africa's foreign relations have mainly been conducted by men, as from the interim government women should be trained, employed, promoted and recognised on an equal basis with men within the diplomatic service. Any existing discriminatory regulations and practices with respect to gender and race in South Africa's foreign service need to be removed.

3.6 Land and Women

The GAC wishes to place on record that no consensus could be reached on the following proposals concerning land and women:

Proposal 1: That Working Group 3 suggest an urgent Commission of Enquiry into legislation which prevents women's access to land ownership in South Africa and the TBVC states, and that the results of such an enquiry be immediately embodied in legislation.

Proposal 2: That Working Group 3: (1) look into those laws which prevent/inhibit women's ownership of or access to land in South Africa and the TBVC states, with the intention of amending or repealing those laws and (2) that there should be an immediate moratorium on the sale and transferral of all state property to private or corporate individuals and organisations.

4. General Recommendations to Codesa (to all Working Groups)

4.1 Non-Sexist Language in CODESA documentation

The GAC recommends that CODESA documents should explicitly define the word "person" as referring to both men and women.

4.2 Gender Discriminatory Legislation

The GAC recommends the repeal of all legislation in South Africa and the TBVC states which discriminates on the basis of race, creed or gender which circumscribe and impede free political, economic or social activity. We suggest that this be attended to by a general law asserting certain basic civil and political rights, combined with an omnibus law repealing all legislation in accordance with a schedule of Acts to be provided by the GAC.

We advise Working Groups 1, 2, 3, 4 and 5 to assist in the identification of such legislation.

5. Conclusion and The Way Forward

In conclusion, and in view of the short period of time which the GAC had had at its disposal, the GAC wishes to point out that, as of 7 May, proposals and recommendations on the proceedings of Working Group 4 and 5 have not yet been formulated, and that there are certain areas in other Working Groups on which consensus has not yet been reached. The GAC would also wish to look at present discriminatory legislation which needs to be repealed or amended. The GAC therefore recommends that it continues with its work after CODESA II both in terms of uncompleted work, feed-back on its submissions from the relevant Working Groups and forthcoming agreements emanating from the various Working Groups and committees.

LITIKO LETEMISEIFO NEIEMTSETFOSISEKELO
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL AFFAIRS
DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGESAKE



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TO : MULTI-PARTY ADMINATTENTION : DK ELOFFTELEFAX NO. : (011) 397 2211

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Number of pages to be send 6 (including this page).SUBJECT : SUBMISSIONS

MESSAGE : NO SUBMISSIONS FOR THE MEDIA AND ELECTORAL
COMMITTEES AS THE PLANNING COMMITTEE EXPECTS
DRAFT BILLS FROM THEM.

SIGNATURE

DATE

19/05/93

INYANDZA NATIONAL MOVEMENT'S
TO
SUBMISSION ~~ON~~ THE TECHNICAL
COMMITTEE ON TRANSITIONAL
EXECUTIVE COUNCIL

A transitional executive structure will be constituted by legislation agreed upon at the Multi-Party Forum. It will have a multi-party character vested with effective executive powers. The structure will include a council hereafter referred to as the Transitional Executive Council (TEC). The TEC will have sub-councils which will be given specific responsibilities in relation to areas of particular concern during stage one of the transition.

Regional governments will be considered to include provincial administration, self-governing territories and TBVC states which will have elected to co-operate and work within the transitional executive structure.

Provision will be made for the application of the following sub-councils:

1. Regional & Local government.
2. Finance.
3. Law and Order, Stability and Security.
4. Defence.
5. Foreign Affairs.
6. Elections.

REGIONALISM

The critical issue in any framework for regional government is the relationship between, on one hand, regional and central

- 2 -

government and, on the other hand, regional and local government. Regional government will be empowered to exercise a law-making and executive power in relation to the areas listed hereunder, provided that regional legislation will have no force where it is repugnant to national laws. Accordingly, in regard to its legislative and executive powers, the central state shall have concurrent and overriding jurisdiction.

Regional governments shall have the powers to implement and administer national policy and legislation, when empowered by national legislation to do so. The areas designated as likely areas of regional government are the following:

- (i) the imposition of taxes in accordance with a national policy;
- (ii) education, other than tertiary education;
- (iii) health services, including hospitals;
- (iv) welfare;
- (v) housing;
- (vi) transport, including harbours, airports and roads;
- (vii) markets;
- (viii) works;
- (ix) traffic control;
- (x) environment;
- (xi) industrial and other development within the region;
- (xii) gambling;
- (xiii) town and regional planning;
- (xiv) imposition of punishment by fine, imprisonment or other sanctions for the contravention of any laws of the regions;
and
- (xv) all other matters delegated to it by Acts of Parliament.

- 3 -

REGIONAL POWERS**CONCURRENT AND OVERRIDING JURISDICTION**

The regions would be entitled to enact laws dealing with any aspect of the areas specified, provided that the provisions of such legislation are not repugnant to national legislation.

ORIGINAL POWERS

The powers of the regions will be original in the sense that they would be conferred on the regions by the constitution, not by statute or government.

EXCLUSIVE JURISDICTION

In respect of all matters not expressly specified the central state will have exclusive jurisdiction to make laws.

DELEGATED POWERS

The region will be able to administer and implement national policy where empowered to do so by national legislation which may delegate both legislative and executive functions even in respect of non-specified matters.

RESIDUAL POWERS AT THE CENTRE

The regions would not have any residual powers.

- 4 -

POWER TO COMPEL PERFORMANCE

The central state can implement national policy within a region - even or especially when a region refuses to implement national policy when legislation authorises the regions to do so.

MULTI-LEVEL JURISDICTION OVER SPECIFIED MATTERS

In relation to specified matters, all three levels of government may have legitimate interest and could perform some functions more appropriately than any of the other two levels. Thus in both Health as well as Education, there may be national policy regarding qualifications, access and funding. Regional government may be concerned with the locations of facilities and the management of resources. Local government/authorities are the appropriate bodies to regulate and supervise the provision of services by hospitals and schools. Indeed, there may be even a 4th level of function, e.g. those performed by parents at the level of the educational institution.

LOCAL GOVERNMENT

There are two options here. On the one hand, it could be proposed that the law dealing with local government be in the form of a national statute. On the other hand, it may be possible to entrench local government in the constitution. This would protect some of their powers from the central state and the regions.

- 5 -

FUNCTIONS DEEMED INAPPROPRIATE FOR REGIONAL GOVERNMENT

The document presented at the South African Conference on Federalism places the administration of justice, law and order, mining, commerce, land and agriculture within the competence of regions. This is unacceptable. These are clearly matters which fall within the ambit of the central government.

