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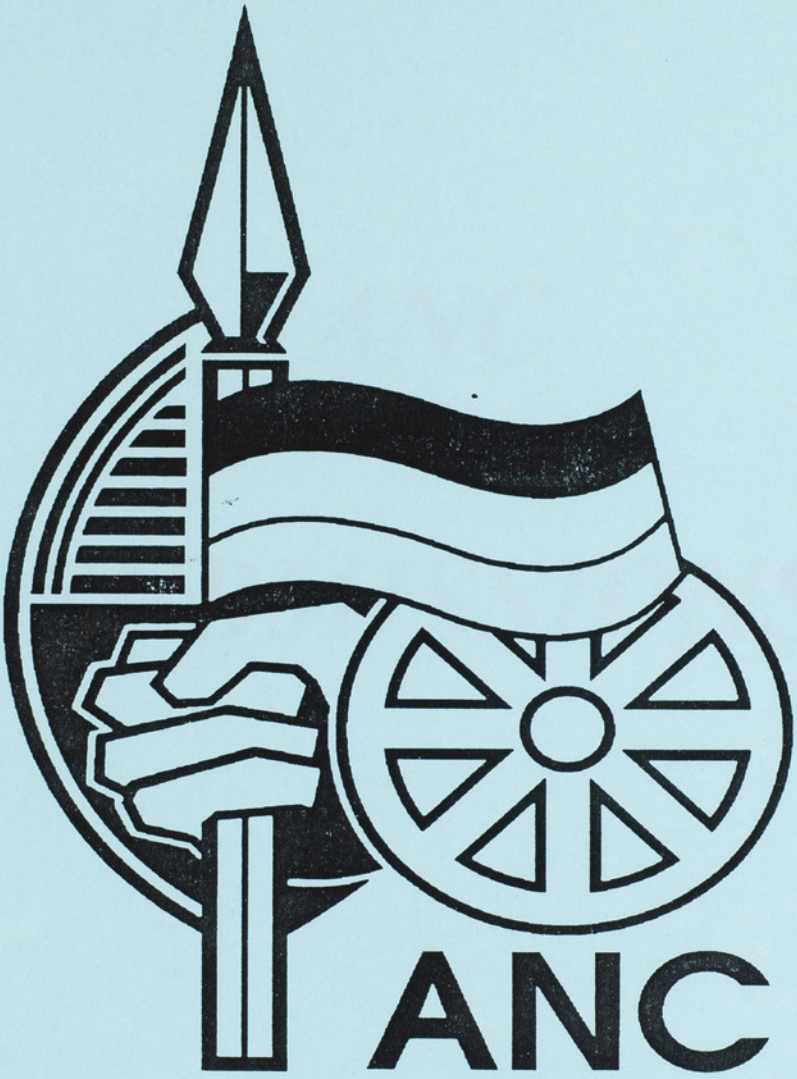

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Submission by the African National Congress

To the Technical Committee on Constitutional Matters

Date : 12 May, 1993

The African National Congress hereby places before the above Committee the following submissions: (Further submissions in this regard will be made on or before Wednesday the 19th May, 1993)

1. FORM OF STATE AND CONSTITUTIONAL PRINCIPLES

Introduction

It is the view of the African National Congress that the question of the form of state is composed of different elements, all of which are intimately related to the constitutional issues listed in the terms of reference of the Technical Committee. One of the areas for dealing with the critical question of the form of state in the South African context is the constitutional principles in general. A particular aspect of this relates to the constitutional principles which define the parameters of the relationship between the central and regional levels of government. Accordingly, the submissions of the African National Congress on this question focus sharply on the question of national, regional and local levels of government. A resolution of this question would be an important contribution to the debate on the form of state.

The African National Congress therefore submits that:

South Africa shall be a united, non-racial, non-sexist and democratic state. South Africa shall be a sovereign state and must be seen, as recognised by the international community, as a single, non-fragmented entity including Transkei, Bophuthatswana, Venda and Ciskei.

Government in such a united sovereign state shall be structured at national, regional and local levels, in respect of which:

i) At each level there shall be democratic representation;

ii) At each level of government there shall be appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively within the context of a united, democratic state. Such powers and functions at central and regional levels shall be entrenched in the constitution.

iii) In addition to powers and functions entrenched in the constitution, each level of government may delegate powers and functions to lower levels of government.

iv) Powers and functions may be either exclusive or concurrent.

v) The national government shall have overriding powers in those matters that are not allocated exclusively in the constitution to the regional level of government.

vi) The general principles of the constitution, including the terms of the Bill of Rights, shall apply at all levels of government.

The African National Congress proposes that the constitution-making body (the Constituent Assembly) shall draft and adopt a new constitution for South Africa on the basis of and within the framework of the following constitutional principles which shall be binding on it:

i) South Africa shall be a united, sovereign state in which all persons shall enjoy a common South African citizenship.

ii) South Africa shall be a democratic, non-racial and non-sexist state.

iii) The constitution adopted by the Constituent Assembly shall be the supreme law of the land.

iv) There shall be separation of powers between the legislature, the executive and the judiciary with appropriate checks and balances. This, however, shall not exclude the executive being made accountable to the legislature.

v) The judiciary shall be independent, non-racial, non-sexist and impartial.

vi) Provision shall also be made for a Constitutional Court which enjoys the respect of all South Africans and draws on the experience and talents of the entire population.

vii) All individuals shall enjoy universally accepted human rights, freedoms and civil liberties which shall be guaranteed by an enforceable/justiciable Bill of Rights.

viii) There shall be representative and accountable government at all levels embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll and, in general, proportional representation.

ix) There shall be freedom of association, including the right to form, join and maintain organs of civil society, including trade unions, religious, residents, students, social and cultural societies.

x) The diversity of languages, cultures and religions shall be acknowledged.

xi) Special provision may be made for the appropriate recognition of traditional institutions at regional and local level.

xii) The constitution shall develop and maintain a foundation for the emergence of national unity while respecting the linguistic, cultural and religious diversity of the nation.

xiii) The constitution shall outlaw all forms of racism and discrimination based on race and gender in public and private life, within the principles of the equality clause referred to hereunder.

xiv) There shall be an equality clause which shall provide that:

i) Every individual shall be equal before and under the law and shall have the right to equal protection and equal benefit of the law without discrimination, and in particular without discrimination based on the grounds of "race", colour, language, gender, creed or sexual orientation.

ii) Sub-section (i) above shall not preclude any law, programme or activity that has as its object the amelioration of the conditions of the disadvantaged, be they individuals or groups, including those disadvantaged on the grounds of race, colour, or gender.

iii) All rights and freedoms contained in the constitution shall be guaranteed equally to all male and female persons.

2. CONSTITUTION-MAKING BODY/CONSTITUENT ASSEMBLY

In view of the historical disfranchisement of all the black people of South Africa and the fact that in South African history thus far, only white people had the opportunity of participating in the process of constitution-making, the African National Congress is firmly of the view that, for the constitution-making process to be legitimate and credible in the eyes of the majority of the people of South Africa, the constitution-making process must involve the people of South Africa as a whole and that the constitution-making body should be an elected one.

Accordingly, the African National Congress proposes that the new constitution for South Africa should be the product of a democratic process. This means that there shall be an elected Constituent Assembly to draw up and adopt a new constitution for South Africa. Such Constituent Assembly shall be sovereign and not be limited in any way except that it shall work within the framework of agreed general constitutional principles.

The Constituent Assembly shall be required to adopt the new constitution within a fixed time-frame. There shall also be appropriate deadlock breaking mechanisms.

It is the view of the African National Congress that the new constitution of South Africa should be adopted as quickly as is reasonably possible so as to ensure that South Africa enters a new historical phase - that of democracy - as quickly as possible. A political solution which involves the democratization of the country will play a major role in restoring peace and stability to the country which are essential for social and economic development and transformation.

The proposal for the setting up of a Constituent Assembly as envisaged by the African National Congress is contained in a document entitled Transition to Democracy Act, which is annexed hereto and marked Annexure "A". The TDA has been prepared by the ANC to facilitate a speedy transition process.

The proposal of the ANC provides for the following:

(i) There shall be a National Assembly consisting of 400 members who will be elected on a single ballot of whom

* 200 shall be elected from the national lists of the participating parties according to proportional representation.

* The 200 regional seats will be allocated between the regions in proportion to the number of votes cast in each region.

(ii) Steps will have to be taken to ensure maximum democratic representation in the National Assembly, but at the same time also to ensure that there will not be an undue proliferation of political parties entering the election.

(iii) When the National Assembly sits as a Constitution-Making Body, it shall be known as a Constituent Assembly. It will be required to adopt a new constitution for South Africa on the basis of a two-thirds majority of the votes of members present; provided that the constitution to be adopted shall in all respects conform with, and shall not in any respect contradict, the agreed general constitutional principles.

(iv) The Constituent Assembly shall have the right to set up, and make use of, such specialised committees as it may deem fit to facilitate the process of agreement and adoption of a new constitution.

(v) The time-frame for the adoption of a new constitution as well as appropriate deadlock-breaking mechanisms are matters which are negotiable. In the Transition to Democracy Act, the ANC proposes that the constitution must be adopted by the Constituent Assembly within a period of nine months, failing which there shall be fresh elections to create a new Constituent Assembly. This provision is an inducement upon members of all parties to agree to a constitution as expeditiously as possible. The second Constituent Assembly will have six months within which to agree to a new constitution which will also have to be adopted by a two-thirds majority. Should this also fail, then a constitution enjoying the support of a simple majority of the Constituent Assembly shall be put to the people of South Africa for approval by way of a referendum at which the constitution must enjoy a majority of 55% to be adopted.

If this constitution also fails to obtain the necessary support, then finally fresh elections should be held for a third Constituent Assembly. Such Constituent Assembly shall have the power to adopt a new Constitution by a simple majority.

The provision for breaking deadlocks is absolutely crucial in the process of constitution-making and this is the objective of the ANC's proposals. However, such a process could be unduly extensive and drawn out. The ANC is therefore prepared to consider any other proposal which will ensure that out of the constitution-making process there shall arise a new constitution within the shortest possible time.

3. TRANSITIONAL CONSTITUTION

In the view of the African National Congress, the issue of the role of the transitional constitution is an important matter and is to be explained in terms of its vision of the transitional process and the crucial importance which the ANC attaches to the need for the process to be legitimate in the eyes of the South African people.

The objective of all transitional arrangements is the following:

i) The holding of elections based on one person one vote throughout South Africa (including the TBVC territories), such elections to be based on the universal franchise of all persons without regard to "race", colour or creed. The elections would be for a Constituent Assembly, whose task would be to draw up and adopt a new constitution for the country.

ii) Accordingly, all transitional arrangements must be directed with this objective in mind and also to ensure that mechanisms are in place to guarantee free and fair elections, free political activity and a level political playing field.

iii) Subject to this objective, mechanisms must also be in place to provide for the governance of the country as from the date of the elections and until a new constitution has been adopted.

In the light of the above, it is necessary for legislative measures to be passed to legalise the entire process up to and including the adoption of the new constitution. The African National Congress proposes that appropriate measures be agreed upon, including a Transition to Democracy Act. The Transition to Democracy Act will be the basic law or transitional constitution which will provide the legal basis for and give legal effect to all the agreements arrived at the multi-party forum, to cover the complete transitional process leading to the adoption of the new constitution by the Constituent Assembly and the installation of the first government in terms of such constitution.

4. TRANSITIONAL, REGIONAL/LOCAL GOVERNMENT

(i) During the period of transition, the most convenient, effective and least expensive road to follow is to adopt the four provinces, namely Natal, Transvaal, the Cape Province and the Orange Free State with the boundaries as created at the time that the Union of South Africa was formed to be the four regions of South Africa for the purpose of regional administration during the period of transition.

(ii) Insofar as powers and functions are concerned, the ANC proposes that regional administrations shall exercise concurrent powers with national government in respect of all matters allocated by the national government to the regional level. This shall be subject, however, to the national government retaining overriding powers in all matters.

(iii) Regional administrations shall be required to implement laws and policies of national government. Alternatively, they shall participate jointly with national government in such implementation.

(iv) The advantage of the provincial boundaries as proposed is the ready existence of the requisite infrastructure and facilities. The maintenance of stability, law and order will be facilitated by the adoption of the course proposed by the ANC.

(v) The phasing in of the existing homeland structures into the new constitutional dispensation will be facilitated by this approach. It will mean that an orderly phasing-in process of existing administrations in the TBVC territories as well as self-governing homelands can proceed effectively within the framework of the said provincial boundaries. This will make the process of phasing in any future regions as may be agreed upon all the easier.

(vi) One of the major objectives of the current process of transition is to rid South Africa of all vestiges of apartheid and racism. The adoption of the course proposed by the ANC will help to facilitate this process.

(vii) The issue of the division of powers and functions between central government and the transitional regions can easily be resolved. The formula adopted at the time of union with respect to such division of powers and functions was extremely effective and can provide a useful guideline.

(viii) **Structures for Regional Administration during the Transition Period**

The ANC takes into account that the transition period will be of relatively short duration. The objective of administration during the period of transition will therefore be adequately catered for by providing for an appropriate provincial executive committee as well as an administrator for each region.

5. TRANSKEI, BOPHUTHATSWANA, VENDA AND CISKEI

The African National Congress points out that not a single one of these entities enjoys international recognition. No state in the world, other than apartheid South Africa, has recognised these territories as independent states. In fact, the international community has consistently condemned the SA Government's homeland policy in terms of which self governing states have been created, including the four so-called independent states.

The African National Congress is firmly of the view that the four so-called independent states should be re-incorporated into a united, non-racial, non-sexist and democratic South Africa.

The African National Congress is also of the view that South African citizenship should immediately be restored to the people of the TBVC territories.

All the inhabitants of the TBVC territories are entitled to participate in all transitional arrangements as well as elections in every way and on the same basis as all other South African citizens. The ANC therefore believes that effect must be given to this position.

FURTHER PROPOSAL

The African National Congress is of the view that the above proposal is in the best interests of South Africa and indeed the various parties presently participating in the negotiation process. At the same time it is mindful of the concerns of the various parties on the issue of regions. Accordingly, the ANC has also considered the feasibility of setting up an Independent Commission on Regions which would have amongst its functions the following tasks:

(1) that of making recommendations to the Multi-party Negotiating Council on regional boundaries for the purposes of the election of the Constituent Assembly/Constitution-making Body;

(2) that of making recommendations to the Multi-party Negotiating council on the boundaries, powers, functions and structures for the purposes of regional administration during the period of transition; and

(3) that of enquiring into, and making recommendations to the Constituent Assembly/Constitution-making Body, on boundaries, constitutional structures, powers and functions of regional government structures to enable the Constituent Assembly to finalise the issue of regionalism.

Though the African National Congress firmly believes that the entire issue of regions should appropriately be addressed and finalised by the elected Constitution-making Body, it is, nonetheless, anxious that the modalities pertaining thereto be resolved in

agreement with all parties concerned. The ANC is therefore prepared to place its proposals on the issues of electoral regions and regional administration during the transition period, as well as its position on the issue of regions in a new constitutional order, before such a Commission. The details of how such Commission should be set up, its composition, powers and time-frames would have to be agreed upon.

LOCAL GOVERNMENT

Insofar as local government is concerned, it is pointed out that there already exists a national negotiating forum on local government at which all interested parties are represented. The issue of local government is crucial and no decisions can, in the view of the ANC, be taken without the participation of all the stake holders. The ANC is of the view, therefore, that the decisions of the said negotiation forum should be taken into account. The guiding principles shall, however, be the need to ensure that there is democratic participation of all the people on the basis of complete equality at local government level as well.

SELF-DETERMINATION IN SOUTH AFRICA

1. Introduction

1.1 The African National Congress welcomes the opportunity to present a submission on the vital issue of self-determination in the context of South Africa. The concept of self-determination has provided the inspiration for the struggle of the people of Africa and Asia from alien occupation and foreign rule and has been inextricably bound up with the development of human rights, the right to dignity and political and economic power of previously subjugated peoples. It has been the most important element in the democratization of international society.

1.2 Self-determination has moral, political and legal elements. In effect, it identifies two elements of particular relevance to South Africa. Internally, governance must be based on the will of the people, freely expressed. A regime which does not obtain the consent of the governed is illegitimate and has no entitlement to speak on behalf of the people. Secondly, governance must be free of an official policy of discrimination based on race, colour or ethnicity or in breach of basic rules of international law such as a policy of genocide, slavery or aggression against other states.

1.3 In its external application, self-determination recognises the right of a people, providing certain conditions are met, to be recognised as an entity, and if necessary, as a sovereign state. As the World Court has said in the *Western Sahara Opinion*, it is for the people to decide the destiny of a territory, and not for the territory to decide the destiny of the people. Such a decision may include closer association with an existing body to form a unitary or a federal state or independence.

1.4 The right to self-determination is clearly a legal right today. It is based on, but not created by, the Charter of the United Nations, which recognised the relationship between peaceful relations among people and stability between states and the freedom of peoples by invoking the principle of equal rights and self-determination of peoples (Articles 1(2) and 55 of the Charter). Subsequent international and regional texts, declarations and treaties re-emphasised the need for respect for the self-determination of peoples, so that it is now possible to speak categorically of a right to self-determination as part of customary law and, hence, as part of international public policy.

