

ORGANOGRAM FOR THE IMC

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CHIEF ADMINISTRATIVE
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**COMPATIBILITY OF THE INDEPENDENT ELECTORAL COMMISSION ACT
(IECA) WITH THE CONSTITUTION 1993**

- 1) Article 4(1) of the Constitution provides that the Constitution is the supreme law of the land and if a law is inconsistent with its provisions such a law shall be of no force.
 - 1.1 Article 2 of the IECA dealing with the application of the Act provides that it shall apply in respect of the first election for parliament and SPR legislatures conducted in terms of the Constitution, the Electoral Act and other transitional legislation all subsequent elections for parliament and SPR legislatures and of referenda.
 - 1.2 The Constitution is defined in article 1 of the IECA as the Constitution of the Republic as stipulated in terms of the Constitution of the Republic of South Africa Act, 1993. According to article 3 the IECA shall be binding on the state, and to the extent that its provisions may conflict with the inherent powers of the state or provisions of any other statute, save for the other transitional legislation, it shall supersede and override such powers and provisions in so far as they relate to the conduct and supervision of elections and other matters dealt with in the Act.
 - 1.3 The underlined part was inserted in the third draft of the IECA. Transitional legislation is defined to include inter alia the 1993 Constitution. No provision is made for the supremacy of a later constitution.
2. Article 1.8. and 1.9 of the IECA defined Eligible Candidates for Parliament and SPR legislatures as persons qualified in accordance with provisions of the Constitution, Electoral Act and other Transitional Legislation. The compatibility of the provisions of such legislation will have to be ascertained.
3. The definitions of the IECA uses the terms the "Republic" which included the RSA, TBVC states and self governing states.
4. A Commission is established in article 4 of the IECA with such executive and regulatory powers as it may deem necessary.

4.1 Article 16 (1)

The Commission is hereby charged with sole responsibility for the organisation, conduct and supervision of elections called from time to time in terms of the constitution and the Transitional Legislation, and it is accordingly vested with all such powers, discretion and authorities as it may require in order to effectively undertake such mandates.

5. The definitions of the IECA provides that the party can be registered in terms of the Electoral Act.

6. Article 11.1 reads as follows: -

Reconstitution of the Commission

If new elections are called in terms of the Constitution the Commission shall be reconstituted and the consequent selection and appointment of the members of such reconstituted Commission (including also, if deemed appropriate International members), shall be effected by the State president, upon the advise of parliament, acting in terms of a motion which shall be required to be passed by the same majority as may be necessary to effect an amendment to the Constitution. If such Motion is not supported by the required majority in Parliament, the consequent selection and appointment of the members of such reconstituted Commission shall be effected by the State President, acting in accordance with the terms of an order of a full bench of the Appellate Division, including the Chief Justice or Acting Chief Justice at the relevant time.

6.1 According to the Technical Committee it is appreciated that this provision has important constitutional implications, and there is a need to refer this matter also for consideration by the Technical Committee on Constitutional matters in order to ensure that there is agreement between the two technical committees, and that the relevant legislation appropriately harmonised.

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA**1993*****(Draft Outline: 2nd August, 1993)*****PREAMBLE**

Whereas there is a need to create a new political order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic state.

And whereas in order to achieve this goal a new constitution should be adopted by the elected representatives of the people of South Africa in accordance with a mandate given to them and enshrined in constitutional principles calling for a democratic system of government in which there will be equality between men and women and people of all races.

AND WHEREAS it is necessary for such purposes for a constitution making body to be elected and for provision to be made for the governance of South Africa during the transitional period whilst the new constitution is being drawn up.

NOW THEREFORE the following constitution for the transitional period is adopted in place of the Republic of South Africa Constitution Act No 110 of 1983

CHAPTER 1**Formal and Constituent Provisions**

Establishment of the New Republic of South Africa

1. (1) South Africa is hereby reconstituted as one sovereign State.
- (2) The national territory shall consist of the whole of the existing territory of the Republic of South Africaa and shall include the Transkei, the Ciskei, Venda and Bophuthatswana.

National Symbols

2. (1) The national flag of South Africa shall be the flag described in schedule 1 hereof.
- (2) The national anthem of South Africa shall be _____.
- (3) The national coat of arms shall be in accordance with the description set out in schedule 2 hereof.
- (4) The national seal of South Africa shall be in accordance with the description set out in schedule 3 hereof.

Languages

3. The languages of South Africa shall be:
The text will be formulated after the report of the committee of the MPNP has been received.

The supremacy of the Constitution.

CHAPTER 2

- (3) Citizenship shall be acquired as provided for in the South African Citizenship Act 44 of 1949.
- (4) Every person who:
 - (a) is a South African citizen as set out in (1);
 - (b) is of or over the age of 18 years; and
 - (c) is not subject to any of the disqualifications set out in the Electoral Act, 1993, shall, on compliance with and subject to the provisions of the Electoral Act, 1993 as a citizen of South Africa, be entitled to vote in any election for members of the National Assembly, the Legislatures of the SPRs and local authorities.

CHAPTER 4

The Legislature

Legislative authority

- 6. (1) The legislative authority of the Republic shall be vested in the Parliament of the Republic which shall consist of the National Assembly and the Senate and shall, subject to the provisions of this Constitution, have the power to make laws for the Republic applying equally in all SPRs.[of the Republic.]
- (2) Parliament shall be competent to delegate by law any matter within its powers to the legislature of an SPR or of a local authority.

Duration of Parliament

7. (1) Parliament shall continue until a new constitutional text has been adopted in accordance with the provisions of Chapter 5, [the entering into force of a new and totally revised constitutional text] or until it is dissolved under Chapter 5.
- (2) If Parliament is dissolved in terms of section . of Chapter 5 an election for a new Parliament shall be called by the President, and such election shall take place within ninety (90) days from the date of such dissolution.
- (3) Notwithstanding the dissolution of Parliament in terms of Section of Chapter 5, the National Assembly and the Senate shall remain competent to perform their functions until, in the case of the National Assembly, a new National Assembly has been elected in terms of the provisions of section hereof, and in the case of the Senate, a new Senate has been elected in terms of section hereof.
- (4) The President shall have the power to summon the outgoing National Assembly for the conduct of urgent and necessary business during the period following the dissolution under Chapter 5, until a new National Assembly has been elected, and shall likewise have the power to summon the outgoing Senate for urgent and necessary business until a new Senate has been elected.
- (5) If a new Constitution is adopted under Chapter 5, then subject to any provision to the contrary in such Constitution, Parliament as it exists at the date of the adoption of the new Constitution, shall remain competent to perform its functions as a legislature, until a new Parliament has been constituted in terms of the new

Constitution.

Franchise

8. *[To be formulated in light of the Negotiating Council's discussion of the reports of the Technical Committee on the Independent Electoral Commission.]*

Composition of the National Assembly

9. (1) The National Assembly shall consist of four hundred members elected according to the system of proportional representation on national and regional party lists as provided for in Schedule 4.
- (2) Persons who are nominated as candidates on regional party lists shall be ordinarily resident in the region in respect to which the party list applies.

Speaker of the National Assembly

10. (1) At its first sitting, and before proceeding to despatch any other business, the newly elected National Assembly, with acting as Chairperson, shall elect one of its members to be the Speaker, who shall be vested with all powers, duties and functions assigned to him or her by the rules and orders of the National Assembly
- (2) The National Assembly shall thereafter elect a Deputy Speaker from amongst its members, and the Deputy Speaker shall act as Speaker whenever the Speaker is not available, and for that purpose shall have all the powers vested in the Speaker.
- (3) The Speaker, or in his or her absence the Deputy Speaker, shall preside over meetings of the National Assembly.

- (4) The Speaker or Deputy Speaker shall vacate his or her office if he or she ceases to be a member of a National assembly, may be removed from office by a resolution of the National Assembly, and may resign by resignation tendered in writing under his or her hand to the -----
- (5) If the office of Speaker or Deputy Speaker becomes vacant, the National Assembly shall in like manner elect a member to fill the vacancy.
- (6) Where neither the Speaker nor the Deputy Speaker is available, the National Assembly, with the Secretary acting as Chairperson, shall elect a member to act as Speaker during such absence.
- (7) The Speaker or the Deputy Speaker or the Acting Speaker presiding at a meeting of the National Assembly shall not have a deliberative vote, but shall have and exercise a casting vote in the case of equality of votes.

Qualification of Members of the National Assembly

- 13. (1) No persons may become members of the National Assembly if they:
 - (a) Have at any time after the adoption of this Constitution been convicted of an offence in South Africa or outside of South Africa if such conduct would have constituted an offence within South Africa, and for which they have been sentenced to imprisonment of more than twelve (12) months without the option of a fine, unless he or she has received a pardon; or

Citizenship

4. (1) South African citizenship at the time of the coming into operation of this Constitution.
- (2) The acquisition and loss of South African citizenship after the coming into operation of this Constitution.
- (3) The protection of South African citizenship after the coming into operation of this Constitution.

CHAPTER 3

Fundamental Rights

5. Wording to be provided by the Technical Committee on Fundamental Rights during the Transition

Chapter 3

Citizenship and the Franchise

- (1) A South African citizen is every person who:
 - (a) is a citizen in terms of the South African Citizenship Act 44 of 1949;
 - (b) if any law mentioned in Schedule X had not been passed, was or would have been a South African citizen, and who would not have ceased to be such a citizen in terms of any provision of the South African Citizenship Act, 44 of 1949.
- (2) No-one shall be deprived of citizenship other than as provided for in the South African Citizenship Act 44 of 1949.

- (b) Are unrehabilitated insolvents; or
- (c) Are of unsound mind and have been so declared by a competent court; or
- (d) Are remunerated members of the Public Service of South Africa.

(2) For the purpose of sub-article (1) hereof:

- (a) no person shall be considered as having been convicted by any Court until any appeal which might have been noted against the conviction or sentence has been determined, or the time for noting an appeal against such conviction has expired;
- (b) the public service shall be deemed to include the defence force, the police force, the prison service and para-statal enterprises.

Vacation of Seats

14. (1) Members of the National Assembly shall vacate their seats if they:
- (a) cease to be eligible to be members of the National Assembly;
 - (b) cease to be a members of the political party which nominated them to sit in the National Assembly.
 - (c) resign their seats in writing addressed to the Speaker;
 - (d) absent themselves voluntarily from the National Assembly for thirty (30) consecutive sitting days, without having obtained the leave of the National Assembly on grounds specified in its rules

and standing orders.

- (2) If a seat of a member of the National Assembly is vacated in terms of sub-article (1) hereof, the political party which nominated such member to sit in the National Assembly shall be entitled to fill the vacancy by nominating any person on the party's election lists compiled for the previous general election, or if there is no such person, by nominating any member of the party: provided that if the vacancy occurs in respect of a person who was nominated on a national list, it shall be filled from the national list, and if the vacancy occurs in respect of a person who was nominated on a regionalist, it shall be filled from the regional list, ordinarily resident in such region.

Quorum

15. The presence of at least one hundred (100) members of the National Assembly, other than the Speaker or the presiding member, shall be necessary to constitute a meeting of the National Assembly for the exercise of its powers and for the performance of its functions.

Oath/Affirmation by Members of the National Assembly

16. Every member of the National Assembly shall make and subscribe to an oath or solemn affirmation before the Chief Justice, or a judge designated by the Chief Justice for this purpose, in the terms set out in Schedule (6).

Public Access to Sitings

17. All sessions of the National Assembly shall be held in public and members of the public and the media shall have access to such meetings: provided that reasonable safeguards may be instituted to search or refuse entry to persons in order to protect the safety of members of the national assembly.

Sessions

18. (1) **The National Assembly shall sit:**
- (a) at the Houses of Parliament in Cape Town, unless the Speaker directs otherwise on the grounds of public interest, security or convenience;
 - (b) in a session commencing as soon as reasonably possible after the election of the National Assembly and not later than _____ days after such election, and such session shall terminate on such date as the National Assembly may determine;
 - (c) in such special sessions as may be directed by proclamation by the President from time to time.
- (2) During such sessions the National Assembly shall sit on such days and during such times of the day or night as it by its rules and standing orders may provide.
- (3) The President may alter the date of commencement of any session directed in terms of section 1(c) if he or she is requested to do so by the Speaker on the grounds of public interest or convenience.

Composition of the Senate

19. (1) The Senate shall be composed of ten members from each SPR, elected by the SPR legislature of each SPR at the first session after its election [from among its number] according to the principle of proportional representation, each voter having one transferable vote.

- (2) Any member of an SPR legislature elected in terms of subsection (1) to the Senate, shall vacate his or her seat in the SPR legislature.
- (3) Vacancies in an SPR legislature occurring as a result of the election of a member to the Senate in terms of subsection (2) shall be filled in accordance with the provisions of the Elections Act 1993. [by persons whose names appear on the party lists on which the names of the persons elected to the Senate appeared.]

President of the Senate

20. (1) At its first sitting and before proceeding to dispatch any other business, the newly elected Senate, with ____ acting as Chairperson, shall elect one of its members to be the President of the Senate, who shall be vested with all powers, duties and functions assigned to him or her by the rules and orders of the Senate.
- (2) The President of the Senate shall preside at meetings of the Senate and at joint sessions of the National Assembly and the Senate.
- (3) In the absence of the President of the Senate, a Chairperson shall be elected by Senators from amongst their number to preside at their meetings during such absence.
- (4) The President of the Senate shall vacate his or her office if he or she ceases to be a member of the Senate, may be removed from office by a resolution of the Senate, and may resign by resignation tendered in writing in his or her hand to the ____.
- (5) If the office of the Speaker becomes vacant, the Senate shall in

like manner fill the vacancy.

- (6) The President of the Senate or the Chairperson presiding at a meeting of the Senate shall not have a deliberative vote, but shall have and exercise and a casting vote in the case of equality of votes.

Oath/Affirmation of members of the National Assembly

- 21. (1) Every member of the National Assembly before taking his or her seat shall make and subscribe to an oath or solemn affirmation before the Chief Justice, or a judge designated by the Chief Justice for this purpose, in the terms set out in schedule 5.

Qualification of members of the Senate

- 22. (1) No person shall be qualified to be a Senator under this Constitution unless he or she:
 - (a) Is at least forty (40) years of age; and
 - (b) Is qualified to stand for election as a member of the National Assembly.

Quorum

- 23. (1) The presence of at least twenty five percent (25%) of the number of Senators entitled to attend shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

Oath and affirmation of Senators

- 24. (1) Every Senator before taking his or her seat shall make and

subscribe to an oath or solemn affirmation before the before the Chief Justice, or a judge designated by the Chief of Justice for this purpose, in the terms set out in Schedule 6.

25. Vacation of Seats by Senators

- (1) A member of the Senate who is elected a member of the National Assembly shall vacate his or her seat as a Senator with effect from the date on which he or she becomes a member of the National Assembly.
- (2) Senators shall vacate their seats if they:
 - (a) Cease to be eligible to be members of the National Assembly
 - (b) Cease to be members of the political party on whose behalf they were elected to attend the Senate
 - (c) If they resign their seats in writing addressed to the President of the Senate.
 - (d) Absent themselves voluntarily from the Senate for thirty (30) consecutive sitting days, without having obtained the leave of the Senate on grounds specified in its rules and standing orders.
- (3) If a seat of a member of the Senate is vacated in terms of subsection (2) hereof, the political party which that Senator represented in the Senate shall nominate a person to replace that Senator.

Sessions

26. (1) The Senate shall sit:
- (a)
 - (b)
 - (c)

Privileges and Immunities

27. (1) Members of the National Assembly and the Senate shall bear no legal responsibility for their opinions expressed by them and for the votes cast by them in the National Assembly.
- (2) Rules providing for the privileges and immunities of Members of the National Assembly shall be made by a joint committee of the National Assembly and the Senate and, notwithstanding the provisions of Chapter 3 of this Constitution, all members shall be entitled to the protection of such privileges and immunities.

Responsibilities of Members of the National Assembly and Senate

28. (1) All members of the National Assembly and Senate are servants of the people of South Africa and are required to discharge their duties to the people in accordance with the objectives of this Constitution and to do so in the public interest and with dignity and integrity.

Restrictions on Senators and Members of the National Assembly

29. No person may at the same time be both a member of the National Assembly and a member of the Senate, nor may a member of the National Assembly or the Senate be a member of an SPR legislature, or a Local Authority, and any person elected to the National Assembly

or the Senate who holds any such position shall, prior to taking the oath/affirmation of office as a member of the National Assembly or the Senate, as the case be obliged to resign therefrom.

30. Rules and orders**Committees**

- (1) The National Assembly and the Senate may make their own rules or procedure for the conduct of its business and proceedings and may also make rules for the establishing, functioning and procedures of committees, and formulate such standing orders, including restrictions on access to such committees as may appear to each of them it to be expedient or necessary, having regard to the business of such committees.
- (2) For the purposes of exercising their powers and performing their functions any committee of the National Assembly or Senate established in terms of sub-article (1) hereof shall have the power to subpoena persons to appear before it to give evidence on oath and to produce any documents required by it, and to receive representations from interested parties.
- (3) The National Assembly and the Senate may make rules and orders concerning the order and conduct of their joint proceedings, including all matters referred to in subsections (2) and (3) hereof.
- (4) Parliament may institute representative standing committees of the National Assembly and the Senate, in order to resolve possible disagreements and to make joint reports.

Ordinary legislation

31. (1) All laws, except laws relating to finance, specified SPR matters, and the amendment of this Constitution, shall be considered to be ordinary legislation.
- (2) Ordinary legislation may be introduced in either the National Assembly or the Senate.
- (3) A bill passed by one House and rejected by the other shall be referred to a joint committee consisting of members of all parties represented in Parliament to report on proposed amendments to the bill, whereafter the bill shall be referred to a joint sitting of both houses for decision by a majority of the total number of members of both houses of Parliament.

Finance Bills

32. (1) Bills appropriating revenue or moneys or imposing taxation shall be introduced only in the National Assembly after they have been considered and reported on by a joint committee of both Houses and, in so far as it may be required in terms of this Constitution, by the Financial and Fiscal Commission.
- (2) A bill shall not be deemed to appropriate revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties.
- (3) The Senate may not amend any bills in so far as they impose taxation or appropriate revenue or moneys.
- (4) If the National Assembly in any session passes a bill imposing taxation only or dealing with the appropriation of revenue or moneys, and the Senate in the same session rejects or fails to pass

it within thirty days after it has been passed by the National Assembly, the bill shall be reconsidered by the National Assembly.

- (5) The National Assembly may adopt a Bill referred to in terms of subsection hereof, with or without amendment, and if adopted it may thereafter be presented to the State President for his or her assent, and shall as soon as it has been assented to by the State President become an Act of Parliament as if it had been approved by the Senate.

Bills concerning specified SPR matters

33. (1) Bills dealing with the exercise of powers and functions allocated to SPR governments under Chapter 9 of this Constitution shall be approved by the National Assembly and the Senate.
- (2) A bill which affects the exercise of powers or functions allocated in terms of section 6(1) of Chapter 9 to a particular SPR only, shall also be approved by a majority of the Senators of that particular SPR.

Amendment of the Constitution

34. (1) Save for the provisions of subsection (2) of this section, and of Chapter 5, an amendment to this Constitution shall be passed by a two thirds majority of the total number of members of the National Assembly and the Senate sitting together in joint session.
- (2) No amendment of this Constitution shall be permissible in so far as it is designed to detract, directly or indirectly, from the essence of the Constitutional Principles contained in Schedule 1.

Requisite Majorities

35. Save as provided in this Constitution, a simple majority of votes cast in the National Assembly or the Senate shall be sufficient for the passing of any Bill, or the taking of any decision or resolution of the National Assembly or Senate.

Assent to Bills

36. A Bill passed by the National Assembly, and where required by this Constitution, by the Senate, shall require the assent of the President, to be signified by the signing of the Bill, and the publication of the Act in the Government Gazette, in order to acquire the status of a valid Act of Parliament.

Signature and Enrolments Acts

37. (1) Any valid Act of Parliament which has been duly passed by Parliament, signed by the President, and published in the Gazette shall be lodged in the office of the Registrar of the Appellate Division of the Supreme Court and such copy shall be conclusive evidence of the provisions of the Act.
- (2) The public shall have the right of access to such copies subject to such regulations as may be prescribed by Parliament to protect the durability of the said copies and the convenience of the Registrar's staff.
- (4) Provision should further be made for the following matters:
- Resolution of conflicts between texts in different official languages

- Penalty for sitting or voting when disqualified
- Rights and obligations of State President and Ministers regarding speaking, sitting and voting in the Houses of Parliament.

CHAPTER 5

The Adoption of the new Constitution

The Constitution-making Body

38. (1) The National Assembly and the Senate, sitting in joint session, shall be the CMB.
- (2) The CMB shall[] adopt a new constitutional text in accordance with the provisions and procedures of this Chapter.
- (3) The CMB shall elect one of its members to preside at its meetings and a deputy to preside in his or her absence, and in the absence of both, a person elected by the CMB for such purpose shall preside for as long as such absence continues.
- (4) The CMB may make rules of procedure of the conduct of its business and proceedings, and also make rules for the establishing, functioning and procedures of committees and formulate such standing orders, including restrictions on access to such committees as may appear to it to be expedient or necessary, having regard to the business of such committees.

Constitutional Principles

39. (1) In undertaking its task of [total revision of the present Constitution and the] drafting of a new constitutional text, the CMB shall comply with the Constitutional Principles contained

in Schedule-- .

- (2) During the course of undertaking the total revision and the drafting of the new constitutional text, any constitutional proposal pertaining to such revision and drafting may be referred to the Constitutional Court by the Chairperson after being petitioned by one third of the members of the CMB to do so, in order to obtain an opinion from the Court as to whether such proposal, if adopted, would comply with the Constitutional Principles.
- (3) A new constitutional text, or any separate part thereof, shall not come into operation unless the Constitutional Court certifies that all its provisions comply with the Constitutional Principles.
- (4) A decision of the Constitutional Court in terms of subsections (2) and (3) shall be final and binding and no court of law shall have jurisdiction to enquire into or pronounce upon the validity of any constitutional provision which has been certified by the Constitutional Court in terms of subsection (3).

Appointment of commissions, committees and advisory bodies

40. (1) The CMB shall have the power to appoint its own commissions, technical and parliamentary committees and other advisory bodies to assist it in its task.
- (2) The CMB shall, with the concurrence of at least two thirds of all its members, appoint an independent panel of five persons being recognised constitutional experts not holding office in any political party, to advise it and the Chairperson on constitutional

matters and to perform such other tasks as are provided for in this Constitution.

Adoption of a new constitutional text

41. (1) [A total revision of this Constitution shall be undertaken by the CMB, and] A new constitutional text shall be adopted by the CMB within two years from the commencement of the first session of Parliament.
- (2) A new constitutional text shall be approved by two thirds of all the members of the CMB.
- (3) Should the CMB fail to adopt a new constitutional text by the requested two thirds majority, but a draft of the new constitutional text is supported by a majority of its members, such draft shall be referred to the panel of constitutional experts by the Chairperson for their advice, to be given within 30 days of such referral, on amendments within the framework of the Constitutional Principles which might secure a majority necessary for the approval of the constitutional text.
- (4) Should a draft prepared in accordance with the unanimous advice of the panel of constitutional experts in terms of subsection (3) not be submitted to the CMB within 30 days, or, should such draft, after being so submitted, not be supported by the required two-thirds majority in the CMB, a constitutional text may be accepted by a majority of the members of the CMB.
- (5) The State President shall refer a constitutional text accepted in terms of subsection (4) to a National Referendum. If the Constitutional Court certifies that it complies with the Constitutional Court to be in conformity with the Constitutional

Principles enumerated in Schedule 7.

- (6) The question put before the electorate in the referendum shall be the acceptance or rejection of such draft constitutional text.
- (7) The constitutional text presented to the electorate in the referendum shall, if approved by a majority of sixty per cent of the votes in the referendum, become the Constitution of South Africa.
- (8) If the new constitutional text is not approved in the referendum contemplated in subsection (7), or if a new constitutional text is not otherwise approved, Parliament shall be dissolved by the State President and a general election shall be held for a new National Assembly.
- (9) A CMB, composed of the newly elected National Assembly, and the Senate, shall within a period of one year after its first session, approve and pass the new constitutional text by an ordinary majority.
- (10) The newly constituted CMB shall conduct its proceedings in accordance with the provisions of this Chapter other than Section ____ hereof.