MULTIPARTY NEGOTIATION PROCESS
TECHNICAL SUB-COMMITTEE ON TRANSITIONAL EXECUTIVE COUNCILS

POSITION OF THE INKATHA FREEDOM PARTY

WORLD TRADE CENTRE : 18 MAY 1993

The Inkatha Freedom Party participated in discussions in negotiations in CODESA I and II and argued from the outset that a single phase transitional process was needed in South Africa. The IFP rejected the notion of an elected constituent assembly becoming the constitution making body. (See the IFP's position as set out in Appendix A).

In the give and take of negotiations, the IFP was prepared to make concessions in return for concessions made in its favour. In this give and take, the IFP supported the notion of a two-phase transitional process on a clear proviso that nothing would be done to establish transitional mechanisms until an interim constitution had been finalised by CODESA and until a set of constitutional principles had been agreed to which would become binding on the constitution making body.

This concession was further motivated for the IFP by Working Group II agreements that boundaries, powers and structures of regions would be finalised and entrenched in the process before an election would be held.

The IFP remains convinced that a single phase transitional process is required and is adamantly opposed to what it perceives to be the threats to constitutionality by the establishment of Transitional

Executive Councils which could erode the due process of government under a constitution.

The IFP warns against attempts to move towards transitional structures by stealth in the form of establishing all the necessary mechanisms for a transitional government prior to settling the form of State and prior to full agreements about the nature of the political dispensation to be introduced through the transitional mechanisms.

The IFP therefore insists that the work of the Technical Committee on Transitional Executive Councils should be suspended until clarity in the form of state has been established. In fact only once the form of State has been clarified will it be possible to determine the stages and phases of the process of transformation. The determination of the process is a necessary pre-condition for any further discussion on the purposes, role and powers of the Transitional Executive Councils.

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**SUBMISSIONS OF THE INTANDO YESIZWE PARTY TO THE TECHNICAL
COMMITTEE ON THE TRANSITIONAL EXECUTIVE COUNCIL.**

The appointment of a Transitional Executive Council arises from the need to level the political playing field with a view to removing all impediments to free political activity in preparation for the holding of free and fair elections.

In view of the fact that the appointment of the TEC is not accompanied with the dissolution of the now existing Parliament of the RSA and the other administrations, it becomes important that the position or status of the TEC and its sub-councils vis-a-vis the RSA Parliament, the different departments of state and the other administrations be clearly stipulated. It therefore becomes extremely important for the mandate, powers, functions and authority of the TEC and its sub-councils to be clearly defined.

The need for the levelling of the political playing field in preparation for the holding of free and fair elections is a genuine and dire need to the masses of South Africa who have been denied the right to vote and put at the back of the political arena for so long. With the mammoth burden facing the TEC, this body, together with its sub-councils should therefore be given over-riding powers.

The TEC and its sub-councils cannot perform its duties, nor exercise its powers in an advisory capacity as this will frustrate the very purpose for which it was established and turn it into a mute, tooth-less watch-dog.

The TEC should be a body clothed with authority, and its decisions must be binding upon the Parliament, departments of state and administrations concerned. It must be able to over-rule any decision of the Parliament, departments of state and administrations, with powers to prescribe to these bodies on matters falling within its jurisdiction in accordance with the enabling act. The TEC will therefore not only have the same status as Cabinet, but will also have powers to over-rule Cabinet and Parliament on matters falling within its mandate.

Finally, in order to enable the TEC to perform its duties correctly, not only its powers should be out-lined, but also the method for the implementation of these powers.

MEMORANDUM

TO : THE PLANNING COMMITTEE OF THE NEGOTIATING COUNCIL
FROM : TRANSVAAL INDIAN CONGRESS / NATAL DURBAN CONGRESS
DATE : 19 MAY 1993
RE : SUBMISSIONS TO THE TECHNICAL COMMITTEE ON THE TRANSITIONAL EXECUTIVE COUNCIL (TEC) AND ITS SUB-COUNCILS

1. The proposals of the NIC/TIC on the Transitional Executive Council and its sub-councils are based on the transition process outlined in Annexure "A" hereto.

2. PURPOSE

- 2.1. In terms of the NIC/TIC scenario for the transition it is vital that a Transitional Executive Council and its various sub-councils be established by mid-1993.

- 2.2. The purpose of the Transitional Executive Council would be to :

- (a) create a climate for free political activity throughout South Africa.
- (b) create the conditions for a fair and free elections.

(c) levelling the political playing fields.

3. SUB-COUNCILS

3.1. Sub-councils should be established for the following

3.1.1. Defence;

3.1.2. Law and order and security;

3.1.3. Finance;

3.1.4. Regional and local government;

3.1.5. Foreign affairs.

4. POWERS OF THE TRANSITIONAL EXECUTIVE COUNCIL AND SUB-COUNCILS

4.1. Both the Transitional Executive Council and its sub-councils should have full executive powers in respect of the matters referred to in paragraph 3 above.

4.2. The State President, Cabinet Ministers and officers under the South

African government and other administrations shall only act in respect of these matters with the prior approval of the Transitional Executive Council and its sub-councils.

4.3. The Transitional Executive Council and its sub-councils shall have full access to all information and personnel relevant to the matters in 3 above.

4.4. The Transitional Executive Council and its sub-councils may intervene in respect of any matter other than those in 3 above should such matter, in their view, affect issues in paragraph 2.2. above.

5. **RELATIONSHIP TO SOUTH AFRICAN CABINET**

5.1. The Transitional Executive Council shall have Cabinet status and shall be empowered to intervene in relevant matters in accordance with powers in paragraph 4 above.

6. **DECISIONS**

6.1. Decisions in the Transitional Executive Council shall be taken by a two-thirds (2/3) majority.

- 6.2. Disputes shall be referred to the Transitional Executive Council for adjudication.

19 MAY

Proposal for submission by the African National Congress to the
 Technical Sub-committee on ~~Constitutional Issues~~ TEC

Terms of reference for Sub-council on Local and Regional Government

The Sub council should exercise executive jurisdiction over the existing provincial administrations, self-governing territories, TBVC states, and relevant government departments (ie. Departments of Foreign Affairs, Finance, Regional and Local Government, and Land Affairs).

A set of committees should be established by the sub-council to deal, inter alia, with the following issues:

- * **Finance:** Co-ordination and review of 93/94 budgets, and any additional budgetary appropriations;
- * **Land:** Alienation, allocation and transfers;
- * **Administration:** Reorganisation of administrative structures and processes, personnel and training; review of strategic plans
- * **Services:** eg. planning, health, housing, infrastructure, education, transportation, to ensure continuity, co-ordination and provision of services;

The committees should deal with the above issues at both regional and local levels, where appropriate.

The aim of the committees, and the sub-council as a whole, is to give effect to multi-party joint control over certain key areas, in order to level the playing fields prior to elections. The sub-council, and its committees, would cease to operate after national elections for a constituent assembly, and an interim government of national unity.