1.5 This right was invoked systematically to ensure the movement towards the independence of colonies in Africa and Asia in the great sweep of freedom in the 1960s. The continual point of reference in the General Assembly's decolonization practice was the seminal resolution 1514 of 1960 which built on the Charter and which was subsequently expanded by other declaratory resolutions of the United Nations. This Declaration effectively outlawed colonialism. It also guarded against the strategies that attempted to partition various colonial territories or the manoeuvres at encouraging recession by the colonial powers by laying down in Article 6 that:

> Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and the principles of the Charter of the United Nations.

1.6 In the area of decolonization, it was relatively easy to identify the "people" who formed the "self" for purposes of deciding on their future. The colonial boundaries were accepted as the unit of self-determination. The United Nations established special structures which assisted in this process and there were only limited areas of controversy, such as Gibraltar and the Malvinas (Falklands), largely because the original inhabitants had been displaced or restrictions had been imposed on the movement of people from contiguous territories which had historic claims.

1.7 Since the effective application of the right to self-determination also depends on the recognition by other states, it is necessary to look at later developments. In 1971, the state of Bangladesh was recognised as an independent State when, following a war of liberation, it seceded from Pakistan. East Pakistan had a separate cultural and linguistic tradition from the rest of Pakistan and, over a period of time, had suffered from national oppression and economic exploitation from the dominant part of West Pakistan. As with the collapse of the Soviet Union and the voluntary separation of the former Czechoslovakia in 1992, there were clearly identifiable "peoples" who occupied distinct territory who could invoke the right to self-determination which was recognised by the international community.

2. The International Community and South Africa

2.1 Since various proponents of secession or partition or an independent Afrikaner State base their arguments on international law and practice, it is necessary to look at the international response over the past two decades to the issue of apartheid, especially in its "grand design" manifestations.

2.2 The perverted logic of apartheid represented the partition policy of the bantustans as an expression of self-determination. A racially-elected government first identified, through the Population Registration Act, ten African "nations" and then, without the clearly-expressed will of the people and without consultation, imposed independence on four of the "territories" and gave a measure of internal self-government to the remainder. The same regime then systematically denaturalized millions of South African citizens and treated them as aliens.

2.3 The response of the international community was rapid and historic. When "independence" was conferred on the Transkei, the General Assembly, by a vote of 134 states in favour with no dissent, condemned the establishment of bantustans as "designed to consolidate the inhuman policies of apartheid, to destroy the territorial integrity of the country, to perpetuate white minority domination and to dispossess the African people of South Africa of their inalienable rights". For the first time in the history of the United Nations, the organised international community rejected a form of "independence" conferred by a member state and declared it to be "invalid". No state, other than apartheid South Africa, has recognised the "independence" of the Transkei or the other three "states".

2.4 The reasons for such a historic decision concerning non-recognition of the products of apartheid must be emphasised. They are two-fold:

2.5 First, the international community, as part of international public policy, began to intervene in various ways in the affairs of a state where there was a gross and systematic violation of human rights. This was particularly in relation to a state which based its policy on an official policy of racial discrimination, such as apartheid. These developments were so rapid that apartheid was soon designated as a crime against humanity, a special convention was adopted which assimilated apartheid policies to and genocide, the crime of crimes. The result, as evidenced in the judgement of the World Court in 1970, is that the adoption of an official policy of racial discrimination is in breach of fundamental rules of international law and other states are not only obliged not to recognise such a state but are permitted to assist in the removal of such an entity. No state can be set up, therefore, on an ethno-chauvinistic basis with control over migration on racial grounds, with political power based on race or where "norms and standards" and "central values" are code- words for racial separation or superiority.

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2.6 The second reason for the non-recognition of the TBVC states was that the racist policies of the apartheid state were assimilated to the denial of the right to self-determination of the entire people of South Africa. Over the past twenty-five years, both the General Assembly and the Security Council of the United Nations have identified the nub of the South African problem, namely the denial of the vote and, therefore, the consent of the majority, as vitiating the independent status of South Africa. Although South Africa has been a state since 1910 and a member of the United Nations since 1945, its internal governance violated a fundamental rule of international law: non-discrimination on grounds of race, colour or ethnicity. The legitimacy of the government was therefore challenged.

2.7 The most striking insight into the international community's response to apartheid policies and its view about the future is provided by the Security Council, where South Africa's partners, with the power of the veto, sit. Whereas the Third World could be dismissed as providing an automatic majority in the General Assembly, the Security Council's actions could be stopped by the three western powers. Yet, they did not. In 1977, the Security Council passed resolution 417 without dissent. This resolution *affirmed the right to the exercise of self-determination by all the people of South Africa as a whole, irrespective of race, colour or creed*. The unit for self-determination is therefore South Africa within its 1910 frontiers and the "people" are the undifferentiated people of South Africa.

2.8 Resolution 417 of 1977 was therefore, in legal terms, a vindication of the Freedom Charter of 1955 with its declaration to South Africa and the world that "South Africa belongs to all who live in it, black and white, and that no government can justly claim authority unless it is based on the will of the people".

2.9 Further, for the first time in history, an international body which has the authority to apply rules to situations, invalidated elections and declared the proposed Tri-cameral Elections of 1984 to be "null and void". Through Resolution 554 of 1984, the Security Council decided, with no dissentients, that only the"total eradication of apartheid in a united and unfragmented South Africa" could lead to a "just and lasting solution".

2.10 The persistent approach of applying the concept of self-determination to South Africa must also be seen in the context of peaceful relations between states. Any entity based on racial or ethnic exclusivism would be a source of tension in the region. This is vividly echoed in Resolution 556 of 1984 by the Security Council - passed at a critical period in the rising struggle against apartheid - where the "legitimacy of the struggle of the oppressed people of South Africa for the *full exercise of the right to self-determination and the establishment of a non-racial democratic society in an unfragmented South Africa*" was reiterated and the demand was made for the "immediate

eradication of apartheid, the dismantling of the bantustans" and the taking of the necessary steps towards the *full exercise of the right to self-determination in an unfragmented South Africa.*

2.11 The views of the international community towards partition or secession, as expressed in these resolutions are very clear. There are compelling legal grounds for the assertion that no state would recognise a state which forcibly came into being on the basis of a racial or ethnic basis or which would be identified with exclusivism of the nature proposed recently or in evidence before the Law Commission during 1990 and 1991. Secession by force of arms to set up a "Volkstaat" would, at worst, result in the *cul de sac* of non-recognition. However, is there an obligation in law to negotiate a settlement which would recognise the right of a self-identified "people" in South Africa to self-determination on the ground that they have a right to form an independent state?

3. **Negotiated Self-Determination**

3.1 The evidence given to the Law Commission by various parties and individuals asserts such a right. Expressly in some cases, but implicitly in others, the case for such an assertion rests on the need to protect Afrikaner "identity", "personality", "nation-hood" or the values of the "volk". Such protection, it is further asserted, can only be pursued through statehood based on the international right to self-determination. The response of the African National Congress to these demands is as follows:

3.2 The right to self-determination does not automatically mean the right to sovereign, independent status, although a claim may, under appropriate conditions, result in the acquisition of independent sovereign status in international law. On the assumption that the claim to self-determination includes a claim to sovereign independence, there are further conditions that must be met. There must be territory which is occupied by the discrete "people"; there must be a "population". No so-called ethnic group occupies an appreciable area of South Africa; all are dispersed throughout our land. Third, there is the requirement of meeting a state's international obligations. This means that it must be "peace-loving" under the Charter. Such an exclusive State would be inherently unstable and could be created to commit regional aggression, especially against a democratic South Africa, in order to "protect" kith and kin who do not wish to join the "Volkstaat". Finally, there must be a "government". To the extent that such a state would be based on the principles of factual apartheid, this state would be a creature whose existence would not only be the negation of obligations under the Charter of the United Nations, but would effectively be a creature criminalised under the Convention for the Suppression and Punishment of the Crime of Apartheid. Such a creature would comprise, if not radically erode, the international juridical framework within which South Africa's transition is occurring.

3.3 Such a claim confuses the rights of a minority to have their human rights respected and have their cultural rights, such as language, religion and culture, protected as is consistent with international obligations. Those who claim rights under the separate state theory are claiming rights to which they cannot aspire, since they are not a "people" in the national liberation and international sense. They are part of a larger group tied to a common history, language and cultural, political and historical baggage. Basic to the right of people to claim independence is that the right claimed must be one enjoyed consistently with the obligations under the UN Charter. There is no right to self-determination to create a state of racial or ethnic supremacy.

3.4 The claim is not a claim to self-determination but a claim to secession from an independent and pre-existing state. Those who are making the claim do not represent a people as defined in various international instruments and practice which is mostly to do with matters of alien rule or undemocratic regimes or tyranny. This claim is made by a party or parties whose programmes and platforms are a denial and denigration of international law and the central values of the international order which values co-operation and peaceful relations. This is therefore a secessionist claim transparently presented as self-determination.

3.5 Claims to secession, inconsistent with any other internationally-sanctioned right, destabilise society and, if permitted, would reduce the right to self-determination to a meaningless juridical formula since every state on our planet has some kind of minority sub-group. Self-definition, as proposed by some of the claimants, is not an adequate basis for such a claim. In the absence of national oppression, racial or religious persecution or total economic deprivation, sub-groups have no right to secede, as the Law Commission in South Africa has clearly identified in its document on human rights. On the contrary it is the majority in South Africa who have been oppressed and who now seek through the invocation of the right to self-determination, the protection of a new Constitution based on democracy and free participation.

3.6 This claim to secession is resisted in the African public order and in the larger world community on the practical basis that it destabilises the nation-state, threatens international peace and security and affirms no valid principles of international law.

3.7 The claim confuses the rights a group or sub-group has to the protection validly and legitimately accorded under the regime for the protection of individuals and minorities under international law with self-determination and independence. It is an invalid conflation.

3.8 The African National Congress believes that the proper and most satisfactory method of dealing with the claims, aspirations and anxieties of minorities is in the manner identified in the resolution adopted by the Conference on Security

and Co-operation in Europe (CSCE) on 1990. It reflects the internationally accepted principles for the protection of discrete minorities. The opening paragraph of this important resolution stipulates:

> The participating States recognise that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, the restraints on the abuse of governmental power, political pluralism and social tolerance.
>
> They further reaffirm that respect for the rights of persons belonging to national minorities as part of universally recognised human rights is an essential factor for peace, justice, stability and democracy in the participating States.

The ANC strongly believes in the principle of self-determination as internationally understood. Indeed, our organisation was set up precisely to overcome the national oppression of the African people manifested by the South Africa Act of 1910. For generations we have been ruled as though we were a conquered people. The Native Administration Act of 1927 set up elaborate administrative structures to govern us. We were almost totally excluded from the vote, denied the right to acquire land in nine-tenths of the country, required to carry passes and governed by a dictatorial network of officials accountable only to Pretoria. To this day our President, Nelson Mandela, does not have the vote.

We know what it is like to be dominated and marginalised in the land of our birth , to be discriminated against, to have our languages and beliefs treated with disrespect and to be denied basic human rights because of our national origin. No-one is more sensitive to the importance of true respect for the rights of all groups than we are.

The question is not whether to have self-determination, but how self-determination is to be expressed in a country like ours. All South Africans share a common destiny. We live together in the same cities and on the same farms. We are involved in a single economy. The problem is not how we can separate ourselves out, but how we can live together without domination or subordination.

South Africa is a country peopled by men and women of the most diverse origins. We speak many different languages, have different religions and different customs. At the same time we share the same land have the same problems of health, education, access to economic opportunities and the pursuit of happiness. We all want peace, development, respect and a sense of security and worth.

The ANC has long believed that South Africa belongs to all who live in it. Our country is spacious enough and sufficiently endowed with resources to grant a decent life to everybody. Everyone shall have the right to enjoy fundamental rights and freedoms and to feel comfortable in all parts of the land.

Division has never solved any of our problems. On the contrary it has always brought with it domination, inequality and conflict. we have learn to live together as equals in the same country. If we cannot live together peacefully in the same country, there is no reason to expect we can live together peacefully side by side.

True self-determination in South African conditions can only be achieved by means of acknowledging the reality of our inter-dependence and not by forcing an artificial and unsustainable independence. We have learnt from prolonged and painful experience that self-determination comes from enjoyment of the right to inclusion in, and not from exclusion from, the life of the country. It means the right to full participation in every area of life without having to give up our beliefs, languages and cultures.

The self-determination of one cannot be separated from the self-determination of all. Self-determination is certainly not consistent with baasskap in any shape or form, indeed it is its complete opposite.

Concretely, self-determination in the context of the historical, social and cultural reality of South Africa means the achievement of a voluntarily negotiated constitutional settlement that contains the following basic principles:

1. The right to equal participation in all areas of life, equal protection and the enjoyment of equal benefits under the law;

2. Mechanisms to ensure non-discrimination, either against individuals or against groups;

3. The right to use and develop one's language and culture and respect for the diversity of religious faiths;

4. Principles of good government which ensure that the institutions of state represent the wisdom, skills and life experience of all groups and communities;

5. Guarantees for an active role for organisations of civil society including cultural, religious and linguistic organisations.

All additions to further constitutional devices will help to ensure acknowledgement of the diversity of the country.

The first is an electoral system based on proportional representation, which facilitates the formation of political groupings to represent the most varied interests.

The second is the acceptance of the importance of strong regional and local government, acting within the framework of general constitutional principles and broad national legislative policy. Regional diversity can reflect itself in a non-racial and democratic way without violating the basic unity of the country.

In conclusion, we feel it is no accident that no clarity exists in terms of the territory in which it is claimed that one particular national group, namely the Afrikaners or "Boerevolk", should exercise exclusive sovereignty. If we accept that baasskap is no longer permissible, then no such region exists in the country.

We cannot believe that the majority of Afrikaners would prefer to give up full and guaranteed citizenship and cultural rights in a democratic South Africa, for the illusory dream of undefined rights in a state without boundaries, without a name, without governmental infra-structure and without international recognition.

We cannot believe that the majority of Afrikaners would wish to de-nationalise themselves in South Africa so that they would need residence permits to continue living in Bellville or Algoa Park, that they would wish to register at Stellenbosch University as foreign students or have to show passports in order to attend a rugby game at Ellis Park.

We cannot believe that the majority of Afrikaners would wish to deny themselves any right to be members of the South African Defence Force, the South African Police, or the South African civil service; nor that they would wish to disqualify themselves from working for the South African Broadcasting Corporation or to play in the South Africa rugby, cricket or football teams.

To sum up, the components of self-determination for all groups in South Africa are, firstly, the right not to be oppressed, secondly the right to maintain identify, thirdly the right to cultural development and fourthly the right to political freedom. All these rights can be guaranteed by appropriate constitutional arrangements based on principles of non-racism, democracy and respect for human rights, including cultural rights. None of these will be furthered by dismemberment or balkanisation of our country.

Self-determination for the people of South Africa as a whole, in all our diversity and respecting the multiplicity of our languages, faiths and historical experiences, can only be achieved by means of a constitution and institutions of government and law that guarantee full equal rights for all. As a basic human right, the right to self-determination cannot be seen in isolation from the rest of human rights. Neither can it be exercised and enjoyed by any population group to the exclusion, and at the expense, of any person or persons not belonging to such a group.

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

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.

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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 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;

INTERIM REGIONAL ADMINISTRATION

PROPOSAL FOR SUBMISSION BY THE AFRICAN NATIONAL CONGRESS TO THE TECHNICAL SUB-COMMITTEE ON CONSTITUTIONAL ISSUES

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1. INTRODUCTION

This document contains proposals for Interim Regional Administrations which would be established after the first elections. The powers and functions of the Interim Regional Administrations would be a matter for the MPNP to decide upon.

The final constitution (to be decided upon by an elected Constituent Assembly) will make provision for the final regional arrangements. The document entitled "ANC Regional Policy (attached herewith) contains the ANC's position in this regard.

2. REGIONS AND BOUNDARIES

There shall be four regions for the purpose of regional administration during the transition period, namely Natal, Transvaal, The Cape Province and the Orange Free State, with boundaries as created at the time of Union in 1910.

3. POWERS AND FUNCTIONS

The powers and functions of the said regions during the period of transition shall be as follows:

3.1 Regional administration shall exercise concurrent powers with national government in respect of all matters allocated by national government subject to

national government retaining overriding powers in all matter.

3.2 Regional administrations shall implement, and/or participate in the implementation of, laws and policies of national government.

3.3 Regional administrations shall effect the phasing out, and/or participate in the process of phasing out, as rapidly as possible but in an orderly manner presently existing regional structures and administrations as well as all apartheid based structures within the said regions.

3.4 Regional administrations shall ensure that all existing structures of administrations and services are rationalised and integrated into the said regions.

The areas designated as likely areas of regional government are the following:

i The imposition of taxes in accordance with the existing national policy framework.

ii Education, other than tertiary education;

iii Health services including hospital;

iv Welfare;

v Housing

vi Markets and pounds;

vii Works and undertakings within the region, provided that if works and undertakings extend beyond the regional boundary, such works and undertakings may only be carried out with the consent of the

neighbouring region or regions affected thereby;

viii Traffic control;

ix The environment;

x Industrial and other development within the region;

xi Horse racing and gambling;

xii Town and regional planning;

xiii The imposition of punishment by fine, imprisonment or other sanctions for the contravention of any laws of the region;

xiv All other matters delegated to it by Act of Parliament.