Amendment of this Chapter

42. (1) No amendments to the provisions of this Chapter shall be permitted in so far as they relate to -
 - (a) the Constitutional Principles set out in Schedule 1;
 - (b) the requirement that the new constitutional text or texts shall comply with the Constitutional Principles, and that

such text or texts shall be certified by the Constitutional Court as being in compliance therewith.

- (2) All other provisions of Chapter 5 shall be capable of being amended by a two thirds majority of the total number of members of the CMB.

CHAPTER 6

The Executive Power

EXECUTIVE GOVERNMENT

Executive Power

43. (1) The executive power of the Republic shall vest in the State President who shall exercise his power after consultation with the cabinet and subject to the provisions of this Constitution.

State President/President

Head of State and of Government

44. (1) The State President shall be the head of State and of the government and the commander-in-chief of the Defence Force.

Election of State President

45. (1) The State President shall be elected by all members of the National Assembly at its first session [at a joint sitting of both houses of the legislature] presided over by the Chief Justice or a judge of appeal designated by him.

- (2) The President shall be elected by a simple majority of all present members of the National Assembly, and in accordance with the procedure provided for in Schedule 2.
- (3) No person may be elected or serve as State President unless he or she is qualified to be nominated or elected and take his or her seat as a member of the National Assembly.
- (4) Any person who holds a public office in respect of which he or she receives remuneration out of public funds and is elected as State President shall vacate such office with effect from the date on which he or she is elected.
- (5) No person shall hold office as State President for more than two terms.

Oath or affirmation

46. (1) A President-elect shall, before formally assuming office, make an affirmation or take an oath which shall be administered by the Chief Justice or a judge designated by the Chief Justice for this purpose. The affirmation or oath shall be in the form contained in Schedule 3.

Tenure of office

47. (1) The term of office of the State President shall be the period of the continuance of the National Assembly at which the State President was elected; and
- (2) after the dissolution of that National Assembly, whether by effluxion of time or otherwise, until a State President

has at or after the commencement of the first session of the newly constituted National Assembly, been elected in terms of this Constitution and has assumed office.

Functions, powers and duties

48. (1) The State President shall uphold, protect and defend the Constitution as the Supreme Law, and shall perform with dignity and leadership all acts necessary, expedient, reasonable and incidental to the discharge of the executive functions of the Government, subject to the overriding terms of this Constitution and the laws of the Republic, which he or she is constitutionally obliged to protect, to administer and to execute.
- (2) The State President shall subject to the provisions of this Constitution have power to:
- (a) appoint times for the sessions of the National Assembly and for its prorogation;
 - (b) address any session of Parliament;
 - (c) confer honours on citizens, residents and friends of the Republic in consultation with interested and relevant persons and institutions;
 - (d) appoint, accredit, receive and recognise ambassadors, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;
 - (e) enter into and ratify international conventions, treaties and agreements;
 - (f) assent to, sign and promulgate laws duly passed by Parliament, or refer such laws back to Parliament in the event of procedural shortcomings in the legislative process;
 - (g) convene the Cabinet for the purpose of

consultation or the resolution of disputes among the members of the Cabinet or the political parties represented in the Cabinet;

- (h) refer disputes of a constitutional nature between political parties represented in Parliament or between organs of the State at any level of government to the Constitutional Court or other appropriate institution or body for resolution;
- (i) pardon or reprieve offenders, either unconditionally or subject to such conditions as he or she may deem fit and to remit any fines, penalties or forfeitures;
- (j) enter into and ratify international conventions, treaties and agreements;
- (k) proclaim or terminate martial law;
- (l) declare war and make peace;
- (m) make such appointments as he or she may deem fit under powers conferred upon him or her by any law and to exercise such powers and perform such functions as may be conferred upon or assigned to him or her in terms of this Constitution or any other law;
- (n) proclaim referenda and plebiscites.

Prerogatives and immunities

49. (1) The State President shall, as head of State, in addition have such powers as were immediately before the commencement of this Constitution possessed by the State President by way of prerogative.
- (2) No person holding the office of State President or performing the functions of State President may be sued in any civil proceedings save where such proceedings concern an act.....

- (3) No person holding the office of State President shall be charged with any criminal offence or be amenable to the criminal jurisdiction of any Court in respect of any act allegedly performed, or any omission to perform any act, during his or her tenure of office as State President.
- (4) After a State President has vacated that office:
 - (a) no Court may entertain any action against him or her in any civil proceedings in respect of any act done in his or her official capacity as President;
 - (b) a civil or criminal Court shall only have jurisdiction to entertain proceedings against him or her, in respect of acts of commission or omission alleged to have been perpetrated in his or her personal capacity whilst holding office as State President, if National Assembly by resolution has removed the State President on the grounds specified in this Constitution and if a resolution is adopted by the National Assembly resolving that any such proceedings are justified in the public interest notwithstanding any damage such proceedings might cause to the dignity of the office of the State President.

Replacement and removal of SP/Succession

50. (1) Whenever the State President is for any reason unable to
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(2) Whenever:

- (a) the State President is unable to nominate a member of the Cabinet in terms of sub-clause 8.2.; or
- (b) the member so nominated is for any reason unable to act; or
- (c) the office of State President is vacant and there is no member so nominated or the member so nominated is unable to act, a member of the Cabinet designated by the remaining members thereof shall serve as Acting State President during the incapacity of the State President or of

the member nominated by him, as the case may be, or until a State President has been elected and has assumed office.

(d) The State President shall be removed from office if 2/3 majority of all the members of the National Assembly [at a joint sitting of both legislatures] adopts a resolution impeaching the State President of a serious violation of the laws of the land or otherwise guilty of such gross misconduct or ineptitude as to render him or her unfit to hold with dignity and honour the office of the State President.

(e) If the State President dies, resigns or is removed or ceases to hold office for any reason the vacant office of State President shall be filled for the unexpired period thereof in exactly the same manner as the first State President was elected.

Remuneration

51. (1) There shall be paid to the State President out of and as a charge on the State Revenue Fund such a salary and allowances and pension, including pension to a State President's widow or widower, as may be determined from time to time by resolution of the National Assembly.

The Cabinet

52 (1) Composition

The Cabinet shall consist of the State President and such other ministers as the State President may appoint in accordance with the provisions hereof.

- (2) The Cabinet will be appointed by the State President who will be obliged to offer appointments to the parties elected to the National Assembly in direct proportion to their representation

therein, provided that this will not apply to parties which are allocated fewer than 5% of the seats in the National Assembly;

- (3) No party will be obliged to accept seats in the Cabinet or to serve therein;
- (4) Each individual member of the Cabinet will be appointed by the State President acting on the advice of the leader of the party in the National Assembly which is entitled to the Cabinet seat or seats;
- (5) The allocation of specific portfolios will be designed by the State President and in consultation with the leader of the party in the National Assembly whose member is appointed to such portfolio;
- (6) The State President shall be obliged to terminate the appointment of any member of the Cabinet if the National Assembly by a majority of its members resolves that it has no confidence in that Minister.
- (7) In the event of a vacancy in the Cabinet, occurring in the manner described in sub-article 10.6. hereof, or as a result of the death or resignation of a member of the Cabinet, the State President will be obliged to appoint a successor Minister from the ranks of the qualifying party on the recommendation of the party leader concerned.

Appointment of Deputy Ministers

53. (1) The State President may after consultation with members of the

Cabinet appoint any person to hold office during the State President's pleasure as Deputy Minister of any specified Department of State or Deputy Minister of such other description as the State President and the Cabinet may determine and to exercise or perform on behalf of a Minister any of the powers, functions and duties entrusted to such Minister in terms of any law or otherwise which may, subject to the directions of the State President and Cabinet be assigned to him from time to time by such Minister.

- (2) Deputy Ministers shall be appointed in a manner similar to the method prescribed by this Constitution for the appointment of Members of the Cabinet provided that Deputy Ministers need not be members of the National Assembly and shall not be members of the Cabinet.

Oath or affirmation

54. (1) Before assuming office Ministers shall make and subscribe to an oath or affirmation before the State President or a person designated by the State President for this purpose in the terms set out in Schedule ? hereof.

Functions, duties and powers

55. (1) Members of the Cabinet shall have the following functions:
 - (a) to direct, co-ordinate and supervise the activities of ministries and government departments, including parastatal enterprises, and to review and to advise the State President and the National Assembly on the desirability and wisdom of any prevailing subordinate legislation, regulations or orders pertaining to such parastatal enterprises, regard being had to the public interests;
to initiate bills for submission to the National Assembly;

- (b) to formulate, explain and assess for the National Assembly the budget of the State and its economic development plans and to report to the National Assembly thereon;
- (c) to carry out such other functions as are assigned to them by law or are incidental to such assignment;
- (d) to attend meetings of the National Assembly and to be available for the purposes of any queries and debates pertaining to the legitimacy, wisdom, effectiveness and direction of Government policies;
- (e) to take such steps as are authorised by law to establish such economic organisations, institutions and parastatal enterprises on behalf of the State as are directed or authorised by law;
- (f) to formulate, explain and analyse for the members of the National Assembly the goals of the Republic foreign policy and its relations with other States and to report to the National Assembly thereon;
- (g) to formulate, explain and analyse for the members of the National Assembly the directions and content of foreign trade policy and to report to the National Assembly thereon;
- (h) to assist the State President in determining what international agreements are to be concluded, acceded to or succeeded to and to report to the National Assembly thereon;
- (i) to advise the State President on the state of national defence and the maintenance of law and order and to inform the National Assembly thereon;
- (j) to issue notices, instructions and directives to facilitate the implementation and administration of laws administered by the Cabinet, subject to the terms of the constitution or any other law;

- (k) to uphold, protect and defend the Constitution as the supreme law and to remain vigilant and vigorous with the purpose of ensuring that the scourges of apartheid, tribalism and colonialism do not again manifest themselves in any form in a free and independent, democratic South Africa.
- (l) to protect and assist disadvantaged citizens who have historically been the victims of these pathologies.

Decision making process in the Cabinet

- 56. (1) Save in respect of the budget and the other money bills, the State President who will chair every meeting of the Cabinet will assess consensus on any agenda item at the Cabinet meeting. If there is dissent within the Cabinet, and any Minister requests a vote, then the particular matter shall be put to a vote. A two-thirds majority of the Cabinet Ministers present and voting shall constitute "sufficient consensus" for a decision to be taken on any particular item or aspect of legislation and any member who dissents therefrom shall be entitled to reserve his or her position and publicly declare his or her dissent.
- (2) In respect of the budget and monetary bills a simple majority of the Cabinet Ministers present and voting shall be sufficient to achieve consensus.

Ministerial accountability

- 57. (1) All ministers shall be accountable individually for the administration of their own ministries and collectively for the administration of the work of the Cabinet both to the State President and the National Assembly.
- (2) During their tenure of office as members of the Cabinet, Ministers may not take up any other paid employment, engage in

activities inconsistent with their position as Ministers, or expose themselves to any situation which carries with it the risk of a conflict developing between their interest as Ministers and their private interests.

- (3) No members of the Cabinet shall use their positions as such or use information entrusted to them confidentially as such members of the Cabinet, directly or indirectly to enrich themselves [or their families].

Replacement and removal of ministers

58. (1) Subject to the provisions of clause ?, whenever any Minister or Deputy Minister is for any reason unable to perform any of the functions of his office the State President may appoint another Minister or Deputy Minister to act in the said Minister or Deputy Minister's stead, either generally or in respect of any specific function.
- (2) The State President shall be obliged to terminate the appointment of any member of the Cabinet if the National Assembly by a majority of all its members resolves that it has no confidence in that member.

CHAPTER 7

The Administration of Justice

The Judiciary

59. (1) The judicial authority over South Africa shall be vested in the Supreme Court of South Africa which shall consist of a Constitutional Court, an Appellate Division and the other

divisions of the Supreme Court existing at the date of coming into force of this Constitution.

(2) The Supreme Court shall have the jurisdiction, including the inherent jurisdiction, which vested in the Supreme Court of South Africa at the date of adoption of this constitution, and any such additional jurisdiction as may be conferred upon it by this Constitution and by Acts of Parliament.

(a) The judiciary shall be independent, impartial and subject only to the Constitution and the law and no person or body or organ of the state shall interfere with judicial officers in the execution of their duties.

(b) The judiciary shall uphold the Constitution.

Lower courts

60. (1) There shall be a magistrate court and such other courts other than the supreme court which shall exercise powers and functions prescribed by Acts of Parliament.

Appointment of Judges

61. (1) The Chief Justice and the President of the Constitutional Court shall be appointed by the President.

(2) All other judges of the Supreme Court shall be appointed by the President in accordance with the following procedure:

(a) Judges shall hold office until the age of _____ or until

they resign or are removed from office in terms of section 4 of this Chapter.

The Removal of Judges from Office

62. (1) A judge may be removed from office before the expiry of his or her tenure only on the grounds of physical or mental incapacity or for gross misconduct and in accordance with the provisions of subsection (2) hereof.
- (2) A judge shall only be removed from office by the State President on a two thirds majority decision of members of the Senate and the National Assembly.
- (3) There shall be a constitutional court
- (4) The constitutional court shall have jurisdiction, and be the highest court in the land in respect of the following subject matters:
- (a) The intepretation and application of the Constitution.
 - (b) Issues concerning allegations of the invasion of the funadamental rights conatined in Chapter 3 of this Constitution.
 - (c) The validity or invalidity of any proposed legisaltion
 - (d) The validity or invalidity of any existing or future legislation.
 - (e) Matters arising under Chaper 5 of this constitution
 - (f) Disputes between the national government and SPRs or

between SPRS arising out of the provision of this Constitution

- (g) Any inquiry as to whether or not any matter falls under its own jurisdiction
- (4) The conditions upon which access to the constitutional court may be exercised as well as any other procedure relating to the conduct of proceedings before the constitutional court shall be regulated by rules prescribed by the President of the constitutional court and published in the gazette, which, without limiting the generality of such power, may include provisions enabling applications to be made directly to the constitutional court in particular circumstances, and also provisions requiring the leave of the constitutional court to be obtained in respect of any matter other than one arising under the provisions of Chapter 5.
- (5) The rules referred to in sub - paragraph (2) above shall be published within one month of the constitution of the constitutional court.
- (6) A decision of the constitutional court on any matter specified in subsection (1) hereof, shall be binding upon all other courts, including the appellate division, and upon all organs of the state at all levels of government, and upon all persons in South Africa.
- (7) Any person, body or organ of the state shall be entitled to institute proceedings, or intervene in proceedings before, a constitutional court, provided such person, body or organ of the state shall demonstrate material interest.
- (8) The constitutional court shall consist of 12 members, appointed

by the government of antional unity for a period not exceeding the continued exitence of this Constitution.

- (9) Members of the constitutional court shall be impartial independent and subject only to the constitution and the law, and no person or body or organ of the state shall interfere with judicial officers in the execution of their duties.
- (10) Only suitably qualified people shall be appointed to the constituional court.
- (11) The State President shall designate the President and Deputy President of the constitutional court, and shall alos determine the seat of the court.
- (12) members of the constitutional court shall be appointed not later than one month of the elections
- (13) No member of the constitutional court shall hold any other office or remuneration during the tenure of his office or place himself in the position which may be in conflict with his /her appointment.
- (14) The constitutional court shall cease exist to exist upon the final/revised constitution coming into operation
- (15) The provison of Article X shall mutatis mutandis apply with regard to the removal of members of the Constitutional Court.
- (16) The President of the Constitutional Court shall have the power to appoint such memebtrs of staff as may be necessary.

The Attorney General

63. (1) There shall be an Attorney General appointed by the President.
- (2) No person shall be legible for appointment as Attorney General unless such person -
- (a) Possess legal qualifications that would entitle him or her to practice in all courts of South Africa.
 - (b) Is, by virtue of his or experience, conscientiousness and integrity a fit and proper person to be entrusted with the responsibilities of the office of Attorney General.
 - (c) The powers and functions of the Attorney General shall be to :
 - * To prosecute in the name of the state in criminal proceedings.
64. (1) Subject to the provisions of this Constitution all laws operative in any part of an SPR at the time of the coming into operation of this Constitution, governing the organisation, composition, seats and jurisdiction of any court or the administration of justice shall remain in force unless repealed or amended.

CHAPTER 8

The Ombudsman and the Human Rights Commission

66. (1) There shall be an Ombudsman who shall have the powers, functions and duties prescribed by the Constitution and the law.
- (2) The Ombudsman shall be a person holding the appointment of a Judge of the Supreme Court or a person possessing the legal

qualifications entitling such a person to practice in the Supreme Court.

- (3) The Ombudsman shall be appointed by the State President on advice of the Judicial S.... Commission. Such appointment shall be subject to ratification by a majority of members of Parliament in a joint sitting.
- (4) The Ombudsman shall hold office for a renewable term of five years.

Independence and impartiality

- (5) The Ombudsman shall be independent and impartial in the carrying out of his/her functions, powers and duties, and subject only to the Constitution and the law.
- (6) The Ombudsman shall be entitled to all the immunities and the privileges of a Judge of the Supreme Court.
- (7) No member of the cabinet or the legislature or any organ of the state or any person shall interfere with the Ombudsman in the exercise of the powers and functions assigned to the Ombudsman by the Constitution or the law.
- (8) All organs of the state shall accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the Ombudsman.

Powers, functions and duties

- (9) The Ombudsman shall have powers and functions and duties

vested in him or her by an act of Parliament which shall include the following:

- (a) The duty to investigate complaints in regard to alleged or apparant violations of fundamental rights, and freedoms, abuse of power, unfair treatment of inhabitant by an official in the employ of any organ of any level of government, manifest injustice or corruption or conduct by such official which would properly be regarded as unlawful, oppressive or unfair.
- (b) The duty to investigate thoroughly all instances of alleged or suspected corruption and the misappropriation of public monies or public assets by officials and to take appropriate steps including reports to the Attorney General and the Auditor General pursuant thereto.
- (c) The duty to investigate complaints concerning the Public Service Commission and any other administrative organs of all levels of government in so far as such complaints relate to equal and fair access by all to the recruitment of such services as the proper and fair administration of such services.
- (d) The duty and power to take appropriate action for the remedying, correction of any of the contemplated hereabove through such means as are fair, proper and effective.
- (e) The power to compel the appearance of witnesses and the production of documents and records relevant to any investigation by the Ombudsman, and to cause anyone in contempt of the Ombudsman's subpoena to be prosecuted before a court of competent jurisdiction.

- (f) The power to question any person, and to require any person to co-operate with the Ombudsman and to disclose truthfully and frankly any information within such persons knowledge, which may be relevant to any investigation of the Ombudsman.
- (g) The duty to report annually to the legislator on the exercise of the Ombudsman's powers and functions.
- (h) Recourse to or exercise of any powers, functions and duties of the Ombudsman shall not oust the jurisdiction of the courts to hear any matter or cause.

Removal from Office

The Ombudsman may be removed before the expiry of his or her term of office by the President on the recommendation of the Judicial Service Commission and subject to the ratification of such removal by a resolution of the majority of members of Parliament sitting jointly.

The Ombudsman may only be removed from office on the grounds of mental incapacity or gross misconduct

The Ombudsman and the Human Rights Commission

- (1) A Human Rights Commission shall be established by Act of Parliament.
- (2) It shall have the powers, duties and functions vested in it by the Act of Parliament, which shall include the duty to promote the observance of the Fundamental Rights enshrined in Chapter 3 of

the Constitution, and for that purpose, to consider proposed legislation when it is submitted to Parliament, and to investigate complaints concerning any contravention or threatened contravention of Chapter 3.

- (3) The Human Rights Commission is of the opinion that provisions of any proposed legislation submitted to Parliament might be contrary to the provisions of Chapter 3 of this Constitution, it shall immediately report that fact to the Speaker and the President of the Senate.
- (4) If the Human Rights Commission after due investigation is of the opinion that there is substance in any complaint made to it, it shall assist the complainant and other persons adversely affected thereby, to secure redress, and where it is necessary for that purpose to do so, it shall have the power to provide financial assistance to enable proceedings to be taken in a competent court for the necessary relief.
- (5) The Human Rights Commission shall be required to report to the President at least once in every year on the performance of its mandate, and the President shall call such report to be tabled promptly in the National Assembly and the Senate.

CHAPTER 9

SPRs

Establishment of SPRs

59. (1) The SPRs of South Africa shall be ... LISTED BY NAME ..., the boundaries of which are defined in Schedule 2.

SPR legislatures

60. (1) There shall be a legislature for each SPR.
- (2) The legislature of each SPR shall consist of the members elected at the time of the election of the National Legislature according to a system of proportional representation on SPR party lists as provided for in Schedule 3.
- (3) The number of seats in an SPR legislature shall be determined by dividing the total number of votes cast in the SPR in the election held in terms of subsection (2) by 50 000, approximated to the nearest complement.
- (4) Provision should further be made for the following matters:
- Convening, venue and holding of sessions of SPR legislatures
 - Qualifications for election to SPR legislatures
 - Vacation of seats by members of SPR legislatures
 - Filling of vacancies
 - Quorum of meetings of SPR legislatures
 - Rules of procedure for the conduct of the business of SPR legislatures
 - Duties, privileges and immunities of members of SPR legislatures
 - The requisite majority for decisions by SPR legislatures
 - Public access to sittings of SPR legislatures
 - Assent to bills passed by SPR legislatures
 - Publication and enrolment of SPR legislation
 - Duration of the SPR legislature.

SPR executives

61. (1) The executive of an SPR shall be elected by the SPR legislature according to the principle of proportional representation, each voter having one transferable vote, and shall consist of ten members.
- (2) The executive of an SPR shall from among its own number elect a Premier.
- (3) Each member of the executive shall be responsible for the administration of one or more of the departments of the SPR to be established by the Premier.
- (4) The Premier shall determine how responsibility for the administration of departments shall be allocated to members of the executive.
- (5) Provision should further be made for the following matters:
- Oath or affirmation of office by Premier, members of SPR executives and legislatures
 - Remuneration of members of SPR legislatures, members of SPR executives and Premiers
 - Appointment of secretary and other officers for SPRs
 - Vacation and removal from office of SPR Premiers and members of SPR executives.

Transfer and consolidation of existing administrative responsibility

62. (1) Subject to the relevant transitional provisions contained in Chapter 12 and immediately following the determination of the extent of the legislative and executive competence of an SPR in terms of section 6, an SPR shall *mutatis mutandis* assume

responsibility for all the administrative and executive institutions existing within the SPR which were previously charged with the administration and execution of the matters falling within the competence of the SPR.

- (2) The government of an SPR shall, on the advice of the Commission on SPR Government instituted in terms of this Constitution, establish a single, consolidated SPR administration as expeditiously as possible.
- (3) In those instances where the administrative institutions of an SPR are charged by the National Executive with the administration of matters falling within the competence of the national government, the SPR executive shall administer those structures for and on behalf of the National Executive.

Administration of existing laws

63. (1) Subject to the relevant transitional provisions contained in Chapter 12 and immediately following the determination of the extent of the legislative and executive competence of an SPR in terms of section 6, existing laws applicable in the SPR governing matters falling within the competence of the SPR, shall *mutatis mutandis* be deemed to be laws of the SPR legislature.
- (2) The powers, functions and obligations relating to the legislative and executive competence of the SPR arising from the provisions of the laws referred to in subsection (1), shall vest *mutatis mutandis* in the legislature and executive of the SPR.
- (3) The legislatures of the SPRs shall undertake the consolidation and

unification of the laws referred to in subsection (1) as expeditiously as possible.

Powers and Functions of SPR Governments

64. (1) The National Executive shall, after consultation with each SPR executive and receipt of the recommendation of the Commission on SPR Government established in terms of this Constitution, determine the extent of the legislative and executive competence of each SPR regarding the functional areas referred to in subsection (2), and such determination of competence shall, if approved by the CMB, be promulgated by the State President in a proclamation published in the *Government Gazette*.
- (2) An SPR shall be entitled to the allocation of legislative and executive competences in each of the following functional areas -
 - (a) Taxation within the SPR in order to raise revenue for SPR purposes
 - (b) The appropriation of revenue and moneys for financing the government and services of the SPR
 - (c) Local government
 - (d) Town planning
 - (e) Markets and pounds
 - (f) Traffic control
 - (g) Protection services

- (h) Local policing and law enforcement
- (i) Housing
- (j) Education
- (k) Cultural affairs
- (l) Traditional authorities and indigenous law
- (m) Health services
- (n) Welfare services
- (o) Agriculture
- (p) Fish and game preservation
- (q) Environmental affairs
- (r) Tourism and recreation
- (s) Public media
- (t) Public works
- (u) Roads
- (v) Transport
- (w) Casinos, racing and gambling

(x) Language policy and language(s) for official use in the SPR.