Terms of reference for the committees:

- * Review existing statutory proposals and legislation;
- * Initiate proposals for legislation, budgets, restructuring of administrations;
- * Supervise any transitional measures being introduced;

In respect of local government in particular, the sub-council should have the following terms of reference:

- * Address the current crisis of local government, particularly the collapse of services in certain areas, and the shortfall of finances;
- * Supervise the appointment of interim structures for the pre-interim period;

- * Create the necessary conditions for local government elections to take place, after the national elections;
- * Liase directly with, and take proposals from, the Local Government Negotiation Forum on proposals for electoral systems, boundary demarcation processes, voter registration, and the structure, powers and functions of interim local government;
- * Establish a representative local government demarcation board to demarcate non-racial local government boundaries for elected interim local government structures;

19 MAY, 1993

ANC PROPOSALS

ANC

PROPOSED TERMS OF REFERENCE FOR TEC SUB-COUNCIL ON DEFENCE PAGE 1

PROPOSED TERMS OF REFERENCE FOR TEC SUB-COUNCIL ON DEFENCE

MANDATE

Working Group 3 of Codesa proposed the following broad mandate for the sub-council on defence:

This sub-council will acquaint itself with developments concerning defence and military formations at all levels of government (central, regional or local) and concerning all other participants in the TEC; it will take steps to identify and promote all developments in this field which in its opinion may impact favourably upon the levelling of the playing fields and free political participation, and the creation as far as possible of a climate of peace and stability; it will take steps to identify and to prevent within its powers all developments in this field which in its opinion will impact adversely upon peace and stability, the levelling of the playing fields, free political participation or the transition to democracy.

SPECIFIC POWERS

The TEC shall delegate to the sub-council the following powers to enable it to fulfil its mandate. Decisions of the sub-council shall be subject to confirmation or amendment by the TEC.

1. Executive authority

The sub-council shall require government and other participants in the TEC to submit all decisions related to military developments for its consideration and approval.

The sub-council shall have the further power to require government or other participants in the TEC not to proceed with any military development which, in its opinion, will undermine or prejudice the objectives outlined in its mandate.

Such developments shall be construed as including proposed legislation on defence; the restructuring of military formations; the formulation of budgets; the appointment of officers to the General Staff; the manufacture and procurement of weaponry; strategic planning; training; and any other matter related to the mandate of the sub-council.

The State Security Council SSC and all structures flowing from the National Security Management System NSMS, including the Joint Monitoring Committees JMC should be disbanded. It would be the task of the Joint Intelligence Structures to verify this. In so far as there are any authorised intelligence structures connected to the SADF, the above provisions shall also apply.

2. Review of legislation

The sub-council shall have the power to review and suspend existing legislation related to defence and military formations.

3. Deployment of military formations

The role of the SADF shall be to protect the borders of South Africa against foreign aggression. The SADF shall not have an internal brief. The sub-council shall be responsible for advising the TEC on the circumstances under which a military formation of government or any participant in the TEC may be deployed in an operational capacity.

The government and other participants in the TEC shall be required to submit to the sub-council for its consideration any proposal to deploy a military formation in an operational capacity, and shall not undertake such deployment without the approval of the TEC.

4. Control of military formations

The sub-council shall have the power to order any military formation of government or any participant in the TEC to take stability, the levelling of the playing fields, the creation of a climate conducive to free and fair elections or free political activity.

5. Code of Conduct

The sub-council shall have the power to formulate a Code of Conduct which shall be binding on all members of military formations of government and other participants in the TEC. It shall take into account the code of conduct being developed for the SADF through the structures of the National Peace Accord.

6. Access to information

The sub-council shall have unrestricted access to all information which concerns defence and military formations of government and other participants in the TEC.

7. Complaints

The sub-council shall have the power to hear complaints concerning military formations of government and other participants in the TEC from the Independent Electoral Commission, the Goldstone Commission, National Peace Accord structures, the TEC and any participant in the TEC.

8. Investigation

The sub-council shall have the power to investigate or order the investigation of any matter which relates to its mandate. This power shall include the power to search premises, to seize documents and to subpoena persons to give evidence before it under oath.

9. Disciplinary Powers

If, after thorough investigation, the sub-council is of the opinion that any member of a military formation of the government of any participant in the TEC is guilty of serious misconduct, it shall have the power to take appropriate disciplinary measures.

Serious misconduct by a member of a military formation shall be construed as the instigation or commission of unlawful violence; the obstruction of the operation of the sub-council or the TEC; a violation of the Code of Conduct; or any other activity intended to undermine free political participation or the transition to democracy.

Appropriate disciplinary measures shall include the censure or the suspension or dismissal of the member concerned from the military formation concerned.

The sub-council shall also have the power to recommend that criminal proceedings be instituted against the member concerned.

The sub-council shall have the further power to investigate the military unit of a member found guilty of serious misconduct.

10. Planning for the new Defence Force

The sub-council shall have the power to begin the process of planning and formulating policy for the integration of armed forces and the establishment of a Defence Force.

11. Support for non-government military formations

The sub-council shall allocate resources to support the welfare of members of military formations of non-government participants in the TEC.

12. Sub-Structures.

The sub-council shall have the authority to consult experts, or establish committees of experts, to assist it in administration, research, investigation, implementation or any other activity necessary for its effective functioning.

13. Joint Military Co-ordinating Committee

The sub-council shall have the power to establish a Joint Military CO-ordinating Committee, comprised of senior representatives of military formations of government and other participants in the TEC, to oversee and monitor the implementation of its decisions and instructions.

GUIDING PRINCIPLES

The sub-council shall be guided by the following principles:

- South Africa shall be committed to resolving internal and external conflict primarily through non violent means.
- National security and personal security shall be sought primarily through efforts to meet the social, political, economic and cultural needs of the people.
- South Africa shall pursue peaceful and co-operative relations with neighbouring states.
- The security institutions shall be bound by the principle of civil supremacy and shall be subject to public scrutiny and open debate.
- The security institutions shall reflect the national and gender composition of South African society and shall implement affirmative action programmes to this effect.
- ✓ The security institutions shall be accountable and answerable to the public through a democratically elected parliament.
- ✓ The security institutions shall respect human rights, non-racialism and democracy, and shall act in a non discriminatory manner towards the citizenry.
- ✓ The security institutions shall be politically non-partisan.

CONTINUING RESPONSIBILITY FOR CONDUCT OF MILITARY FORMATIONS

Nothing in these terms of reference or the operation of the sub-council shall be construed as detracting in any way from the responsibility of government and other participants in the TEC to ensure that their respective military formations, and the members thereof, comply with the Code of Conduct and other-wise conduct themselves in a manner conducive to the fulfillment of the mandate of the TEC.

SUBMISSION BY THE AFRICAN NATIONAL CONGRESS TO THE TECHNICAL SUB
COMMITTEE ON ~~CONSTITUTIONAL ISSUES~~

T.E.C.