4. STRUCTURES OF ADMINISTRATION

4.1 Executive Committee

There shall be established in each region a Executive Committee consisting of five to seven persons who shall be chosen by representatives of the region elected to the National Assembly, such persons to be drawn from political parties in proportion to the number of seats each party holds in the Constituent Assembly in respect of such regions.

4.2 Administrator

Each region shall have an administrator who shall be appointed by simple majority by the Executive Committee. The Administrator shall act as Chair of the Executive Committee and its Chief Officer.

4.3 Executive Committee members may be

removed/replaced by the said regional representatives provided that any replacement shall also be in accordance with the principle of proportionality.

4.4 The Administrator may be removed/replaced by the Executive Committee by simple majority.

5. The division of powers and functions between national government and regional administration in respect of the territories of the TBVC administrations shall be in line with the rest of South Africa, subject to such phasing in provisions as may have been determined by the Transitional Executive Council.

6. **LOCAL GOVERNMENT IN THE INTERIM**

6.1 Local government bodies shall carry out the functions assigned to them by Act of Parliament.

6.2 A regional council may delegate many of its powers or functions to a local authority, and require the local authority to execute such powers and implement such functions on its behalf within the local authority's area of jurisdiction.

6.3 If a local authority fails to carry out functions allocated to it by Act of Parliament, the Minister responsible for local government may appoint an officer to discharge such functions for as long as it may be necessary to do so.

6.4 If a local authority fails to carry out functions delegated to it by a regional council, the administrator of such council may appoint an official to discharge such functions for as long as it may be necessary to do so.

REGIONAL DEMARCATION COMMISSION

ANC SUBMISSION

MS. RENOSI MOKATE	DBSA, MIDRAND
MS. IVY MATSEPE	EDUCATION DEVELOPMENT TRUST
JOHANN VAN DER WESTHUYSEN	UNIVERSITY OF PRETORIA
PAUL DAPHNE	UNIVERSITY OF FORT HARE
KHEHLA SHUBANE	:CENTRE FOR POLICY STUDIES, JOHANNESBURG
AMANDA YOUNG	PLANNER, CAPE TOWN CITY COUNCIL
RICHARD HUMPHRIES	CENTRE FOR POLICY STUDIES, JOHANNESBURG
MS. LULU GWAGWA	UNIVERSITY OF NATAL
MS. LINDA MVUSI	JOHANNESBURG
PAUL ZULU	UNIVERSITY OF NATAL
JEFF MCCARTHY	UNIVERSITY OF NATAL PIETERMARITZBURG
LINDISIZWE MAGI	UNIVERSITY OF ZULULAND
CLIVE MENNEL	CBM, JOHANNESBURG
ALI NONYANE	LAND SURVEYOR, JOHANNESBURG
BAX NOMVETE	AFRICAN INSTITUTE FOR POLICY ANALYSIS AND ECONOMIC INTEGRATION, UNIVERSITY OF CAPE TOWN
OSCAR DHLOMO	INSTITUTE FOR MULTI PARTY DEMOCRACY, DURBAN
MS. ALISON TODE	UNIVERSITY OF NATAL
PHILLIP VAN RHYNVELD	UNIVERSITY OF WESTERN CAPE

FUNDAMENTAL RIGHTS

Submission by the African National Congress

To the Technical Committee on the question of Fundamental Rights During the Transition

Date : 12 May, 1993

The African National Congress submits that the fundamental rights listed hereunder should be protected and guaranteed in a transitional constitution, the Transition to Democracy Act:[1]

(a) Freedom from racial discrimination and the right of both men and women to enjoy equal rights in all areas of public and private life.

(b) Freedom of speech and expression which shall include the freedom of the press and other media.

(c) Freedom of thought, conscience and belief.

(d) The right to personal freedom including the right not to be detained without trail.

(e) The right to personal privacy including freedom from arbitrary search and seizure, integrity of the home and the inviolability of personal communications.

(f) The right to assemble and demonstrate peaceably without arms, including the right to hold public meetings, gatherings and processions and to participate in peaceful political activity intended to influence the composition and policies of governments.

(g) The right to form trade unions, employer's organisations and to engage in collective bargaining.

(h) The right to form and join associations and political parties.

(i) Respect for human dignity.

(k) The right of a person to use the language and to participate in the cultural life of his/her choice.

Any existing or future legislation during the transition which is contrary to these rights shall be null and void.

It is the ANC's belief that the final Bill of Rights shall be adopted by the Constituent Assembly as part of a future constitution for South Africa.

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[1] See the ANC's proposed Transition to Democracy Act annexed hereto and marked "A".

INTRODUCTION

1. Working Group 3 of Codesa decided that there should be established a Transitional Executive Council with various Sub-Councils to carry out various tasks during the period preceding the elections.

2. The broad task of these structures was said to be, "... to prepare for and to facilitate the transition to a democratic constitution to which Codesa is committed and in particular, the achievement of a level playing field and a climate favourable to free political participation and the holding of free and fair elections."

3. One of these structures was identified as a "Sub-Council on Foreign Affairs".

4. The Working Group, however, recognised that the area of foreign affairs was in a category different from the areas of government relevant to the other Sub-Councils.

5. Accordingly, it pointed "to the unique character of the Sub-Council" and called for broader discussion concerning it.

6. In keeping with the decisions of Working Group 3, which stated that "there is a need for a multiparty Transitional Executive Structure to function in conjunction with existing legislative and executive structures ...", this Sub-Council should be set up and function in a manner not intended to replace these existing structures.

AGREED TERMS OF REFERENCE OF THE SUB-COUNCIL ON FOREIGN AFFAIRS

1. The Sub-Council shall be set up as a body which will work with existing legislative and executive structures with the aim of achieving progressively the broadest possible consensus on matters affecting the country's international interests, particularly its long term interests.

2. The Sub-Council should assist with regard to securing agreements with the international community concerning any contribution that this community may make to assist in the peaceful transition to democracy.

3. The Sub-Council should assist in generating such international resources as may be available to help the country to address the socio-economic needs of the people as a whole.

4. As agreed at Codesa, the Sub-Council will report to the Transitional Executive Council.

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TRANSITIONAL

EXECUTIVE

COUNCIL

INTRODUCTION

1. Working Group 3 of Codesa decided that there should be established a Transitional Executive Council [illegible] Sub-Councils to carry out various tasks during the period preceding the elections.

2. The broad task of these structures was said to be: "to prepare for and to facilitate the [illegible] democratic constitution to which Codesa [illegible] particular, the achievement of a [illegible] climate favourable to free political [illegible] holding of free and fair elections."

3. One of these structures was identified as a "[illegible] Foreign Affairs".

4. The Working Group, however, recognised [illegible] foreign affairs was in a category [illegible] of government relevant to the other [illegible].

5. Accordingly, it pointed "to the [illegible] Sub-Council" and called for [illegible] it.

6. In keeping with the decisions of [illegible] accept that "there is a need for a [illegible] Transitional Structure to function [illegible] existing legislative and executive [illegible] Sub-Council should be set up and function [illegible] designed to replace these existing [illegible].

[illegible] FOREIGN AFFAIRS

1. The Sub-Council shall be set up as a body which will work with existing legislative and executive structures with the aim of achieving progressively the [illegible] consensus on matters affecting the country's [illegible] interests, particularly its long term [illegible].

2. The Sub-Council [illegible] agreements with the international [illegible] contribution that this community can make [illegible] peaceful transition to democracy.

3. The Sub-Council should assess [illegible] international resources as may be [illegible] country to address the socio-economic [illegible] as a whole.

4. As agreed at Codesa, the Sub-Council [illegible] Transitional Executive Council.

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Submission by the African National Congress

To the Technical Committee on the Transitional Executive Council

Date : 12 May, 1993

[Note : Further submissions will be made on or before 19 May, 1993 on the question of the powers, duties and functions of the sub-councils.]

LEGISLATIVE FRAMEWORK FOR A TRANSITIONAL EXECUTIVE COUNCIL

1. A Transitional Executive Council shall be constituted with executive powers for the following purposes:

   (i) to prepare for and to facilitate the transition to a democratic order in South Africa;

   (ii) to create a climate for free political participation in which -
   (a) there will be no impediment to legitimate political activities;
   (b) there will be no intimidation;
   (c) political parties and organisations will be free to canvass support from voters, to organise and hold meetings, and to have access to voters for such purposes;
   (d) the power of government will not be used to favour or prejudice any political party or organisation;

   (iii) to promote conditions conducive to the holding of free and fair elections in accordance with the provisions of (the Transition to Democracy Act).

2. (a) Notwithstanding the provisions of any other law, including the Republic of South Africa Act, 1983, executive authority, including the making of Proclamations, Ordinances and regulations, and any other discretions vested in the State President, Ministers or any other person by any law, which may have an impact on any of the purposes referred to in section 1, and which relate to -

   (i) regional and local government;

   (ii) law, order, stability and security;

   (iii) defence;

   (iv) any aspect of finance referred to in section 5(d);

   (v) any aspect of foreign affairs referred to in section 5(e);

(vi) any other matter assigned to the Transitional Executive Council by the State President;

shall be exercised by the State President, Minister or person vested with such authority or discretion, in consultation with the Transitional Executive Council, or if such function has been delegated by the Transitional Executive Council to a sub-council, in consultation with such sub-council.

(b) All Proclamations, regulations and government notices dealing with matters referred to in sub-section (a) shall be signed by the State President, Minister or other person concerned, and countersigned by a member of the Transitional Executive Council duly authorised thereto.

3. In addition to the executive power referred to in section 2, and the other powers referred to in this Act, the Transitional Executive Council will have the following powers:

(a) to request information from, and to have access to all records of, any government, administration or organisation participating in the Transitional Executive Council, insofar as such information or access to such record, is reasonably required by it for the purpose of exercising its functions;

(b) to exercise all or any of the functions and powers referred to in section 6, or powers necessary for the achievement of the purposes referred to in Section 6, and to delegate the exercise of any of its powers and functions to its sub-councils;

(c) to receive reports from and to confirm or amend decisions made by any of its sub-councils;

(d) to initiate or participate in negotiations with any government, administration, persons or bodies of persons in relation to any matter which in its opinion may be relevant to any of the purposes referred to in section 1;

(e) to appoint a secretary and such other officers and employees as may be required for the proper performance of its functions, and to fix the remuneration and terms of employment of such officers and employees;

(f) to request officers in the Public Service to be seconded to it in terms of section 13(6) of the Public Service Act, 1957 (Act No 54 of 1957) in order to assist it in the performance of its functions;

(g) any other power reasonably needed by it to enable it to achieve its purposes and to carry out its functions.

4. (a) All governments will keep the Transitional Executive Council informed of, and will provide it with copies of all proposed legislation, including proclamations, bills and regulations of governments or administrations that may be relevant to the purposes referred to in section 1.

(b) If the Transitional Executive Council has reason to believe that any proposed legislation, including bills, ordinances, proclamations, or regulations, other than those dealt with in section 2(a), will have an adverse impact upon any of the purposes referred to in section 1, it may, after taking into account the necessity for such legislation, require the government or administration concerned not to proceed therewith.

5. (a) All governments, administrations and participants will keep the Transitional Executive Council informed an the Transitional Executive Council will be entitled to ask for and to receive from them, information in regard to proposed executive actions by any government or administration, or contemplated actions on the part of any other participant in the Transitional Executive Council, that may have an impact on any of the matters referred to in section 1.

(b) If the Transitional Executive Council has reason to believe that the implementation of such executive or other action will have an adverse impact upon the purposes referred to in section 1 it may, after taking into account the necessity for such action as far as such government, administration or participant is concerned, require the government, administration or participant not to proceed therewith.

6. Without limiting in any way the powers vested in it by section 2, the Transitional Executive Council will have the following sub-councils which will report to it in such manner and at such times as it may determine:

(a) A sub-council on regional and local government which will have the following purposes -

(i) to acquaint itself with developments in regional and local government;

(ii) to identify and, in accordance with powers delegated to it, to take action in respect of aspects of regional and local government that may have an impact on the purposes referred to in section 1;

(iii) to attend to matters delegated to it by the Transitional Executive Council.

(b) A sub-council on law and order, stability and security which will have the purposes and powers as set out in annexure A.

(c) A sub-council on defence which shall have the purposes and powers as set out in annexure B.

(d) A sub-council on finance which shall have the following purposes:

(i) to acquaint itself with developments in government finance at all levels of government, including all existing governmental authorities, be they on the central, regional or local government level;

(ii) to identify and, in accordance with powers delegated to it, to take action in respect of aspects of governmental finance at all levels which may have an impact on any of the purposes referred to in section 1;

(iii) to acquaint itself with any matter relevant to intergovernmental financing, and to make recommendations to the Transitional Executive Council in regard thereto;

(iv) to monitor and, in accordance with powers delegated to it, to prevent any attempt by any governmental body to favour directly or indirectly any political party or organisation above others;

(v) to monitor and, in accordance with powers delegated to it, to prevent any attempt by any government body, directly or indirectly, to prejudice any political party or organisation.

(vi) to deal with any other matter delegated to it by the Transitional Executive Council.

(e) A sub-council on foreign affairs, which shall have the purposes and powers set out in annexure C.

(f) Sub-council of elections which shall have the purposes and powers set out in annexure D.

(g) Save where the terms of the delegation of powers to a sub-council by the Transitional Executive Council otherwise provide, all decisions of sub-councils will be subject to confirmation by the Transitional Executive Council, which if it decides to confirm a decision, may do so unconditionally or subject to amendments required by it.

7. For the purposes of carrying out their functions in terms of this Act, the sub-councils shall have the same powers, including the right to request and be furnished with information, and to have access to records, as the Transitional Executive Council would have had, if such functions had been carried out by it.

8. All participants in the Transitional Executive Council, and all governments and administrations will be required to comply with requests made to them in terms of the provisions of this Act, by the Transitional Executive Council, and all decisions made in terms of this Act by the Transitional Executive Council, or a sub-council having delegated authority to do so, will be binding on and will be implemented by such governments, administrations and participants: Provided that-

   (a) If in relation to a requirement of the Transitional Executive Council made in terms of section 4(b), the government or administration concerned contends that the necessity for the proposed legislation outweighs its adverse impact, it may refer such issue to the Independent Election Commission for a decision thereon, and may only proceed with such legislation if the Independent Election Commission upholds its contention.

   (b) If in relation to a requirement of the Transitional Executive Council made in terms of section 5(b), the government, administration or participant concerned contends that the necessity for the proposed action outweighs its adverse impact, it may refer such issue to the Independent Election Commission for a decision thereon, and may only proceed with such action if the Independent Election Commission upholds its contention.

9. Any differences as to whether or not in any particular instance a matter falls within the scope of the powers of the Transitional Executive Council, or one of its sub-councils, as provided for in sections 4(a), 5(a) or 6(a) to (e) or whether any proposed action or legislation including Proclamations, Ordinances or regulations will have an adverse impact on any of the purposes referred to in section 1, such difference may be referred by any government, administration or participant to the Independent Election Commission for its decision.

10. If any issue is referred by any government administration or participant to the Independent Election Commission for a decision, in accordance with the provisions of this Act, the Independent Election Commission shall as soon as possible, and after consideration of:

    (i) the disputed issue;

(ii) the views expressed thereon by the members of the Transitional Executive Council; and

(iii) any other matter considered by the Independent Election Commission to be relevant to its decision

determine the difference and give its decision thereon.

11. Any decision of the Independent Election Commission made in respect of any matter referred to it in terms of this Act shall be final and binding and not subject to appeal or review in any court.

12. A request to the Transitional Executive Council or to a sub-council thereof to procure information or to inspect records, pursuant to the powers which it has in terms of this Act, which is supported by at least one-third of the members of the Transitional Executive Council, shall be given effect to by the Transitional Executive Council or the sub-council, as the case may be, and the information gathered in consequence of such request or inspection, shall be made available to all members of the Transitional Executive Council.

13. (a) The Transitional Executive Council shall consist of a representative of each of the governments, administrations and organisations which constitute Codesa, which commit themselves to the achievement of the purposes set out in section 1 and which undertake to co-operate with and implement the decisions of the Transitional Executive Council.

(b) Appointments to the Transitional Executive Council shall be made by the State President by proclamation in the Gazette: provided that in making such appointments, the State President shall act on the recommendations of the government, administration or organisation concerned.

(c) If a member of the Transitional Executive Council loses the confidence of the government, administration or organisation which recommended his or her appointment, the State President, on being advised thereof by such government, administration or organisation shall, by proclamation in the Gazette, remove such person from the Transitional Executive Council.

(d) If a member of the Transitional Executive Council dies, resigns from office, or is removed from office in terms of sub-section (c) hereof, the government, administration or organisation previously represented by such member shall be entitled to a new representative on the Transitional Executive Council, and such appointment shall be made by the State President in accordance with the provisions of sub-section (b) hereof.