- (3) The competence of an SPR shall be determined as provided for in subsection (1) after due consideration of the SPRs' financial, administrative and infrastructural capability, and such determination shall have regard to the principles enumerated in Schedule 1.
- (4) An SPR executive may decline specific powers and functions in any of the functional areas at the time of the initial allocation and may from time to time request the National Executive to expand its competence.
- (5) The determination of the extent of the legislative and executive competence of an SPR made in terms of subsection (1) shall not be amended during the period of the operation of this Constitution without the consent of the SPR legislature.

SPR finance and fiscal affairs

- 65. (1) An SPR shall be entitled to an equitable share of revenue collected nationally in order to enable it and the local governments within its boundaries to provide basic services and to execute their functions and powers.
- (2) The Financial and Fiscal Commission established in terms of Chapter 11 shall make recommendations to the National Assembly regarding equitable fiscal and financial allocations to the SPRs from revenue collected nationally, taking into account the national interest, the provisions of subsection (1), economic disparities between the SPRs, as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each SPR.

- (3) An SPR Revenue Fund shall be established in every SPR, into which shall be paid all revenues raised by or accruing to the SPR.
- (4) An SPR government shall not be competent to raise loans for current expenditure.
- (5) An SPR government shall be competent to raise loans for capital expenditure with the consent of the national executive given on the advice of the Financial and Fiscal Commission.
- (6) An SPR government shall be competent to levy such taxes and surcharges as may be recommended by the Financial and Fiscal Commission and approved by the National Assembly, which approval shall not unreasonably be withheld.
- (7) An SPR government shall not be entitled to raise taxes detrimentally affecting national economic policies, inter-SPR commerce, or the national mobility of goods, services, capital and labour.
- (8) Allocations by the national government to local governments shall ordinarily be made only via an SPR government.

Effect of laws of SPR legislature

- 66. (1) A law made by an SPR legislature shall have effect in and for the SPR as long and as far only as it is not repugnant to any Act of Parliament duly passed within the competence of Parliament in terms of this Constitution.
- (2) The provisions of a law made by an SPR legislature shall not be deemed to be repugnant to an Act of Parliament unless such provisions are expressly or

by necessary implication inconsistent with an Act of Parliament.

Recommendations to Parliament

67. (1) An SPR legislature may recommend to Parliament the passing of any law relating to any matter in respect of which such legislature is not competent to make laws.

SPR Constitutions

68. (1) An SPR legislature may, subject to the provisions of this Constitution, adopt a constitution for the SPR by a two thirds majority of all its members.
- (2) An SPR legislature may make such arrangements as it deems appropriate for the negotiation and drafting of an SPR constitution.
- (3) An SPR constitution adopted by an SPR legislature shall not be inconsistent with the principles enumerated in Schedule 1 or the provisions of the new constitutional text adopted in terms of Chapter 5.
- (4) An SPR constitution shall be developed in consultation with the Commission on SPR Government established in terms of section 13.
- (5) An SPR constitution adopted prior to the adoption of a new constitutional text in terms of Chapter 5 shall be approved and come into operation in

terms of a resolution of the CMB passed by two thirds of its members.

- (6) An SPR constitution adopted by an SPR legislature may be referred to the Constitutional Court by the chairperson of the CMB after being petitioned by one third of the members of the CMB in order to obtain an opinion from the Court as to whether such constitution, if adopted, would conform with the Constitutional Principles.
- (7) An SPR constitution which is not in force prior to the new constitutional text intended in Chapter 5, shall be approved and come into operation in terms of such new constitutional text.

Development of constitutional provisions regarding SPR Government

- 69. (1) The development of a system of SPR government shall receive the priority attention of the CMB and in this regard it shall take into consideration the recommendations of the Commission on SPR Government referred to in section 13 and the views expressed thereon by the executives of the various SPRs.
- (2) The Commission's recommendations to the CMB regarding any matter that falls within the ambit of its objects in terms of section 14 shall include draft provisions for the national Constitution.
- (3) The CMB shall deal with such draft provisions in the same manner as it is required to deal with other constitutional provisions.
- (4) Draft provisions recommended by the Commission which are not adopted by the CMB, shall lapse, except if a majority of the members of the CMB present and voting resolve that the recommended provisions be referred back to the Commission for further consideration.

- (5) Draft provisions referred back to the Commission may again be presented to the CMB, provided that if amended in one or more substantive respects, the provisions of this section regarding the acceptance, rejection or referral of the recommendations of the Commission shall apply *mutatis mutandis*.

Election of new SPR Governments

70. (1) An SPR government may at any time after the coming into force of an SPR constitution contemplated in section 10 or of the constitutional dispensation contemplated in section 11, petition the CMB to determine by resolution that an election for the establishment of a new SPR legislature and executive in that SPR, or in an SPR incorporating that SPR in whole or in part, shall be held.

Commission on SPR Government

Establishment of Commission on SPR Government

71. (1) A Commission on SPR Government shall be appointed by the State President in terms of this Constitution within 30 days of its coming into operation.

Objects and functions of the Commission

72. (1) The objects and functions of the Commission regarding the establishment of SPR government in terms of this Chapter are to -
- (a) advise the national government and SPR governments on the establishment and consolidation of administrative institutions and structures in the SPRs; and

- (b) make recommendations to the national government regarding the extent of the legislative and executive competence of SPRs during the period of operation of this Constitution.
- (2) The objects and functions of the Commission regarding the constitution making process provided for in Chapter 5 are to submit recommendations to the CMB in the form of draft constitutional provisions regarding -
- (a) the finalisation of the number and the boundaries of the constituent SPR's of the Republic of South Africa;
 - (b) the constitutional dispensations of such SPRs, including the constitutional structures within such SPRs as well as the method of their election and their authority, functions and procedures;
 - (c) measures, including transitional measures, that provide for the phasing in of new SPR constitutional dispensations;
 - (d) the rationalisation of statutory enactments and public sector resources directed at facilitating the introduction and maintenance of a system of SPR government;
 - (e) the final delimitation of powers and functions between national and SPR institutions of government with due regard to the criteria that are set out in subsection (3);
 - (f) fiscal arrangements between the institutions of national government and those of SPR government;
 - (g) the powers and functions of local governments; and

- (h) any matter which the Commission considers to be relevant or ancillary to its functions.

(3) In carrying out its functions the Commission shall, *inter alia*, take into consideration -

- (a) The provisions of this Constitution;
- (b) The principles enumerated in Schedule 1;
- (c) Historical boundaries, including those set out in Schedule 2, former provincial boundaries, magisterial and district boundaries and infrastructures;
- (d) Administrative considerations, including the availability or non-availability of infrastructures and nodal points for services;
- (e) The need to rationalise existing structures;
- (f) Cost-effectiveness of government, administration and the delivery of services;
- (g) The need to minimise inconvenience;
- (h) Demographic considerations;
- (i) Economic viability;
- (j) Developmental potential;

(k) Cultural and language realities.

Constitution and impartiality of the Commission

72. 1) The Commission shall consist of not less than ten full-time members appointed for such period, not exceeding five years, as the State President may determine.
- (2) At least one member of the Commission shall be appointed from each SPR after consultation with the Premier of the SPR.
- (3) Members of the Commission shall perform their duties fairly, impartially and independently.
- (4) Members shall not perform or commit themselves to perform remunerative work outside their official duties.
- (5) A member of the Commission may not hold office in any political party or political organisation.
- (6) It shall be an offence subject to penalties prescribed by law to attempt to influence a member to act otherwise than in accordance with the provisions of subsection (3).

Chairperson and deputy chairperson

73. (1) The State President shall designate one of the members of the Commission as chairperson and another as deputy chairperson.

- (2) (a) When the chairperson is absent or not able to perform his or her functions as chairperson, or where there is a vacancy in the office of chairperson, the deputy chairperson shall act as chairperson, and if the chairperson as well as the deputy chairperson are absent or not able to perform the functions of the chairperson, the Commission shall elect another member to act as chairperson.
- (b) Such member shall while acting as chairperson have all the powers and perform all the duties of the chairperson.

Vacation of office and filling of vacancies

- 74. (1) Members of the Commission shall vacate their offices if they resign or if they become disqualified to hold office for the same considerations and in the same fashion as would apply to a judge of the Supreme Court.
- (2) Any person who has ceased to be a member of the Commission by reason of the effluxion of time may be reappointed.
- (3) If a member of the Commission ceases to hold office, the State President may, subject to section 15 appoint somebody to fill the vacancy.

Meetings of the Commission

- 75. (1) Meetings of the Commission shall be held at a time and place to be determined by the Commission or, if authorised thereto by the Commission, by the Chairperson.
- (2) A quorum for a meeting of the Commission shall not be less than one half of all its members.

- (3) A decision of a majority of the members of the Commission shall constitute a decision of the Commission and in the event of an equality of votes the chairperson shall have a casting vote in addition to his or her deliberative vote.
- (4) All the decisions of the Commission shall be recorded.

Committees

- 76. (1) The Commission may establish committees from among its number.
- (2) Any such committee shall consist of such number of members as the Commission may determine.
- (3) The Commission shall designate one of the members of the committee as chairperson thereof, and if any such chairperson is absent from a meeting of the committee the members present shall elect one from among their number to act as chairperson.
- (4) (a) The Commission may, subject to such directions as it may issue from time to time-
 - (i) delegate any power granted to it by or under section 14 to such a committee; and
 - (ii) grant authority that a duty assigned to it by or in terms of section 14 may be performed by such a committee.
- (b) The Commission shall not be divested of a power so delegated and the performance of a duty so authorised, and may amend or set aside any decision of a committee.

Co-option of persons to serve on or advise committees

77. (1) A committee may co-opt any person to serve on a committee or to attend a particular meeting thereof in connection with a particular matter dealt with by the committee.
- (2) Such a person may take part in the proceedings of the committee in connection with the matter or at the meeting in respect which he or she has been co-opted, but shall not be entitled to vote.

Remuneration and allowances of members of the Commission and other persons

78. (1) Members of the Commission and persons referred in sections 16 and 20 who are not in the employment of the State, shall be paid, from moneys appropriated by Parliament for that purpose, such remuneration and allowances as the Minister of Finance may determine.

Regulations

79. (1) The State President may make regulations regarding -
- (a) procedures in connection with any function of the Commission;
and
 - (b) any other matter in connection with the achievement of the objects of the Commission.

CHAPTER 10

Local Government

79. (1) General provisions regarding the powers, functions and structures of local government;
- (2) The comprehensive powers, functions and other features of local government shall be set out in parliamentary statutes and/or SPR legislation.

CHAPTER 11

Finance

Existing Debts and Liabilities of the State

80. (1) Nothing herein contained shall affect any assets or rights belonging to the State or any debts or liabilities of the State as existing immediately prior to the coming into force of this Constitution, and all such assets, rights, debts and liabilities shall remain assets, rights, debts and liabilities of the State, subject to the conditions imposed by any law under which such debts or liabilities were raised or incurred, and without prejudice to any rights of security or priority in respect of the payment of principal, interest, sinking fund and any other charges conferred on the creditors concerned, and the State may, subject to such conditions and rights, convert, renew or consolidate such debts.

- * Liabilities of TBVC States, Selfgoverning Territories and Provinces
- * Apportionment of Liability for national debt and liabilities of TBVC States etc. to the SPRs

State Revenue Fund

81. (1) There shall be a state revenue fund into which shall be paid all revenues raised or received by the State, and from which appropriations shall be made by the National Assembly for the purpose of the State in a manner prescribed by this constitution and any other law, and subject to the charges imposed thereby.

Audit

82. (1) The accounts of the State Revenue Fund shall be investigated, examined and audited by the Auditor-General in accordance with the provisions of the relevant Act of Parliament.

Appropriation Bills

83. (1) Any Bill which appropriates revenue or monies for the ordinary annual services of the State shall deal only with such appropriation.

Appropriation to be initiated by a Minister

84. (1) The National Assembly shall not consider any proposal, whether by way of a vote or by way or a resolution, address or Bill, for the appropriation of any part of the public revenue, or of any tax or impost for any purpose which has not been initiated by a Minister.

Annual Budget

85. (1) The Minister of Finance shall in respect of every financial year cause to be laid before the National Assembly an annual budget reflecting the estimated receipts and expenditure of the Government for that year.
- (2) The annual budget shall distinguish expenditure on revenue account from all other expenditure.
- (3) If in respect of any financial year it is found -
- (a) that the amount authorised to be expended on a particular service for the current financial year is insufficient, or that a need has arisen for expenditure upon some new service not included in the annual budget for that year; or
 - (b) that any money has been spent on any service during a financial year in excess of the amount granted for that service for that year; the Minister of Finance as soon as reasonably possible after becoming aware thereof, shall cause to be laid before the National Assembly a supplementary budget or an excess budget, as the case may be.
- (4) Appropriation in terms of the annual budget, supplementary budget or excess budget shall be detailed in an Appropriation Bill which shall be submitted to the National Assembly and dealt with in accordance with the provisions of section _____.
- (5) If the National Assembly is not in session, or if the budget has not been approved, the President may authorise expenditure to be made out of the State Revenue Fund in respect of estimated expenditure for a part of the financial year, not exceeding four months, and such expenditure shall be deemed to have been authorised by the National Assembly in terms of

sub-article ____ hereof, and shall be included in the budget estimates for such financial year.

Withdrawal of Money from the State Revenue Fund

86. (1) No money shall be withdrawn from the state revenue fund, except under appropriation made by law in accordance with the provisions of this constitution.

Auditor General

87. (1) There shall be an auditor general who shall be appointed by the President.

- (2) The auditor general shall hold office for ____ years unless removed earlier under sub-article (3) hereof, or unless he or she resigns in writing addressed to the President.

- (3) The auditor general shall be independent and impartial

- taxation
- the Reserve Bank;
- the Financial and Fiscal Commission representative of the SPRs.

CHAPTER 12

General and transitional provisions

88. (1) Provisions relating to:

- The legal system (continuation of statutory and common law subject to the Constitution, unification of provincial ordinances, TBVC laws and laws of the self-governing territories with national and SPR law, recognition of indigenous law);

Repeal of the TBVC Laws and of Self-governing territories and South African laws dealing with the status of such territories.

The laws mentioned in schedule _____ are repealed to the state indicated.

Continuation of laws

Any rule of law which was in force immediately prior to the date of reincorporation of the TBVC state, shall continue to be in force until repeal or amended by the competent authority.

South African law shall apply to all the functional areas when SPR shall have no competence according to this Constitution.

- the status of international law;

Existing International Agreements

All international agreements binding on the Republic of South Africa immediately prior to the commencement of this Constitution shall remain in force.

International agreements entered into between the government of the RSA and the governments of the TBVC states which are still in force prior to the commencement of this Constitution shall be taken over by the SPR into which a TBVC state is incorporated insofar as it relates to such SPR and is capable of being applied thereto.

International agreements binding upon the Republic of South Africa under this Constitution shall form part of the law of the land. Unless otherwise provided by this Constitution or Act of Parliament the rules of customary international law shall form part of the law of the land.

CHAPTER

Commission for Administration

Establishment

89. (1) There shall be a Commission for Administration which will have the functions of advising the President on:
- (a) The appointment of suitable persons to specified categories of employment in the public service with special regard to the balanced structuring thereof;
 - (b) The exercise of adequate disciplinary control over such persons in order to ensure the fair administration of personnel.

- (c) The remuneration and the retirement benefits of any such person;
 - (d) All other matters which by law pertain to the public service;
 - (e) To advise the President on the identity, availability and suitability of persons to be appointed by the President to offices in terms of this Constitution or any other law.
- (2) The Commission for Administration shall perform any other functions assigned to it by Act of Parliament.

Appointment of Commission for Administration

90. (1) The Commission for Administration shall be independent and act impartially.
- (2) The Commission for Administration shall consist of a Chairman and no less than five (5) and no more than ten (10) other persons nominated by the President and confirmed by the Senate by resolution. Every member of the Commission for Administration shall be entitled to serve on such Commission for a period of five (5) years unless lawfully removed before the expiry of that period in accordance with procedures to be prescribed by Act of Parliament. Every member of the Commission for administration shall be eligible for re-appointment.

CHAPTER

THE POLICE, THE DEFENCE FORCES AND THE PRISON SERVICE

Establishment

91. (1) There shall be established by Act of Parliament:
- (a) A South African Police Force with prescribed powers, duties and procedures in order to secure the internal security of South Africa, to maintain law and order, to prevent the commission of crime in South Africa, and to keep the public peace.
 - (b) A South African Defence Force with prescribed composition, powers, duties and procedures, in order to defend the territory and national interests of South Africa.
 - (c) A South African Prison Service with prescribed powers, duties and procedures in order to maintain and administer prisons and punishment and which shall be performed in a humane manner with due regard to the dignity of all human beings.
- (2) The President shall be the Commander-in-Chief of the Defence Force and shall have all the powers and exercise all the functions necessary for that purpose.
92. (1) The President shall appoint:
- (a) The Commissioner of Police
 - (b) The Commissioner of Prisons
 - (c) The Chief of the Defence Force
- which appointments shall be made on the recommendations of a

Joint Security Committee of the CMB.

- (2) The Joint Security Committee shall be composed in a way in which all parties with more than five per cent of the seats in the CMB are represented in proportion to the seats held by them.

Removal of Commissioners or of the Chief of the Defence Force

93. (1) The President may remove the Chief of the Defence Force, the Commissioner of Prisons or the Commissioner of Police from office for good cause and in the public interest and in accordance with any Act of Parliament which may prescribe procedures considered to be expedient for this purpose.

Administration and Structuring

94. (1) The Chief of the Defence Force, the Commission of Prisons and the Commission or Police shall make provision in regard to the forces or services in respect of which they are responsible, for their balanced structuring and shall have the power to make suitable appointments, to cause charges of indiscipline amongst members of the forces or service to be investigated and prosecuted, and to ensure the efficient administration of the forces or the service.

The Police and the Community

95. (1) The Commissioner of Police shall make provision for the reception and investigation of complaints against members of the police force by members of the public.
- (2) The Commission of Police shall make provision for structures of consultation and communication between local communities,

either through local authorities or through elected representatives, and officials of the force responsible for the operation and administration of the police force in the area in which the community resides or in respect of which the local authority has been established.

- civil society;
- method of publication of notices, etc.;
- affirmation in lieu of oath;
- construction of certain references;
- definitions and terminology;
- short title, commencement and duration of the Constitution.

SCHEDULE 1
Constitutional Principles

I

96. The Constitution of South Africa shall provide for the establishment of one sovereign state, a common South African citizenship and a democratic system of government committed to achieving equality between men and women and people of all races.

II

The Constitution shall be the supreme law of the land, shall be binding on all organs of government, shall prohibit racial, gender and all other forms of discrimination and promote racial and gender equality and national unity.

III

There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness.

IV

The judiciary shall be competent, independent and impartial and shall have the power and jurisdiction to safeguard and enforce the Constitution and all fundamental rights.

V

There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters roll, and in general, proportional representation.

VI

Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.

VII

Formal legislative procedures shall be adhered to by legislative organs at all levels of government.

VIII

The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged.

IX

Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected.

X

All shall enjoy universally accepted fundamental rights, freedoms and civil liberties, protected by entrenched and justiciable provisions in the Constitution.

XI

The legal system shall ensure the equality of all before the law and an equitable legal process. The principle of equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.

XII

The institution, status and role of traditional leadership, according to indigenous law, shall be recognised and protected in the Constitution. Indigenous law, like common law, shall be recognised and applied by the courts subject to the provisions of the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.

XIII

Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy.

XIV

Amendments to the Constitution shall require special procedures involving specified majorities.

XV

Government shall be structured at national, SPR and local levels.

XVI

At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of Principle XII.

XVII

Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. The allocation of powers between different levels of government shall be made on a basis which is conducive to financial viability at each level of government and to effective public administration, and which promotes national unity, legitimate regional autonomy and cultural diversity.

XVIII

The powers and functions of national and SPR governments shall be defined in the Constitution. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of SPRs shall in addition to any other procedures specified in the Constitution for constitutional amendments, also require the approval of a specified majority of the legislatures of the SPRs, alternatively, if there is such a chamber, a specified majority of a chamber of Parliament composed of regional representatives, and if the amendment concerns specific SPRs only, the approval of the legislatures of such SPRs will also be needed.

XIX

A framework for local government powers, duties, functions and structures shall be set out in the Constitution. The comprehensive powers, duties, functions and other features of local government shall be set out in parliamentary statutes and/or SPR legislation.

XX

The powers and functions of the national and SPR levels of government shall include exclusive and concurrent powers as well as the power to perform functions for other levels of government on an agency or delegation basis.

XXI

National and SPR governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in Principle XIX shall make provision for appropriate fiscal powers and functions for different categories of local government.

XXII

Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that SPRs and local governments are able to provide basic services and execute the functions allocated to them in the Constitution.

XXIII

A Financial and Fiscal Commission, representing inter alia each of the SPRs, shall recommend equitable fiscal and financial allocations to the SPR governments from revenue collected nationally, after taking into account the national interest, economic disparities between the SPRs as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the SPRs.

XXIV

The following criteria shall be applied in the allocation of powers to the national government and the SPR governments:

1. The level at which most control can be exercised effectively over the quality and delivery of services, should be the level responsible and accountable for the quality and the delivery of the services and such level shall accordingly be empowered by the Constitution to do so.
2. The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the SPRs.
3. Where it is necessary for the maintenance of essential national standards, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one SPR which is prejudicial to the interests of another SPR or the country as a whole, the Constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the Constitution.
4. The essential principles of the Constitution, including the fundamental rights contained therein, shall apply to all organs of the state at all levels of government.
5. Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government.
6. Where uniformity across the nation is required for a particular function, the legislative power over that function should be allocated predominantly, if not wholly, to the national government.
7. Where minimum standards across the nation are required for the delivery of public services, the power to set such standards should be allocated to the national government.

8. The determination of national economic policies, and the power to promote inter-SPR commerce and protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.
9. SPR governments shall have powers, either exclusively or concurrently with the national government, inter alia -
 - 9.1 for the purposes of regional planning and development and the delivery of services; and
 - 9.2 in respect of aspects of government dealing with the specific socio-economic and cultural needs and the general well being of the inhabitants of the SPR.
10. Where mutual co-operation is essential or desirable or where it is required to guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the SPR governments.
11. In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national and SPR governments which cannot be resolved by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the national government.
12. The Constitution shall specify how powers which are not specifically allocated in the Constitution to the national government or to an SPR government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national or SPR governments.

XV

Notwithstanding the provision of any other clause, the right of employers and employees to join and form employer organisations and trade unions and to engage in collective bargaining shall be recognised and protected.

XVI

The independence and impartiality of a Commission for Administration, a Reserve Bank, and Auditor-General and Ombudsman shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the Civil Service.

XVII

Every member of the security forces (police, military and intelligence), and the security forces as a whole, shall be required to perform their duties and functions and exercise their powers in the national interest and shall be prohibited from furthering or prejudicing party political interest.

SCHEDULE 2

Boundaries and Designation of SPRs

97. [Report of the Commission on Delimitation/Demarcation of SPRs]

SCHEDULE 3

System for the Election of the National Assembly and SPR Legislatures

negconst.doc
21 July 1993

Schedule X

Status of Transkei Act, 1976 (Act No 100 of 1976)

Status of Bophuthatswana Act (Act 89 of 1977)

Status of Venda Act (Act 107 of 1979)

Status of Ciskei Act (Act 100 of 1981).

Chapter 10 Mr wichers

Local Government

- (1) Local government shall include all municipalities and other institutions defined and constituted by laws of SPR governments, and such laws may classify categories of local government according to the strength of their population, income, powers and functions and other criteria which in the opinion of SPR governments necessitate such classification.
 - (a) The boundaries of Local Authorities, the election of members of Local Authorities, the qualification of voters and all other matters necessary and incidental to the institutions of Local Authorities, shall be regulated in the laws of SPR governments
 - (b) Local government shall fall within the original functional area of SPR government and subject to the provisions of the Constitution, SPR governments shall have the power to make laws to regulate the affairs of local governments. Such laws shall make provisions for the conduct of the affairs and the exercise of powers and functions of Local Government as well as all other matters incidental to such exercise, provided that no laws of SPR governments may encroach upon the essential democratic nature of Local Government or deprive them of their means to provide basic services and to exercise those powers and functions which are necessary to maintain the well being of their residents and inhabitants.
 - (c) A Local Government shall have the right to approach the Constitutional Court in matters affecting their rights and powers under this Constitution.
 - (d) Existing Local Governments within SPR's shall continue to exist and

exercise their powers and functions until SPR governments on the advice of the Commission on SPR's (and the CMB), have passed laws necessary to institute and regulate Local Governments within their boundaries.