MAY 19, 1993

RESTRUCTURING LOCAL GOVERNMENT POLITICAL, FINANCIAL AND
ADMINISTRATIVE STRUCTURES DURING THE PRE-INTERIM PERIOD

1. Introduction

This submission is based on a framework that has been adopted by working group one (Legal and Constitutional) of the Local government Negotiation Forum (LGNF), and incorporates the proposals presented by the non-statutory delegation to the LGNF.

This proposal is located within the following understanding of the timeframes and process of the transition to democracy in South Africa.

The 'interim phase' begins with elections for the establishment of a Constituent Assembly/ Constitution-making body (CA) and an Interim Government of National Unity (IGNU). The interim phase ends when the CA has completed its work, and the IGNU is replaced following elections on the basis of a new constitution.

The period prior to these elections is defined as the pre-interim or pre-elections phase, during which the Transitional Executive Council (TEC) and the sub-councils are established.

2. What is our conception of the process of transition for local government?

The removal of apartheid at local government level cannot take place in isolation from a national framework.

There is a need for interim local government structures to address the crisis of local government. However, interim local government structures should be consistent with constitutional principles adopted at CODESA. Local government restructuring should not be used as a means to delink the local transition from the national constitutional process. Our concern is that such delinking will result in pre-empting certain key constitutional issues, and finalise the local government system during the interim period.

Having said this, while the process of local government transition is to some extent dependent on, and will need to be co-ordinated with national multi-party negotiations, delays in such negotiations should not prevent the introduction of pre-interim measures at local government level.

3. **In terms of local government restructuring, what do we want to achieve during the pre-interim period, i.e. in the period prior to elections for interim local government?**

- 3.1 The pre-interim period must address the crisis of service provision at the local level. The immediate aim should be to ensure that municipal services are properly provided during the interim period. In addition, all residents should pay for services received.

In order to address these related issues, six specific problem areas need to be addressed during the pre-interim phase:

* **Legitimacy**

Interim local government structures, that are more widely acceptable, need to be put in place as part of the solution to the services and the payments problem.

* **Arrears**

The writing off of arrears is a key issue for all parties to resolve in order to move towards better service delivery and resumption of payments.

* **Quantity and quality of services**

A system of **measurable improvements** in the quantity and quality of services needs to be introduced during the pre-interim phase. This system needs to produce clear results that are visible to all residents.

* **Maintenance of services**

Services, once provided, need to be properly maintained. Existing Black Local Authority administrations are not in a position to maintain services to a sufficient standard, and agency agreements with neighbouring local authorities have only provided short-term relief to the problem. This problem needs to be addressed through the introduction of new interim administrative arrangements.

* **Affordability**

There are two parts to this problem.

Firstly, as long as tariffs for services are calculated on the basis of segregated unviable budgets (as is the current case with BLAs), the general criteria of affordability will be very difficult to achieve. Therefore, single budgetary

processes, on the basis of 'one city, one tax base' need to be introduced.

Secondly, there are large number who are unable to afford the cost of even minimum levels of services. Interim tariff mechanisms, including internal subsidisation and other measures need to be put in place in order to address the issue of affordability for the very poor.

* **Public Education**

Many families who have not been paying charges for services have become accustomed to use their disposable income in other ways. A system of public education, that outlines and promotes a set of negotiated interim political, financial and administrative measures, and assists families with a re-budgeting process, needs to be put in place.

The above criteria have been put forward in an attempt to resolve the problems of services and payments during the interim period. They are based on practical experiences of civics and other organisations of some of the shortcomings of locally-negotiated agreements over the past three years. Interim measures need to deal with the **structural** problems of local government in a far-reaching manner. The so-called 'culture of non-payment' is a symptom of these structural problems that needs to be addressed. The problems of non-payment are broader than the issue of the rent boycott.

- 3.2 The pre-interim phase should lay the basis for the transition to democracy at a local level. This should include the removal of existing local government councils, and their replacement with interim councils. The boundaries within which such structures exercise their powers must consolidate what was previously fragmented on the basis of race.

Pre-interim structures should establish multi-party control over local government resources. Such structures will enable joint responsibility and authority to be taken by **all local** government stakeholders.

It is **also** critical that unilateral restructuring be stopped. The only effective prevention of this is through the establishment of interim political structures.

- 3.3 A legal framework should be enacted to establish local negotiation forums. Local negotiations should be encouraged as a means to ensure inclusive local involvement in the process of local government transition.

Local forums should discuss any issue that is relevant to the running of local government during the pre-interim and interim periods or relevant to proposals for the establishment of new local government systems.

Local negotiations's will be an important and necessary component regarding the running of local government in the pre-interim period. These forums will need to involve local stakeholders and consensus proposals emanating from such forums should be considered to be binding on all parties to the local forums.

Such forums should formulate proposals concerning future local government models.

Once interim structures have been elected the role of the negotiation forums will change. Final political say regarding the running of local government and the submission of proposals for future local government systems in the area concerned, will be vested in the elected body.

- 3.4 The LGNF and local forums should begin debating final local government models, for submission to the Constituent Assembly/ Constitution-making body.

4. **The ANC supports the following option for the restructuring of the local government political structures during the pre-interim period: Dis-establish existing local government political structures (i.e. governing councils), and replace with appointed Interim Local Councils (ILCs)**

- 4.1 **Interim local government councils:** It is proposed that existing racially defined constitutional structures be dissolved and replaced with single local government bodies based on non-racial boundaries. These new structures will be local government bodies legally and practically.

These temporary local government bodies will be responsible for the running of local government in the pre-elections phase and preparing for local elections. They should take the form of appointed Interim Local/Metropolitan/District Councils's (ILC).

Ideally this appointment should occur after the appointment of the National Transitional Executive Council, but delays at the national level should not stall the appointment of ILC's.

- 4.2 **Powers and functions:** The powers and functions of ILC's will be based on existing deracialised legislation or ordinances which should be amended and/or repealed and made uniformly applicable (i.e. applicable across what were previously racially defined local authority boundaries).

- 4.3 **Appointment of ILC's:** Every local level negotiation forum will be required to make recommendations for the membership of the ILC, within a certain period of time. The ILC will be constituted on the basis of parity between statutory and non-statutory delegations.

In addition, each ILC could be chaired by an independent chair, assisted by two

assistant chairs (one from each delegation)

Appointment of the ILC could be by the proposed Local and Regional Government Sub-Council if this structures is in place. In its absence, appointments could be made by the LGNF (or a sub-committee thereof) in terms of the existing powers of Provincial Administrators.

The sub council or the LGNF, whichever makes the appointments, should be obliged to accept consensus proposals emerging from local forums, where they have been established in terms of national guidelines). The regional and national structures of the LGNF could establish deadlock breaking mechanisms to assist were local forums cannot reach agreement.

- 4.4 **Decision making:** ILC's should strive to make decisions on the basis of consensus, however, the chair and assistant chairs should act as a deadlock breaking mechanism.