(e) Members of the Transitional Executive Council will be fulltime executives. (It will be necessary here to specify the procedures for determining the salaries and benefits of such executives, by whom their salaries will be paid, and what the terms and conditions of their service will be).

14. (a) The first meeting of the Transitional Executive Council shall be held at a date and a place to be determined by the Chairpersons of Codesa, which shall be a date not later than seven days after the Transitional Executive Council has been appointed in accordance with the provisions of this Act.

(b) The notice in the Gazette announcing the appointment of the first members of the Transitional Executive Council, shall also specify the date and place of its first meeting.

(c) The Transitional Executive Council shall thereafter meet at least once in every week, and on such other occasions as it may from time to time determine.

(d) The Chairpersons of Codesa shall preside at the first meeting the Transitional Executive Council. At this meeting the Transitional Executive Council shall appoint a secretary, who shall be a fulltime official of the Council, and shall decide upon the procedures to be followed in convening and conducting its meetings until rules governing such procedures have been made in terms of section 15.

(e) The secretary shall -

(i) carry out all duties assigned to him or her by the Transitional Executive Council;

(ii) convene special meetings of the Transitional Executive Council if required to do so in writing by not less than one third of its members;

(iii) fix a time, date and venue for any meeting called in terms of sub-paragraph (ii) hereof which, save in the case of urgency, shall be convened on not less than three days notice to the members of the Transitional Executive Council: provided that an urgent meeting may be called on short notice if the calling of the meeting on short notice is ratified by the Transitional Executive Council at such meeting.

(f) One-third of the members of the Transitional Executive Council shall constitute a quorum for any meeting.

15. The Transitional Executive Council shall be entitled to make rules not inconsistent with this Act, governing the convening and conduct of its meetings and those of its sub-councils, and the manner in which its business and affairs will be conducted.

16. (a) The Transitional Executive Council and its sub-councils will endeavour to take decisions on a consensus basis.

(b) If, notwithstanding attempts to reach consensus, such consensus has not been achieved, a decision which has the support of at least 80% of the members of the Transitional Executive Council shall be deemed to be a decision of the Council.

(c) If any government, administration or participant in the Transitional Executive Council wishes to refer a decision made in terms of sub-section (b) to the Independent Election Commission to be dealt with in accordance with the provisions of this Act, it shall refer such matter in writing to the such Commission not later than three days after such decision has been made.

(d) If a decision taken in terms of sub-section (b) hereof, is not referred to the Independent Election Commission in terms of sub-section (c) hereof, it shall, after the expiry of the period of three days, become final and binding, and shall not be subject to appeal or review in any court.

17. (a) Meetings of the Transitional Executive Council may be attended by all members of sub-councils.

(b) The Transitional Executive Council may invite any other person to attend its meetings, and at its discretion allow any person present at its meetings to speak.

(c) Decisions of the Transitional Executive Council shall be taken only by the members thereof, and persons who are present at meetings, but are not members of the Transitional Executive Council, shall have no right to vote on any decision.

18. (a) Sub-councils will have a multi-party character, and unless the Transitional Executive Council considers that good cause exists therefor, shall consist of not more than six members.

(b) Appointments to sub-councils, the removal and replacement of members of sub-councils, and the temporary appointment of a person as a substitute

for a member who is absent or unable to perform his or her duties, will be made by the State President by proclamation in the Gazette: provided that such appointment, removal, replacement, or temporary appointment will be made by the State President in accordance with the recommendations of the Transitional Executive Council.

(c) Members of sub-councils will be fulltime executives. (Provision will have to be made for salaries, by whom the salaries will be paid, and the conditions of service.)

19. (a) The State President, in consultation with the Transitional Executive Council, shall be entitled by way of Proclamation in the Gazette, and for the purposes referred to in section 1, to repeal or amend any of the provisions of this Act, or notwithstanding the provisions of any other law, to introduce new provisions into this Act, which shall take precedence over any other law that may conflict with such provisions.

(b) Such Proclamation shall have the same force and effect as an Act of Parliament, and shall not be subject to appeal or review in any court.

20. This Act and any Proclamation made under section 19, shall, notwithstanding the Self-governing Territories Constitution Act, 1977 (Act No 21 of 1977), apply mutatis mutandis in every Self-governing Territory as defined in section 38(1) of that Act.

21. (a) The Transitional Executive council shall from time to time determine a budget to meet the reasonable costs of carrying out its powers and functions in accordance with the provisions of this Act.

(b) If there is a dispute between the members of the Transitional Executive Council concerning the budgetary requirements of the Council, then pursuant to a request supported by at least one third of the members of the Council, such dispute shall be referred to the Independent Election Commission for a decision.

(c) Any decision made by the Independent Election Commission in terms of sub-section (b) shall be final and binding and not subject to appeal or review in any court.

(d) The South African Government shall provide the funds necessary to cover the budget of the Transitional Executive Council determined in accordance with sub-section (b) or (c).

(e) A Revenue Account shall be established by the Transitional Executive Council, and all funds made over to it shall be paid into such account, and all expenses and disbursements incurred by it shall be paid out of such account.

(f) The books and accounts of the Transitional Executive Council shall be subject to audit by the Auditor-General.

22. The Transitional Executive Council and its sub-councils shall be entitled to exercise the powers and functions conferred on them by this Act in Transkei, Bophuthatswana, Venda and Ciskei.

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;

AFRICAN NATIONAL CONGRESS SUBMISSION

ON PROPOSED TERMS OF REFERENCE FOR THE T.E.C. SUB-COUNCIL ON FINANCE

FUNCTIONS

1 The TEC Sub-Council on Finance (the SCF) will, notwithstanding any other law:-

1.1 acquaint itself with recent economic developments, economic policy objectives and targets for the medium term and more particularly, for the ensuing 1994/1995 fiscal year;

1.2 be entitled to representation on all function and budgeting committees with a view to ensuring that funds are not applied in a manner favouring any political grouping participating in the election of a democratic government and, if warranted, report its finding to the Transitional Executive Council;

1.3 receive reports indicating detailed departmental and regional costed expenditure as well as reports regarding expenditures against budgeted amounts;

1.4 be required to approve any measures designed to rationalise treasury functions in the process of realignment of government structures during transition;

1.5 make recommendations to the Transitional Executive Council and to the relevant departments concerning the privatisation or tendering out of functions currently performed by relevant departments of state;

1.6 direct the auditor-general to investigate allegations of general or specific

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corruption and inefficiency, and will direct the auditor-general to report back to the sub-council upon completion of such investigation;

1.7 be entitled to recommend the disciplinary measures including suspension and/or dismissal of public servants who fail to perform their tasks within the necessary guidelines relating to financial discipline and unauthorised or improper expenditure;

1.8 in regard to the 1994/1995 fiscal year be required to approve :-

1.8.1 the overall level of state expenditure;

1.8.2 the composition of expenditure - security, social, economic and general government broken down into capital and recurrent expenditure;

1.8.3 the level and composition of any taxes to be collected;

1.8.4 the financing of the budget deficit;

1.8.5 the contingent liabilities of government.

1.9 make recommendations regarding the overall efficiency of state expenditure.

2 In the execution of its terms of reference the SCF shall:-

2.1 have access to all relevant information available from departments of state, the South African Reserve Bank, the Central Economic Advisory Service, the Tax Advisory Committee and the National Economic Forum;

2.2 shall be entitled to research or otherwise acquire for the account of the political parties represented on the SCF such other information not available from the sources mentioned in paragraph 2.1 above;

2.3 shall have access to information regarding disbursements made from the secret funds operated by the government in order to determined whether a particular political party is being favoured.

3 The SCF will be required to approve:-

3.1 any new appointment in the public service of a person to the level of director or above;

3.2 any new international financial agreements with any foreign government or international agency;

3.3 all fiscal transfers to the tiers of governments, central departments, national states and self-governing states.

INDEPENDENT

ELECTORAL

COMMISSION

INDEPENDENT

ELECTORAL

COMMISSION

Submission by the African National Congress

To the Technical Committee on the Independent Electoral Commission

Date : 12 May, 1993

ELECTORAL (CONSTITUENT ASSEMBLY) BILL, 1993

To establish an independent electoral commission to conduct and supervise elections, to provide for a code of conduct of political parties and to regulate the voting of voters and the election of members of the Constituent Assembly and to provide for incidental matters.

1. **Application of Act**

1.1 The provisions of this Act shall apply in respect of the Constituent Assembly elections and incidental matters thereto.

1.2 In the event of any conflict between this Act and earlier legislation regulating elections, this Act and the regulations made thereunder shall prevail.

1.3 Save where the context otherwise provides, the provisions of this Act shall apply to the national territory as identified and designated in 1910.

2. **Independent Electoral Commission**

2.1. An Independent Electoral Commission shall be nominated by the Multi Party Forum [or the Transitional Executive Council] and formally appointed by the State President.

2.2. The Commission shall consist of

2.2.1 not less than seven and no more than eleven members of integrity and suitable qualification all of whom shall be eligible voters.

2.2.2 four persons from the international community who shall be appointed by the State President upon the recommendation of the Multi Party Forum. [Transitional Executive Council]

2.3. All decisions of the Commission shall be taken by means of a vote and a simple majority shall be sufficient to bind the Commission. In the event of a deadlock, the President of the Commission who shall be appointed by the members of the Commission and who shall be a member of the Commission, shall have a casting vote.

2.4. No person shall serve as a Commissioner if such person:

2.4.1 remains an official or office bearer of any political party or political organisation; or

2.4.2 appears on a party list as a candidate for the election.

3. Status of Independent Electoral Commission

3.1. The Commission shall have the sole responsibility for the organisation, conduct and supervision of the election in terms of the provisions of this Act.

3.2. The Commission shall be independent of all governmental structures. Its sole responsibility to any other organ of government shall be to provide written reports to the Transitional Executive Authority on its decisions in respect of the organisation and conduct of an election.

3.3 The Commission shall be the supreme body in respect of the elections and shall have exclusive jurisdiction to apply and interpret this law. Its decisions shall be final.

3.4. The South African Government shall provide the funds necessary to finance the expenditure of the Commission, which funds shall be made over to the Commission from the Central Revenue Fund.

3.5. A revenue account shall be established by the Commission and all funds made over to it shall be paid into such account and all expenses and disbursements incurred by it shall be drawn from such account.

3.6. The Auditor General shall audit the books and accounts of the Commission.

4. Powers and Functions of the Independent Electoral Commission

4.1. The Commission shall have the sole responsibility to organise and conduct the elections and to make such arrangements as are necessary to ensure that the elections are conducted honestly and fairly.

4.2.1 The Commission shall certify to the TEC the fairness and freeness of the election. The Commission shall, in addition to such certification, be empowered to decide on such measures as it may deem necessary to correct or rectify substantial or material irregularities or unfairness in the elections.

4.2.2 The Commission shall, in addition to the certification, decide on the measures that it considers necessary for the parties to follow where, in its opinion, the election was partly or wholly unfair.

4.3. All powers of Ministers of State, governmental and local authorities in respect of the organisation, conduct and supervision of an election shall be derived solely from the Commission and shall be transferred to the Commission.

4.4. In particular and without limiting the general powers of the Commission as contained in paragraph 4.1 of this clause, the Commission shall:

4.4.1 apply the electoral system agreed to by the parties at the Multi Party Forum;

4.4.2 identify the criteria for voter identification;

4.4.3 designate the applicable voting areas and polling stations; including mobile polling stations;

4.4.4 determine where voters may cast their votes;

4.4.5 promulgate regulations governing procedures for the casting of postal votes where the voter is incapable of voting in person because of his or her illness or physical infirmity or physical disability or advanced age or because of her pregnancy;

4.4.6 endeavour to ensure that each qualified voter be identified in advance of such election; but each qualified voter who produces his or her ID document or passport shall be entitled to vote whether or not he or she has been identified in advance;

ALTERNATIVELY:

ensure that, save for the production of an ID document or a passport at the actual vote, each qualified voter shall be identified in advance of such election;

4.4.7 determine the extent to which existing law restricts free political activity, including access to voters, and shall promulgate regulations repealing or amending these;

4.4.8 establish boards or appropriate machinery which shall have the power to hear a dispute concerning electoral irregularities, provision of venues for meetings, access to voters, intimidation and the breaches of the conduct for political parties or any other matter referred to the Commission, subject to a decision of such board or mechanism being referred to the Commission which shall act as an appeal tribunal.

4.4.9 have the power to direct any governmental authority, including the police and the Defence Force or any other body or person to perform and execute tasks necessary for the implementation and conduct of the election;

4.4.10 work in collaboration with the Independent Media Commission to ensure that all political parties participating in the election be given reasonable and fair access to all public broadcasting and television networks by means of an applicable code of broadcasting conduct, provided that the Commission shall be the final arbiter in the application of the provisions of such code;

4.4.11 determine the extent, if any, of party political advertising in the electronic media;

4.4.12 formulate and publish a code of conduct with which every political party and each participant in the election shall comply together with applicable sanctions for breach of such code;

4.4.13 formulate and publish binding guidelines for the financing of the political campaigns of political parties. Such guidelines shall include a requirement of public disclosure of each contribution in excess of R10 000,00 to a

political party and the identity of the contributor;

4.4.14 prepare, develop, initiate and implement educational programmes for voters in the election. Such programmes shall be designed to ensure that all eligible voters understand the voting procedures and know about the secrecy of the ballot. The Commission shall prepare as soon as is practicably possible after its constitution a budget for the financing of such programmes to be tabled before the Transitional Executive Authority which, subject to its approval, shall make the necessary funds available to the Commission;

4.4.15 administer such funds as may be allocated by the Commission for the purposes of assisting political parties in the organisation of their respective political campaigns. Such funds shall be allocated to political parties by means of retrospective reimbursement of expenditure properly proved and further in the ratio of the percentage of votes cast for each such party in the election. Such money shall be allocated in advance to the Commission by the Government;

4.4.16 enrol monitors nominated by international bodies as official observers, be responsible for their deployment in monitoring the elections and receive reports from such observers as to the conduct of such elections; in this regard we would propose the appointment of an observer agency to co-ordinate the monitoring work, preferably the United Nations or a combination of international bodies.

4.4.17 appoint subcommittees and regional councils which will perform such tasks as the Commission deems necessary to achieve the objective of the Commission. Such subcommittees shall be solely accountable to the Commission and such decisions as are taken by a subcommittee will be subject to appeal to the Commission;

4.4.18 act as an adjudicator and arbitrator on any matter related to the election process and the election referred to it by political parties, political organisations and the public including disputes referred to it by the Transitional Executive Council in terms of the procedures laid down in the Transition to Democracy Act;

4.4.19 appoint electoral officers and other officials as it deems fit;

4.4.20 make any other arrangements and promulgate any regulations which it, in its sole discretion, deems necessary for the attainment of its functions and purposes.

5. Persons entitled to vote

5.1 All South African citizens who have attained the age of 18 years shall be eligible to vote for the purposes of this clause.

5.1.1 Citizens, for the purpose of this clause, shall include all citizens of Transkei, Venda, Bophuthatswana and Ciskei.

5.2 A person shall be deemed to be a citizen by reason of any one of the following grounds:

5.2.1 Birth in South Africa;
5.2.2 At least one of such a person's parents was a South African citizen;
5.2.3 Marriage to a South African citizen;
5.2.4 Residence in South Africa for a continuous period of at least five years immediately prior to the registration of this Act.

5.3. Any person so entitled to vote as provided in paragraphs 5.1 and 5.2 shall exercise his/her vote in the area determined by the Commission.

6. **Persons not entitled to vote**

No person shall be entitled to vote if he or she:

6.1. has been convicted of any corrupt or illegal practice under this Act;

6.2. is subject to an order of court declaring him or her to be of unsound mind or mentally disordered or mentally defective;

6.3. is detained as a mentally ill person under the Mental Health Act (Act 18 of 1973) or similar statute in the case of a person resident in an independent state so defined.

7. **Voter Identification**

7.1 The Commission shall draw up regulations concerning the identification of voters. If it considers it necessary, it may provide for a system of voter identification cards.

7.2 In establishing proof of voting age, place of birth and citizenship, all appropriate methods of proof of identity shall be taken into account, including inter alia, passports, identity documents, birth certificates, baptismal certificates, school reports and affidavits.

8. **Party Lists for Election to Constituent Assembly**

8.1. No person shall be eligible for inclusion on a party list unless such person is eligible to vote and is not serving a current term of imprisonment.

8.2. Each person nominated on a party list shall confirm in writing his/her consent to such nomination and his or her confirmation that he or she is

legally competent to become a member of the Constituent Assembly by virtue of being an eligible voter.

8.3. If a person whose name appears on a party list dies before the election takes place or withdraws consent or is withdrawn by a political party for any reason, the political party on whose list the person's name appeared may nominate a person to replace the candidate.

8.4. Each party shall furnish to the Commission a list of persons in respect of each region as defined in the Transition to Democracy Act in which it intends to contest the election and shall furnish a second list to the Commission in respect of candidates nominated for election on the national list as provided for in the Transition to Democracy Act.