SPR Executives (m Olivier and devenish

61. (1) The executive committee of an SPR shall be elected by the SPR legislature according to the principle of proportional representation, each voter having one transferable vote, and shall consist of ten members.

(1) The executive committee of an SPR, which shall consist of 10 members), shall be appointed by the State President who will be obliged to offer appointments to parties elected to the SPR legislature in direct proportion to their representation therein, provided that this will not apply to parties which are allocated fewer than 5% (10%) of the seats in the Legislature.

(2) No party shall be obliged to accept portfolios in an SPR executive committee.

(3) The executive committee of an SPR shall from among its own number elect a Premier.

(4) Each member of an executive committee shall be responsible for the administration of one or more of the departments of the SPR to be established by the Premier.

(5) The Premier shall determine how responsibility for the administration of departments shall be allocated to members of an executive committee.

(6) Before formally assuming office, a Premier-elect and executive members of the SPRs shall make the following oath or affirmation which shall be administered by the Chief Justice (Judge-President of the SPR)

or a Judge designated by him or her for this purpose:

'I... do hereby swear/solemnly affirm,

That I will strive to the best of my ability to uphold protect and defend as the Supreme Law the Constitution of the Republic of South Africa, and faithfully to obey, execute and administer the laws of South Africa and that I will endeavour to the best of my ability to ensure justice for all the inhabitants of South Africa.'

- (7) There shall be paid to the Premiers, members of the SPR executives committee and legislatures out of and as a charge on the State Revenue Fund such salary and allowances and pensions, as may be determined from time to time by resolutions of the SPR Legislatures.
- (8) After consultation with the Commission for Administration the SPR executives committees shall appoint Secretaries and other officers of the SPR Legislatures.
- (9) Whenever any member of an SPR exexutive committee is for any reason unable to perform any of the functions of his or her office the Premier shall appoint another member of the SPR legislature to the said office from the same political party as the replaced member.
- (10) The Premier of an SPR shall be obliged to terminate the appointment of any member of an SPR executive committee if the SPR Legislature in question, by a majority of all its members, resolves that it has no confidence in that member.

Decision making process in SPR Executives Committees

- (1) Save in respect of the budget and other money bills, the Premier, who shall chair meetings of the executive, will assess consensus on any agenda item at an SPR executive meeting. If there is dissent within the executive, and any member requests a vote, then the particular matter shall be put to a vote. A two thirds majority of executive members present and voting shall constitute 'sufficient consensus' for a decision to be taken on any particular item or aspect of legislation and any member who dissents therefrom shall be entitled to reserve his or her position and publically declare his or her dissent.
- (2) In respect of the SPR budget and monetary bills a simple majority of the SPR members present and voting shall be sufficient to achieve consensus.

Equality of Official SPR Languages

- (1) If there are more than one official language for an SPR, each shall be treated on a footing of equality, and as far as is practicable possess and enjoy equal freedom, rights and privileges.
- (2) All records, journals and proceedings of the SPR Legislature shall be kept in the official languages and all bills, laws and notices of general public importance or interest issued by the SPR Government shall be in both official languages.

Signature and Enrolment of SPR Legislation

- (1) As soon as may be after any SPR law has been assented to, the Secretary to the SPR Legislature shall cause two fair copies of such law of such law, in each of the official languages to be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court of South Africa, and each such copies shall be conclusive evidence as to the provision of every such law, (and in the event of a conflict between the copies so enrolled the one signed by the Premier and a member of the executive committtee shall prevail.)

Public access to sittings

1. Save as provided in Sub article (2) hereof, all meetings of the SPR legislature shall be held in public and members of the public shall have access to such meetings.
2. Access by members of the public in terms of Sub Article (1) hereof may be denied if an SPR legislature adopts a motion supported by a two thirds majority of all its members excluding such access to members of the public for specific periods or in respect of specific matters.

Ascent to Bills passed by the SPR legislatures

1. A Bill passed by an SPR legislature in terms of this constitution shall require the assent of the Premier and a member of the executive committee

to be signified by the signing of the bill, and the publication of the Act in the regional gazette in order to acquire a status of a valid Act.

Duration of the SPR legislature

1. The SPR shall continue until a new constitutional text has been adopted in accordance with the provisions of Chapter 5 or until Parliament is dissolved under Chapter 5.

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QUORUM OF MEETINGS OF SPR LEGISLATURE

1. The presence of at least fifty per cent [50%] of the total number of members of the SPR legislature entitled to attend shall be sufficient to constitute a meeting of the SPR legislature for the exercise of its powers.

- OR -

A quorum for a meeting of the SPR legislature shall be not less than one half [$\frac{1}{2}$] of all its members entitled to attend.

VOTING IN REQUISITE MAJORITIES

2. Save as otherwise specified in this Constitution a decision of a majority of the members of the SPR Legislature shall constitute a decision of the legislature.

- OR -

Save as provided in this Constitution a simple majority of votes cast in the SPR legislature shall be sufficient for the passing of any legislation or taking of any decision or resolution of the SPR legislature.

3. The Chairperson of the legislature shall not vote unless the numbers are equal in which event the chairperson shall have a casting vote.

RULES OF PROCEDURE AND ORDERS

4. The SPR legislature may make rules and orders with respect to the order and conduct of its business and proceedings.
5. The SPR legislature may also make rules for the establishing and functioning and procedures of committees, and formulate such standing orders having regard to the business of such committees.
6. For the purposes of exercising their powers and performing their functions any committee of an SPR legislature established in terms of 5 hereof shall have the power to *subpoena* persons to appear before it to give evidence under oath and to produce any documents required by it, and to receive representations from interested parties.

PRIVILEGES AND IMMUNITIES OF SPR LEGISLATURES

7. Rules providing for the privilege and immunities of members of the SPR legislature shall be made by a law of the SPR legislature.
8. Notwithstanding the provisions of any other law, no member of the legislature of the SPR shall be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of any matter or thing which he or she have brought by petition, bill, motion or otherwise or may have said before or in the SPR

legislature or any committee thereof.

**SECOND REPORT OF THE TECHNICAL COMMITTEE ON
CONSTITUTIONAL ISSUES TO THE NEGOTIATING COUNCIL:
19 MAY 1993**

1. Introduction

1.1 The resolution adopted by the Negotiating Council at its meeting on 18 May 1993 records broad agreement that the most suitable form of government for the future will be one which involves the allocation of powers to central and regional governments. We were asked to take into account the concerns and views of delegates expressed at the meeting of 18 May, and in their submissions to us, and to undertake the following tasks:

- 1.1.1 Provide the Negotiating Council with a report on constitutional principles.
- 1.1.2 Consider and report on the structures, powers and functions of states/provinces/regions (SPR).
- 1.1.3 Present proposals on various issues pertaining to the constitution-making process.
- 1.1.4 Provide the Negotiating Council with recommendations on how best the discussions within the Negotiating Council on these issues should be structured.

THESE DRAFT MINUTES ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE NEGOTIATING COUNCIL. THE MINUTES ARE STILL TO BE RATIFIED AT THE NEXT MEETING OF THE NEGOTIATING COUNCIL.

DRAFT MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 11h00 ON TUESDAY 28 SEPTEMBER 1993 AT THE WORLD TRADE CENTRE

PRESENT: See Addendum A

1. Moment of Prayer/Meditation

A moment of prayer/meditation was observed by all members.

2. Welcome and Attendance

The participants were welcomed.

3. Ratification of the Agenda

3.1 The agenda was ratified with the following amendments:

- * Item 6.1 to read "A discussion on the Explanatory Memorandum on progress for the Constitution for the Transition".
- * Item 6.2 to read "13th Report of the Technical Committee on Constitutional Issues".
- * Item 6.3 to read "Discussion on the 4th Supplementary Report of Constitutional Principles".

3.2 The NPP requested that the following item be added to the agenda to read "Aspects of hasty actions with regard to amalgamation of local governments which might have an effect on the levelling of the playing fields". After discussion it was agreed that this issue be referred to the Planning Committee to be dealt with initially.

4. Minutes

4.1 The minutes of the meeting of 30 August 1993 were ratified with no amendments.

- 4.2 The minutes of the meeting of 31 August 1993 were ratified no amendments.
- 4.3 The minutes of the meeting of 1 September 1993 were ratified with no amendments.
- 4.4 The minutes of the meeting of 2 September were ratified with no amendments.
- 4.5 The minutes of the meeting of 7 September 1993 were ratified with the following amendments:
- * Item ??, page 9 the second paragraph, the words "policing forces" should read "military forces and policing agencies".
 - * Item ??, page 10 the words "66.6%" replaced by "two-thirds".
- 4.6 No matters arising were noted out of the minutes of 30 August 1993, 31 August 1993, 1 September 1993, 2 September 1993 and 7 September 1993.

5. Planning Committee Reportback

5.1 Presentation of Bibles:

M Webb, the current Planning Committee Chairperson, reported that an organisation distributing Bibles had made a number of Bibles available to delegates.

5.2 Kwazulu Government Court Action:

It was noted that the written judgement had been distributed and therefore, was now finalised.

5.3 Constitutional Issues:

5.3.1 It was noted that in future submissions received will again be distributed to delegates.

5.3.2 It was further noted that the Planning Committee had agreed to encourage participants to focus their bilateral meetings on SPR issues for completion within a week.

5.3.3 An Ad-Hoc Committee consisting of R Cronje, PJ Gordhan and Z Titus would meet with a delegation of the National Electrification Forum.

5.3.4 Various issues related to Section 119 of the Draft Constitution will be dealt with at a later stage.

5.4 Task Group on the Delimitation/Demarcation of Regions:

It was noted that this Task Group was scheduled to have completed its work by 15 October 1993.

5.5 Implementation of the Four Draft Bills:

It was noted that a report was being prepared and would be presented to the Negotiating Council at a later stage.

5.6 Report on the Processing of Draft Bills through Parliament:

Z Titus, on behalf of the Task Group, gave a report. It was noted that all Draft Bills had been approved and only technical amendments were made by the State Law Advisors. A written report would be given to the Negotiating Council concerning the monitoring of other proposed legislation to serve before the November session of Parliament.

5.7 Commission on National Symbols:

It was noted that the deadline for submissions was 13 October 1993 with the report of the Commission submitted to the Negotiating Council on 20 October 1993.

5.8 Task Group on the Repeal or Amendment of Discriminatory Legislation:

This Task Group was at present proceeding its work. The TBVC States were requested to submit names of Department of Justice representatives to assist in this regard.

5.10 Technical Committee on Violence:

It was noted that this Technical Committee was proceeding with a further report.

6. Substantive Issues

6.1 A discussion on the Explanatory Memorandum on progress on the Constitution for the Transition:

6.1.1 The Technical Committee on Constitutional Issues was welcomed. Present were A Chaskalson, E Moseneke, B Ngoepe, M Olivier, W Olivier, F Venter and M Wiechers. Apologies were noted from GE Devenish.

6.1.2 The Administration gave an overview presentation of the document. The Technical Committee then proceeded to deal with the document in depth. During the course of the presentation by the Technical Committee the

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following was noted:

6.1.2.1 Clause 6 refers : The political question around the TBVC States still had to be dealt with by the Negotiating Council.

6.1.2.2 Schedule 5 refers : The Technical Committee suggested that Schedule 5 would have to be revisited in connection with the Draft Electoral Bill.

6.1.3 After the presentation of the document, questions of clarity were put to the Technical Committee.

6.1.4 The question of citizens of the TBVC States and the upcoming election was raised. It was noted that the present legal position was that citizens of the TBVC States would not be able to vote in a South African election unless South African citizenship was restored. It was suggested that if the TBVC States were not incorporated into the Republic of South Africa at the time of the upcoming election that a provision should be made in the Constitution to allow citizens of the TBVC States to vote if they so wish.

6.1.5 It was noted that the Planning Committee would be meeting with representatives of the Traditional Leaders to deal with concerns expressed by the Traditional Leaders.

6.1.6 The Technical Committee and the Administration was thanked for this report. It was noted that the report would be updated as progress was achieved.

6.2 13th Report of the Technical Committee on Constitutional Issues:

6.2.1 The Technical Committee presented its 13th Report to the meeting.

6.2.2 It was noted that the draft text provided was to facilitate the debate and to provide a broad framework for discussion.

6.2.3 The meeting proceeded to deal with the Addendum and to seek clarity on each clause.

* It was suggested that clause 140 (2) should make provision for the prohibiting of re-arrangement of local government boundaries outside the LGNF.

* It was suggested that one of the functions of Commission on SPR government should be to consider local government boundaries and the issues relating to sub-section (3).

* It was noted that metropolitan government was part of third tier

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government and should be treated as such.

- * It was noted that local government authorities should promote the well-being of residents within the areas of their competence allocated by the Constitution and other laws.
- * Sub-section (8) refers: It was suggested that the regional interest should also be taken into account.
- * Sub-section (9) refers: It was suggested that, instead of a local authority going directly to the Constitutional Court, it should have mechanisms available to approach regional or national government.
- * Sub-section (9) refers: The Technical Committee was requested to consider whether the word "competences" is sufficiently broad and whether it should not include the concept of rights. Furthermore, the Technical Committee was requested to consider making provision for the competences concerned.

The meeting adjourned at 13h15.

The meeting reconvened at 14h35.

- 6.2.4 It was agreed that, having completed questions of clarification, the Addendum would now be discussed and debated clause by clause. It was noted that this was an initial debate and that the clauses would be revisited at a future meeting of the Negotiating Council.
- 6.2.5 Until the role of Traditional Leaders had been resolved, it was noted that the Cape Traditional Leaders reserved its position.
- 6.2.6 It was suggested that broader input, specifically from the Local Government Negotiating Forum (LGNF) should be obtained for this chapter. It was noted that the liaison committee would be meeting with the LGNF the following day and that a report would then be submitted to the Negotiating Council. It was further suggested that a mechanism was needed to link the LGNF process into the Transitional Constitution. It was, finally, suggested that all structures dealing with local government should be encouraged to make submissions on this issue.
- 6.2.7 It was suggested that the South African Government should, through the Ministry of Local Government halt all unilateral amalgamation of any local government bodies. It was further suggested that a resolution should be drafted by the Planning Committee in this regard.

- 6.2.8 It was suggested that as some of the issues raised had been raised in the LGNF, discussion should be deferred and interaction between the Technical Committee and the LGNF allowed to take place first.
- 6.2.9 It was noted that this chapter on local government should be seen as an enabling one, which would provide a framework for any eventuality and that there should be a distinction between the provisions of this chapter on the one hand and what might be necessary between now and the elections on the other. It is, therefore, necessary to find some link between the Subcouncil on Local Government and the LGNF in order to prevent a void occurring.
- 6.2.10 It was suggested that SPR Legislatures should do the bulk of work with regard to local government and that, therefore, interim measures should not encroach upon the authority of SPR's to determine the local government dispensation after the election.
- 6.2.11 Clause 140 (4) refers: It was agreed that the word "income" should be changed to "finance".
- 6.2.12 Clause 140 (5) refers: It was noted that there was no possibility that this clause could entrench apartheid at local government level, because that would be against the Constitutional Principles and the Bill of Rights.
- 6.2.19 Clause 140 (6) refers: It was noted that this clause constitutionalises or entrenches procedural justice in ordinary administrative law and that this clause was necessary because there was no pre-existing right in this regard. After lengthy discussion it was agreed that the question of empowering somebody or some structure to limit the capacity of anyone to amend the status of a local authority, should be kept in abeyance until the report was discussed at a future meeting of the Negotiating Council.
- 6.2.20 No comments were noted on clause 140 (7).
- 6.2.21 Clause 140 (8) refers: The Technical Committee was requested to reconsider the use of the word "conduct" in the last line.
- 6.2.22 No comments were noted on clause 140 (9).
- 6.2.23 Clause 141 (1) refers: The Technical Committee was requested to reconsider this clause taking into account the views expressed in the meeting.
- 6.2.24 Clause 141 (2) refers: It was noted that the words "equitable allocation" refer to the use of own sources. It was further noted that a distinction should be made between the principle of equitable

allocation on the one hand and the purpose for which it might be used on the other.

6.2.25 Clause 142 refers: It was noted that the words "subject to any changes lawfully made by a competent authority" are ambiguous. The Technical Committee was requested to investigate this. It was further suggested that the clause should include some reference to sub-sections 5, 6 and 8.

6.2.26 In response to a query that Chapter 10 did not address the question of Tribal Authorities, the Technical Committee pointed out that decisions from the Planning Committee were awaited in this regard.

6.2.27 It was agreed that the Planning Committee should look into a holistic mechanism which would cater in the first instance, for transitional measures between the present and the coming election, and in the second instance for provisions in the transitional constitution and submit recommendations to the Negotiating Council, which recommendations might also facilitate the work of the LGNF. It was suggested that, as the LGNF does not represent all local structures, other bodies should also be contacted in this regard.

6.2.28 It was agreed that the Planning Committee furthermore looks into the issue of unilateral restructuring or amalgamation at local government level. A draft resolution in this regard was submitted by the NPP (see Addendum B).

6.3 Fourth Supplementary Report on Constitutional Principles:

It was agreed that, since clause 118 of the Draft Constitution and certain Constitutional Principles overlap, the Council would discuss this report at a later stage.

6.4 With regard to the partial implementation of the Draft Constitution prior to elections, it was noted that this was possible and a matter of legal technicality. This would have to be addressed in a way that covered the needs of participants with regard to the participation of citizens in the election.

6.5 The Technical Committee was requested to consider the need to amend certain existing legislation (for example privileges and immunities legislation) in this regard.

7. Meetings Schedule and Draft Programme

The meetings schedule and draft programme was noted.

8. **Closure**

The meeting adjourned at 16h15.

These minutes were ratified at the meeting of the Negotiating Council of 1993 and the amended version signed by the Chairperson of the original meeting on

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CHAIRPERSON

Addendum A

The following delegates and advisers were present at the meeting of the Negotiating Council on Tuesday 28 September 1993:

PJ Gordhan : Chairperson
L Landers : Assistant Chairperson

Organisation	Delegates	Advisers
ANC	C Ramaphosa	M Manzini MV Moosa
AVU	A Pienaar C Kruger	AJ Horn S Burger
Bophuthatswana	R Mangope R Cronje	BE Keikelame SG Mothibe
Cape Trad. Leaders	M Nonkonyana	GD Gwadiso DM Jongilanga
Ciskei	M Webb VT Gqiba	TM Bulube AC Cilliers
DP	C Eglin D Smuts	KM Andrew AJ Leon
Dikwankwetla	SOM Moji	TJ Mohapi
IFP		
IYP	NJ Mahlangu NS Mtsweni	AP Laka
KP		
INM	SS Ripinga ND Mokoena	MS Gininda GG Zama
Kwazulu		
Labour Party	CC August I Richards	J Douw
NIC/TIC	B Pillay	K Mayet
NP	D de Villiers TJ King	L Wessels
NPP	A Rajbansi L Singh	B Singh G Chetty

OFS Trad. Leaders	MA Molefe RH Mopeli	MB Mota
PAC	P de Lille B Desai	L Makhandu M Shinnars
Solidarity	DS Rajah K Moodley	AS Razak
SACP	J Slovo L Jacobus	E Pahad
SA Government	RP Meyer LR Brink	JT Delpert
Transkei	Z Titus N Jajula	R Nogumla
TVL Trad. Leaders	LM Mokoena	NE Ngomane MA Netshimbupfe
UPF	A Chabalala MJ Mahlangu	J Maake RJ Dombo
Venda	SE Moeti	S Makhuvha GM Ligege
XPP	PT Shilubana	GNK Hetisani EE Ngobeni

T Eloff	:	Administration
G Hutchings	:	Minutes
P Lelaka	:	Administration
M Radebe	:	Administration

EXPLANATORY MEMORANDUM

FOURTH DRAFT

**INDEPENDENT ELECTORAL COMMISSION
BILL**

25 AUGUST 1993

General Comment

This Memorandum accompanies the Fourth Draft of the Independent Electoral Commission Bill, which has been prepared by the Technical Committee with the assistance of Mr J.H. Bruwer, Deputy Chief State Law Adviser.

This latest draft has been prepared in great haste at the special request of the Planning Committee, and represents a substantial revision of the Technical Committee's earlier submissions, although there are a limited number of changes which involve matters of principle. The primary purpose of the redraft has been to place the document in a form suitable for presentation to Parliament.

As a consequence of discussions held between the

EXPLANATORY MEMORANDUM

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As a consequence of discussions held between the

Technical Committee and the Special Ad Hoc Political Sub-Committee appointed by the Council to consider certain clauses, and the instructions and advice received from the delegated members of the Planning Committee, a number of clauses in the Third Draft have been substantially amended and others deleted.

A schedule of old and new clause numbers is being prepared for the assistance of members. In the meanwhile a brief commentary follows with regard to a number of provisions which have been altered in order to draw members attention to salient changes, viz:

Clause 1

There has been a general revision of the definitions with the addition of the following newly defined terms, viz:

"Appeal Tribunal"
"candidate"
"committee"
"directorate"
"Media Commission"
"member"
"National Assembly"
"prescribed"
"Secretariat"
"Senate"
"Special Electoral Court"
"Supreme Court"

Clause 2(2)

Provision has been made for the application of the Act to the holding of a referendum. This will in turn necessitate some consequential amendment to the Referendums Act, No. 108 of 1983.

Clause 3(2)

The State President is to be bound not only by the advice of the Forum (as in previous drafts), but also in appropriate circumstances by advice of the (SPR) legislature.

Clause 4(2)

The formulation of the objects has likewise been amended in terms of the discussions and instructions received.

Clause 5(1)

In itemising the appropriate qualifications of members of the Commission, reference is now also made to persons "who do not have a high party political profile". This latter phrase replaces the former clause 7.2.4, which has now been deleted, and which gave rise to a great deal of concern and debate.

Clause 5(3)(a)

After careful consideration, the Technical Committee has retained the provision for the appointment of a single chairperson and vice-chairperson. The proposal with regard to co-chairpersons did not seem practicable, particularly in the light of the need for a casting vote.

Clause 6(1)(iii)

Council may wish to give this clause further consideration. Strong divergent views have been expressed with regard to this provision, and the draft has not been further amended pending clarification by the Council.

Clause 6(2)(f)

Attention is also directed to the prohibition on the acceptance of other remuneration or benefits, except with the authority of the State President acting upon the advice of the Forum

Clause 8(3)(a)

As instructed, the Technical Committee has now reflected the two thirds' majority required in respect of a decision by Parliament to re-appoint members to a new Commission in respect of further elections.

Clause 8(3)(b)

In this particular instance, the role of the Appellate Division has been retained, more particularly in view of the fact that the proposed Special Electoral Court may not have been constituted at the relevant point in time when the issue arises.

Clause 11(1)

The proper forum for determination of an application for the removal of a member of the Commission is now specified as the Special Electoral Court to be constituted in terms of section 31. In earlier drafts the proper forum was reflected as a full bench of the Appellate Division.

Clause 12(3)

As instructed, the required quorum for meetings of the Commission is stated as 75% of the (voting) members; save and except for the final determination and certification of the election results, in respect of which the quorum shall be all members, save for those unable to attend for reasons outside their control.

Clause 12(4)

Subject to the provisions of section 13(4), the required majority for ordinary decisions of the Commission is a simple majority. The final determination and

certification of the results as free and fair, requires the decision of at least 75% of the members present constituting the required quorum.

Clause 13

The Commission's powers, duties and functions are set out in detail. Subsection 4 constitutes a new provision which empowers the Commission to hear appeals from decisions of the directorates and to give binding instructions to the directorates and their substructures.

Clause 14

This provision now contains an itemization of the powers, duties and functions of the Commission.

Clause 15

This clause has been reformulated in order to provide for the mechanism of appropriations by Parliament, and for the agreement of the TEC during its lifetime and thereafter for a special discretion vested in the Special Electoral Court in the event of Parliament refusing to vote the funds which the Commission deems necessary.