In the event of the ILC's failure to reach a decision, the chair should meet with his/her assistant chairs and act as arbitrator whose decision will be final and binding.

All ILC decisions would be required to fall within the applicable legal framework.

- 4.5 **Finance, services and administration:** Service delivery, financial and administrative arrangements should be restructured according to the following principles:

4.5.1 Single budgets should be drawn up by unified administrations which shall take full financial responsibility for the whole area within their jurisdiction, under the direction of interim local authorities;

4.5.2 Services should be provided on a co-ordinated basis by unified administrations, under the direction of interim local authorities;

- 4.6 **Preparation for local government elections:** ILC's should begin making the necessary preparations for elections for interim local government, in conjunction with the LGNF and the sub-council on local and regional government. These preparations should include voter registration and voter education.

5. **Implications for changes to local government boundaries**

- 5.1 The appointed interim councils should exercise control over all local government functions on the basis of jurisdictions that cut across existing racially defined boundaries.

Interim local government boundaries should be based on recommendations from local negotiation forums.

- 5.2 In many cases however, the demarcation of interim boundaries will be an extremely complex process. In order to address this complexity a representative local government boundary delimitation commission should be established to hold hearings and make recommendations where conflicts arise within or between local, sub-regional or metropolitan areas.
- 5.3 The effect of pre-interim structures must be to ensure a single authority exercises political authority over all resources in a given **single** jurisdiction, based on non-racial boundaries. This may have to be achieved in different ways in different local contexts:
- * **Metropolitan regions:** In order to avoid pre-emptive restructuring it will be necessary to draw a single political boundary around the metropolitan areas. Such boundaries could be in terms of RSC boundaries or functional criteria. In order to achieve non-racial jurisdictions (and avoid pre-emptive restructuring) political authority will need to be concentrated at the top. Existing local boundaries should be used as deconcentrated administrative boundaries under the single political authority, and resources (currently concentrated in the white local authorities) should flow freely between the administrative boundaries.
 - * **Stand alone cities/towns:** The process of disestablishing apartheid local government and establishing interim single political structures, administrations and budgets must be defined and implemented during the pre-interim and interim periods. This is a process, and a separation of administrative and political boundaries should be made to assist with that process.
 - * **Rural local government:** It is envisaged that interim district councils (IDCs) be established. An option in this regard would be the establishment of strong political IDCs, which excludes small towns within the rural district.

It is proposed that restructuring of boundaries for all three of the above categories include homeland (self-governing and TBVC) boundaries as well.

6. **Interim legislation**

Legislation should deal with running of local government in the interim and pre-interim periods. The legislation regarding the running of local government should be both enabling and mandatory in character.

On the one hand measures regarding the dissolution of apartheid local government bodies and the establishment of institutional structures and financial frameworks aimed at improving service delivery should not be made optional. Such measures must be mandatory.

On the other hand the broad mandatory framework should be complimented by an enabling framework aimed at enhancing the capacity of the local structures and

stakeholders to address issues in the pre-interim phase in a manner that is responsive to local needs and conditions.

The legislation would need chapters on finance, administration, political structures, electoral procedures, boundaries, service delivery, negotiation forums, national and regional authorities as far as local government is concerned etc. The legislation will probably need a section of general frameworks as well as chapters to deal with local government in the self-governing territories and the TBVC states, and differing arrangements within different local contexts will need to be provided for.

7. **Role of the Local Government Negotiation Forum (LGNF)**

The LGNF is an important negotiation forum, in that it brings together many local government stakeholders and expertise.

One of the main functions of the LGNF should be to put forward proposals for new legislation to replace the **Interim Measures for Local Government Act, 1991**, and section 28 and 29 of the **Provincial and Local Authorities Affairs Amendment Act, 1992**. This should be done as soon as possible, in order to address the current local government crisis.

The LGNF should have a structured relationship with the TEC sub-council on local and regional government.

TEC Sub council on regional and local government: proposed terms of reference

1. The sub council should exercise executive jurisdiction over the existing provincial administrations, self-governing territories, TBVC states, and related central government departments (e.g. Foreign Affairs, Finance, Regional and Local Government, Land Affairs).
2. A set of committees should be established by the sub-council to deal, *inter alia*, with the following issues:
 - * **Finance:** Co-ordination and review of 93/94 budgets, and additional budgetary appropriations;
 - * **Land:** Alienation, allocation and transfers;
 - * **Administration:** Reorganisation of administrative structures and processes, personnel and training; review of strategic plans;
 - * **Services:** e.g. planning, health, housing, infrastructure, education and transportation, to ensure continuity, co-ordination and provision of such services;
3. The committees should deal with the above issues at both regional and local level, where appropriate.
4. The committees should:
 - * Review existing statutory proposals and legislation;
 - * Initiate proposals for legislation, budgets, restructuring of administrations;
 - * Supervise any transitional measures that are introduced by the TEC;
5. **The aim** of the committees, and the sub-council as a whole, is to give effect to multi-party control over certain key areas, in order to level the playing fields prior to elections. The sub-council, and its committees, would cease to operate after national elections for a constituent assembly, and an interim government of national unity.
6. In respect of local government, the sub-council should have the following terms of reference:
 - * Address the current crisis of local government, particularly the collapse of services in certain areas, and the shortfall of finances;
 - * Supervise the appointment of interim structures for the pre-interim period;
 - * Create the necessary conditions for local government elections;

- * Liaise directly with the Local Government Negotiation Forum on proposals for electoral systems, boundary demarcation processes, voter registration and the structure, powers and functions of elected interim local government;
- * Establish a representative local government boundary demarcation board;

XIMOKO PROGRESSIVE PARTY

SUBMISSION TO THE TECHNICAL COMMITTEE ON THE
TRANSITIONAL EXECUTIVE COUNCIL

D23

16 MAY 1993

The Ximoko Progressive Party has supported the principle of a Transitional Executive Council and Sub-Councils as the centre piece of the Interim Government Structure preceding the period of Transition.

However, the X.P.P is concerned at the practicability of full deployment of such structures given the present timetable envisaged for elections, and given the delay of almost a year since these structures were first contemplated by CODESA. Deployment of the full system would arguably only be practical if some role were envisaged for these structures in the transitional period as well.

D24

NATIONAL PEOPLE'S PARTY OF SOUTH AFRICA

76 Trisula Avenue
Arena Park
Chatsworth
4030

19 May 1993

Dr. T. Eloff
The Management
Multi Party Negotiation Process
World Trade Centre

Dear Dr. Eloff

Kindly submit the following as the views of the N.P.P.
to the Technical Committee on the Transitional Executive
Council.

Need for the T.E.C.

There was definitely an emerging consensus at the Working
Group No. 3 of Codesa on the need for the First Phase of the
transition process in order to :

1. Have Independent control of the media, appoint
an Independent Election Commission, etc.
2. Have Joint Control of the Security Establishment
3. Level the playing field (In respect of Social matters

The N.P.P. fully supports the need for the establishment of
the T.E.C.