9. Registration of Political Parties

9.1. The Independent Electoral Commission shall register as a political party any organisation which wishes to contest the elections for the Constituent Assembly if:

9.1.1 It is satisfied that it is an object of such organisation to propose a list of persons to contest the election to the Constituent Assembly;

9.1.2 the organisation provides a deposit of R100 000,00 with the Independent Electoral Commission, such deposit being forfeited in the event of the organisation failing to obtain 3% (percent) of the votes cast in the elections;

9.1.3 The organisation provides the Independent Electoral Commission with an original copy of its constitution together with the signatures of 20 000 persons qualified to vote;

9.1.4 The organisation provides a written undertaking that it will abide by the Code of conduct for parties and will accept the decisions of the Commission and the result of the election;

9.1.5 the organisation provides the Independent Electoral Commission with

9.1.5.1 the name of the organisation;

9.1.5.2 the full names and signatures of the national officers;

9.1.5.3 the business address and postal address of the head office of the organisation and postal addresses of its provincial or regional offices.

9.2. Upon registration the Independent Electoral Commission shall issue such an organisation with a certificate of registration.

9.3. Two or more political parties which have mutually agreed thereto may be registered for the purposes of the election as one political party and may assume for the purposes of the elections any name which such parties

deem appropriate.

9.4. Upon the date set by the Independent Electoral Commission as nomination day each political party shall submit to the duly designated officer of the Commission a list of persons proposed by such party for its lists for election to the Constituent Assembly.

9.5 The Commission shall register the symbol or logo of each party.

10. Polling Districts and Polling Stations

The Independent Electoral Commission shall in its sole discretion as soon as practicable after its establishment but after consultation with duly authorised representatives of registered political parties divide South Africa into as many polling areas as it deems appropriate for the fair and efficient conduct of an election. All polling venues should be accessible to all voters.

11. Hours of Poll

The poll shall commence at 06:00 and shall close at 22:00. There shall be 3 days for polling one of which shall not be a working day. The officer duly appointed by the Independent Electoral Commission to preside at the polling station shall be entitled to permit voters to remit a vote in the event that such voter is in the perimeter of the polling station by 9:00 p.m (21H00).

12. Appointment and Powers of Presiding Officers

The Independent Electoral Commission shall appoint presiding officers for each polling district and where applicable for each polling station.

13. Where persons vote

13.1. Save in the case of postal votes recorded in terms of duly promulgated regulations issued by the Independent Electoral Commission, a voter shall vote in the region in which he or she resides or works.

13.2. Notwithstanding paragraphs 13.1, the Independent Electoral Commission may promulgate regulations authorising that persons may vote in another area if it deems it suitable for the fair and efficient conduct of the election.

14. **No voter to vote more than once**

14.1. A voter shall, whether or not his or her name appears on more than one voters list or more than once on the same list, be entitled to vote once only for the election of candidates to the Constituent Assembly and subject to paragraph 14.2 a voter shall not be entitled to vote unless such person produces an identity document or a voter identification card.

14.2. In the event that a voter fails to establish his or her identity as provided for in paragraph 7. the voter shall be required to make an affidavit to the effect that he or she is eligible to vote and that he or she has not voted in another district.

14.3. Such votes as are cast in terms of paragraph 14.2 must be verified by the Independent Electoral Commission during the counting of such votes.

14.4. A person who makes a false affidavit shall be guilty of an offence and liable to conviction and penalties as prescribed hereunder.

14.5 The Commission shall draw up regulations to ensure that means are identified to ensure that persons do not vote more than once.

15. **Manner of Voting**

The voting at the election shall be by secret ballot which shall in substance be conducted in accordance with procedures promulgated by the Independent Electoral Commission, which shall inter alia make provision for illiterate, blind and physically incapacitated persons to cast their vote. The ballot form should be single-columned and in alphabetical order.

16. **Counting of Votes**

The Independent Electoral Commission shall appoint a returning officer for each polling district.

17. **The Chief Returning Officer**

The Independent Electoral Commission shall appoint a chief returning officer who shall not be an office bearer of or member of any political party or a candidate for election.

18. **Offences**

18.1. The Independent Electoral Commission shall promulgate regulations as soon as is practicable after its constitution prohibiting corrupt practices relating to the election campaign and voting, undue influence, bribery, illegal persuasion, or intimidation of voters.

18.2. The Commission shall be empowered to provide for appropriate punishment in the event of a person being convicted by the appropriate court of law for the commission of one or more offences specified in paragraph 18.1. Such punishment may include the imposition of a fine, a term of imprisonment, prevention from voting or being a candidate for election or campaigning for any other candidate for elections.

18.3 The Commission shall ensure that the taking of public opinion polls and the publication of the results of such polls shall be restricted in the two weeks prior to the election. No such poll shall be published in the period of fourteen days before the election. In addition, the Commission shall ensure that persons and agencies taking such polls clearly identify the conditions and procedure for the taking of such polls and which political party, organisation or person has requested or paid for the poll.

19. **Procedure for complaints in respect of electoral irregularity**

19.1. Any duly authorised representative of a political party or eligible voter shall be entitled to make application to the Independent Electoral Commission in the manner prescribed by regulation by such body in respect of any electoral irregularity being a breach of any of the provisions of this Act and on any of the provisions of such regulations which the Commission publishes from time to time.

19.2. The Commission shall as soon as it is practicable have the application considered in terms of the procedures laid down by it and shall make its decision known by means of a written ruling, a copy of which shall be provided to the applicant or his or her duly authorised representative. The decision of the Commission shall be final.

EXPLANATORY MEMORANDUM ON THE ELECTORAL (CONSTITUENT ASSEMBLY) BILL 1993

1. The African National Congress submits its proposals on the establishment of the machinery for the conduct of elections to the Constituent Assembly in the form of a Bill. Although the language used in the proposed measure may not be exactly that of a parliamentary drafter's version, the sense it attempts to convey could form the basis for such legislation.

2. The preamble provides in general terms, for the purpose of the Bill. It is now agreed that the first elections should be conducted by a body which enjoys the confidence of all sectors of our society and that it should be authorised to act independently and have adequate powers.

3. The definitions clause will be inserted when there is agreement on the text of the proposed legislation.

4. Section 1 refers to the matters. Firstly, the context for the Bill is the election for the Constituent Assembly. Second, as there must be uniform legislation for an election throughout South Africa, the Bill stipulates that its area of application is the national territory as established in 1910. The agreement of the "TBVC states" to the election process for the Constituent Assembly will entail acceptance of the provisions of this measure. Third, the law must provide for resolving any conflict between this Act and earlier legislation, which is basically the Electoral Act 45 of 1979 as amended and added to. The Independent Electoral Commission may wish to substitute its own rules for the existing ones or to amend them and therefore to continue some of the earlier provisions. But for the avoidance of doubt it is made clear that this Act and the regulations made by the Commission shall have precedence.

5. Section 2 constitutes the Independent Electoral Commission. Because of the importance of its role, it is proposed that it be neither too small nor too unwieldy in composition. Members shall serve in a full-time capacity and shall be persons who enjoy the confidence of South Africans. Therefore, it is suggested that a Commissioner should divest herself or himself of any office in a political party for the duration of the Commission's terms and must not play a direct role in the election as a candidate. In addition to South African citizens, it is proposed that four "External Commissioners" be appointed, to provide expertise to the Commission and a measure of impartiality and external supervision.

6. Decisions of the Commission must be taken expeditiously. The addition of external appointees therefore makes it possible that such decisions can be taken by a simple majority of the Commission. As such, Commissioners will provide the element of detachment and impartiality.

7. Section 3, dealing with the status of the Commission, is the heart of the proposal. Section 3.1 provides for the Commission to have sole control over the whole election. It provides for the Commission's independence and, in order to ensure speed of decision-making, for the finality of its decisions.

8. Section 4 refers to the powers of the Commission. In a transitional situation, a body which acts as a referee must have the authority to determine whether the election was "free and fair". This the Commission is entitled to do and it will report to the Transitional Executive Council. In addition, Section 4 authorises the Commission to propose or to take corrective action, including putting parties on notice where it considers that the behaviour of a party, its officials or members, is not consistent with the demands of a free and fair election.

9. The electoral system decides the method by which the electors will vote. Whether the election should be conducted on the first-past-the-post system or by proportional representation on a list system is a matter for the Multi-Party Process to determine and not the Commission (Section 4.4.1).

10. The Commission is given the discretion to determine the criteria for identifying voters. It may decide whether a voter's register is necessary or whether the issuing of voters' cards to eligible voters will suffice. In any event, the production of a passport or identification document at the actual voting station is sufficient evidence of citizenship and entitlement to vote. Identification of voters must take into account a multiplicity of methods of proof (Section 7.2).

11. Entitlement to vote has to be distinguished from identification. In common with other countries, entitlement to vote is determined by citizenship. It takes into account that racial and gender factors or practices are echoed in present laws and, to that extent, amends existing citizenship rules.

12. Voting must be in person, on one of the three designated days set aside for the elections in the area determined by the Commission (Section 5.3). The only exception to personal voting is the proposal for postal voting by persons incapable of voting in person because of illness or physical infirmity or physical disability or age or pregnancy (Section 4.4.5). No other provision for postal voting is made to ensure that there is no abuse and, at the same time, fairness for all parties.

13. The Commission is authorised to set up sub-committees and councils to enable it to perform its functions. It may therefore devise the best method for the efficient pursuit of its tasks. In addition, it can establish mechanisms for the investigation and hearing of complaints.

14. If the Commission is to perform its functions satisfactorily as the guardian of the electoral process, it must be able to instruct in the last resort any person (including departments and security personnel) to perform necessary tasks (Section 4.4.9), have the ultimate authority where it shares a function with

another body (Section 4.4.10) and enforce rules and procedures such as a Code of Conduct for Political Parties on the parties, officials and participants in the election (Section 4.4.12).

15. Provision is made for binding guidelines for the financing of political campaigns (Section 4.4.13), assistance towards the election expenditure of parties (Section 4.4.15), regulation of political advertising in the electronic media (Section 4.4.11) and the regulation of public opinion polls (Section 18.3).

16. Section 19 deals with the requirements covering the registration of political parties. In addition to the requirements laid down in this section, the Commission will have the standard power to refuse registration if the name or the symbol of a party is similar to or identical with the name of another party; the organisation of the ballot, including the arrangements for the ballot paper; and the security of the electoral process.

17. The Commission will liaise with international (including regional) official observers and monitors and in co-operation with these bodies will be responsible for their deployment in monitoring the elections. These monitors will report to the Commission which shall take their observations into account, together with its own assessment, in coming to a decision on any matter (Section 4.4.16).

18. The provisions relating to party lists for elections to the Constituent Assembly (Section 8 and Section 9.3 and 9.4) are based on the assumption that the electoral system will be by way of the List System based on proportional representation. Under this system, a party obtains a number of seats in proportion to the total number of votes it wins. Hence, the treatment of irregularities and breaches of electoral rules, etc., are not based on a constituency-type election as in the Tricameral System but on the responsibility of parties and those who must account on behalf of the party.

19. It is necessary, in our view, to lay down in the parent act the number of days as well as hours of voting in which the election is held (Section 3). These are matters of great significance and cannot be left to the Commission. This provision takes into account geographical, employment and social conditions in our country.

20. The other provisions are common form features of any electoral law. The African National Congress will be pleased to provide to the Technical Committee supplementary documentation to explain the reasons for and justification of specific proposals or to expand on this memorandum.

ANC'S RESPONSE TO THE INITIAL REPORT OF THE TECHNICAL COMMITTEE ON THE INDEPENDENT ELECTORAL COMMISSION (IEC) DATED 21 MAY 1993

AD PARAGRAPH 1.8

(1) **Citizenship**: The ANC reiterates the contents of paragraph 5.2 et seq of its initial Submisssion in this regard. This will enable numerous South Africans who might have been denied citizenship rights by the apartheid State to vote.

(2) **Criminality**: The ANC notes in passing that the provisions of Section 4(1)(a) of the current **Electoral Act, Number 45 of 1979**, would exclude most of its own leaders from participating in the proposed elections. The ANC's preference is as stated in paragraph 6 of its Submission in this regard.

AD PARAGRAPH 1.11

The ANC cautions against the use of the phrase **"interim Constitution"** as it connotes a fully fledged interim Constitution which may impinge heavily on the territory of the Constituent Assembly which the proposed elections should produce. The ANC's preference in this regard is a simple Transition to Democracy Act intended solely to prevent the emergence of a constitutional *hiatus* during the period of constitution-making. This, we believe, will obviate the obvious delay entailed in the making of an interim Constitution which will be superseded by the new Constitution to be made and adopted by a Constituent Assembly.

AD PARAGRAPH 1.17

While the ANC is not *per se* averse to the notion of an interim Parliament, it wishes to point out that the primary objective of the proposed elections is, and should be, to produce a democratic Contitution-making Body that will make and adopt a new Constitution for South Africa.

AD PARAGRAPH 3

The ANC is of the view that the definition of the State upon which the proposed Electoral Act shall be binding should be broader and that, therefore, the TBVC territories should be mentioned specifically. No-one must be left in any doubt whatsoever that the Act shall be binding upon whole of South Africa as stood in 1910.

AD PARAGRAPH 4

The ANC notes the contents of footnote 8; however, the ANC is opposed to a proliferation of Electoral Commissions particularly because the majority of our citizenry will be participating for the very first time in an election. Besides, the question of the forms of state still has to be settled in the process of constitution-making.

AD PARAGRAPH 5

It is the view of the ANC that the adjudication role of the IEC should not be confined to "**the conduct of political parties** ..." It is not altogether unimaginable that in numerous instances

the IEC will have to grapple with problems pertaining to the attitudes and conduct of state officials, security personnel, chiefs and indunas who may be tempted to deny some of the participating parties freedom of political activity.

AD PARAGRAPH 6.1

It is the view of the ANC that political parties and organisations, as well as the administrations of the TBVC territories and the Self-governing territories, should also be covered so that the IEC should be seen to be independent of and seperate from them as well.

AD PARAGRAPH 6.3

The ANC wonders in what capcity the State President, the leader of one of the parties that will be contesting the Constituent Assembly elections, will be entitled to receive reports of the IEC. An impression may be given that the IEC is primarily accountable to the State President, the legitimacy of whose office under the current constitutional order is impugned by the majority of the disfranchised citizens. As all parties, including the National Party Government, of which the State President is Head, will be represented on the Transitonal Executive Committee (TEC), it is not necessary for any of the leaders to be given anything that smirks of preferential treatment particularly with regard tothe proposed elections.

AD PARAGRAPH 7.1

The ANC is of the view that the composition of the IEC should, as far as possible, reflect our collective commitment as parties to ensuring direct involvement and representation of women in public affairs.

Furthermore, proposes that the words **"seconded for this purpose by Accredited International Organisations and/or foreign Governments, and"** be deleted (this applies to paragraph 9.1.2 as well). The IEC should be entitled to select international experts instead of being given seconded persons who may or may not be experts.

AD PARAGRAPH 7.2

This paragraph, read with paragraph 1.12 of the Report, may exclude some of our outstanding personalities from appointment to the IEC because they might have "**held Political Office during a period of three years prior to the date of the Transitional Elections.**" Furthermore, those who may be appointed to the IEC may subsequently be disqualified and prevented from holding Public Office for a period of three year after the elections. For one thing, our outstanding lawyers, whom we may wish to consider for the judiciary in a new South Africa, may be disqualified if this paragraph is retained as currently framed. This would make it well nigh impossible for us to get suitable people to serve on the IEC, given the history of our country, the educational and experiential malaise afflicting the indigenous African majority and women. For this reason, the ANC therefore reiterates the contents of paragraphs 2.4.1 and 2.4.2 of its Submission.

AD PARAGRAPH 10

The ANC is of the view that the involvement of the National Party Government, or a TBVC

or self-governing territory administration, or any political party or organisation in any matter affecting the IEC should be avoided. Therefore, this paragraph is unacceptable to us as it is currently drafted; it may tend to give the Minister of Finance an unfair advantage and an influence on the the IEC, thus undermining its independence.

AD PARAGRAPH 16.1

The ANC proposes that it should be made clear to all and sundry that the IEC has the sole responsibility to organise, conduct and supervise the elections. This paragraph therefore should be framed in such a manner that it does precisely that.

AD PARAGRAPH 17.1

The ANC is anxious that voter education should, as far as is possible, be conducted in all languages predominantly used by our people in various parts of the country. Furthermore, adequate provision should be made for those eligible voters who are disabled or illiterate.

AD PARAGRAPH 17.2

The ANC prefers the use of the Identity Documents issued by the RSA Government or those issued by the administrations of the TBVC territories as well as Voters' Cards issued by the IEC as primary means of voter identification. The IEC should, at the same time, be entitled to designate appropriate and adequate means of voter identification.

AD PARAGRAPH 17.3

Due to the fact that preparing a voters' roll will take a long time to conclude and may cause a lot of anguish and confusion as illiterate and inexperienced people struggle to get registered, the ANC proposes that, for purposes of the Transitional Elections, there be no registration of voters. A simpler process that would be primarily designed to help the IEC in planning and in the counting of votes should be looked for.

AD PARAGRAPH 17.5

In order to prevent any confusion, the ANC recommends that as part of the process of registration of parties, pictures of the leaders of parties be included and be put on the ballot papers.