Clause 16

This clause has been amended in terms of advice received from the Department of State Expenditure.

Clause 17

This clause reflects inter alia that the Commission's determination, certification and evaluation of the election results, and its further decision in the event of elections not being free and fair, shall be final and not subject to appeal or review.

Clause 20

As instructed, the Act now reflects the powers, duties and functions of the Administration Directorate. The clause provides for appeals from decisions and actions taken by any substructure to the relevant directorate; and further states that the directorate shall operate independently of the Monitoring Directorate and the (Adjudication) Secretariat; that it shall be under the supervision of the Commission, and bound to carry out the Commission's instructions.

Clause 23

Similarly, the powers, duties and functions of the Monitoring Directorate have been set out in detail, and similar provisions providing for appeals by substructures, for the independent operation of the directorate, for supervision by the Commission, and for the Commission's power to issue instructions have been reflected.

Clause 26

Insofar as the Secretariat is concerned, its powers, duties and functions have likewise been defined, and provision is made for its independent operation, for the supervision by the Commission, and for the Commission's right to issue instructions.

Clause 27

Provision is made for the establishment of Special Electoral Tribunals to deal with matters constituting electoral irregularities and infringements of the Code of Conduct.

Clause 29

Provision is made for the establishment of Electoral Appeal Tribunals which shall hear and determine appeals and reviews from the Special Electoral Tribunals.

Clause 31

In terms of instructions received, the Technical Committee has now made provision for the establishment of a Special Electoral Court comprising five persons being:

- (i) a judge of the Appellate Division;
- (ii) two other judges of the Supreme Court;
- (iii) a person with suitable legal experience; and

- (iv) some other suitable person, appointed initially by the Transitional Council.

Clause 32

The powers, duties and functions of the Special Electoral Court are defined. They include the power to review any decision of the Commission, other than a determination and certification in terms of section 17. Provision is also made for such court to deal with matters that may be assigned to it in terms of the Transitional Executive Council Act or other legislation.

Clause 34(2)

The power of the Commission to delegate is restricted in respect of certain matters, and in particular, with reference to the making of regulations, the determination and certification of election results and certain other stated matters.

Clause 35

This clause provides for an appeal from substructures to their Directorates; from directorates to the Commission; and it provides for reviews from the Commission to the Special Electoral Court. Further provision is made for appeals from the Electoral Tribunals to the relevant Appeal Tribunal. Decisions of the Appeal Tribunals and Special Electoral Court are final and not subject to either


appeal or review.

Clause 41

The Commission's power to make regulations has been expanded. The Council may wish to give further consideration to the proposed obligation to disclose as a matter of public record the receipt and source of any contribution to electoral expenses in excess of R10 000.00.


(Schedule of comparative clause numbers to follow at a later stage)

**EMBARGOED UNTIL TABLING IN
THE NEGOTIATING COUNCIL**

 **FOURTH DRAFT**

INDEPENDENT ELECTORAL COMMISSION ACT

25 AUGUST 1993



BILL

To make provision for the conduct of free and fair elections for the National Assembly and any other legislature contemplated in the Constitution of the Republic of South Africa Act, 1993; to make provision for the conduct of free and fair referenda; and to provide for matters in connection therewith.

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

ARRANGEMENT OF SECTIONS

CHAPTER I

Interpretation and Application of Act

Section

1. Definitions
2. Application of Act
3. Act binding on State and State President

CHAPTER II

Independent Electoral Commission

4. Establishment and objects of Commission
5. Constitution of Commission
6. Conduct required of members
7. Independence of Commission
8. Term of Commission
9. Establishment of committees
10. Conditions of service, remuneration and allowances of members of Commission
11. Vacation of office, removal from office and filling of vacancies in Commission
12. Meetings of Commission
13. Powers, duties and functions of Commission
14. Administration and staff of Commission
15. Expenditure of Commission and guarantee by State

16. Accountability and finance
17. Determination and certification of election results, and declaration

CHAPTER III

Election Administration Directorate

18. Establishment of Election Administration Directorate
19. Constitution of Election Administration Directorate
20. Powers, duties and functions

CHAPTER IV

Election Monitoring Directorate

21. Establishment of Election Monitoring Directorate
22. Constitution of Election Monitoring Directorate
23. Powers, duties and functions

CHAPTER V

Election Adjudication Secretariat

24. Establishment of Election Adjudication Secretariat
25. Constitution of Election Adjudication Secretariat
26. Powers, duties and functions

CHAPTER VI

Special Electoral Tribunals

27. Establishment and constitution of Special Electoral Tribunals
28. Powers, duties and functions

CHAPTER VII

Electoral Appeal Tribunals

29. Establishment and constitution of Electoral Appeal Tribunals

30. Powers, duties and functions

CHAPTER VIII

Special Electoral Court

31. Establishment and constitution of Special Electoral Court
32. Powers, duties and functions

CHAPTER IX

General Provisions

33. Successors to Forum
34. Delegation of powers and assignation of duties by Commission
35. Appeal and review
36. Remuneration and allowances of members of Tribunals
37. Secrecy
38. Exemption from duties, taxes and fees
39. Offences and penalties
40. Limitation of liability in respect of anything done under this Act
41. Regulations
42. Short title

CHAPTER 1

Interpretation and Application of Act

Definitions

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

- (i) **"Administration Directorate"** means the Election Administration Directorate established by section 18;
- (ii) **"Appeal Tribunal"** means an Electoral Appeal Tribunal established in terms of section 29;
- (iii) **"candidate"** means any person whose name appears on a list of nominations by any registered party as defined in section 1 of the Electoral Act to be a member of the National Assembly or any other legislature in terms of the Constitution and the Electoral Act;
- (iv) **"Chief Executive Officer"** means the person appointed to that office by the Commission in terms of section 14(1);
- (v) **"Commission"** means the Independent Electoral Commission established and constituted from time to time by or in terms of this Act;
- (vi) **"committee"** means a committee of the Commission established under section 9;
- (vii) **"Constitution"** means the Constitution of the Republic of South Africa Act, 1993;
- (viii) **"directorate"** means a directorate established by this Act;
- (ix) **"election"** means any election conducted in terms of the Electoral Act for the National Assembly or any other legislature, and includes any referendum conducted in terms of section 2(2);
- (x) **"Electoral Act"** means the Electoral Act, 1993;
- (xi) **"Electoral Code of Conduct"** means the Code of Conduct for Political Parties contained in Schedule 1 to the Electoral Act;
- (xii) **"Electoral Tribunal"** means a Special Electoral Tribunal established in terms of

section 27;

- (xiii) **"Forum"** means the body so designated as part of the structure of the Multi-Party Negotiating Process, and includes its successors referred to in section 33;
- (xiv) **"international member"** means any person appointed as a member of the Commission under section 5(2)(a);
- (xv) **"international observer"** means any person appointed as a representative of the United Nations, the Organization of African Unity, the European Community, the Commonwealth and any other inter-governmental organization or foreign government accredited for that purpose by the Subcouncil on Foreign Affairs of the Transitional Council during its term of office, and thereafter by the Department of Foreign Affairs, in order to observe and report on the electoral process;
- (xvi) **"judicial office"** means any appointment as a judge of the Supreme Court, whether permanent or on an acting basis;
- (xvii) **"legislature"** means any legislature contemplated in the Constitution, excluding the National Assembly and Senate;
- (xviii) **"Media Commission"** means the Independent Media Commission established by section 2 of the Independent Media Commission Act, 1993;
- (xix) **"member"** means a member of the Commission appointed under section 5(1);
- (xx) **"monitor"** means any person appointed as such in terms of section 23(1)(a);
- (xxi) **"Monitoring Directorate"** means the Election Monitoring Directorate established by section 21;
- (xxii) **"National Assembly"** means the National Assembly as contemplated in the Constitution;
- (xxiii) **"observer"** means any observer registered with the Monitoring Directorate in terms of section 23(1)(b);
- (xxiv) **"Parliament"** means Parliament as contemplated in the Constitution;
- (xxv) **"party"** means any registered party as defined in section 1 of the Electoral Act, and includes any party, organization or movement of a political nature which publicly supports or opposes the policies, candidates or cause of any first-mentioned party, or which propagates non-participation in any election or the non-acceptance of its results certified by the Commission;
- (xxvi) **"political office"** means any executive appointment or elected office, including any elected or nominated public representative of a party, whether involving

- remuneration or not, or any other paid office, in the service of a party;
- (xxvii) **"prescribed"** means prescribed by regulation;
 - (xxviii) **"public office"** means any appointment or position in the service of the State, or any corporate or other body, institution or concern, owned or controlled, whether directly or indirectly, by the State, and includes any such appointment or position in the legislative, executive or judicial organs of the State at any level of government, but excludes any appointment to judicial office and any academic appointment at any university or tertiary educational institution;
 - (xxix) **"referendum"** means any referendum conducted under the supervision of the Commission in accordance with the provisions of section 2(2);
 - (xxx) **"regulations"** means any regulations made under section 41;
 - (xxxi) **"Republic"** means the Republic of South Africa, including any of the Republics of Transkei, Bophuthatswana, Venda or Ciskei which formally adopted the provisions of this Act and the Electoral Act as part of its municipal law;
 - (xxxii) **"Secretariat"** means the Election Adjudication Secretariat established by section 24;
 - (xxxiii) **"self-governing territory"** means a self-governing territory as defined in section 38(1) of the Self-Governing Territories Act, 1971 (Act No. 21 of 1971);
 - (xxxiv) **"Senate"** means the Senate as contemplated in the Constitution;
 - (xxxv) **"State"** means the Republic;
 - (xxxvi) **"Supreme Court"** means the Supreme Court of South Africa, including the Supreme Court of the Republic of Transkei, Bophuthatswana, Venda or Ciskei if such Republic formally adopted the provisions of this Act and the Electoral Act as part of its municipal law;
 - (xxxvii) **"Special Electoral Court"** means the Special Electoral Court established by section 31;
 - (xxxviii) **"Transitional Council"** means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993;
 - (xxxix) **"transitional legislation"** means the legislation to be enacted in consequence of the Multi-Party Negotiating Process, including the Constitution, the Electoral Act, the Independent Media Commission Act, 1993, the Independent Broadcasting Authority Act, 1993, and the Transitional Executive Council Act, 1993; and
 - (xl) **"this Act"** includes the regulations.

Application of Act

2.(1) The provisions of this Act shall apply in respect of the first elections to be conducted for the National Assembly and all other legislatures in terms of the Constitution and the Electoral Act, and thereafter in respect of all subsequent elections for the National Assembly and all other legislatures, or any of them, and in respect of any referendum conducted under the supervision of the Commission in terms of subsection (2).

(2) Upon the advice of the Forum or any legislature the State President shall by proclamation in the Gazette declare that the provisions of this Act shall apply in respect of the holding of any referendum, and in such case such provisions shall apply mutatis mutandis in respect of the holding of such referendum, whether nationally or within any particular geographical region, or in respect of any specified issue.

Act binding on State and State President

3.(1) This Act shall be binding upon the State, including its various legislative, executive and judicial organs at all levels of government, and to the extent that its provisions may conflict with the inherent powers of the State, or with the provisions of any other law, it shall have precedence over such powers and provisions, save for that of the transitional legislation, in so far as such powers and provisions relate to the conduct and supervision of elections and the other matters dealt with in this Act.

(2) This Act shall be binding upon the State President who shall be obliged to act in accordance with the advice of the Forum or any legislature.

CHAPTER II

Independent Electoral Commission

Establishment and objects of Commission

4.(1) There is hereby established a juristic person to be known as the Independent Electoral Commission.

(2) The objects of the Commission shall be -

- (a) to administer, organize, supervise and conduct, whether directly or indirectly, free and fair elections for the National Assembly and all legislatures;
- (b) to regulate the conduct of all persons, parties, candidates, departments and other organs of State, including local governments, in so far as their acts and decisions may affect such elections;
- (c) to promote conditions conducive to free and fair elections; and
- (d) to determine and certify the results of elections and to declare to what extent such elections have been free and fair, and to take the necessary actions in consequence of its declaration.

Constitution of Commission

5.(1) The Commission shall, subject to subsection (2), consist of no fewer than seven and not more than 11 members who shall be appointed by the State President upon the advice of the Forum, and who shall be impartial, respected and suitably qualified men and women, who do not have a high party political profile, are themselves eligible voters, and represent a broad cross-section of the population.

(2)(a) The State President may, upon the advice of the Forum, appoint not more than five persons (not being citizens of the Republic) from the international community as members of the Commission in a non-representative capacity.

(b) Such international members shall have the same rights and powers as other members, excluding the power to vote, and shall not constitute part of any quorum in terms of this Act.

(3)(a) The State President shall, upon the advice of the Forum, designate two members as Chairperson and Vice-Chairperson of the Commission, respectively.

(b) In the absence of both such Chairperson and Vice-Chairperson, the remaining members shall by simple majority nominate another member as acting Chairperson of the Commission.

(c) The international members shall not be eligible to serve as Chairperson, Vice-Chairperson or acting Chairperson.

(4) The State President shall, upon advice of the Forum and subject to subsection (1), appoint additional members to the Commission.

Conduct required of members

6.(1) Every member of the Commission shall -

- (a) be appointed in her or his individual capacity, and shall, notwithstanding any personal opinion, preference or party affiliation, serve impartially and independently and perform her or his functions in good faith and without fear, favour, bias or prejudice;
- (b) serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment, occupation or the holding of any other office;
- (c) within 30 days of her or his appointment to the Commission, submit to the Forum a written statement setting out -
 - (i) all assets owned, whether directly or indirectly, by such member, including all benefits of a pecuniary nature, whether actual or contingent;
 - (ii)(aa) the aggregate of all income received by or accrued to; and
 - (bb) all offices and appointments held by, such member during the 12 months period immediately preceding her or his appointment to the Commission.

(2) No member of the Commission shall -

- (a) during her or his term of office be eligible for appointment or nomination to any political or public office, whether involving remuneration or not, and such ineligibility shall, in respect of such public office, continue for a period of 18 months reckoned from the date upon which such term of office shall have terminated;

- (b) whether directly or indirectly, in any manner give support to, or oppose, any of the parties or candidates participating in the elections, or any of the issues in contention between such parties or candidates;
- (c) by her or his membership, association, statement, conduct or in any other manner, place in jeopardy her or his perceived independence, or in any other manner damage the credibility, impartiality, independence or integrity of the Commission;
- (d) make private use or profit from any confidential information gained as a result of her or his appointment and functions as such member;
- (e) divulge any such information to any third party save in the course and scope of her or his official functions and with the concurrence of the Commission;
- (f) accept any remuneration, emolument or benefit, of whatsoever nature, arising from any other employment, occupation or the holding of any other office, unless specifically authorized thereto by the State President, acting upon the advice of the Forum;
- (g) be interested or concerned, whether directly or indirectly, in any company, close corporation, business, concern or organization which has a direct or indirect beneficial interest in transactions entered into by the Commission, unless specifically authorized thereto by the State President, acting upon the advice of the Forum;
- (h) during her or his term of office be eligible to serve as a member of the Forum, the Transitional Council, Parliament or any other legislature, and such ineligibility shall continue for a period of 18 months reckoned from the date upon which such member shall have ceased to be such member;
- (i) after having served as such member, be eligible to serve as a member of the Parliament or other legislature for which that Commission was responsible to conduct elections, during the term of such Parliament or legislature.

Independence of Commission

7.(1) The Commission shall function without political or other bias or interference and shall, save as may in this Act be expressly otherwise provided, be independent and separate from the Forum, the Transitional Council, any party, any government and its administration or any other functionary or body, whether directly or indirectly representing the interests of government.

(2) Any power of any of the entities referred to in subsection (1), in so far as it relates to the administration, organization, conduct and supervision of any election shall be subject to the powers of the Commission, to which such entities shall be accountable for such of their acts and decisions as may, in the opinion of the Commission, influence or affect any election.

Term of Commission

8.(1) In respect of every election the Commission shall, subject to subsection (3), be constituted upon a date to be fixed by the State President by proclamation in the Gazette, which date shall be determined upon the advice of the Forum, and thereafter the Commission shall, subject to subsection (2), continue until it has completed its mandate and has been dissolved by the State President by proclamation in the Gazette.

(2) In respect of every election the Commission shall not be dissolved -

(a) save upon the advice of the Forum; and

(b) until the last-occurring of -

(i) the certification of such election as having been substantially free and fair, including similar certification in respect of any further election as may have been ordered by the Commission under section 17(3); or

(ii) the final determination of all issues and disputes arising from such election, as may have been referred for determination in terms of this Act.

(3)(a) If further elections are called in terms of the Constitution, the Commission shall be constituted and the consequent selection and appointment of the members, including, if deemed appropriate, international members, shall be effected by the State President by proclamation in the Gazette upon the advice of Parliament acting in terms of a motion which shall be passed by a two-thirds, majority.

(b) If such motion is not supported by the required majority in Parliament, the constitution and the consequent selection and appointment of the members of that Commission shall be effected by the State President by proclamation in the Gazette in accordance with an order of a full bench of the Appellate Division of the Supreme Court which shall include the Chief Justice or acting Chief Justice at the relevant time.

(c) In the case of a vacancy arising or the removal from office of a member of the Commission referred to in paragraph (b), the provisions of section 11(3) shall apply mutatis mutandis, and in such application any reference in that section to the advice of the Forum shall be construed as a reference to the order of the full bench of the

Appellate Division of the Supreme Court constituted as contemplated in that paragraph.

(4) All assets, moneys and liabilities of the Commission shall on its dissolution in terms of subsection (1) devolve upon the State.

Establishment of committees

9.(1) The Commission may establish such number of committees, whether as standing or special purpose committees, as it may consider necessary for the effective exercise and performance of its powers, duties and functions.

(2)(a) A committee shall consist of such number of persons as may be determined by the Commission.

(b) A committee may include persons who are not citizens of the Republic.

(c) In appointing members of a committee, the Commission shall endeavour to involve a broad cross-section of the population, including women.

(3) The Commission shall designate a member of the Commission as the chairperson of a committee.

(4) The majority of the members of a committee shall form a quorum for a meeting of the committee.

(5) A committee shall, when required, submit a report to the Commission for consideration.

(6) The Commission may on receipt of a report referred to in subsection (5) -

(a) refer the matter back to the committee for such further inquiry as may be determined by the Commission;

(b) make such further inquiry as it may deem necessary or desirable; or

(c) confirm, vary or set aside any decision taken by the committee.

(7) For the purposes of the performance of its functions a committee shall have the same powers as those conferred upon the Commission in terms of this Act for the performance of its functions.

(8) Any member of a committee who is not in the full-time employment of the State shall receive such remuneration and allowances, if any, as the Commission may determine after consultation with the Minister of State Expenditure and with the Subcouncil on Finance of the Transitional Council during its term of office.

Conditions of service, remuneration and allowances of members of the Commission

10. The conditions of service, remuneration, allowances and other benefits of members of the Commission shall be determined by the Forum after consultation with the Minister of State Expenditure.

Vacation of office, removal from office and filling of vacancies in Commission

11.(1) A member of the Commission may be removed from office by order of the Special Electoral Court on an application lodged by or on behalf of -

- (a) the State President;
- (b) the Transitional Council;
- (c) Parliament or any other legislature; or
- (d) any party as defined in section 1 of the Electoral Act and eligible to participate in the relevant election, or at least 1 000 eligible voters: Provided that no such application by such party or such voters shall be heard save with the prior leave of the Chairperson of the Special Electoral Court, who shall first satisfy herself or himself as to the existence of probable cause, and who may impose such conditions upon the grant of leave, including the imposition of time limits for the institution of any such proceedings, as she or he may deem appropriate,

if the Special Electoral Court is satisfied as to the existence of good and sufficient reason therefor as contemplated in subsection (2).

(2) In considering any such application the Special Electoral Court shall determine that good and sufficient reason exists for the removal from office of a member of the Commission, in the case of -

- (a) serious misconduct;
- (b) unfitness or incapacity, including continued ill health;
- (c) a material contravention or failure to comply with the provisions of section 6(1)(a), (b) or (c) or (2)(a), (b), (c), (d), (e), (f) or (g); or
- (d) any other reason which the Special Electoral Court may consider material and inconsistent with such member's continuance in office.

(3) If a member of the Commission dies, tenders her or his resignation in writing to the State President or is removed from office in terms of this section, the State President shall, upon the advice of the Forum, either -

- (a) allow such appointment to lapse, provided there remains at least the minimum number

- of members provided for in section 5(1); or
- (b) appoint some other suitably qualified person as a member for the unexpired portion of the term of the Commission.

Meetings of Commission

12.(1) The Commission may meet at any place in the Republic determined by the Chairperson for the purpose of performing its functions.

(2) Meetings may be convened at any time at the instance of the Chairperson or Vice-Chairperson, or at the instance of any two other members, and shall be convened at such intervals as circumstances may require.

(3)(a) Subject to paragraph (b), a quorum for a meeting of the Commission shall be 75% of the members.

(b) In respect of the determination and certification of the results of an election as having been substantially free and fair, or otherwise, in terms of section 17, the quorum for the meetings of the Commission shall be all the members, excluding such members as may be unable to attend by reason of serious illness, disability, incapacity or other compelling circumstance.

(4)(a) Subject to paragraph (b), and section 13(4) the decision of the majority of the members present at a meeting of the Commission shall be the decision of the Commission.

(b) In respect of the determination and certification of the results of an election as having been substantially free and fair, or otherwise, in terms of section 17 the decision of the Commission shall not be of force and effect unless at least 75% of the members present at the meeting of the Commission shall have concurred in such decision.

(5) The Commission may determine its own procedures to be followed at its meetings.

Powers, duties and functions of Commission

13.(1) The Commission may exercise the powers and shall perform the duties and functions conferred upon or assigned to it by this Act or any other law.

(2) The Commission shall -

- (a) assume sole responsibility for the administration, organization and conduct, whether directly or indirectly, and the supervision of the administration, organization and conduct of any election called from time to time in terms of the Constitution and the

Electoral Act;

- (b) take such measures as it may consider necessary for the prevention of intimidation of voters, candidates and parties as defined in section 1 of the Electoral Act;
- (c) be responsible for the education of voters concerning -
 - (i) democratic principles and values;
 - (ii) the electoral process and mechanisms;
 - (iii) the right to free political canvassing and campaigning;
 - (iv) secrecy of voting; and
 - (v) any other relevant matter,

by means of -

- (aa) literature and the use of other media, including distribution and publication of suitable literature, advertisements and dissemination through radio, television and the public print media, having due regard to the variety of languages spoken and varying levels of education throughout the Republic; and
- (bb) workshops, seminars and meetings, as it may consider appropriate.
- (d) register and regulate the activities of observers;
- (e) facilitate and assist the role of international observers; and
- (f) submit monthly written reports concerning its functions, which reports shall be delivered simultaneously to the Forum and the State President, and such reports shall be public documents.

(3) The Commission shall have such executive and regulatory powers as may be necessary for the achievement of its objects, including but without limitation thereto -

- (a) all powers necessary for the promotion of conditions conducive to the conduct of free and fair elections, which, in respect of the first elections referred to in section 2(1), shall be exercised in conjunction with the Transitional Council; and
- (b) all powers necessary for the enforcement, whether directly or indirectly, of the Electoral Code of Conduct and the regulation of the conduct of all persons, candidates, departments of State and all organs of any government, including the security and defence forces, in so far as such conduct may promote or inhibit the conduct of free and fair elections.

(4) The Commission shall have power -

- (a) to hear and determine appeals from decisions or actions of the directorates in respect of prescribed matters, which decisions or actions may on appeal be confirmed, varied or set aside : Provided that they may only be varied or set

- aside by a two thirds' majority; and
- (b) to give binding instructions to the directorates and their sub-structures in respect of matters concerning their functions, which power may be exercised either upon request from the directorates or of its own accord: Provided that such instructions may only be given by a two thirds' majority.

Administration and staff of Commission

14.(1) The Commission shall appoint a Chief Executive Officer who shall perform the functions assigned to him by this Act and the Commission.