Status

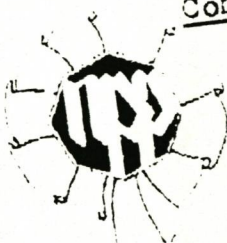
It is significant that the T.E.C. have Cabinet status in
all respects.

Note ought to be taken of the fact that the status of Own
Affairs Ministers is no different from that of a member of
the Cabinet.

The T.E.C. should function side by side, on equal terms,
with the Executive of the country. It should not be inferior
nor superior.

Composition

1. T.E.C. The T.E.C. should have at least one person from
each participant at the M.P.N.P.
2. Sub-Councils . No participant should have more than
one person serving on a Sub-Council



N.P.P. Submission

Page Two

Each member of the T.E.C. must serve on at least one sub-council.

Substitutes should not be allowed.

Full Time Executives

The members of the T.E.C. or the Sub-Councils should be regarded as Executives - no higher or lower than a member of the Cabinet.

OBJECTIVES

In addition to the items listed in the first report of the Technical Committee it is necessary to highlight the levelling of the playing fields.

For this purpose there should be a sub-Council for Social Development. The T.E.C. must be empowered to deal with any matter if, in its opinion, that such matters have a negative impact on the levelling of the playing fields.

POWERS

The legislation must clearly define how the decisions of the T.E.C. would be implemented.

Furthermore the T.E.C. must have the power to call to its meetings any political office bearer or any official in respect of the matters that it would be dealing with.

CONDITION OF SERVICE, remuneration, allowances, etc

All members of the T.E.C. and the sub-councils should be remunerated equally. If a member of the T.E.C. is a member of a statutory body or an official of a statutory body receiving a salary from the State then if the salary is lower than what a member of the T.E.C. would be remunerated with then such a member should be paid only the difference by the T.E.C. so that each one would be remunerated equally.

The N.P.P. is of the view that the necessary draft legislation be prepared and in order to create the climate of confidence the T.E.C. should be established without any further delay.

A. Rajbansi
A. Rajbansi

D25

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Demokratiese Party
Democratic Party

19 May 1993

*Resent
 1st fax incomplete*

FAX

TO: TECHNICAL COMMITTEE ON THE TRANSITIONAL EXECUTIVE COUNCIL, MULTI-PARTY NEGOTIATIONS
FAX: 011/397-2211

FROM: DEMOCRATIC PARTY

COMMENTS ON FIRST REPORT OF TECHNICAL COMMITTEE

We are in general agreement with the tenor of the report but would like to make some submissions.

Page 3, paragraph 2(1)

The TEC should be composed of political organisations which plan to contest the first election and want to ensure that it is free and fair. The main task of the TEC is to monitor governments and administrations and it is inappropriate and illogical that they be part of the watchdog body and so end up monitoring themselves.

Page 5, paragraph 3(2)(a)

After "request" insert "and obtain".

Page 6, paragraph 3(2)(h)

After "person" insert "or persons".

Page 6, paragraph 4(1)(a)

The Codesa report's reference to "regional government" was intended to be a generic term which would include, inter alia, provincial administrations, TBVC and homelands' governments, regional service councils, etc. It is therefore required as part of this sub-council's brief.

Page 6, paragraph 4(1)(d)

There is a need for this sub-council to have its mandate broadened to include social, economic and developmental issues that impact on free and fair elections. The current disruptions arising from the education crisis are examples of the potential that exists for affecting free and fair elections - certainly far more so than foreign affairs.

Page 7, Note to paragraph 4(3)

No party should be permitted to have more than one person on any particular sub-council.

Pages 8, 9 and 12

Starting in paragraphs 5(3)(a) and (b) and (4), there are a number of references to "governments, administrations and participants". This is confusing. Either the terminology in paragraph 2(1), i.e. "governments, administrations and organisations" should be retained throughout, or "participants" should be used on its own as governments and administrations are also participants.

Pages 11 and 12, paragraphs 6(5) and 7(3)

The description "members" of the TEC appears for the first time. We suggest the terminology be standardised. Possibly using "representatives on" instead of "members of" would be better as it would tie in with paragraph 2(1).

We hope these comments will be useful to you in your deliberations.



K M ANDREW

MIN0203.WP (5)

WORKING GROUP 2\MINUTES\2 MARCH

"The South African Government considers the question of the autonomy of regional and local governments to be a matter of principle. Therefore, "appropriate and adequate legislative and executive powers, duties and functions" in the proposed paragraph 3 is understood to indicate autonomous powers, duties and functions, originally allocated to regional and local governments by the Constitution.

"The specific functions to be entrusted to the regional and local government levels must be determined according to the principle of subsidiarity, which means that a function must be situated at the level where it may be performed optimally.

"Since a function cannot be performed without the necessary financial capability, fiscal competency must accompany the allocation of powers to the highest practicable degree. Where full fiscal autonomy is not practicable, the financial capability of the regional and local governments must be supplemented by means of constitutionally regulated horizontal and vertical fiscal equalization."

- 4.2 The Working Group noted the ANC's disagreement with the South African Government's interpretation. The Working Group also noted the ANC's statement that the following concepts are neither implied nor rejected by clause three of the Steering Committee document:
 - 4.2.1 Concurrent powers
 - 4.2.2 Overriding powers
 - 4.2.3 The creation of metropolitan governments with a special status.
- 4.3 The Working Group agreed on the following formulation with regard to clause 3 of the Steering Committee document:
 - 4.3.1 "This meeting agrees that the draft document implies that all levels of government will have fiscal powers defined in the constitution. This agreement is unanimous. This agreement should be considered when the Working Group's report is drawn up for Codex 2.
- 4.4 The Working Group agreed on the five principles contained in the Steering Committee document. The principles are as follows:
 - 4.4.1 Government shall be structured at national, regional and local levels.
 - 4.4.2 At each level there shall be democratic representation.
 - 4.4.3 Each level of government shall have appropriate and adequate legislative and executive powers, duties and functions that will enable each level to function effectively; such powers, duties and functions to be entrenched in the constitution.
 - 4.4.4 In addition to the powers, duties and functions entrenched in the constitution, each level of government may delegate powers, duties and functions to the lower level of government.
 - 4.4.5 The general principles of the constitution, including the terms of the Bill/Charter of Fundamental Rights shall apply to each level of government.

Chancellor, dissolve the Bundestag within twenty-one days. The right to dissolve shall lapse as soon as the Bundestag with the majority of its members elects another Federal Chancellor.

(2) Forty-eight hours must elapse between the motion and the vote thereon.

Article 69 (Deputy of the Federal Chancellor)

(1) The Federal Chancellor shall appoint a Federal Minister as his deputy.