INDEPENDENT

MEDIA

COMMISSION

INDEPENDENT

MEDIA

COMMISSION

Submission by the African National Congress

To the Technical Committee the Independent Media Commission and the Independent Telecommunications Authority

Date : 12 May, 1993

Introductory note

The submissions contained herein relate to the Independent Media Commission. In this regard, we would like to give notice that a more comprehensive submission in legislative form will be delivered by Wednesday 19 May, 1993.

With regard to the Independent Telecommunications Authority we generally support the proposals that emerged from the CODESA process as a sufficient basis for the preparation of draft legislation. Further proposals from us dealing with specific aspects will be filed by 19 May, 1993.

Independent Media Commission

1. Appointment and Term of Office

An Independent Media Commission shall be established by Act of Parliament.

1.1 After nominations from the public to the Multi Party Forum, the final selection by the Multi Party Forum of seven commissioners, including that of the chairperson and vice-chairperson, shall be confirmed by the State President by notice in the Gazette.

1.2 The term of office of the IMC will be subject to review by the Constituent Assembly/Interim Parliament.

2. Objects of the IMC

The main objects of the Commission shall be:

2.1 the promotion of freedom of expression in order to assist the creation of a climate favourable to free and fair elections;

2.2 the promotion of fair and equitable access to broadcasting services by political parties, organisations or movements;

2.3 the monitoring of broadcasting services to ensure compliance with fairness guidelines on the coverage of issues with regard to elections and political parties, organisations or movements;and issues related thereto;

2.4 the monitoring of broadcasting services to ensure compliance by broadcasting services and political parties, organisations or movements with provisions on

political broadcasts and political advertising;

2.5 the monitoring and review of all government information services and government-funded publications to ensure their impartiality;

3. Powers of the IMC

The Commission shall have the power to:

3.1 mediate and adjudicate disputes between broadcasting services and political parties, organisations and movements;

3.2 require broadcasting services to broadcast a counter-version of a particular programme or facts and opinions expressed within a particular programme.

3.3 impose financial penalties on broadcasting services for non-compliance with provisions of the Act.

3.4 recommend the suspension, cancellation or revocation of a broadcast licence should the licence holder consistently and purposively contravene the provisions of this Act.

3.5 suspend the publication of a government-funded publication should that publication contravene guidelines in the Act;

4. Functions of the IMC

In the promotion of its objects the Commission shall -

4.1 establish committees, which shall include a Political Communications Committee, a Fairness Guidelines Committee, a State Media Committee and a Monitoring Committee;

4.2 ensure fair implementation of rules on party political broadcasts and political advertising, fairness, and government information services and government-funded publications; such rules should be negotiated and agreed to before-hand;

4.3 hold inquiries;

4.4 monitor broadcasting services;

4.5 audit, monitor and review government-funded publications;

4.6 make recommendations to the TEC with regard to government information

services;

4.7 inform both the Electoral Commission and the TEC should the Commission become aware of any matter that may have an adverse impact upon the maintenance of a climate in which free and fair elections can be conducted;

4.8 act as the guarantor of the independence of the SABC Board and the Independent Broadcasting Authority by holding inquiries into and publishing findings on any alleged undue political or economic interference with the activities of both the Board and the Authority.

4.9 perform such other functions as may be assigned to the Commission by or under this Act or any other law.

5. Jurisdiction of IMC

The following shall not be within the jurisdiction of the IMC:

5.1 the printed media (the IMC will merely liaise with the Press Council, if and when necessary);

5.2 programme content of broadcasting services insofar as it does not relate to political developments, party political broadcasts, political advertising and the coverage of issues with regard to elections, political parties, organisations or movements.

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ANC REGIONAL POLICY

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Appendices

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(March 1993)

This document arises out of a process of consultation that culminated in a National Consultative Conference on Regional Policy in March 1993. The original document arose out of a number of meetings jointly convened by the Constitutional Committee, and the Department of Local and Regional Government and Housing of the ANC.

While this consultation process was primarily intended for ANC structures, and the democratic movement in general, the ANC believes in the interest of all South Africans. The ANC policy approach to regions is that of building and re-uniting - not redividing - a nation.

SECTION 1

INTRODUCTION

A Heated Debate

The debate on different levels of government in South Africa, and in particular on the degree to which regions should have autonomy, has become heated. The issues are not only what the powers and boundaries of regional and local government should be, but who decides, how and when.

Usually the debate is presented in terms that are both grossly over-simplified and quite wrong. It is said that the choice before South Africa is between a highly centralised state directing a centrally planned economy, allegedly the ANC position, on the one hand, and a highly de-centralised state with a free economy on the other, said to be the South African government's position on the other. Both positions are misrepresented.

The ANC stands for a united, non-racial and non-sexist, democratic South Africa. This means we want a South Africa that is unified but not over centralised. It must have a constitution which provides for democracy at all levels, popular participation at every level of government, and a distribution of powers and functions at national, regional and local level which will best achieve this objective, and also ensure development and eradication of inequalities created by apartheid. This can only take place within a national policy framework.

We in the ANC want democracy and development at all levels, and look forward to the private sector making an essential contribution to the nation's well-being. The South African government, on the other hand, is really interested in creating disguised NP-dominated homelands, even if this means wrecking the economy and even if it results in promoting population movements so as to concentrate potential voting support in regions of potential NP hegemony. If this were to happen, the bitterness of the past will re-surface in new forms, and just as Balkanisation is bringing disaster to the Balkans, so would its equivalent in South Africa tear our country apart.

We have no problem with the democratic principle that different parties can hold office at national and regional levels. Any healthy democracy recognises that people in a certain area might prefer the opposition party to the governing party at the national level. What South Africa would not be able to bear would be the creation of mini-states ruled by ethnically based parties and pulling in different directions.

The terms unitary states and federal states have both been misused. Many unitary states have federal features and many federal states have unitary ones; the Federal Republic of Germany thus has a more centralised state system than the United States of America, despite their different names. Furthermore, in reality, in both those countries in all but a few relatively minor matters, legislation adopted by the national legislature will override laws adopted by the local states.

What matters is the relationship between the different levels of government and how they all connect up in the total constitutional picture.

Our Objectives

The way that government is structured in each country will inevitably depend very much on its history and on what the purposes of government are seen to be. In the case of South Africa, we are involved in the process of knitting together the state again after the nightmarish dismemberments created by apartheid. We are trying to transform an oppressive state built on division and inequality into a democratic one that serves the interests of the whole South African nation.

Our goal is to enable everyone to live freely and with dignity anywhere in the country, and to create stable and efficient institutions so as to give the best possible chances for the development of democracy, peace and prosperity for all.

The ANC wants to:

- de-racialise our country, so that people can start to think of themselves politically as South Africans holding diverse views, and not as members of this or that racial, ethnic or linguistic group locked into corresponding and definite political compartments;

- progressively integrate, normalise and legitimise the structures of government so that these are no longer seen as instruments of oppression, division and corruption but rather as the means for enabling people to live in tranquillity and get on with and improve their lives;

- discourage political mobilisation on the basis of race, ethnicity or language and especially to prevent state power at any level from being used for purposes of ethnic domination, intolerance and forced removals of populations;

- democratise our land, so that people are as directly involved as possible in shaping their destinies at every level of government;

- minimise the possibilities of abuse of power which could result from the overconcentration of authority in too few hands;

- reduce and eliminate the massive inequalities established by apartheid, by making resources available for the advancement of those oppressed and kept back in the past by racial discrimination and gender oppression;

- progressively do away with the massive imbalances between regions and between urban and rural areas within regions;

- facilitate the development of an integrated, efficient and internationally competitive national economy; and

- enable people to take pride in their culture and language in a spirit of non-racialism, democracy and respect for the language, culture and beliefs of others.

Healing our country, creating the conditions for economic advance, establishing a climate of peace and tolerance and embarking upon orderly and sustainable programmes to improve the lives of the majority, can only be achieved by means of a national effort undertaken with a sense of national responsibility. We can never succeed if we have a multiplicity of conflicting policies carried out by a multiplicity of feuding bureaucracies.

Soft Boundaries

Underlying the whole presentation that follows is a concern for three fundamental and inter-related rights: the right to freedom,

the right to democracy and the right to development.

The basic issue is not what powers should be reserved for the regions and what powers set aside for the central government. Rather, it is what the relationship between central, regional and local government should be in respect of the national, regional and local dimensions of the tasks that face the whole country.

Thus, education, health, housing, employment, transport and economic development, all have to be conducted both at national and sub-national levels within a single national policy framework. Governmental structures will be so organised such that regions will participate fully in the formulation of policy. The issue is not how to separate out exclusive competence for one level as against the other, but how to ensure appropriate responsibility and accountability at each level, and the harmonious interaction of all levels.

Following from this is the necessity to have soft boundaries rather than hard boundaries in relation to different levels of government. While we have to be rigid rather than soft on basic constitutional principles such as multi-party democracy, equality and fundamental rights and freedoms, our institutional arrangements should be as flexible as possible so as to enable them to grow and adapt themselves in the light of experience.

Thus, the provision of services should not stop at this or that hard boundary. Nor should responsibility for development be confined to one hard level of government or the other. Civil service, police and development structures should be designed with a view to harmonising and integrating rather than to sealing off and separating their functions.

Interrelationship of Checks and Balances

Finally, the question of timing is important. We are totally against the prescribing of structures and powers of regional and local government in advance of the process of adopting a new constitution. We accept the general principles that there should be national, regional and local levels of government, that each should be democratically elected rather than appointed, and that the constitution should lay down the principles on which they are to be structured. It should go without saying that the general principles of the Bill of Rights enshrining universally recognised fundamental rights and freedoms should apply throughout the country at all levels of government.

Beyond this, we feel that the determination of regional structures and the spelling out of functions for the regions and local authorities, is something that should be done as part and parcel of the elaboration of the constitution as a whole. Apart from the fact that institutions created by structures that lack democratic legitimacy will themselves lack legitimacy, and hence be vulnerable to future attack, constitutions simply cannot be made in a piecemeal fashion.

The whole concept of checks and balances requires that all the checks and all the balances be known and be in place and interacting with each other at the same time. Certain checks and balances by their very nature cannot be created in isolation from other checks and balances. The new constitution will be an integrated package of interrelated rights, duties, mechanisms and procedures, not an assembly of constitutional spare parts.

Thus, the shape and nature of the regions relates to far more than the simple devolution of power from the centre. It affects the electoral system for the country as a whole (whether to have regional as well as national lists), the composition of the central legislature (there are strong arguments for an

upper house based essentially on regional representation), amendments to the constitution (whether or not a certain percentage of regions have to agree to certain amendments), the role and functioning of state fiscal and monetary institutions (especially in relation to revenue collecting and transfer payments), the structure of the army, police force, and prison service, lines of responsibility and accountability in the public administration, and the structure and functioning of the judiciary.

It is the ANC's view, as articulated at the Policy Conference, that the details of the powers, functions, roles and boundaries of the regions carry such constitutional importance that only a national and democratically elected Constituent Assembly should arrive at any final decision on the matter. The National Party Government, however is of the view that the powers, functions and even the boundaries of future regional government should be settled before a Constituent Assembly is elected. This is clearly undemocratic and unacceptable.

The Constituent Assembly Decides

We might add that there is support for the idea of relatively strong metropolitan government being established in the areas of greater Johannesburg, Cape Town, Durban, Port Elizabeth and possibly elsewhere. It would be unwise indeed to adopt rigid schemes of regional and local government that pre-empted balanced discussion of the desirability or otherwise of establishing such metros and ensuring that they take their proper place in the total constitutional scheme.

It is expected that, within the framework of clearly enunciated general principles of constitutionalism, democracy and non-racism agreed to in advance, there will be a considerable degree of give and take on all these questions at the Constituent Assembly. This was the experience in Namibia, where the Constitution that emerged after extensive discussion was signed by every single participant at the constitution-making body.

The objective in South Africa will be to draft a constitution that has the assent and support of the overwhelming majority of South Africans with a view to creating a country in which the overwhelming majority feel comfortable and at home.

The question of regional and local government is a difficult one for any country, and particularly for one where apartheid has created so many false boundaries and divisions. The proper time and place for determining the precise structures and powers of government at all levels, is after (and not before) elections have been held; to create a legitimate and widely representative constitution-making body.

Transitional arrangements

In the meantime, all we are called upon to do is to make suitable transitional arrangements, bearing in mind that there are many honest civil servants whose interests have to be dealt with in a fair and practical way. In this respect, we propose that the four provinces are sufficiently familiar and are sufficiently capacious to provide the basis for progressive re-integration of Bantustans and homelands into the mainstream of South African political and administrative life, pending the adoption of a new Constitution. A powerful argument in favour of this approach is that a infrastructure already exist at provisional level to provide the services and facilities reincorporation of the homelands.

Looking to the future, it is imperative that the ANC spearhead within the broad democratic movement the formulation of clear and concrete proposals on regional and local government for submission at the Constituent Assembly. Let the other groups allow themselves to present the whole question in terms of how best they can cling to power. Our task is to help determine how the new

South Africa can be shaped so that our age-old dream of a united, open, prosperous, non-racial, just and democratic society can be realised. After the trauma of apartheid that, and no less, is what our people and the world expect.

SECTION 2

THE RELATIONSHIP BETWEEN THE DIFFERENT TIERS OF GOVERNMENT

In the South African Constitutional debate there is general consensus among the different political actors that a new democratic constitution for South Africa should provide for three tiers of Government - central, regional and local. There is agreement that each level of Government should be democratically elected, with certain specified powers and functions protected by the constitution, where appropriate.

In order to ensure that historical inequalities are redressed, citizens are equally treated and protected by the constitution, where agreed, it is necessary that regional and local government operate within a national framework guided by the same set of democratic principles.

It is often taken as given that decentralisation will bring government closer to the citizenry and as such act as a buffer against an over centralised bureaucracy. However, in practice decentralisation does not always yield the expected democratic and accountable results. This is one important consideration in stating, therefore, that the autonomy of regional and local government cannot be seen as absolute. For example, in South Africa governing powers were devolved to homelands which are regionally, and often locally based. This, however, has often brought repression - and not government - closer to the people.

Similarly, for purposes of co-ordination and reasonable uniformity in service provision, caution should be expressed against allocating powers and functions exclusively to a single tier of government. Hence the ANC proposes concurrent powers among the three tiers of government with overriding powers reserved for the central government as is the case in Germany. For example, central, regional and local government could play a role in the provision of educational and health services in their respective areas of operations.

In order for regional and local governments to carry out their functions effectively and efficiently they need to have an appropriate combination of political and fiscal powers. In addition, while central government has a role to ensure equitable redistribution of resources from poor to rich regions, it is equally important for sub-national government to co-ordinate development and strive to redress inequalities in their own areas of jurisdiction.

In dealing with the different tiers of government, a number of issues need to be resolved. While South Africa currently has a number of metropolitan areas, it has no metropolitan governments. The ANC views the creation of metropolitan governments in certain parts of the country as essential to the cause of unifying, de-racialising and democratising cities in addition to the more efficient and effective provision of affordable services.

Metropolitan governments, in places like Greater Johannesburg, Cape Town or Durban will necessarily be large, populous and relatively powerful.

The ANC sees metropolitan government as a form of local government, and accordingly located in the third tier -below regional government. The ANC envisages two levels (or tiers) of decision-making and responsibility within a metropolitan government: the metropolitan government

itself, and the primary local authorities (or boroughs) within the area of its jurisdiction.

Insofar as the more rural areas are concerned, the ANC envisages the creation of larger geographical forms of local government: district councils. The similarity with metropolitan government lies in the fact that there would be two levels of decision-making, powers and functions within such district councils: that of the council itself, and that of the (lower level) village or small town. However, the district council is seen as constituting part of the third tier of government within the overall constitutional framework.

Further attention needs to be paid to the possible form and relationship between the third and first tiers of government.

Finally, it is worth recording the ANC's view that we envisage a significant role for civil society in ensuring that all tiers of government - and the relationship between such tiers - become and remain transparent, sensitive, accountable and democratic. In our conception, civil society embraces diverse bodies such as religious organisations, trade unions, civic associations, professional bodies, student organisations, cultural groups, organisations of the disabled, sporting bodies and the women's movement. They would be independent of the state and their right to exist would not be dependent on the authorisation of the state.

At the same time they could collaborate with the state in securing the objectives of the constitution, particularly in relation to guaranteeing basic freedoms, securing social advancement, healing the divisions of the past and promoting religious, cultural and linguistic rights. Co-operation with the state, however, will not mean co-option by the state or subordination to it. These bodies must retain their right to criticise state actions, to demand improved performance, and to make proposals for reforms at all levels of government.

Law-making bodies should be required to keep the public adequately informed on all matters affecting the public interest, and to make reasonable provisions for organisations of civil society to be heard in relation to matters affecting the rights and expectations of their constituencies.

SECTION 3

FINANCE AND RESOURCES

A critical component of the balance that needs to be drawn between the powers of central, regional and local government within the framework of a national, democratic Constitution lies within the vital role of finance and resources. In this section, the policy document deals with this critical issue, seeking to examine the relationship between political decentralisation and the allocation of fiscal powers and functions between the tiers of government.