(2) The Commission may, for the effective exercise and performance of its powers, duties and functions -

- (a) establish and co-ordinate the necessary functional structures and regulate their powers, duties and functions as it may deem appropriate;
- (b) make provision for the co-option, employment or assistance in such structures, the directorates and the Secretariat of legal experts and other suitably qualified or experienced persons, including persons who are not citizens of the Republic;
- (c) appoint and dismiss staff in respect of its own structures, the directorates and the Secretariat, and generally specify terms of employment as it may consider reasonable and appropriate: Provided that it shall endeavour to appoint men and women representing a broad cross-section of the population;
- (d) fix remuneration and determine emoluments and other benefits after consultation with the Minister of State Expenditure and the Subcouncil on Finance of the Transitional Council during its term of office;
- (e) purchase, hire or otherwise acquire movable or immovable property;
- (f) enter into agreements with any person, including the State, for the performance on its behalf of any specified act or function or the rendering of any service;
- (g) insure itself and its members, staff, visitors and the public generally against loss, damage, risk or liability which may be suffered or incurred;
- (h) open and operate bank accounts with the South African Reserve Bank or any other registered financial institution approved for that purpose by the said Reserve Bank; and
- (i) in general, perform such acts and do such things as may be necessary or expedient for the achievement of its objects.

Expenditure of Commission and guarantee by State

15.(1) The expenditure in connection with the exercise of the Commission's powers and the performance of its duties and functions shall be paid out of money appropriated by Parliament then existing for such purpose.

(2) Subject to section 16(1), Parliament then existing shall, in respect of the first elections referred to in section 2(1) on request by the Commission vote the necessary funds to enable the Commission to exercise its powers and perform its duties and functions effectively.

(3) Subject to section 16(1), Parliament shall, in respect of any further elections called in terms of the Constitution, on request by the Commission vote the necessary funds to enable the Commission to exercise its powers and perform its duties and functions effectively: Provided that if the Commission is of the opinion that the funds so voted by Parliament is insufficient for that purposes it may submit the matter for final determination to the Special Electoral Court.

(2) The State shall guarantee, where required, all commitments and liabilities of the Commission incurred in the exercise of its powers or the performance of its duties and functions.

Accountability and finance

16.(1) The Commission shall determine and submit for approval by the Forum estimates and, if necessary, additional estimates, of expenditure anticipated in the exercise of its powers or the performance of its duties and functions covering such periods as coincide as far as possible with the financial year as defined in section 1 of the Exchequer Act, 1975 (Act No. 66 of 1975).

(2) The financial affairs of the Commission shall be dealt with as a particular portion of a vote whereof accounts are kept separately, as contemplated in section 15A(1) of the Exchequer Act, 1975, by one or more employees of the Commission designated for that purpose by the Chief Executive Officer.

(3) The Chief Executive Officer shall -

- (a) be charged with the responsibility of accounting for the financial affairs of the Commission and for all State moneys received and payments made by it;
- (b) be deemed to have been assigned by the Treasury as defined in section 1 of the

Exchequer Act, 1975, all of the powers and duties referred to in section 15(2) of that Act under section 15A(2) of that Act;

- (c) ensure that accounts of the financial affairs of the Commission are kept in accordance with Treasury Instructions issued in terms of the Exchequer Act, 1975;
- (d) ensure that the Commission keeps full and proper records of all its income and expenditure, and all of its assets, liabilities and financial transactions, and that monthly financial statements are prepared in the format required by the Auditor-General; and
- (e) ensure that all reasonable management measures are adopted so that assets, services and resources are obtained, safeguarded and utilized in the most economic, efficient and effective manner, and that the requirements of the Auditor-General are duly satisfied.

(4)(a) The Auditor-General shall have the same powers, duties and functions contemplated in the Auditor-General Act, 1989 (Act No. 52 of 1989), in respect of all accounts maintained by the Commission.

(b) The estimates and accounts of the Commission shall be subject to audit by the Auditor-General who shall report thereon to the Forum and to Parliament then existing.

Determination and certification of election results, and declaration

17.(1) Upon completion of the ballot, the Commission shall as expeditiously as possible, but in any event within a period of 10 days of the close of the poll, determine and certify the results of the election, and declare whether, and if so, to what extent, it considers that such election has been conducted in a manner which was substantially free and fair.

(2) In effecting such determination, the Commission may accept and reject the results of the poll as a whole, or it may accept or reject such results in respect of any particular legislature or geographic district or region for the purposes of voting.

(3) In the event of the results of the poll as a whole, or any part thereof, being rejected by the Commission, the Commission shall determine and cause to be implemented such steps, including the organization, conduct, administration and supervision of a new election, as it may consider appropriate in the circumstances, in order to achieve a substantially free and fair election result, having due regard to the provisions of the Constitution.

(4) Notwithstanding the provisions of subsections (2) and (3), the results of the poll as a whole, or any part thereof, shall not be rejected merely by reason of some untoward

occurrence, mistake or non-compliance with the provisions of this Act, the Electoral Code of Conduct or the Electoral Act, if it appears to the Commission that the election was conducted substantially in accordance with the legal requirements, and that such occurrence, mistake or non-compliance was unlikely to have materially affected the result.

(5) The Commission's determination, certification and evaluation of election results, and its further decisions in terms of subsection (3), shall be final and not subject to appeal to or review by any court or the Special Electoral Court.

CHAPTER III

Election Administration Directorate

Establishment of Election Administration Directorate

18. There shall be established on the date on which the Commission is constituted, a directorate to be known as the Election Administration Directorate, which shall continue until the date on which the Commission is dissolved, on which date that Directorate shall be dissolved.

Constitution of Election Administration Directorate

19.(1) The Administration Directorate shall consist of a Chief Director : Administration and such other officials as the Commission may consider necessary and appoint to enable that Directorate to effectively perform its functions in terms of this Act and the Electoral Act.

(2) In effecting the appointment of the Chief Director referred to in subsection (1), the Commission shall invite and consider, but shall not be bound by, the advice of the Forum.

Powers, duties and functions

20.(1) The Administration Directorate shall have the powers, duties and functions conferred upon or assigned to it by or in terms of this Act and the Electoral Act.

(2) Any decision or action taken by any sub-structure of the Administration Directorate in a geographic district or region may be appealed against to that Directorate, which may confirm, vary or set aside such decision or action.

(3) The Administration Directorate shall -

- (a) operate independently of the Monitoring Directorate and the Secretariat;
- (b) be under the supervision of the Commission; and
- (c) carry out the instructions of the Commission, to which it shall be accountable.

CHAPTER IV

Election Monitoring Directorate

Establishment of Election Monitoring Directorate

21. There shall be established on the date on which the Commission is constituted, a directorate to be known as the Election Monitoring Directorate, which shall continue until the date on which the Commission is dissolved, on which date that Directorate shall be dissolved.

Constitution of Election Monitoring Directorate

22.(1) The Monitoring Directorate shall consist of a Chief Director : Monitoring and such other officials as the Commission may consider necessary and appoint to enable that Directorate to effectively perform its functions in terms of this Act.

(2) In effecting the appointment of the Chief Director referred to in subsection (1), the Commission shall invite and consider, but shall not be bound by, the advice of the Forum.

Powers, duties and functions

23.(1) The Monitoring Directorate shall -

- (a) appoint and co-ordinate monitors to observe and report to it upon the electoral process, including political meetings, canvassing, advertising and other campaigns;
- (b) register and regulate observers, and publish guidelines and, if it considers it necessary, a Code of Conduct binding upon all such observers;
- (c) facilitate the role of international observers and provide them with information and assistance as may be required to enable them to perform their duties;

- (d) investigate alleged infringements of the Electoral Code of Conduct, other electoral offences and any other matters justiciable in terms of this Act and the Electoral Act and report to the Commission thereon;
- (e) issue and execute prescribed search warrants and subpoenas and seize items required in connection with the investigation of alleged infringements of the Electoral Code of Conduct, other electoral offences and any other matters justiciable in terms of this Act and the Electoral Act, with the assistance of the Peacekeeping Force contemplated in the Transitional Executive Council Act, 1993, the police or defence forces, as may be requested by the Commission;
- (f) co-ordinate meetings between the various parties participating in the election with a view to mediating and, if possible, resolving issues and disputes arising in the course of the election and preceding campaign, by negotiation and mutual agreement;
- (g) issue preliminary warnings and notices of infringement concerning alleged or threatened infringements of the Electoral Code of Conduct;
- (h) report to the Commission upon the electoral process as required by it;
- (i) operate independently of the Administration Directorate and the Secretariat;
- (j) be under the supervision of the Commission; and
- (k) carry out the instructions of the Commission to which it shall be accountable.

(2) Any decision or action taken by any sub-structure of the Monitoring Directorate in a geographic district or region may be appealed against to that Directorate, which may confirm, vary or set aside such decision or action.

CHAPTER V

Election Adjudication Secretariat

Establishment of Election Adjudication Secretariat

24. There shall be established on the date on which the Commission is constituted a secretariat to be known as the Election Adjudication Secretariat, which shall continue until the date on which the Commission is dissolved, on which date the Secretariat shall be dissolved.

Constitution of Election Adjudication Secretariat

25.(1) The Secretariat shall consist of a Secretary and such other officials as the Commission may consider necessary and appoint to enable the Secretariat to effectively perform its functions in terms of this Act.

(2) In effecting the appointment of the chief director referred to subsection (1), the Commission shall invite and consider, but shall not be bound by, the advice of the Forum.

Powers, duties and functions

26. The Secretariat shall -

- (a) co-ordinate the functions of the Special Electoral Tribunals, the Election Appeal Tribunals and the Special Electoral Court;
- (b) perform the administrative work connected to the functions of those Tribunals;
- (c) operate independently of the directorates;
- (d) be under the supervision of the Commission;

- (e) carry out the instructions of the Commission, to which it shall be accountable.

CHAPTER VI

Special Electoral Tribunals

Establishment and constitution of Special Electoral Tribunals

27.(1) The Commission shall, subject to subsection (2), establish such number of Special Electoral Tribunals with jurisdiction in respect of defined geographical areas as it may consider necessary to adjudicate and determine prescribed matters concerning alleged electoral irregularities and infringements of the Electoral Code of Conduct.

(2) A Special Electoral Tribunal shall consist of one person appointed to that office by the Commission who shall be either an attorney, advocate, magistrate or academic lawyer at a university with not less than 10 years' experience in one or more such capacity.

(3) In effecting the appointment of Electoral Tribunals the Commission shall invite and consider, but shall not be bound by, the advice of the Forum.

Powers, duties and functions

28.(1) An Electoral Tribunal hearing any matter falling within its jurisdiction, shall enquire into and consider the matter in the prescribed manner and shall make such finding or give such order as in its opinion is fair and just.

(2) An Electoral Tribunal finding any person or party guilty of contravening or failing to comply with any prescribed matter or any provision of the Electoral Code of Conduct, may impose any such prescribed penalty or sanction as it may deem appropriate in the circumstances.

(3) An Electoral Tribunal shall have such other powers, duties and functions as may be prescribed.

CHAPTER VII

Electoral Appeal Tribunals

Establishment and constitution of Electoral Appeal Tribunals

29.(1) The Commission shall, subject to subsection (2), establish such number of Electoral Appeal Tribunals as it may consider necessary to hear and determine appeals and reviews decisions from the Special Electoral Tribunals, noted in the prescribed manner.

(2) An Electoral Appeal Tribunal shall consist of three persons appointed by the Commission, of whom -

- (a) the Chairperson shall be a judge of the Supreme Court;
- (b) one shall be a retired judge of the Supreme Court or an attorney, advocate or magistrate or academic lawyer at a university with not less than 10 years experience in one or more such capacity;
- (c) one shall be a suitable person who may or may not be legally qualified or experienced.

Powers, duties and functions

30.(1) An Electoral Appeal Tribunal hearing any appeal or reviewing any decision shall enquire into and consider the matter in the prescribed manner and shall confirm, vary or set aside the decision, order, penalty or sanction of the Electoral Tribunal, or make such other decision or give such other order or impose such other penalty or sanction as in its opinion the

Electoral Tribunal ought to have made, given or imposed.

(2) An Electoral Appeal Tribunal shall have such other powers, duties and functions as may be prescribed.

CHAPTER VIII

Special Electoral Court

Establishment and constitution of Special Electoral Court

31.(1) There is hereby established a tribunal to be known as the Special Electoral Court with the powers, duties and functions referred to in section 32.

(2) Subject to subsection (3) the Special Electoral Court shall consist of -

- (a) a Chairperson who shall be a judge of the Appellate Division of the Supreme Court; and
- (b) four other members of whom-

- (i) two shall be judges of the Supreme Court;
- (ii) one shall be a person suitable to be a member through experience as an attorney, advocate, magistrate or academic lawyer at a university with not less than 10 years experience in one or more such capacity; and
- (iii) one shall be a suitable person who may or may not be legally qualified or experienced;

appointed by the Transitional Council.

(3) The Chief Justice shall submit a list of judges to the Transitional Council from which the Chairperson and two judges referred to in subsection (2)(a) and (b)(i) shall be selected.

Powers, duties and functions

32.(1)(a) Subject to section 17(5), the Special Electoral Court shall have power to review any decision of the Commission.

(b) Any such review shall be conducted on an urgent basis, and shall be disposed of as expeditiously as possible.

(2) The Special Electoral Court shall have power to remove any member of the Commission from office under section 11.

(3) The Special Electoral Court shall have such other powers, duties and functions as may be conferred upon or assigned to it by the Electoral Act, the Transitional Executive Council Act, 1993, and any other law.

CHAPTER IX

General Provisions

Successors to Forum

33.(1) Any power, duty or function conferred upon or assigned to the Forum by this Act shall be assumed by the Transitional Council or the appropriate subcouncil thereof, as the case may be, as from the date of its constitution in terms of the Transitional Executive Council Act, 1993.

(2) Upon dissolution of the Transitional Council, any power, duty or function referred to in subsection (1) shall devolve upon the National Assembly or the relevant legislature, in respect of elections to be conducted for the National Assembly or the relevant legislature, as the case may be.

Delegation of powers and assignation of duties by Commission

34.(1) Subject to subsection (2), the Commission may delegate any power and assign any duty conferred upon or assigned to it by this Act, to any person or body, or authorize such person or body, including the State, to perform any duty assigned to it by this Act.

(2) The power of the Commission to make regulations, and its duties -

- (a) to determine and certify the election results as substantially free and fair, or otherwise, in terms of section 17;

- (b) to constitute the directorates, the Secretariat, the Electoral Tribunals and the Appeal Tribunals; and
- (c) to supervise the directorates, the Secretariat and the electoral process, shall not be delegated or assigned.

(3) Any power or duty referred to in subsection (1) shall not be further delegated or assigned without the prior consent of the Commission, which shall not be divested of any such power as it may delegate under that subsection.

Appeal and review

35.(1) Any person, party or candidate who or which considers herself, himself or itself aggrieved by any decision or action taken by any sub-structure of a directorate, may, within the period and in the manner prescribed, appeal to the directorate concerned against the decision or action in question.

(2) Any person, party or candidate who or which considers herself, himself or itself aggrieved by any decision or action taken by any directorate, in respect of a prescribed matter other than decisions or actions as provided for in subsection (1) may within the period and in the manner prescribed, appeal to the Commission against the decision or action in question.

(3) There shall be no appeal from any decision of the Commission, but subject to section 17(5), any interested person, party or candidate may bring any proceedings of the Commission under review before the Special Electoral Court within the period and in the manner prescribed.

(4) Any person, party or candidate who or which considers himself or itself aggrieved by any finding, order, penalty or sanction made, given or imposed by any Electoral Tribunal, may, within the period and in the manner prescribed, appeal to the relevant Appeal Tribunal against the finding, order, penalty or sanction.

(5) Any interested person, party or candidate may bring any proceedings of any Electoral Tribunal under review before the relevant Appeal Tribunal within the period and in the manner prescribed.

(6) The decisions of -

- (a) any Appeal Tribunal; and
 - (b) the Special Electoral Court,
- shall be final and not subject to appeal or review.

Remuneration and allowances of members of Tribunals

36.(1) Subject to subsection (3), the Transitional Council may, after consultation with the Minister of State Expenditure, determine remuneration and allowances payable to members of the Special Tribunal.

(2) Subject to subsection (3) the Commission may, after consultation with the Minister of State Expenditure, determine remuneration and allowances payable to members of the Electoral and Appeal Tribunals.

(3) Different or no remuneration or allowances may be determined under subsections (1) and (2) in respect of different members of those Tribunals.

Secrecy

37.(1) Every member of the Commission and every person employed in the performance of the functions of the Commission, the directorates and the Secretariat shall aid in preserving secrecy in regard to any matter or information that may come to her or his knowledge in the performance of her or his duties in connection with the said functions, except in so far as the publication of such matter or information is authorized by law.

(2) Any person who, in the exercise of powers or the performance of duties in terms of this Act, has obtained knowledge regarding the affairs of any registered party as defined in section 1 of the Electoral Act, candidate or eligible voter, shall not disclose such knowledge to any person other than is required in the course and scope of her or his duties or in response to a question lawfully put in the course of proceedings in any court of law or Tribunal contemplated in this Act.

Exemption from duties, taxes and fees

38. Notwithstanding anything to the contrary contained in any law, no duty, tax or fees shall be payable by the Commission to the State in respect of anything done or any transaction entered into under this Act, or in respect of any document required in connection therewith.

Offences and penalties

39. Any person who-

- (a) wilfully hinders or obstructs the Commission, a directorate or the Secretariat or a member of its staff in the exercise of its or her or his powers or in the performance of its or her or his duties or functions;
 - (b) wilfully interrupts the proceedings at a meeting of the Commission or a hearing of an Electoral or Appeal Tribunal or misbehaves himself in any other manner in the place where such meeting or hearing is held;
 - (c) in connection with any meeting of the Commission or hearing of such Tribunal does anything which, if such meeting or hearing were proceedings in a court of law, would have constituted contempt of court;
 - (d) does anything calculated improperly to influence the Commission or any such Tribunal in respect of any matter being or to be considered by the Commission or such Tribunal in connection with any decision;
 - (e) contravenes or fails to comply with any provision of this Act,
- shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

Limitation of liability in respect of anything done under this Act

40. The Commission, any directorate, the Secretariat or any member of its staff or any Tribunal contemplated in this Act shall not be liable in respect of anything done in good faith under any provision of this Act.

Regulations

41.(1) The Commission may make regulations regarding -

- (a) the obligation to disclose, as a matter of public record the receipt and the source of any contribution (whether in cash, specie, credit, right of use or otherwise) representing a value in excess of R10 000,00, which is promised or received by any party for the purpose of funding its' election expenses or for the promotion of any candidacy, or propagating any of its' policies or political objectives;
- (b) governing the permissible nature and content of political advertising, which shall be determined and enforced by the Commission in conjunction with the Media Commission or the Independent Broadcasting Authority established by section 3 of the Independent Broadcasting Authority Act, 1993;

- (c) the issue, contents, form, and the practice and procedure in connection with the execution of search warrants, subpoenas and the seizure of items required in connection with the investigation of alleged infringements of the Electoral Code of Conduct, other electoral offences and matters justiciable in terms of this Act;
- (d) the manner in which and the nature of proceedings which may be instituted in the Electoral and Appeal Tribunals;
- (e) the time limits within and manner in which appeals may be noted or proceedings may be brought under review in terms of this Act;
- (f) the electoral irregularities and other matters in respect of which contraventions or failures to comply shall constitute cause for proceedings to be instituted in the Electoral Tribunals;
- (g) the issue, contents, form and use of process, and the practice and procedure in connection with the service and execution thereof;
- (h) the manner of recording or noting evidence or proceedings;
- (i) the appointment and admission of sworn translators;
- (j) orders, penalties and sanctions which may be given or imposed by an Electoral or Appeal Tribunal, and the execution thereof;
- (k) the manner in which a person, party or candidate may be summoned to appear in an Electoral Tribunal to face charges of contravening or failing to comply with a regulation contemplated in paragraph (f), and the manner in which one or more persons may be selected to represent such party in such Tribunal;
- (l) the procedures for investigating alleged infringements of the Electoral Code of Conduct, other electoral offences or matters justiciable in terms of this Act in order to bring it to an expeditious conclusion;
- (m) the practice and procedure to be followed by directorates in hearing appeals from their sub-structures having due regard to the principles of justice;
- (n) the practice and procedure to be followed by the Secretariat in the performance of its functions;
- (o) fees and costs and the recovery thereof in respect of legal proceedings in terms of this Act;
- (p) representation or absence thereof in respect of legal proceedings in terms of this Act;
- (q) the practice and procedure to be followed by the Electoral and Appeal Tribunals in the conduct of their proceedings in order to bring such proceedings to an expeditious conclusion, having due regard to fairness and justice;

- (r) the criterion of proof to be applied by the Electoral and Appeal Tribunals in order to come to a decision;
- (s) any matter required or permitted to be prescribed in terms of this Act; and
- (t) generally, all matters which in its opinion are necessary or expedient to be prescribed to achieve the objects of this Act.

(2) A regulation under subsection (1) may prescribe penalties for any contravention of the provisions thereof or any failure to comply therewith of a fine or imprisonment of a period not exceeding two years.

(3) Regulations under subsection (1) affecting State expenditure shall be made only after consultation with the Minister of State Expenditure.

Short title

42. This Act shall be called the Independent Election Commission Act, 1993.

***LIST OF LEADERS OF
PARTIES/ORGANISATIONS/ADMINISTRATIONS.***

AFRICAN NATIONAL CONGRESS

Head of Delegation: Dr N Mandela

Physical Address: 51 Plein Street, Johannesburg, 2001.....

.....

Tel and/or Fax: 330-7071/330-7033.....

AFRIKANER VOLKSUNIE

Head of Delegation: Mr A Beyers

Physical Address: The Grove , 114 Parktown Estates, Pretoria, 0084.....

.....

Tel and/or Fax 012 335-3667.....

BOPHUTHATSWANA GOVERNMENT

Head of Delegation: President LM Mangope

Address: 7 Gordon Street, Mafikeng or 9 Khutsong Flats, Gemsbok Street,
Golfview, Mafikeng, or State Affairs, Second Floor, Garona,
Mmabatho

Tel and/or Fax: 0140 815250/ 841327/29 2002

CISKEI GOVERNMENT

Head of Delegation: Brigadier OJ Gqozo (*c/o M Webb*)

Address: State House, Bisho, Ciskei

.....

Tel and/or Fax: 041-927 46/ Fax 0401 951174.....

KONSERWATIEWE PARTY

Head of Delegation: FT Hartzenberg c/o Tom Langley

Physical Address: 1142 Pretorius Street
Hatfield
Pretoria

Tel and/or Fax 012 215270

DEMOCRATIC PARTY

Head of Delegation: Dr ZJ de Beer

Physical Address: 39 Cotswold Drive
Saxonwold
Johannesburg

Tel and/or Fax 021 4381316.....

DIKWANKWETLA PARTY

Head of Delegation: Dr TK Mopeli

Physical Address: Minister Residential Area
No 7 Modulaqhowa
Qwaqwa.....

Tel and/or Fax: 058 7130429.....

INKATHA FREEDOM PARTY

Head of Delegation: Dr M Buthelezi (*c/o Dr FT Mdlalose*)

Physical Address C/O Sue Felgate
B North 204
Cnr Ugibabanya Crescent & Undabankulu Street
Ulundi

Tel. 0358-700630
Tel and/or Fax:

INTANDO YESIZWE PARTY

Head of Delegation: Prince JS Mahlangu

Physical Address: House No.21
Erasmus Extension 2
Cnr Prinsloo
Derdeland
Bronkhortspruit

Tel and/or Fax: 01212 20288.....

INYANDZA NATIONAL MOVEMENT

Head of Delegation: Chief Minister MC Zitha

Physical Address: Dept of Economic Affairs
Kangwane Govt
Louieville
District Low' s Creek, 1302
.....

Tel and/or Fax: 01314-72111/ fax 01314-72089

LABOUR PARTY

Head of Delegation: Reverend HJ (Alan) Hendrickse

Physical Address: 16 Jublee Crescent
Uitenhage
6230

Tel and/or Fax: 041 9922309.....

NATAL INDIAN CONGRESS/TRANSVAAL INDIAN CONGRESS

Head of Delegation: Mr G Sewpershad

Physical Address: c/o B Pillay 16 Celtic Road, Greenwood Park, Durban.....

.....
Tel and/or Fax:

NATIONAL PARTY

Head of Delegation: Dr DJ de Villiers

Physical Address: Akacia Park
Goodwood
Mopane 60
7460

.....
Tel and/or Fax: 021 591 7029.....