(2) The tenure of office of the Federal Chancellor or a Federal Minister shall end in any event on the first meeting of a new Bundestag; the tenure of office of a Federal Minister shall also end on any other termination of the tenure of office of the Federal Chancellor.

(3) At the request of the Federal President the Federal Chancellor, or at the request of the Federal Chancellor or of the Federal President a Federal Minister, shall be bound to continue to transact the affairs of his office until the appointment of a successor.

VII. LEGISLATIVE POWERS OF THE FEDERATION

Article 70 (Legislation of the Federation and the Laender)

(1) The Laender shall have the right to legislate in so far as this Basic Law does not confer legislative power on the Federation.

(2) The division of competence between the Federation and the Laender shall be determined by the provisions of this Basic Law concerning exclusive and concurrent legislative powers.

Article 71 (Exclusive legislation of the Federation, definition)

In matters within the exclusive legislative power of the Federation the Laender shall have power to legislate only if, and to the extent that, a federal law explicitly so authorizes them.

Article 72 (Concurrent legislation of the Federation, definition)

(1) In matters within concurrent legislative powers the Laender shall have power to legislate as long as, and to the extent that, the Federation does not exercise its right to legislate.

(2) The Federation shall have the right to legislate in these matters to the extent that a need for regulation by federal legislation exists because:

1. a matter cannot be effectively regulated by the legislation of individual Laender, or
2. the regulation of a matter by a Land law might prejudice the interests of other Laender or of the people as a whole, or
3. the maintenance of legal or economic unity, especially the maintenance of uniformity of living conditions beyond the territory of any one Land, necessitates such regulation.

Article 73 (Exclusive legislation, catalogue)

The Federation shall have exclusive power to legislate in the following matters:

- 1.* foreign affairs as well as defence including the protection of the civilian population;
2. citizenship in the Federation;
3. freedom of movement, passport matters, immigration, emigration, and extradition;
4. currency, money and coinage, weights and measures, as well as the determination of standards of time;
5. the unity of the customs and commercial territory, treaties on commerce and on navigation, the freedom of movement of goods, and the exchanges of goods and payments with foreign countries, including customs and other frontier protection;
6. federal railroads and air transport;

* As amended by federal laws of 26 March 1954 (Federal Law Gazette I p. 45) and 24 June 1968 (Federal Law Gazette I p. 711).

7. postal and telecommunication services;
8. the legal status of persons employed by the Federation and by federal corporate bodies under public law;
9. industrial property rights, copyrights and publishers' rights;
10. * co-operation of the Federation and the Laender in matters of

- (a) criminal police,
- (b) protection of the free democratic basic order, of the existence and the security of the Federation or of a Land (protection of the constitution) and
- (c) protection against efforts in the federal territory which, by the use of force or actions in preparation for the use of force endanger the foreign interests of the Federal Republic of Germany,

as well as the establishment of a Federal Criminal Police Office and the international control of crime.

11. statistics for federal purposes.

Article 74 (Concurrent legislation, catalogue)

Concurrent legislative powers shall extend to the following matters:

1. civil law, criminal law and execution of sentences, the organization and procedure of courts, the legal profession, notaries, and legal advice (Rechtsberatung);
2. registration of births, deaths, and marriages;
3. the law of association and assembly;
4. the law relating to residence and establishment of aliens;
- 4a. ** the law relating to weapons and explosives;
5. the protection of German cultural treasures against removal abroad;
6. refugee and expellee matters;
7. public welfare;
8. citizenship in the Laender;

* As amended by federal law of 28 July 1972 (Federal Law Gazette I p. 1305).
 ** Inserted by federal law of 28 July 1972 (Federal Law Gazette I p. 1305) and amended by federal law of 23 August 1976 (Federal Law Gazette I p. 2383).

9. war damage and reparations;
10. * benefits to war-disabled persons and to dependants of those killed in the war as well as assistance to former prisoners of war;
- 10a. ** war graves of soldiers, graves of other victims of war and of victims of despotism;
11. the law relating to economic matters (mining, industry, supply of power, crafts, trades, commerce, banking, stock exchanges, and private insurance);
- 11a. *** the production and utilization of nuclear energy for peaceful purposes, the construction and operation of installations serving such purposes, protection against hazards arising from the release of nuclear energy or from ionizing radiation, and the disposal of radioactive substances;
12. labour law, including the legal organization of enterprises, protection of workers, employment exchanges and agencies, as well as social insurance, including unemployment insurance;
13. **** the regulation of educational and training grants and the promotion of scientific research;
14. the law regarding expropriation, to the extent that matters enumerated in Articles 73 and 74 are concerned;
15. transfer of land, natural resources and means of production to public ownership or other forms of publicly controlled economy;
16. prevention of the abuse of economic power;
17. promotion of agricultural and forest production, safeguarding of the supply of food, the importation and exportation of agricultural and forest products, deep sea and coastal fishing, and preservation of the coasts;
18. real estate transactions, land law and matters concerning

* As amended by federal law of 16 June 1965 (Federal Law Gazette I p. 513).

** Inserted by federal law of 16 June 1965 (Federal Law Gazette I p. 513).

*** Inserted by federal law of 23 December 1959 (Federal Law Gazette I p. 813).

**** As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 363).

agricultural leases, as well as housing, settlement and home-
stead matters;

19. measures against human and animal diseases that are com-
municable or otherwise endanger public health, admission to
the medical profession and to other health occupations or
practices, as well as trade in medicines, cumatives, narcotics,
and poisons;

19a.* the economic viability of hospitals and the regulation
of hospitalization fees;

20.** protection regarding the marketing of food, drink and
tobacco, of necessities of life, fodder, agricultural and forest
seeds and seedlings, and protection of plants against diseases
and pests, as well as the protection of animals;

21. ocean and coastal shipping as well as aids to navigation,
inland navigation, meteorological services, sea routes, and
inland waterways used for general traffic;

22.*** road traffic, motor transport, construction and mainte-
nance of long-distance highways as well as the collection of
charges for the use of public highways by vehicles and the
allocation of revenue therefrom;

23. non-federal railroads, except mountain railroads;

24.**** disposal of waste, keeping the air pure and combatting
noise.

Article 74a* (Wider competence of Federation for pay scales)

(1) Concurrent legislation shall further extend to the pay scales
and pensions of members of the public service whose service and
loyalty are governed by public law, in so far as the Federation
does not have exclusive power to legislate pursuant to item 8
of Article 73.

(2) Federal laws enacted pursuant to paragraph (1) of this Article
shall require the consent of the Bundesrat.

(3) Federal laws enacted pursuant to item 8 of Article 73 shall

* Inserted by federal law of 12 May 1969 (Federal Law Gazette I p. 363).