3.1 Fiscal Decentralisation

Given the importance of economic considerations and the fact that finance is in many cases the real key to political influence, it is vital that the manner in which the new constitution deals with decentralisation of the fiscal system is coherent, and consistent with the desired structure of political decentralisation. It must be appropriate to modern economic conditions, seeking to enhance democratic accountability while ensuring that the public resources of the country are shared fairly amongst the whole population.

3.1.1 An emphasis on local control

The starting point should be a strong emphasis upon the need to strengthen local control over the use of public resources. This helps to ensure that usage is efficiently and appropriately tailored to local conditions. The link between paying taxes and receiving public services must be recognised as an important element in the strengthening of democratic accountability, and is most direct at the local level.

3.1.2 The constraints on decentralisation

However, there are substantial constraints on the extent to which the fiscal system can be decentralised. While these have always existed, they have grown more compelling in recent decades because of the rapid increase in the mobility of goods, people, services and information, and the consequent intensification of the national integration of the South African economy. Policies introduced in one part of the country quickly have impact on other areas.

Fiscal decentralisation must not compromise the capacity for the authorities to exercise sound management over the economy as a whole. A prerequisite, for example, of implementing effective policies to control inflation and unemployment levels is that the autonomy of decentralised government over taxation, spending and borrowing must not clash with effective overall management.

Local and regional governments should be empowered to borrow, for capital expenditure only, subject to the approval of national government and the Reserve Bank in respect of external borrowing; and subject to the authorisation or approval of national government in respect of internal borrowing.

Fiscal decentralisation should guard against allowing too many distortions to be introduced into the economy which prevent resources from flowing to best use. The more taxes differ across different areas, the more the flow of resources across the country will be inefficiently distorted. Allowing regions and local authorities too much power to distort economic conditions in their favour could lead to chaotic results as each authority continually tries to outdo its neighbours. If businesses are to compete effectively, the

extent to which regional and local authorities should be allowed to compete must be limited. Linked to this is the need to even the responsibility for redistribution across the country as a whole. Micro and macroeconomic distortions could arise if business and the wealthy in some parts of the country are forced to bear a greater responsibility for dealing with the country's poverty and inequality than in other parts; or if the poor in some areas are treated worse than in others. It would also lead to inefficient and undesirable migration of both the rich and the poor.

The need to place at national level the key responsibility for effecting and co-ordinating redistribution, is particularly important in South Africa - given the severe spatial imbalance between the location of needs and resources. The level of inequality in the country compromises the extent to which accountability can be based on a direct relationship between payment of taxes and receipt of public services.

Thus, more important even than the call for 'one city one tax base' is the need for 'one country one tax base'.

Balancing the extent of redistributive goals variations which can be permitted in the progressivity of taxation, but also constrains the autonomy which can be given to different regions over how resources are spent. To a large extent it is the nature of the overall package of public goods provided by the authorities which determines the extent of redistribution: for example, spending resources on ensuring good primary education for all has greater redistributive content than subsiding universities.

By the same token, fiscal decentralisation should not compromise the capacity for coherent national policies on urbanisation to be implemented. Allowing regions to compete in making themselves as unattractive as possible to poor incoming migrants in the hope that they will go elsewhere will make coherent urbanisation policies impossible.

3.2 Technical constraints on devolving taxes

The nature of most of the significant taxes makes it impossible to give much power to lower tiers of government over how they are levied. For example, given the national integration of the South African economy, allowing VAT to be levied at different rates in different regions would lead to enormous administrative difficulties. Even where it is levied at the same rate, identifying in which region the many firms which operate nationally actually 'add value' would be almost impossible.

For similar reasons company tax can also not be assigned to any particular region or locality; while assigning customs duties to particular regions would be very arbitrary.

Similar difficulties are to be found with income tax; it is often difficult to identify clearly where income is actually earned. Furthermore, where income tax rates are different in different areas, ensuring that people don't register for tax purposes in low would be a difficult policing task.

The problems of assigning fixed property taxes, such as rates, to a particular area are much less severe, making them much better candidates for devolution to decentralised levels of government. Some excise duties, such as fuel levies may also hold greater potential for decentralisation.

A distinction needs to be drawn between:- assigning particular taxes, such as mining taxes, to the region or local area in which they are supposedly generated, allowing each region to see its own rate; and - assigning particular taxes, levied at a uniform rate nationally, to a whole level of government. In this case some formulae would be required to ensure that the revenue is shared fairly between the different governments at that

level.

In either case, consideration must be given to the way in which changes in economic conditions could interfere unduly in the relationship between different levels of government. For example, over recent years the contribution of mining taxes to the total tax pool in South Africa has declined very significantly, while the contribution of income tax and GST/VAT has risen. Had a particular level of government been dependent mainly on mining taxes, for example, its capacity to perform would have been severely compromised.

3.3 The need for fiscal transfers to effect decentralisation

The above arguments make it clear that, as at present, considerable national control needs to be exercised over the overall fiscal system, and that a large proportion of taxes will inevitably have to be collected at national level. However, to accommodate a more substantial and effective decentralisation of political power than exists at present, better mechanisms will need to be found for transferring resources from the national fiscus to lower levels of government than have existed up till now.

These transfers will fall into two main categories. Firstly, where regional and local government is given responsibility for implementation of national policies, transfers will have conditions attached to ensure that national policies are indeed adhered to in implementation. Thus, within clearly defined nationally determined parameters, decentralised governments would be able to fine-tune the actual pattern of expenditure to suit local needs. The majority of transfers are likely to fall into this category.

Other transfers, however, would have far less stringent conditions attached, and would be aimed at enabling lower tiers of government to implement policies in areas where the constitution gives them powers to act autonomously. These grants would have to take into account the capacity of various lower level governments to raise their own resources so that inequalities amongst regions and localities could be counteracted.

3.4 Institutions for managing fiscal transfers and the decentralisation of taxes

Given that the way in which responsibility and control over the transfers is exercised affects the relationship between different levels of government, it would be unwise to leave such control entirely to central government. On the other hand, trying to fix in the constitution the detail of how transfers are made would tend to be either too vague or too rigid, or both.

The ANC proposes the creation, by means of a statutory act of parliament, a permanent and independent Advisory Commission on Fiscal Decentralisation.

Such a Commission would be structured on a non party-political basis in which certain powers for advising on the structure and mechanism of fiscal decentralisation would be vested. This Commission would be answerable to national parliament as a whole including the chamber in which the regions are represented at national level. Its powers should extend to aspects of transfers between all levels of government.

Its task would be to advise government how best to ensure that the allocation of taxes and transfers to the various levels of government takes place within guidelines laid down in the constitution. These guidelines must be consistent with the extent of political autonomy decentralised government is to have, and with the Bill of Rights. Such guidelines should ensure that transfers are made in such a way that lower levels of government are able to plan properly; that they are structured so as to enhance

efficiency and local accountability and that they can open to clear and effective monitoring. The guidelines must seek, in a transparent and objective manner, to redress inequalities between regions.

The Advisory Commission on Fiscal Desentralisation will advise government on the granting of powers of taxation to lower levels of government within this overall framework. This should be done in a way which enhances accountability and which allows lower levels of government some leeway to raise additional revenue to deal with their own specific problems. Finally, the Fiscal Commission could also play an advisory role in certain areas.

Steps shall be taken to ensure transparency, efficiency and accountability in the expenditure of public funds. To this end, an Independent Fiscal Audit Office will be required and empowered to audit national regional and local government expenditure.

3.5 Resources, economic and the structure of decentralisation

An implication of the above structure of fiscal decentralisation is that because resources are to be collected largely on a national basis, and distributed by means of transfers, drawing boundaries to ensure that each region has similar economic strength becomes relatively unimportant. This opens the way for regional boundaries to be drawn on the basis of a wider range of criteria, including how regional representation can represent the regional diversity of the country at national level for the purpose of national policy making.

SECTION 4

POWERS AND FUNCTIONS OF REGIONS

The critical issue in any framework for regional government is the relationship between, on the one hand, regional and central government and, on the other hand, regional and local government. This issue is most sharply raised in the delineation of the powers of the region in regard to the powers of the centre. The proposed legal formulation is set out in the first annexure to this document. The formulation advanced in this proposal establishes that regional government will be empowered to exercise a law-making and executive power in relation to the areas listed in the schedule, provided that regional legislation will have no force where it is repugnant to national laws. **Thus, in regard to its legislative and executive powers, the central state shall have concurrent and overriding jurisdiction.**

Regional governments shall also 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 framework operating within guidelines overseen by the Advisory Commission on Fiscal Decentralisation.

(ii) Education, other than tertiary education;

(iii) Health services including hospitals;

(iv) Welfare;

(v) Housing;

(vi) Transport, including harbours, airports and roads;

(vii) Markets and pounds;

(viii) Works and undertakings within the region, provided that if works and undertakings extend beyond the regional boundary, such works and undertakings may only be carried out with the consent of the neighbouring region or regions affected thereby;

(ix) Traffic control;

(x) The environment;

(xi) Industrial and other development within the region;

(xii) Horse racing and gambling;

(xiii) Town and regional planning;

(xiv) The imposition of punishment by fine, imprisonment or other sanctions for the contravention of any laws of the region;

(xv) All other matters delegated to it by Act of Parliament.

This simple formulation requires some further discussion to establish a clearer grasp of exactly what powers the ANC is suggesting that regions will have. It should be mentioned at the outset that, although this formulation favours the central authorities at the expense of the regional authority, it is not out of line with the constitutional devolution of powers in Germany and some other federal states. We may set out the powers of the regions as follows:

4.1 Regional Powers

4.1.1 Concurrent and Overriding Jurisdictions

The regions would be entitled to enact laws dealing with any aspect of the areas listed in the schedule, provided that the provisions of such legislation are not repugnant to national legislation. The central state would thus have concurrent jurisdiction in all these areas.

4.1.2 Original Powers

The powers of the regions would be original in the sense that they would be conferred on the regions by the constitution, not by statute or government. They may of course be removed, amended or augmented by means of a procedurally proper amendment to the constitution. The central state would not, however be empowered to enact ordinary legislation which would effectively remove those powers. In other words, the central government may regulate those areas in which regional governments are competent but may not remove the region's right to deal with those issues. It may not, for example, prohibit the regions from building any houses or providing any health facilities.

4.1.3 Exclusive Jurisdiction

In respect of all matters not expressly listed in the schedule the central state will have exclusive jurisdiction to make laws, and to confer the authority and/or establish the agency by means of which such areas of government are administered. Examples of such areas are Foreign Affairs, Defence, Internal Security, Constitutional Affairs and Administration of Justice. The regions will not be able to make policy in these areas at all.

4.1.4 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-scheduled matters.

4.1.5 Residual Powers at the Centre

The regions would not have any residual powers, that is powers to make and implement policy in respect of matters not expressly mentioned in the schedule. The central government would have such powers.

4.1.6 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. In this proposal central government can, by legislation, compel regions to perform certain functions but would, of course, be limited by practical political considerations in attempting to do so. Provision should be made to allow for central government to assume regional government functions where the region cannot, or refuses to, perform them. This power should be limited to drastic cases of breakdown of regional government. It is envisaged that neither the regions nor the central state would have the power to dissolve regional governments, but regional governments will be responsible to the constitution as well as to the regional electorate.

4.1.7 Multi-level Jurisdiction over Scheduled Matters

It is clear that in relation to scheduled matters, all three levels of government may have legitimate interests 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 location of facilities and the management of resources. Local

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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, for example, those performed by parents at the level of the educational institution.

It is possible that problems could arise out of this situation. Central and regional government may have the power to build houses. The central government could regulate but not prevent the region from doing so. However, as in the past, these are not insurmountable problems and in the 'old' South Africa there were many examples of such overlapping jurisdiction notably in housing, transport and health.

4.1.8 Local Government

The ANC proposes that the law dealing with local government be in the form of a national statute. National Parliament should be empowered to adopt a Local Authorities Act which would elaborate their powers and functions, as well as their relationships to other tiers of government, making suitable amendments when and where necessary.

Outstanding policy matters of detail, such as whether local authorities should operate either under the *ultra vires* principle, which specifies the exact parameters of local authority jurisdiction (the current system), or be delegated a general competence to perform its functions, will be resolved at a local government policy conference later this year.

In respect of the relationship between local and regional government, it should be noted that the national statutory framework would necessarily limit the powers of regional government in regard to establishing local government policies which are repugnant to the national framework.

Regional government would still be able to pass ordinances in unregulated areas of local government. The regional executive councillor in charge of local government would *inter alia* be responsible for ensuring that there was no corruption in local governments or for ensuring that elections were properly held. Such issues may be better dealt with by regional governments than by a central government. Local government powers, on the other hand, could be amended or increased through national legislation.

4.2. Functions deemed inappropriate for regional government:

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

4.2.1 Administration of Justice, Bill of Rights

In our view, overall responsibility for the administration of justice, including the establishment and maintenance of regional and supreme courts, rest exclusively with the central government.

We need a nationally integrated system of justice with full re-incorporation of the judicial structures in the TBVC areas. The country cannot afford a multiplicity of legal systems with a multitude of Chief Justices giving different decisions in different parts of the country. Instead, we should maintain the present nationally integrated system, but in a deracialised and representative form while making provision for regional and magisterial sub-divisions.

Of course, the Bill of Rights will have national application and will override any regional laws and govern all acts of regional government. No regional government will be able to override these rights.

4.2.2 Law and Order

While the ANC endorses the principle that policing should take place in close collaboration with local communities who should assist in establishing the policing priorities for their areas, we do not believe in the establishment of regional police forces, save for the possibility of establishing local traffic police. Autonomous regional police forces create the possibility of private armies, linked to regional or ethnic leaders through patronage and capable of victimising regional outsiders. It is possible to conceptualise a system in which a single national police force is regulated by a statute which requires regional and local government supervision. This, however, is very different to disestablishing the SAP and reconstituting seven, eight or ten police forces. There are other reasons for the maintenance of a central police force - these include the fact that contemporary police forces require a degree of centralised resources and management - particularly in regard to training, the maintenance of centralised information, the combatting of organised crime, maintenance of internal security and the setting of uniform standards and disciplinary order.

4.2.3

We must firmly oppose policies which perpetuate or reinforce the present situation, where we have five armies, 11 police forces, over 15 health and education departments and innumerable *ad hoc* committees. We are over-governed. Therefore, we should not confuse governance with accountability and democracy. We wish to avoid situations that arise in places such as Nigeria or the United States, where there is a vast, unnecessary and expensive bureaucracy at regional levels. The cost of such structures, alone, is sufficient to render them undesirable.

4.3 Fiscal Powers of Regions

It is clear that both regional and local government must have some powers to raise revenue. The National Party's recent proposals appear to give all power over taxation to the regional level. This is viewed by the ANC as unworkable, particularly in a modern economy such as South Africa.

In our view this matter should be dealt with in the constitution in order to prevent (i) all income accruing to the regions from whom the central state would have to request its

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apportionment, (the scenario envisaged in the National Party proposal) and (ii) disproportionate revenue raising capacity by richer regions, thereby perpetuating regional disparities. Provision is made for this by the proposed statutory creation of an Advisory Commission on Fiscal Decentralisation (see section 3: Finance and Resources).

Rather than define the diverse sources from which regional government would be entitled to raise its revenue, (e.g., gambling tax and property tax), it may be more appropriate to set out those potential areas of income in respect of which the central state will have the prior or exclusive right to raise revenue. Usually the central state has the sole prerogative on personal income tax, company tax, customs and excise. On the other hand, rates and property taxes are more effectively and appropriately raised by local and regional authorities.

As indicated in this proposal, the central state will have a prior claim on revenue and thus would be able to secure the preponderant proportion of taxes raised and thereby be in a position to equalise the distribution of resources as between regions. The regions would be able to raise additional revenue only after all distributions to the central revenue fund. This would empower the central authority, which will bear the burden of the cost of reconstruction, to set taxes at the levels it deems appropriate and, accordingly, limit the ability of the regions to further increase in tax burdens.

However, it should not be the intention to entirely discourage regions from attempting to raise additional revenue to deal with their particular problems. Although it is envisaged that certain types of taxes - such as the current turnover tax and salary levies (the Regional Services Councils levy) - would be income which could accrue to the regional governments, it should not be necessary to specify this in the constitution.

4.4. Politics, Accountability and Stability

It is believed that the formulation of the functions and powers of regional government should be designed to enrich political life through facilitating public participation, transparency and accountability in government at the levels at which it is most appropriate. It should not however, disempower South Africans by fragmenting their resources and compartmentalising the citizenry's decision-making powers. The ANC is of the view that there is no necessary contradiction between the existence of regions and the project of nation building. It may even be suggested that regional government can enhance national stability and identity, provided that regional boundaries do not necessarily coincide with ethnic, racial, linguistic or other boundaries, and that the regional framework is not designed to perpetuate or create disparities between citizens.

4.5. STRUCTURE OF REGIONS

4.5.1 Number of Regions

The question of fixing precise numbers or boundaries of regions is not the function of this policy document, nor of any single political party. The ANC envisages that this process will be undertaken by a Delimitation Commission after agreement on the basic number and siting of regions has been agreed. Detailed questions, such as the regional location of East Griqualand, would be left to this Commission.