NATIONAL PEOPLE'S PARTY

Head of Delegation: Mr A Rajbansi

Address: 76 Trisula Ave
Arena Park, Chatsworth

4092

Tel and/or Fax: 031-431-071/fax 031-43-2897

PAN-AFRICANIST CONGRESS

Head of Delegation: Mr C Makwetu

Address: 3rd Floor, Anderson Place

Cnr Anderson and Harrison Strs
Johannesburg, 2001

Tel and/or Fax: 011-836-0407/fax 011-838-3705

SOLIDARITY PARTY

Head of Delegation: Dr JN Reddy

Address:
.....

Tel and/or Fax: 021-403-2911.....

SOUTH AFRICAN COMMUNIST PARTY

Head of Delegation: Mr C Nqakula

Physical Address: 1-5 Leyds Street - 3rd Floor, Braamfontein, Jhb,
.....

Tel and/or Fax: 011 339-3621 Fax 339 4244/339-6880.....

SOUTH AFRICAN GOVERNMENT

Head of Delegation: President FW de Klerk

Address: Tuynhuys Building
Plein Street
Cape Town

Tel and/or Fax: 021-45-7300/fax 461-1848.....

TRANSKEI GOVERNMENT

Head of Delegation: Major-General B Holomisa

Address: 11th Floor, Botha Sigcau Building
Corner Own Street.....
Umtata
.....

Tel and/or Fax: 0471-22510/fax 0471-23876.....

UNITED PEOPLE'S FRONT

Head of Delegation: Chief Minister N Ramodike (Documents to be delivered to personal Secretary: Lesley Molele)

Address: Mankweng Turfloop.....
424 B TOROTO

Tel and/or Fax: 01521 670658

VENDA GOVERNMENT

Head of Delegation: Brigadier G Ramushwana

Address: Thohoyandou.....
Block G

House no 867

Tel and/or Fax: 0159 41122 ask for Capt Mukhuba

XIMOKO PROGRESSIVE PARTY

Head of Delegation: Chief SDW Nxumalo

Address: Leave all documents at security gate

Gazankulu Ministerial Residence - Giyani

Tel and/or Fax: 0158-20400/ 0158-20417.....

LIST OF PRESS CONTACTS FOR FAXING OF PRESS STATEMENTS, ETC

CHRIS FISHER	STOCK PRESS	789-5273
TOM ROY	PRETORIA NEWS	012-28-7166
CHRISTO KRITZINGER	SABC-TV	714-5281
PETER DAVIS	DAILY NEWS	031-308-2222/2043
FOWZIA MOODLEY	POST NATAL	031-308-2427
NEVILLE WOUDBERG	EVENING POST	041-55-4966
GORDON KING	CAPE TIMES	021-488-4762
MR MTEMBU	ILANGA	031-309-3489
NIGEL BRUCE	FINANCIAL MAIL	834-1686
Z SISULU	NEW NATION	333-2733
J HOBDAV	THE ARGUS	021-488-4075
DEREK SMITH	EASTERN PROVINCE HERALD	041-55-4966
KHULU SIBIYA	CITY PRESS	402-6501
ALAN FINE	BUSINESS DAY	836-0805
ANTON HARBER	WEEKLY MAIL	334-2905
MAX DU PREEZ	VRYE WEEKBLAD	838-5901
D DELPORT	SUNDAY TRIBUNE	031-308-2222
HC DE VILLIERS	THE CITIZEN	402-6862
GLYN WILLIAMS	DAILY DISPATCH	0431-43-5155
S BRAMDEW	LEADER	031-28-1751
DAVID BRAUN	NATAL MERCURY	031-308-2333
S VAN DER WESTHUIZEN	SA COMMS SERVICES	323-3831
BRIAN POTTINGER	SUNDAY TIMES	497-2664

D WILLIERS

NATAL WITNESS

0331-940-468

(M)

MEDIA LIST

NAME	MEDIA GROUP	
M Magonare	BOP TV	BOP EG EG EG
Mogonare	BOP TV	
C Malherbe	REUTERS	
N Makgamathe	KYODO NEWS	
Zeph Makgetla	ANC DIP	
J Maclellan	SUNDAY TRIB	
Sam Manuel	THE MILLITANT	
PS Magubane	TIME MAGAZINE	
G Marika	SWEDISH TV	
M Marion	LE MONDE	
Karel Maseko	ANC VIDEO UNIT	
P Mashiloane	SABC	
George Mashinini	THE STAR	
J Masilela	PTA NEWS	
A Mateus	LUSA	
Richard Martinez	ELPAIS	
Kendridge Mathabathe	NEW NATION	
JD Maytham	CAPITAL RADIO	
Lag Mazuro	RTL RMC NTR	
Evans Mboweni	CITY PRESS	
A Meijer	TELEVISA ECO	
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S Middleton	BBC	
Abdul Milazi	THE STAR	
A Mischke	RAPPORT	
R Mkhondo	REUTERS	
J Mkhize	REUTERS	
IJ Mogale	BOP TV	
DE Noirmont	REUTERS	
MT Mokoena	CBS NEWS	
Themba Molefe	SOWETAN	
MM Motloun	TNT UPDATE	
Motsepe Mokone	TNT UPDATE	
Sello Motsepe	SOWETAN	
C Moutout	LIBERATION	
SN Msibi	ARD	
Greg Myre	THE ASSOCIATED PRESS	
D Mbonxa	AGF	

(N)

BY Ncoyini
R Nelushi
J Ngwenya
LK Ngoma
M Nkosi
Kaizer Nyatshumba

CISKEI NEWS
TNT UPDATE
REUTERS
RADIO TRANSKEI
ZDF TV
THE STAR

(O)

KD Oosterbroek
JL Oosthuizen

THE STAR
SABC

(P)

S Parkin
Debora Patta
Mark Peters
C Petterson
M Phethle
Estelle Pienaar
N Pincus
A Pinder
Rodney Pinder
C Portier
MP Prinsloo

ASS.PRESS
RADIO 702
NEWS WEEK
DAGENS INDUSTRI
THE UPDATE
SABC
BUSINESS DAY
BBC
REUTERS
SWISS TV
BEELD

(Q)

Angela Quintal

THE CITIZEN

(R)

G Radebe
MD Ramatsui
Dandy Rametsi
SG Ralo
A Rossouw
D Roux
F Rosseau
G Rein
CM Russel
E Ransdell

ITN
S.A.COMMUNICATION NEWS
AFRICAN NEWS
CBS
BEELD
BEELD
DIE TRANSVALER
ARD GERMAN RADIO
AFP
U S NEWS

(S)

D Sanai
NT Salman
B Saul
P Seboko
B Selebi
ST Selepe
S Sekola
H Serfontein
D Shange
Scheepers
S Shorkend
N Simangaliso
A Singh
Z Sisulu
E Sithole
J Skeet
C Smitt
C Sols
J Sousa
A Sparks
S Stanford
B Stemp
M Subramoney
A Swart

AFP
TRANSKEI
THE MAIL
SOWETAN
ANV VIDEO UNIT
SA UNION OF JOURNALIST
CITY PRESS
VRYE WEEKBLAD
RADIO ZULU DURBAN
SABC
VRYE WEEKBLAD
SABC
FM
NEW NATION
NEW NATION
BBC MEDIA
SUNDAY TIMES
DYNAMID IMAGES
BEELD
THE OBSERVER
SWEDISH TV
SABC
P.T.I.
ARD TV

(T)

P Taylor	WASHINGTON POST
W Teng	XINHUA
J Terhorst	NRC HANDELSBLAD
M Thanda	SABC
P Thornycroft	SUNDAY STAR
Titus	TNT UPDATE
M Del Torcato	AIM
MJP Tshungu	SABC
A Tyler	S.A.EXCLUSIVE
RH Tyson	DETROIT FREE PRESS

(V)	
M Van Der Meijdea	SABC
PA Van Niekerk	VOLKSKRANT
P Van Nuijsenberg	GPD
J Van Schaik	FIN EKON TIJD
LN Van Tilburg	SABC
E Van Wyk	SAPA
R Van Zyl	SABC
L Venter	SABC
R Viljoen	S.A. MEDIA PRODUCT
R Von Lucius	FRANKFURTER ALG
Von Sobeck-Skal	ZDF

(W)	
P Waldmeir	FINANCIA TIMES
E Waugh	THE STAR
E Wessels	NEGOTIATIONS
T Westhuizen	DIE BURGER
M Whitaker	NEWS WEEK
C Whitfield	NATAL HERCURY
IZ Wojcik	POLISH NEWS AG
S Luc Waltinne	AGF

(Y)	
E Yssel	SA COMM SV

(Z)	
ES Zondo	SABC
W Zian	PEOPLE'S DAILY OF CHINA
A Zoubov	RUSSIUN TV
W Zwane	BUSINESS DAY

DIAL GROUP NUMBER:

0036

SAUK	011-714-2440
RADIO METRO	011-726-2914
ANN KEYS	011-714-2440
SOWETAN	011-474-8834
OR	011-474-0652
MNET	011-889-21971
SA PRESS ASSOCIATION	011-331-7473
DAILY NEWS	031-308-2222
DIAMOND FIELD ADV.	0531-25881
ILANGA	031-309-3489
POST NATAL	031-308-2427
PRETORIA NEWS	012-28-7166
SUNDAY TRIBUNE	031-308-2222
THE ARGUS	021-488-4075
THE STAR	011-836-8398
SUNDAY STAR	011-838-4714
DIE TRANSVALER	011-402-0037
CITIZEN	011-402-6862
CAPE TIMES	021-488-4762
EP HERALD	041-55-4966
EVENING POST	041-554966
BUSINESS DAY	011-836-0805
SUNDAY TIMES	011-497-2664
FINANCIAL MAIL	011-834-1686
NATAL MERCURY	031-308-2333
BEELD	011-402-1871
DIE BURGER	021-406-2943
RAPPORT	011-402-6163
OOSTERLIG	041-54-2187
VOLKSBLAD	051-47-7363
CITY PRESS	011-402-6501
FIN EN TEGNIEK	011-404-1701
D D J	011-678-8052
AZZURRO	011-728-4909
DAILY DISPATCH	043-143-5155
FINANCE WEEK	011-444-0424
E PIENAAR	012-804-1184
LEADERSHIP SA	011-834-6246
NATAL WITNESS	0331-94-0468
NEW NATION	011-333-2733
SECULO DE JHB	011-834-4511
VRYE WEEKBLAD	011-838-5901
WEEKLY MAIL	011-334-2905
RADIO 702	011-334-2905
CAPITAL RADIO	011-403-3914
WEEKEND ARGUS	021-488-4075
A CARLISLE	011-331-7473

STOCK PRESS	011-789-5273
LEADER	031-28-1751
SA COMMS SERVICES	011-323-3831
GERMAN TV ZDF	011-726-5740
CHANNEL AFRICA	011-714-6422
SWEDEN'S BUSINESS DAILY	011-486-0111
LE MONDE	011-883-4739
SACOB	021-461-5470
FRENCH NEWS AGENCY	011-726-8756
LONDON TIMES	011-29-3297(Fax)
(MICHAEL HANLYN)	011-29-0780(Tel)

**List of Parties/Leaders of Organisations/Administrations/Parties in
the Mult-Party Negotiating Process**

1. AFRICAN NATIONAL CONGRESS

MC Ramaphosa
B Kgosisile

2. AFRIKANER -VOLKSUNIE

C Kruger
C Pienaar

3. BOPHUTHATSWANA GOVERNMENT

R Cronje
R Mangope

4. CAPE TRADITIONAL LEADERS

M Nonkonyana
SN Sigcau

5. CISCHEI GOVERNMENT

MB Webb
VT Gqiba

6. DEMOCRATIC PARTY

CW Eglin
M Finnemore

7. DIKWANKWETLA PARTY

SOM Moji
K Ngwenya

8. **INKATHA FREEDOM PARTY**

FT Mdlalose
FX Gasu

9. **INTANDO YESIZWE PARTY**

NJ Mahlangu
N Mtsweni

10. **INYANDZA NATIONAL MOVEMENT**

SS Ripinga
ND Mokoena

11. **KONSERWATIEWE PARTY**

T Langley
CP Mulder

12. **KWAZULU GOVERNMENT**

BS Ngubane
H Ngubane

13. **LABOUR PARTY**

L Landers
CC August

14. **NATAL/TRANSVAAL INDIAN CONGRESS**

PJ Gordhan
F Hajaij

15. **NATIONAL PARTY**

DJ de Villiers
TJ King

16. **NATIONAL PEOPLE'S PARTY**

A Rajbansi
S Naidoo

17. ORANGE FREE STATE TRADITIONAL LEADERS

MB Mota
M Moroke

18. PAN AFRICANIST CONGRESS

B Alexander
P de Lille

19. SOLIDARITY PARTY

DS Rajah
N Singh

20. SOUTH AFRICANIST COMMUNIST PARTY

J Slovo
L Jacobus

21. SOUTH AFRICAN GOVERNMENT

RP Meyer
CR Brink

22. TRANSKEI GOVERNMENT

Z Titus
N Jajula

23. TRANSVAAL TRADITIONAL LEADERS

LM Mokoena
MF Mngomezulu

24. UNITED PEOPLE'S FRONT

RJ Dombo
A Chabalala

25. VENDA GOVERNMENT

SE Moeti
AK Masehela

26. XIMOKO PROGRESSIVE PARTY

ST Mona
MH Matjokana

REPORT ON MEDIA ARRANGEMENTS

1. It is reported that, in line with the recommendations of the Communications Committee, the following facilities be provided for the electronic media (TV) during meetings of the Negotiating Council:
 - 1.1 A sound feed meeting broadcasting quality; and
 - 1.2 Sufficient lighting in the reconstructed chamber meeting the requirements for making video recordings for broadcasting.
(This implies that agencies wishing to make video recordings use their own video recording equipment during sessions of the Council).
2. In view of the astronomical cost of supplying a video feed of broadcasting quality on a continuous basis (R500 000) of the deliberations of the Negotiating Council, it is not possible to render such a service.
3. In agreement with a decision by the Planning Committee an overflow room to accommodate media representatives and TC members is being prepared, at this point of time only with a sound feed of the proceedings of the Negotiating Council. Tenders are being called for by the World Trade Centre to provide a video relay of proceedings (not of broadcasting quality) and could be installed within the next week.
4. It is recommended that for the meeting of the Negotiating Council of 18 May a temporary arrangement for a video relay be made at the lowest cost possible.

REPORT BY THE PLANNING COMMITTEE TO
THE NEGOTIATING COUNCIL OF 18 MAY 1993
ON MEDIA ARRANGEMENTS

1. It is recommended that, in line with the recommendations of the Communications Committee, the following facilities be provided for the electronic media (TV) during meetings of the Negotiating Council:
 - 1.1 A sound feed meeting broadcasting quality; and
 - 1.2 Sufficient lighting in the reconstructed chamber meeting the requirements for making video recordings for broadcasting. (This implies that agencies wishing to make video recordings use their own video recording equipment during sessions of the Council).
2. In view of the astronomical cost of supplying a video feed of broadcasting quality on a continuous basis (R500 000) of the deliberations of the Negotiating Council, it is not possible to render such a service.
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**EMERGENCY PROCEDURE IN CASE OF OCCUPATION OR THREAT FROM
OUTSIDE THE WORLD TRADE CENTRE**

1. Should it be unsafe or impossible to evacuate all persons within the WTC to the outside, everyone will be shown to a room which has been identified as a place of safety where persons shall be kept until the situation has returned to normal.
2. The safe room is situated in the south-eastern quarter of the WTC, below Mr Neels Swart's office - see Annexure A for precise position of safe room.
3. Don't panic. Be calm. We have planned for any eventuality.
4. Wait for instructions from members of the Multi-Party Security and the health team. Follow instructions strictly.
5. Please move in an orderly fashion.
6. If you are injured, try to remain calm. Trained staff will attend to you immediately.
7. Obey instructions from security personnel and the health team implicitly. They are working in your interests.
8. Upper Level
 - 8.1 All persons in the offices on the upper level move towards the eastern side of the building, down staircase no. 6 and into the safe-room as indicated on the attached floor plan of the upper level.
 - 8.2 Persons in the vicinity of the Planning Committee and Negotiating Council Room, ANC, Kwazulu and Traditional Leaders offices must move down staircase no. 7.
 - 8.3 Persons should not make use of staircase 1, 2 and 3 as this will create heavy pedestrian flow on the lower level where people are also moving towards the safe room.
9. Lower Level
 - 9.1 All persons in the centre well and the adjoining bathrooms move through the steel sliding door to the South of the Centre well to the Safe-room (as shown on the attached floor plan of the lower level).
 - 9.2 All other persons move along the shortest route to the safe room.

Report from the Planning Committee on Guidelines for Demonstrations

1. The Multi-Party Security Force at the World Trade Centre is an impartial force, aimed at the protection and safety of all parties represented in the Negotiating Process. It is here to assist in the security of the World Trade Centre and to ensure the safety of all persons within the premises, as well as to be of assistance to any party or group who wish to exercise their right to demonstrate at the World Trade Centre.
2. Therefore the Planning Committee proposes the following guidelines for demonstrations:
 - 2.1. All demonstrations should take place at the gates of the World Trade Centre. This arrangement is necessary because some demonstrations consists of large numbers and many vehicles/buses and could not safely be accommodated within the fences of the World Trade Centre. Parking within must be reserved for all persons involved in the Negotiating Process.
 - 2.2. Demonstrators should not block the free flow of traffic into the World Trade Centre;
 - 2.3. Demonstrators should not stone or damage buildings, vehicles or any other property in the vicinity of the World Trade Centre;
 - 2.4. The Multi-Party security would welcome dialogue between itself and heads of demonstrations. Any reasonable request regarding facilities at the gate, will be considered with the view of making conditions at the gate as comfortable/hospitable as possible.
 - 2.5. Multi-Party security will assist leaders of demonstrations in forwarding memoranda through Administration to the relevant people concerned. In this regard, parties whom the demonstrators want to meet, should be notified. If such a party does not want to meet the demonstrators, the memorandum should be received by the Head of Administration, who should ensure that the memorandum is subsequently handed to the relevant party.
 - 2.6. By agreement of all the parties, delegations wishing to hand over a memorandum is restricted to three (3) persons who may enter the premises to hand over such a memorandum. However, should the demonstration wish to send a delegation, which consists of more than 3 (three) persons, into the World Trade Centre, then this request should be directed to Multi-Party security who shall take this request to the Head of Administration, for consideration/approval.

MULTI-PARTY SECURITY

CODE OF CONDUCT

As in all security structures, there exists a set of rules which guides the effective workings of such structures, so to must the Multi-Party Security be guided by a set of guidelines whereby there can be maximised discipline and greater efficiency in the tasks that we set out to do.

Therefore this code of conduct is specifically aimed to achieve these goals.

1. Security, being composed of different parties/organisations/administrations, it is essential that all members of this security must at all times be impartial in carrying out our tasks.
2. All orders from the Command Structure must be strictly adhered to.
3. Our task, as Multi-Party Security is the protection of all individuals who are part of the negotiating process, as well as the protection of the property of the Multi-Party Process. It is therefore required of us that when we are assigned to a post, it should be strictly maintained at all times and throughout the duration.
4. Members should at all times be punctual on duty and also punctual at their posts. Members who are absent without due cause will be viewed in a serious light with the command structure taking the necessary disciplinary measures.
5. It is incumbent upon us that we should at all times be neatly attired. As we are integrally part of this process, we therefore reflect the image of the process.
6. Members should approach people of this process with the necessary courtesy and respect and this should be equally applied in all cases.
7. Drinking or being drunk on duty will not be tolerated. This will lead to immediate dismissal.
8. The following disciplinary measures will be taken if this code of conduct is violated:
 - 8.1 Members will be given a initial warning failing which, the particular member will be marked absent for the day;
 - 8.2 If the member's violation of this code persists, a letter from the Command structure via Dr T Eloff will be sent to his/her party, requesting that members removal from the Multi-Party Security.
9. Any complaints/grievances as regards the working conditions, or any other problem experienced, should be taken up with the command structure. Members of security should refrain from consulting party members with internal security arrangements/problems. Security members should under no circumstances engage in arguments among each other - any problem must be solved in consultation with any of the four (4) commanders.

**RECOMMENDATION TO THE NEGOTIATING COUNCIL
BY THE PLANNING COMMITTEE**

**PROPOSAL REGARDING REPEAL OF LEGISLATION IMPEDING FREE
POLITICAL ACTIVITY AS WELL AS DISCRIMINATORY LEGISLATION**

1. We propose a two person overall task group which would be responsible for identifying legislation in the SA Statute book as well as setting up and coordinating four sub-groups charged with identifying legislation in each of the four TBVC territories.
2. The overall task group will consist of:
 - a) A person seconded from the Ministry of Justice
 - b) Professor Johann Van der Westhuizen who is the director for the Centre of Human Rights, law faculty, University of Pretoria; Professor and head of the Department of Legal History, Comparative Law and Legal Philosophy, University of Pretoria.
3. The overall task group, in setting up sub-groups must ensure that in the case of each of the TBVC territories, a person seconded by the Ministry of Justice from the respective TBVC territories is included in the sub-groups.
4. The overall task group as well as each of the sub-groups should work continuously and file periodic reports for the attention of the MPNP.

30 September 1998

SUMMARY OF THE SUBMISSIONS RECEIVED FROM
PARTIES NOT REPRESENTED IN THE MULTI--
PARTY NEGOTIATING PROCESS

A. *TRADITIONAL LEADERSHIP*

1. *College of Magoshi in Lebowa :*

- 1.1 Traditional leaders should be entrenched on a local level;
- 1.2 Traditional leaders must also participate on regional as well as central level, but only in an advisory capacity.

B. *THE POSITION OR PARTICIPATION OF WOMEN AND GENDER ISSUES:*

Submissions in this regard were received from the following sources :

- 1. Annette Reyneke (document No. 49, volume 13). She contends that, as over 50% of the adult population consists of women, there should at least be a 25% representation of women in all public offices, including State and quasi State boards, public boards such as Transnet, Telkom, Eskom and boards of companies listed on the stock exchange, etc. Apparently she wants this prescription to be included in the constitution.
- 2. Women's National Coalition (document 74, volume 17).
 - 2.1 Constitutional principles "do not deal with the question of the clash between culture and equality or religion and equality. This should be dealt with and can be done so in a number of ways :
 - (a) Equality can override the exercise of cultural and religious rights;

- (b) Equality can override cultural rights only; or
- (c) Equality can override cultural and religious rights where these provide lesser two rights to persons (and particularly) than they would obtain if they were subject to the system of civil law."

2.2 The second point raised is that it should be clearly stated that "customary law will be applicable insofar as it is compatible with the provisions of the fundamental rights contained in the constitution and in particular with the right to equality and non-discrimination. This should not only apply to 'indigenous law' or African customary law; but also to all systems of custom and customary law that affect the inhabitants of South Africa (including Muslim law)".

2.3 In essence, the proposals are that the status of women or their rights should not be undermined through the exercise of a particular culture, either in the form of religion, or customary or indigenous law.

C. *SEXUAL ORIENTATION* :

Submissions in this regard were received from:

1. Members of the "gay" community. Tens of letters from individuals who claimed to be gays, were received. However, they were virtually all identical. They pleaded for recognition of their right to lead that kind of life.
2. On the other hand, an opposing submission was made on behalf of the Kwazi-Bantu Ministers' Conference (document 75, volume 17). They contend that the constitution should make no provision, or afford any protection to, such thing as the right to "sexual orientation".
3. The Ark Christian Ministries Church also support the other ministers in their submission of 12 October 1993.

D. ON THE ISSUE OF LANGUAGES:

Submissions in this regard were received from the English Academy of Southern Africa (document 90, volume 18). It makes the following submissions with regard to the question of official status of languages :

"Although it is desirable that all eleven languages normally recognised as the main languages spoken in South Africa should have equal status, the only practicable solution is to make one language the language of communication. The other languages should all have official status at various levels of public life. In various circumstances, and possibly on a geographical basis, to be laid down in broad terms in the constitution and spelt out in more details in corresponding legislation. The exact nature of requirements for multi-lingual use such as parallel use or the provision of translation would also be spelt out.... The English Academy of Southern Africa proposes that English should be the main official language of South Africa."