** As amended by federal law of 18 March 1971 (Federal Law Gazette I p. 207).

*** As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 363).

**** As amended by federal law of 14 April 1972 (Federal Law Gazette I
p. 393).

+ As inserted by federal law of 18 March 1971 (Federal Law Gazette I p. 206).

likewise require the consent of the Bundesrat, in so far as they
prescribe for the structure and computation of pay scales and
pensions, including the appraisal of posts, criteria or minimum
or maximum rates other than those provided for in federal laws
enacted pursuant to paragraph (1) of this Article.

(4) Paragraphs (1) and (2) of this Article shall apply mutatis
mutandis to the pay scales and pensions for judges in the Laender.
Paragraph (3) of this Article shall apply mutatis mutandis to laws
enacted pursuant to paragraph (1) of Article 98.

Article 75* (General provisions of the Federation, catalogue)

Subject to the conditions laid down in Article 72 the Federa-
tion shall have the right to enact skeleton provisions concerning:

1.** the legal status of persons in the public service of the Laender,
communes, or other corporate bodies under public law, in so
far as Article 74a does not provide otherwise;

1a.*** the general principles governing higher education;

2. the general legal status of the press and the film industry;

3. hunting, protection of nature, and care of the countryside;

4. land distribution, regional planning, and water management;

5. matters relating to the registration of changes of residence or
domicile (Meldewesen) and to identity cards.

Article 76 (Bills)

(1) Bills shall be introduced in the Bundestag by the Federal
Government or by members of the Bundestag or by the Bundesrat.

(2)+ Bills of the Federal Government shall be submitted first to
the Bundesrat. The Bundesrat shall be entitled to state its position
on such bills within six weeks. A bill exceptionally submitted to
the Bundesrat as being particularly urgent by the Federal Govern-
ment may be submitted by the latter to the Bundestag three weeks
later, even though the Federal Government may not yet have
received the statement of the Bundesrat's position; such state-
ment shall be transmitted to the Bundestag by the Federal
Government without delay upon its receipt.

* As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 363).

** As amended by federal law of 18 March 1971 (Federal Law Gazette I p. 206).

*** Inserted by federal law of 12 May 1969 (Federal Law Gazette I p. 363).

+ As amended by federal law of 15 November 1969 (Federal Law Gazette I
p. 1177).

VIIIa. JOINT TASKS*

Article 91a* (Definition of joint tasks)

(1) The Federation shall participate in the discharge of the following responsibilities of the Laender, provided that such responsibilities are important to society as a whole and that federal participation is necessary for the improvement of living conditions (joint tasks):

1. expansion and construction of institutions of higher education including university clinics;
2. improvement of regional economic structures;
3. improvement of the agrarian structure and of coast preservation.

(2) Joint tasks shall be defined in detail by federal legislation requiring the consent of the Bundesrat. Such legislation should include general principles governing the discharge of joint tasks.

(3) Such legislation shall provide for the procedure and the institutions required for joint overall planning. The inclusion of a project in the overall planning shall require the consent of the Land in which it is to be carried out.

(4) In cases to which items 1 and 2 of paragraph (1) of this Article apply, the Federation shall meet one half of the expenditure in each Land. In cases to which item 3 of paragraph (1) of this Article applies, the Federation shall meet at least one half of the expenditure, and such proportion shall be the same for all the Laender. Details shall be regulated by legislation. Provision of funds shall be subject to appropriation in the budgets of the Federation and the Laender.

(5) The Federal Government and the Bundesrat shall be informed about the execution of joint tasks, should they so demand.

* Inserted by federal law of 12 May 1969 (Federal Law Gazette I p. 359).

Article 91b* (Co-operation of Federation and Laender in educational planning and in research)

The Federation and the Laender may pursuant to agreements co-operate in educational planning and in the promotion of institutions and projects of scientific research of supraregional importance. The apportionment of costs shall be regulated in the pertinent agreements.

* Inserted by federal law of 12 May 1969 (Federal Law Gazette I p. 359).

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**PAN AFRICANIST CONGRESS OF AZANIA INPUT REGARDING:
THE TECHNICAL COMMITTEE DEALING WITH THE INDEPENDENT MEDIA
COMMISSION**

**1. RELATIONSHIP BETWEEN THE INDEPENDENT MEDIA COMMISSION
(I.M.C.) AND THE TRANSITIONAL AUTHORITY (T.A.):**

The proposals of the PAC with regard to a truly independent T.A. (with fully-fledged executive and legislative powers in its areas of jurisdiction - including the media) was dealt with fully in the paper on the PAC input with regard to the Technical Committee dealing with the T.E.C. According to the said PAC proposals, the T.A. is truly independent and there is therefore no need for the I.M.C. to be independent of the T.A. in terms of accountability. The I.M.C. must act as an independent commission but it is accountable to the T.A. to which it must report regularly. The I.M.C. is not a permanent watchdog over all affairs of the media but a temporary commission with a specific task relating to elections meaning that its functions are political and since it is not an authority but a commission it has to report to the T.A. Unlike the CODESA T.E.C., which has a sub-council on the media and which sub-council may not interfere with the work of the I.M.C., the T.A. has no such sub-council and the I.M.C. reports directly to the T.A.

2. TERMS OF REFERENCE:

The PAC supports the terms of reference and wish to add that in addition to attending the electronic media and communications, the Technical Committee must also attend to the print media as it may cause problems as serious in nature as the electronic media. The body supervising the print media, namely the Media Council, is a voluntary association to which some newspapers are not affiliated and from which others may resign. This leaves a vacuum of an agency to which complaints on biased reporting by the print media can be made. The Technical Committee should investigate:

- how the Media Council can have jurisdiction over all print media, or
- how a body can be created to which complaints about the reporting of the print media can be made, or
- how the I.M.C. can attend to complaints about the reporting of the print media.

3. COMPOSITION OF THE I.M.C.:

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It shall consist of 7 members appointed by the Multi-Party negotiating process. The State President shall not have anything to do with these appointments.

We support the following criteria for appointment:

Organs of civil society shall be invited, inter alia, by advertisement in the press to nominate names to either the Multi-Party negotiating process or the T.A., whichever is appropriate at that time, bearing in mind the urgency of the matter, for purposes of preparing a short list of names from which the board of the I.M.C. can be appointed.

4. POWERS, FUNCTIONS AND DUTIES:

We support the following powers, duties and functions, subject to additions on the print media):

Functions:

The regulation of the utilisation of the electromagnetic spectrum, including the allocation of licences and the determination of licence conditions according to an agreed set of standards.

The appointment of a suitable structure to monitor the proper exercise of licence conditions.

Powers:

The powers of the Postmaster General must be transferred to the I.M.C.

Further:

To ensure that a wide range of telecommunication services, including regional and community broadcasting program services, is available throughout SA.

To ensure fair and effective competition in the provision of such and related services.

To ensure fair and equitable opportunity to opinion formers to express their views freely.

To ensure optimum affordable research and development with a view to improving the utilisation of the available electromagnetic spectrum and to introduce technologies to improve signal quality.

To ensure impartial control of all broadcasting by laying down norms and standards.