It is the view of the ANC that this entails a process that could and should be utilised to foster understanding, unity, peace and reconstruction rather than conflict. Only a full and thorough process of consultation can adequately inform the debate and the decisions, thus avoiding expedient decisions in the short term.

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However, the ANC is of the view that ten is the maximum number of regions into which South Africa should be divided.

4.5.2 Size of Elected Council

The cost of maintaining regional governments should be taken into account in determining the number of councillors for each region.

4.5.3 Elections by Proportional Representation

The proposal assumes that the national electoral system will be the proportional representation 'list' system. All the reasons for opting for this system at the national level (*viz* inclusivity, exact proportionality between representation and support, the avoidance of conflict over constituency boundaries) would also apply at regional level.

However, in order to strengthen democracy, the ANC favours a mix of representation (direct and indirect) at the regional and local government level, which should have the effect of ensuring that regional policies were responsive to local needs. In the case of local and especially metropolitan government, a mixed system should have the effect of unifying apartheid structures.

4.5.4 Regional Elections and Regional Constitutions should be set out in the Constitution

In a previous proposal these matters were to be left to a national statute to set out. Some parties at Codesa have argued that they could be left to the regions themselves to formulate or amend as in the USA.

The full framework for the powers and functions of regions should be set out in the National Constitution. The regions will thus have uniform provisions and powers. The situation in South Africa is not analogous to federal states created out of pre-existing autonomous states. At the same time, the democratic functioning of the regions requires protection by its constitutionalisation and thus would not easily be subject to amendments. The regional councils would retain powers to finalise the details of how they function and their rules of procedure.

4.5.5 Tenure of Councilors / Period between Elections

It is proposed that regional elections should not take place at the same time as national elections. By proposing a 4-year term (in contradistinction to the 5 year parliamentary term) such elections will generally take place before or after a general election. This will mean that regional issues will not be lost or submerged by national issues. However, the cost of separate elections must be weighed up against this possible benefit.

4.5.6 Dissolution

It is proposed that the constitution should provide that the regional councils should not be able to dissolve themselves (so as to frustrate central government) or be dissolved by Parliament (to undermined regional governments). In this proposal the only means by which a regional government will be dissolved is through the expiry of the period of office, or through central government approving the request of a regional government for a regional election. It will be necessary, however, to incorporate within the constitution a provision which will enable the functions of regional government to be assumed by the central government where a regional government will not or cannot discharge its constitutional or statutory obligations.

4.5.7 Size of Regional Executive Council

It is proposed that the regional executive council be limited to five members in addition to the administrator. Under the old provincial government system the number of executive members was limited to four. In view of the

large number of regions and the general expenses and benefits which will flow to REC members, it may be better to limit the number to five.

4.5.8 Administrator

It is proposed that the administrator be elected by an absolute majority of the regional council. In an earlier proposal of the constitutional committee, and in line with the previous practice, it had been proposed that the Administrator be appointed by Pretoria without regard to his/her acceptability to the council. This practice could well lead to disharmony between different levels of government. While such a system has been proposed in the interim government /constituent assembly stage, we propose that in a final constitution the electoral principle should apply to regional government.

4.5.9 Method of Composition of Regional Executive Council

It should be noted that the principle of collegiality (i.e. that parties be represented on the executive council in proportion to their representivity in the council itself) will be argued by the National Party. This system once operated in regard to provincial councils and was abandoned precisely because it entrenched conflict and disharmony. Subject to a reasonable right of access to information for all members of the council, we believe there is no good reason for a proportionally representative regional executive.

The executive council should be appointed by the administrator in consultation with the council. In our view, this system should provide for a more effective executive. The administrator him/her self should be capable of being removed by the the council on a vote of no confidence, by a special procedure. In this way the council would have supervisory control over the administrator and his/her executive council

SECTION 5

MANAGING REGIONAL POLICY IN THE TRANSITION

The important question arises as to how the matter of regional policy should be dealt with between now and the election of the Constituent Assembly - the transitional period.

In order not to pre-empt the deliberations of the Constituent Assembly, the ANC proposes that the four existing and established Provinces with the 1910 boundaries be retained in the interim.

The ANC and the democratic movement in general are firmly committed to a procedure in terms of which a majority of the elected representatives of the people make binding decisions. We are committed to this procedure because we regard the principle of equal liberty - the principle that all adult citizens should have an equal right to participate and determine the outcome of political decision-making processes - as fundamental. Institutionally, this fundamental principle requires the election of a representative body with the power to make laws.

The principle of equal liberty applies with at least equal force to the process of constitution-making. This is why the ANC is of the firm view that the constitution should be adopted by an elected body with plenary powers to devise a system of constitutional democracy.

A broadly based, democratically elected constituent assembly should, subject to a two-thirds majority and within the framework of agreed general principles of democracy, have the power to choose the form of the future state, including the role, powers, functions and boundaries of regional and local government. This view of the ANC is strengthened if the process which creates the constituent assembly offers fair opportunities for all interests to achieve representation and thereby to seek their objectives within a democratically-elected forum.

This process would also help to ensure that the final decisions to be taken on the system of regional government will occur within a wider constitutional framework. There is an inherent danger in isolating regional government as a separate issue, as though it can be resolved with no due reference to the other tiers of government. Constructing a regional policy in isolation could have very severe and adverse consequences for the future constitution of this country. The future political and economic stability of this country and its citizens require that we deal with the matter in an open and transparent manner - and that we get it right.

APPENDIX 1

FRAMEWORK FOR STRUCTURE AND POWERS OF REGIONS

1. Regional Boundaries

There shall be a maximum of 10 regions in South Africa, the names and boundaries of which are set out in schedule . . .

2. Regional Councils

2.1 A regional council shall be elected by ballot for each region.

2.2 Each regional council shall consist of (x) members.

2.3 Elections shall be by proportional representation and shall be called and conducted on the basis of a list system in accordance with the provisions set out in schedule . . . - hereto. . .

3. Tenure of Regional councils

A regional council shall be constituted for a period of 4 years from the date on which it was elected and shall not be subject to dissolution save by effluxion of time.

4. Executives of Regional Councils

4.1 The chief executive officer of each region shall be the regional administrator.

4.2 The regional administrator shall be elected by an absolute majority of the regional council at its first meeting. The regional administrator shall hold office for the period for which the regional council has been elected, but shall be liable to be removed from office by a vote of no confidence passed on him or her by the regional council. In that event, a new administrator shall be elected in accordance with the provisions of this article.

4.3 Elections for the regional administrator shall be conducted in accordance with the provisions set out in schedule . . . - hereto . . .

4.4 The regional administrator shall establish departments for the proper administration of the affairs of the region.

4.5 The regional administrator shall appoint an executive committee consisting of not more than 5 persons who shall hold office at the discretion of the regional administrator, and shall resign if a vote of no confidence is passed on the administrator.

4.6 The regional administrator shall allocate responsibility for the administration of departments to members of the executive committee. A member of the executive committee may be given responsibility for the administration of more than one department.

4.7 The regional administrator shall preside at meetings of the regional executive committee. These shall be convened by the regional administrator.

4.8 If a regional executive committee refuses to carry out its responsibilities as defined in the Constitution or manifests total incapacity to administer the affairs of the region properly, the State President may delegate such functions to a Minister who shall assume such responsibilities for as long as that may be necessary.

5. Sessions of Regional Council

5.1 The administrator of a region shall by proclamation in the regional gazette fix the times for holding sessions of the regional council, and may from time to time prorogue such council: provided that there shall be a session of not less than six weeks at least once in every year, and provided further that a period of more than 1 year shall not intervene between the last sitting of the regional council in one session and its first sitting in the next session.

5.2 The regional administrator shall preside at meetings of the regional council, which shall be conducted in accordance with rules and procedures laid down by the regional council.

6. Remuneration

The salaries and allowances of the regional administrators, members of the executive committees of regions, and members of the

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regional council shall be determined from time to time by the national assembly. The salaries and allowances shall be the same in each region and shall not be reduced during the term of office of the regional councils.

7. Powers of Regional Councils

Without derogating in any way from the powers of the National Assembly a regional council shall be entitled to make laws in relation to the following matters:

(i) The imposition of taxes in accordance with 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 and pounds;

(viii) Works and undertakings within the region, provided that if works and undertakings extend beyond the regional boundary, such works and undertakings may only be carried out with the consent of the neighbouring region or regions affected thereby;

(ix) Traffic control;

(x) The environment;

(xi) Industrial and other development within the region;

(xii) Horse racing and gambling;

(xiii) Town and regional planning;

(xiv) The imposition of punishment by fine, imprisonment or other sanctions for the contravention of any laws made in accordance with the provisions of this section;

(xv) All other matters delegated to it by Act of Parliament.

8. Validity of Laws

Any law made by a regional council in terms of its powers under article 7, shall have effect in and for the region as long and as far as it is not repugnant to any Act of Parliament.

9. Assent to Regional Laws

9.1 Any law passed by a regional council shall not have the force of law unless and until it has been assented to by the administrator and published in the regional gazette.

9.2 The administrator shall assent to any proposed law which has been passed by the regional council unless he or she is of the opinion that it may be

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repugnant to an Act of Parliament or in conflict with any of the provisions of the constitution. In that event the administrator may refer the proposed law to the constitutional court for its opinion, and shall act thereafter in accordance with the terms of such opinion.

10. Language

Regional Councils shall determine which scheduled language or languages may be used within the region for conducting the business of the regional government: provided that any scheduled language may be used for the purpose of addressing written communications to any department of the regional government.

11. Local government

11.1 Local government bodies shall carry out the functions assigned to them by Act of Parliament.

11.2 A regional council may delegate any of its powers or functions to a local authority, and require the local authority to execute such powers and implement such functions on its behalf within the local authority's area of jurisdiction.

11.3 If a local authority fails to carry out functions allocated to it by Act of Parliament, the Minister responsible for local government may appoint an officer to discharge such functions for as long as it may be necessary to do so.

11.4 If a local authority fails to carry out functions delegated to it by a regional council, the administrator of such council may appoint an official to discharge such functions for as long as it may be necessary to do so.

12. Fiscal Transfers

Fiscal transfers shall be made by the central government to regional councils in an equitable manner, taking into account the population size, backlogs and priorities (such as the urban and rural poor, women and children) of each of the regions.

9

VIOLENCE

AND THE

PEACE CORPS

SUBMISSION BY THE AFRICAN NATIONAL CONGRESS TO THE TECHNICAL COMMITTEE ON VIOLENCE ON THE PEACE CORPS

1. INTRODUCTION

1.1. The ANC is fully in support of the establishment of a Peace Corps on a national basis as a critical instrument in bringing about peace and in beginning to rebuild society at the grassroots level.

1.2. In recent weeks, following the assassination of Cde. Chris Hani who introduced the idea, many different conceptions of a Peace Corps have been proposed. This requires us to now attempt to clarify precisely what a Peace Corps should be in order to channel all our energies into a coherent and focussed initiative.

1.3. The ANC is currently engaged in intensive internal discussions to finalise its proposals on the Peace Corps. However, we are prepared to submit the following tentative broad framework in order to stimulate broader discussion with a view to quickening the pace with which consensus is obtained.

2. OUR VIEW OF WHAT THE PEACE CORPS SHOULD BE

2.1. In essence the Peace Corps should be

2.1.1. a youth based formation

2.1.2. accountable to and based in the community

2.1.3. non partisan

2.2. It should be funded in the main by public funds with contributions from private and donor sources

2.3. The Peace Corps should serve as a means of

2.3.1. mobilising large numbers of youth

2.3.2. providing training to youth which will equip them with valuable life skills and work skills

2.3.3. protecting communities against violence and crime

2.3.4. acting as a vital resource in developmental and civic activities aimed at the physical and social reconstruction of local communities

3. THE PEACE CORPS IS DIFFERENT TO A PEACE KEEPING FORCE

3.1. The Peace Corps is not to be confused with a peacekeeping force made up of members of existing armed formations. That is a subject which must be dealt with separately.

3.2. The Peace Corps is essentially a civilian formation. It will play a role in the life of local communities side by side with the formal authorities as a voluntary instrument of the communities, albeit a nationally co-ordinated formation.

4. PROPOSED STRUCTURE AND FUNCTIONING

4.1. The Peace Corps must reach out to both young men and women. Where necessary, affirmative action must be taken to ensure the full participation of women.

4.2. The Peace Corps will be drawn primarily from the ranks of the unemployed. However, it must also integrate the student and worker sections of the youth.

4.3. Recruitment in the Peace Corps should be on a voluntary basis for a fixed period. More discussion is required on this point. Our view is that it should be between one and three years.

4.4. In addition to the members of the Peace Corps, full time staff will be required to manage, co-ordinate and conduct training. This will be necessary at local as well as regional and national levels.

4.5. To ensure accountability to the community, a representative committee is required at local level to oversee recruitment, the operation of the Peace Corps and how it is serving the needs of the community.

4.6. Regarding organisation, the Peace Corps may well have to have specialised sections depending on the needs of the community to attend to its different functions e.g. community protection, development, etc.

4.7. Training will require that at least a core curriculum is devised for all Peace Corps members which can be supplemented with more specialised training depending on the different needs which have to be met. It is important that the training should be certifiable to enable Peace Corps members to progress educationally and in terms of future employment opportunities

5. FACILITIES AND RESOURCES

5.1. The Peace Corps will require suitable premises such as offices and meeting venues at the local level. Existing state facilities, including

schools, may be used for this purpose. However, where necessary, new premises will have to be built which could be done by the Peace Corps themselves.

5.2. The capacity of the Peace Corps to protect the community will require that a quantity of weapons, including arms and ammunition are available for the Peace Corps. Careful procedures of control and safekeeping will be necessary in this regard.

6. PAYMENT

6.1. It is essential that members of the Peace Corps receive some remuneration. The form and amount of payment needs to be carefully considered.

6.2. It is important, however, to maintain an adequate level of remuneration and not to regard the Peace Corps as a source of cheap labour.

7. WAY FORWARD

7.1. The Peace Corps will have to be created in the context of an established institution. It is our view that in the short term, the structures of the Peace Accord are the appropriate vechicle through which the concept of a Peace Corps can be finalised and implemented.

7.2. In the longer term, it is possible that the Peace Corps can be linked to democratically elected local government structures. This would need to be considered at the appropriate time.

7.3. We therefore propose that once the report of the Technical Committee is compiled and submitted to the Planning Committee, it should be submitted to the National Peace Accord structures to be taken forward here.

REPEAL

OF

REPRESSIVE

LEGISLATION

REPEAL

OF

REPRESSIVE

LEGISLATION

Submission by the African National Congress

To the Technical Committee on the Repeal of Discriminatory Legislation

Date : 12 May, 1993

[Note : Further submissions on this question will be filed by 19 May, 1993]

The African National Congress submits that it is crucial for all laws that impede free political activity in South Africa, including the TBVC states, should be amended or, as the case may be, repealed, in order to

1. ensure the creation of a climate for the exercise of free political activity, and
2. ensure that laws which may abridge or inhibit the objective of free and fair elections for a Constituent Assembly are removed.

We therefore propose that the laws listed in the schedule attached hereto be dealt with as indicated in the said schedule.

Repressive legislation prohibiting free political activity.

Schedule 1.

No. and year of law	Title of law	Extent to which repealed or amended
Act. no 44 of 1950 of the Parliament of the republic of South Africa	Internal Security Act, 1950	The repeal of the whole
Act no. 3 of 1953 of the Parliament of the Republic of South Africa	Public Safety Act, 1953	The Repeal of the whole
Act no. 17 of 1956 of the Parliament of the RSA	Riotous Assemblies Act, 1956	(a) The repeal of section 2;
		(b) the amendment of section 4 by the deletion of expression "section 2(4) or";
		(c) the amendment of section 5 by the deletion of the expression "2 or";
		(d) the repeal of section 6; and
		(e) the repeal of Chapter VIII;
		(f) the repeal of Chapter IX, except in so far as it relates to the payment of salaries, pay and allowances and allowances of auxiliary services who are such members immediately before the commencement of this Proclamation;
		(g) the repeal of sections 103bis, 103ter and 103quat; and
		(h) the amendment of section 118 by the deletion of paragraph (b) of subsection (1).
Act no. 44 of 1958 of the Parliament of the RSA	Post Office Act, 1958	All sections that enable the State or government or any of its agencies to, in any manner whatsoever, interfere with the privacy of the citizens of this country
Act no. 34 of 1960 of the Parliament of the RSA	Unlawful Organisations Act, 1960	The repeal of the whole
Act no. 76 of 1962 of the Parliament of the RSA	General Law Amendment Act, 1962	The repeal of the whole
Act no. 37 of 1963 of the Parliament of the RSA	General Law Amendment Act, 1963	The repeal of sections 3, 4, 5, 6, 7, 14, 15, 16 and 17
Act no. 62 of 1966 of the Parliament of the RSA	General Law Amendment Act, 1966	The repeal of sections 3, 4, 5, 6, 22 and 23

Act no. 83 of 1967 of the Parliament of the RSA	Terrorism Act, 1967	The repeal of the whole
Act no. 21 of 1975 of the Parliament of the RSA	Publications Act, 1975	The amendment of section 47 by the deletion in paragraph (e) of subsection (2) of the words "safety of the State"