E. ALLOCATION OF POWERS : LOCAL/SPR/NATIONAL GOVERNMENTS :

1. The following submissions were received:

1.1 *Electricity Supply Commission (document 91, volume 18).*

With regard to the issue of electricity supply, ESCOM contends that the regulation thereof should be on a national level, and not regional. They state their case as follows :

- 1.2 Accelerated and efficient electrification is vital for national survival and prosperity;
- 1.3 Regulation to be made simpler and benign, and should be allocated to first tier government.
- 1.4 Distribution area boundaries should be independent of second tier government boundaries.
- 1.5 Large scale generation and transmission regulated nationally.
- 1.6 Second tier and third tier Government influence on distribution enterprises

policy limited to stake holder and not as regulators.

- 1.7 The allocation of the powers, functions of second tier governments and the demarcation of their geographic areas should not constrain future decisions concerning the structure of the Electricity Supply Industry (including distribution areas) and the associated regulatory system.

2. *National Electrification Forum (Document 120, volume 22)*

In essence, the forum supports the submissions made by Telkom, Escom and the Rand Water Board. They argue for "an integrated national policy and institutional approach" to resolve problems relating to the supply of electricity. However, they suggest that the actual implementation of the policy should take place at regional and local levels. The call for an integrated national policy and institutional approach is motivated as follows :

- 2.1 "There is an existing backlog of approximately 3,8 million electrified houses;
- 2.2 The electricity distribution industry (EDI) is severely fragmented, with some 500 different local authorities being responsible for distribution;
- 2.3 The matter is further complicated by the apartheid by approximately 1 000 different legally promulgated domestic tariffs."

3. *Telcom SA Limited (document A94, volume 19)*

Telcom argues that the regulatory body over telecommunications should be central. It is important, so argues Telkom, that "the main functions of the regulatory body would be : (i) to provide a consistent and uniform interpretation and implementation of a national telecommunications policy and its objectives, such as the affordable provision of telephone services to all citizens, and adequate service levels, (ii) to act as a watchdog and/or arbitrator to ensure a level playing field in the telecommunications competition arena. These objectives would be hard to achieve if Regions had autonomous powers in this regard." In brief, it argues that telecommunication should be under central government. Telkom also argues for a uniformity of standards and service levels throughout the country.

4. *The Procurement and Supply of Water*

Submissions were received from the Rand Water Board. It argues that the procurement and supply of water should be entrusted to a national government and should not be regionalised. The motivation being :

- 4.1 such procurement and supply presently crosses, not only provincial, but also national boundaries; for example, the PWV area is supplied from the Tugela river in Natal and, according to the Board, we should receive water from the Kingdom of Lesotho in the near future.
- 4.2 "In view of the fact that water is an extremely scarce commodity its conservation, wise utilization and transfer between communities is already a matter of national concern and this aspect is likely to become much more important in the future".

5. *South African Chamber of Business (Document 117, Volume 22).*

Their submissions deal mostly with issues outside our committee's brief, namely, as fundamental rights. Nevertheless, the chamber suggests that in the drawing up of the constitution, the following guidelines should be taken into account :

- 5.1 That the constitution should not be overdetailed when it comes to the "exposition of the future constitutional, legislative and administrative roles of the regions, but (however) to express such competencies in general terms;
 - 5.1.1 "Avoidable costs of Government"
 - 5.1.2 "Scrutiny of public expenditures by the Auditor General."
 - 5.1.3 "Limits on the taxation powers of the regions."
 - 5.1.4 Details concerning such competencies may only be spelt out after consultation with "all interested parties, including organised

business."

- 5.2 In its subsequent submission, dated 13 August 1993, SACOB calls for a speedy and permanent resolution of as many matters as possible which have a bearing on business confidence and future business decisions.

It also calls for the inclusion of property rights. It also calls for some close attention to inter-government relationships with respect to mobilization and deployment of capital, public and private.

6. *Submissions by Transnet - 29 September 1993*

Transnet submits that the competencies of the national and SPR governments should be defined with more precision, particularly with regard to the following areas:

- 6.1 Road Traffic;
- 6.2 SPR tourism and recreation;
- 6.3 SPR roads;
- 6.4 SPR Public Transport.

It would be a fair summary to their submissions to state that, by and large, they plead for a clearer definition of competencies to be assigned to various levels of government. The memorandum focuses on provisions of section 118 and 38.

F. *ON THE ISSUE OF THE OMBUDSMAN*

1. A memorandum in this respect was received from his Lordship, Justice van der Walt, the present Ombudsman. Several suggestions are contained therein, inter alia,

- 1.1 Retention of the title " Ombudsman" on the basis that it has no gender connotations and that it is accepted worldwide as being gender neutral.
- 1.2 The office of an Ombudsman should be national ; that is to say there should be one national Ombudsman assisted by, possibly , deputies or assistants throughout the regions.
- 1.3 That the present act, namely, the Ombudsman act

G. SELF DETERMINATION :

1. *Afrikaner Vryheidstigting : (document 38, volume 10)*
2. *Afrikaner Freedom Foundation (document 39, volume 10)*

These two institutions did not spell out their submissions in clear terms. All they did was to make photocopies of some books or publications and simply submitted them.

3. *Submissions by a S Van Gass (document 93, volume 19)*

- 3.1 He argues for what appears to be federal, or even confederal South Africa. He advocates the constitutional dispensation that would provide "equal right of access to the main production resources within our common boundaries for individuals from any group, while at the same time allocating, in a very special manner (he does not say in what manner) indisputable portions of land to every group (he does not describe how each group should identify itself) where each can preserve and cultivate its own characteristic lifestyle and identity ... In practice, the rights and privileges defined must be real, but formulated in such a manner that the advantages gained by anyone through it will imply the least possible disadvantage to others."

He calls for the creation of "group specific states to those groups or nations demanding political sovereignty, thereby overcoming demographical deadlocks in the allocation of land, which is required to provide the absolutely essential guarantee of security to each and every group."

H. ADMINISTRATION OF JUSTICE

1. *Submissions by Die Vereniging van Prokureursordes van die RSA.*

The most outstanding features of these submissions are :

- 1.1 The establishment of "High Courts". These Courts would be immediately below the Supreme Courts;
- 1.2 Appointment of judges. Here the most unique aspect is the suggestion that only those people who have served as judges in the higher courts would qualify to be appointed to the Supreme Court.

2. *Submissions by the Appeal Court (The Honourable Justice MM Corbett)*

- 2.1 The submissions concern mainly the establishment and composition of the Constitutional court. Briefly, the following are suggested:
- 2.2 That the Constitutional Court should form a Chamber of the Appellate Division, that is, there should not be a separate Constitutional Court.
- 2.3 All appointments of Judges of the Constitutional Court should be by the Judicial Service Commission and not as suggested by the draft Constitution.
- 2.4 Qualifications for the appointment to the Constitutional Court should be tightened up. It is argued that as they stand, even a lay person (ie. a non lawyer), can be appointed to the Constitutional Court. It is argued, ideally, the Constitutional Court should consist mainly of the Judges of the Appeal Court.
- 2.5 It is argued that were the Constitutional Court form part of the Appellate Division, matters would be dealt with expeditiously, that the status of the Appellate Division would not be adversely affected, and that, in any event,

the present judges are sufficiently equipped to exercise the jurisdiction envisaged for the Constitutional Court.

3. *Submissions by the Women's National Coalition*

Their submissions also pertain to the Constitutional Court issue.

3.1 Re: Membership of the Court and the appointment of Judges. It is argued that the bench should be as representative as possible. Special reference is made to the representation of women. Whatever method of appointment is adopted, it "should be one that firstly takes a representative bench". It is argued that there should be a constitutional principle calling for representative appointment in all public bodies, including the Constitutional Court, with due regard to race and gender.

3.2 Re: The Judicial Service Commission

The memorandum is critical of the suggested composition of the Judicial Service Commission. It is argued that such composition "will ensure that no woman is on it." It is suggested that a deliberate attempt be made to ensure that one of the appointees will be somebody with legal training and specialised knowledge of gender issues.

3.3 Re: The Jurisdiction of the Constitutional Court

It is suggested that section 87 (2) (c) should be reformulated in such a way as to make it clear that the Constitutional Court will have jurisdiction over such customary laws as Muslim and Hindu laws. A reformulation is suggested as follows : "... the constitutionality of any law including common law and all forms of customary law and an Act of Parliament...".

3.4 Re: Right of Appearance

It is suggested that the right of appearance before the Constitutional Court should be extended not only to attorneys but all people with legal qualifications, including academics and people employed in NGO's.

4. *Submissions by the Law Review Project -7 October 1993*

The memorandum deals exclusively with the question of a special Constitutional Court. After making a useful survey and comparative study of various countries, the memorandum finally opposes the creation of such a separate court. Several issues are raised and criticised in the part of the memorandum entitled "Conclusion". Briefly, the grounds on which the creation of such a separate court is opposed, are:

- 4.1 That finalisation of matters will be delayed;
- 4.2 There would be duplication, with costs running high;
- 4.3 That such a court does not necessarily need specialised skill;
- 4.4 That the representativity of the society does not justify its creation as a separate court. Finally, it is argued that in the event of such a court being created, it should act as a final court of appeal only, and as a special chamber of the Supreme Court. "Appeals in which constitutional and non constitutional questions must be decided should be heard by both the regular Supreme Court and this special chamber sitting together. This is the only way to ensure that the establishment of a separate constitutional court will not make litigation more expensive and time consuming for the general public as it is at present."

The memorandum also contends that the present legislation, as it stands, is adequate to achieve the above dispensation.

I. *ON THE DISTRIBUTION OF FUNDS IN THE REGIONS*

1. *Submissions by the Durban Regional Chamber of Business*

This body draws attention to the fact that the Natal/KwaZulu region has, for many

years, been underfunded in many aspects. A memorandum is attached to their submissions, which recognises certain socio-economic indicators, divided into four broad groups, in respect of which the regional had been neglected:

(a) Health and demography.

Reference is made to several factors, including high infant mortality rate, diseases associated with poor socio-economic conditions etc, it is contended that, despite all these, "the region has continued to be grossly underfunded in respect of government health services relative to other regions in South Africa, both as regards budget provision per capita and budget provision per hospital bed."

(b) Immunisation and infrastructure

It is argued that although the region had the second highest population density in 1990, the urbanisation per ratio is well beyond that of the national average. Although Natal's roads on average carry the heaviest traffic per kilometre and traffic volume has increased by 60% over the past ten years, funds made available to the region for the construction, abilitation and maintenance have decreased in real terms by 55%

(c) Educational matters

"Natal/KwaZulu has the third lowest expenditure per pupil and has the highest pupil/teacher ratio of 40:1. KwaZulu itself has the lowest expenditure per pupil amongst the Self Governing territories' educational departments."

(d) Economic Situation

"In 1990 whereas the region was home to approximately 23% of South Africa's population, it generated only 14% of the country's Gross Domestic product (GDP). Consequently GDP per capita is the second lowest among the nine development areas of South Africa. Furthermore, Natal/KwaZulu has the second highest unemployment rate in South Africa." The region is thus " is a severely underdeveloped region despite a virtually equal population, it receives government consumption spending of less than one third of that of the PWV region with a similar population size. "

J. *INTERNATIONAL LAW AND TREATIES*

1. *Joint submission by Professors MG Erasmus, DJ Divine and CJ Dugard. It is proposed that :*
 - 1.1 The following clause be included in the Constitution: "International law binding upon South Africa, shall, unless otherwise provided for in this Constitution or by express provision in an Act of Parliament form part of the law of South Africa."
 - 1.2 The second clause proposed would be to govern the negotiation and signing of international agreements, their approval by parliament, as well as their publication in the government gazette.
 - 1.3 The above submissions constitute a significant departure from the current legal position. The Ombudsman Act 118 of 1979 could be adhered to and only be departed from if its a real and meaningful and above all practical and functional improvement..."
 - 1.4 The Ombudsman be appointed by the National Assembly.
 - 1.5 That his powers be as wide as possible.
 - 1.6 That the ombudsman should have the same qualifications and be appointed and removed from office in the same manner as a judge.

K. *MISCELLANEOUS*

1. *Submissions from the Afrikaanse Handels Instituut, 4 October 1993*

This memorandum deals with a number of issues:

1.1 The preamble

It is suggested that the first paragraph of the preamble should include the fundamental concept of freedom, and, specifically personal liberty.

It is contended that conceptually and politically, democracy and equality are not necessarily equivalent to and will not necessarily guarantee the upholding of personal liberties.

1.2 It is contended that section 28 of the draft constitution is superfluous and should be left out in the light of sections 17, 16 and 27. It is argued that the rights of employers and employees should not be constitutionalised in such specific details;

They should be left to legislation.

1.3 It is also contended that Constitutional Principle XXV of Schedule 7 to the constitutional draft is superfluous and provides a bias in the direction of a corporatist state and a collectivist economic system;

It is argued that it is not a Constitutional Principle at all.

1.4 It is also suggested that the size of the national parliament should be reduced by at least 100, for economic reasons. It is suggested that there be "regional senates" of about 20 people to each SPR, the argument being that "this could effectively prevent serious geographical bias in the SPR legislatures and in the SPR governments".

1.5 It is also argued that the areas of training, manpower policy, labour legislation and labour market institutions should be added to the list of concurrent competencies listed in section 118 of chapter 9 of the proposed interim constitution. the argument being that, as the SPRs have concurrent powers on education, it will be illogical to deny them similar powers with regard to the instances referred to.

2. *Memorandum by Peter S Clark -July 1993*

2.1 He calls for the creation of a federal republic of South Africa, divided into

autonomous 9 cantons indicated and identified in the map he has drawn up. taxation must be done by both the federal and canton governments, with fixed percentages. Pretoria to be a federal district, and not to be apart of any canton.

- 2.2 The proposed constitution should be approved in a national referendum, with a minimum two thirds majority, " followed by Supreme Court ratification." No elections to be held before that stage.

1. Appointment of the Prime Minister

The President shall appoint a Prime Minister who shall be responsible for the management of the Cabinet and, in the absence of the President, shall be accountable to Parliament for the policy of the government of national unity.

2. Appointment of Ministers

(1) The Cabinet shall consist of the President, the Deputy President, the Prime Minister and the Ministers appointed by the President in accordance with the provisions of this section.

(2) All parties with more than 40 seats in the National Assembly shall be allocated seats in the Cabinet in proportion to the seats held by them in the National Assembly.

(3) The allocation of specific portfolios to the parties qualifying for seats in the cabinet shall be made by the President, after consultation with the Deputy President and the leaders of the qualifying parties.

(4) The appointment of a minister to a portfolio allocated to a party in terms of subsection (3) shall be made by the President in consultation with the leader of such party.

(5) The President shall terminate the appointment of any Minister if requested to do so by the leader of the Party from which such Minister was chosen.

(6) If a vacancy in the Cabinet occurs as a result of the death of a Minister, or for any other reason, the President shall fill the vacancy in consultation with the leader of the party to which such seat was allocated.

3. Decision making process in the Cabinet

(1) The Prime Minister, in consultation with the Cabinet, shall formulate the policy to be followed by the government of national unity, and in consultation with the Ministers concerned, the policy or policies to be followed in the administration of the department or departments under the control of such Ministers.

(2) Decisions concerning the policy of the government of national unity, or changes in such policy shall, where possible, be taken in terms of subsection (1) by consensus: provided that if consensus cannot be achieved, the support of two-thirds of the members of the Cabinet shall be sufficient for the adoption of the policy.

(3) The policy of the government of national unity including the policy of each department of government shall be submitted by the Prime Minister to the President for his or her approval, and if approved by the President after consultation with the Deputy President, shall be submitted by the President to Parliament for confirmation at a joint

sitting of the National Assembly and the Senate.

(4) The President shall address the joint sitting and outline the policy to be followed by the government of national unity, and that policy shall be debated at the joint sitting.

(5) If Parliament fails to confirm the policy of the government of national unity submitted to it for its confirmation in terms of subsections (3) and (4), or if such policy is not submitted to it by the President for confirmation within a period of 90 days from the date of the election of the President, the Cabinet shall be dissolved and a new Cabinet shall be appointed by the President in accordance with the provisions of section 2.

(6) The provisions of subsections (1), (2), (3) (4) and (5) shall apply mutatis mutandis to the newly appointed Cabinet, save that the period of 90 days referred to in subsection (5) shall commence on the date of dissolution of the previous Cabinet.

4. Implementation of cabinet policy

(1) Ministers shall administer their departments in accordance with the policy determined in terms of section 2.

(2) Ministers shall seek the approval of Parliament to the policy adopted in terms of section 2 for the administration of the department or departments for which they are responsible, and the implementation by them of such policy, on the occasions when the budgets for such departments are submitted to Parliament for approval.

(3) If Parliament fails to give its approval to such policy, the President may dismiss the Minister, or may request the Prime Minister, in consultation with the Minister concerned, to amend the policy to be followed by that department.

(4) If the President elects to dismiss the Minister in terms of subsection (3) he or she shall forthwith take steps to appoint a new Minister for that department in accordance with the provisions of section 2, and the newly appointed Minister shall reformulate the policy to be followed by that department in consultation with the Prime Minister.

(5) The policy of the department amended in terms of subsection (3), or reformulated in terms of subsection (4), shall be submitted to the President for his or her approval, and if so approved shall be submitted to Parliament for its approval.

(6) If Parliament fails to give its approval to such policy, or if such policy is not submitted to Parliament for approval within 30 days of the date on which the decision of Parliament in terms of subsection (3) was taken, the President shall either dissolve Parliament, or appoint a new Prime Minister, in which event the cabinet shall be dissolved and a new cabinet appointed.

(7) If the cabinet is dissolved and a new cabinet appointed, the provisions of sections 2 and 3 and the provisions of this section, shall mutatis mutandis apply to the appointment of the new cabinet, the formulation and approval of the policy of the new

government, and the formulation of the policy for the administration of its departments.

(8) If a Minister fails to administer the department for which he or she is responsible in accordance with the policy approved in terms of section 3, the President may either require the Minister concerned to bring the administration of such department into conformity with the agreed policy, or, after consultation with the Minister and the leader of his or her Party, dismiss the Minister.

(9) If Parliament is not satisfied with the way in which the government of national unity is functioning, or the way in which a Minister administers a department for which he or she is responsible, it may express its disapproval through a vote of no confidence in the government, or in the Minister, as the case may be.

(10) If a vote of no confidence is passed by Parliament in the government, the provisions of subsections (6) and (7) shall *mutatis mutandis* be applicable.

(12) If a vote of no confidence is passed in a Minister the President shall dismiss the Minister.

Note: Provision must be made for secrecy of cabinet deliberations.

6 October 1993

EXPLANATORY MEMORANDUM ON PROGRESS ON THE CONSTITUTION FOR THE TRANSITION.

There are a number of matters regarding the Constitution for the period of the transition addressed in previous reports, on which no definitive decisions have as yet been taken by the Negotiating Council. Urgent instructions on these matters are required in order to finalise the constitutional text, bearing in mind the time constraints.

In this memorandum, some of the most important outstanding matters requiring the urgent attention of the Council are listed (See Addendum A).

There are also various matters which have not as yet been addressed by the Technical Committee, which should be included in the Constitution. The Committee is in the process of preparing texts and accompanying reports on these matters. These matters not yet considered are listed in the memorandum as well (See Addendum B).

In order to facilitate the speediest processing and refining of the constitutional text, attached for your consideration, is a schematic representation of the status of the clauses of the draft constitutional text (See Addendum C).

For quick reference a table describing the status of the clauses is divided into the following categories indicated by an √

Clause:	Indicating the clause being referred to
Discussed:	Indicating that the clause has been discussed in Council
Referred to PC/bilaterals	Indicating that the clause has been referred to the Planning Committee and or bilaterals for resolution
Referred to TC	Indicating that the clause has been referred back to the Technical Committee by the Council for reconsideration
Agreed/No Comment:	Indicating that the clause has either been agreed to by Council or that no comments were made when it was discussed.
Revisited:	Indicating that the Council has agreed to revisit the clause
Submissions:	Indicating that it was agreed that participants would submit submissions on the relevant clause

either to the Planning Committee or the Technical
Committee

A question was raised during the debate regarding the procedure for the adoption for ordinary legislating where it is passed by one House and rejected by the other. Under the present Section 58(3) such legislation shall be referred to a joint committee consisting of members of all parties represented in Parliament to report on proposed amendments, whereafter the Bill shall be referred to a joint sitting of both Houses which may adopt the Bill by a majority of the total number of members. We were requested to investigate other possible ways to resolve such a deadlock.

Different methods can be identified to achieve consensus between the two Houses.

1. Adoption by a joint sitting of both Houses by a special majority of the members of both Houses.
2. If the two Houses can't agree after a minimum period of eg 3 months, Parliament can be dissolved to consult the Electorate.
3. A process where Bills are considered and amended by each House and then be submitted to the other until agreement is reached (la navette).
4. Reference of the Bill to an arbitration committee consisting of an equal number of members from both Houses.

1. Introduction

On 18 May the technical committee was requested to undertake the following tasks by the Negotiating Council:

- 1.1.1 Provide the Negotiating Council with a report on constitutional principles.
- 1.1.2 Consider and report on the structures, powers and functions of states/provinces/regions (SPR).
- 1.1.3 Present proposals on various issues pertaining to the constitution-making process.
- 1.1.4 Provide the Negotiating Council with recommendations on how best the discussions within the Negotiating Council on these issues should be structured.

On 30 June the Negotiating Council agreed:

**RESOLUTION ON STEPS TO BE TAKEN FOR THE
PURPOSES OF ESTABLISHING A NEW CONSTITUTIONAL ORDER
ADOPTED BY THE NEGOTIATING COUNCIL ON 30 JUNE 1993**

1. The Negotiating Council agrees on the following steps to be taken for the purposes of establishing a new constitutional order:
 - 1.1 *The MPNP shall adopt the Constitutional Principles, including principles of regional government, providing for both strong regional government and strong national government;*
 - 1.2 *The Constitutional Principles shall be binding on the Constitution-Making Body and shall be justiciable by a Constitutional Court/Tribunal;*
 - 1.3 *The Commission on Delimitation/Demarcation appointed by the MPNP will make recommendations to the MPNP on regional boundaries for the purposes of elections and regional government for the transitional phase;*
 - 1.4 The MPNP shall agree on legislation to make provision for the following structures for the purpose of levelling the playing field and promoting conditions conducive to the holding of free and fair elections:
 - 1.4.1A Transitional Executive Council;
 - 1.4.2An Independent Electoral Commission;
 - 1.4.3An Independent Media Commission and an Independent Broadcasting Authority;
 - 1.5 The MPNP shall agree on details of discriminatory

legislation to be repealed;

- 1.6 The MPNP shall agree on a Constitution for the transitional period;
2. The Negotiating Council accordingly requests the Technical Committee on Constitutional Issues to draft a Constitution for the transition which shall make provision for:
 - 2.1 The election according to a system of proportional representation of a Constitution-Making Body, legislature and national government for the transitional phase which will include a national and regional component. With regard to constitution making, this Constitution shall provide for dead-lock breaking and special majorities by which decisions will be taken;
 - 2.2 The election of regional legislatures and the establishment of regional governments in the transition;
 - 2.3 The powers, functions and structures of regions for the transitional period;
 - 2.4 Fundamental human rights on a justiciable basis during the transitional period;
 - 2.5 A Constitutional Court/Tribunal to ensure the justiciability of the Constitutional Principles, of the fundamental rights and of the Constitution itself;
3. Participants are given until the 12th of July 1993, to make further inputs to the Technical Committee with regard to the above draft Constitution for the transition.
4. This is agreed against the background of paragraph 6 of the Explanatory Memorandum adopted by the Negotiating Council on 30 April 1993.

The technical committee drafted the following reports in response to the tasks they were given by the council. The following is a record of the agreements made in council in response to the reports of the technical committee:

Constitutional principles
confederalism
self determination
constitution making process
TBVC states
SPRs
Constitution making body

The Appointment, remuneration and tenure of office of judges.

(1) (a) The Chief Justice, the judges of appeal, the judges president, the deputy judges president and all other judges of the Supreme Court shall be fit and proper persons appointed by the President under his hand and the seal of the Republic of South Africa, and shall receive such remuneration as may be prescribed by or under the Judges Remuneration and Conditions of Employment Act, and their remuneration shall, subject to the provisions of section 7(4) of the said Act, not be reduced during their continuation in office:

(2) Any person appointed under subsection (1) shall before commencing to exercise the functions of his office take an oath or make an affirmation, which shall be subscribed by him, in the form set out below, namely_



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(b) Any such oath or affirmation shall be taken or made before the senior available judge of the division concerned who shall at the foot thereof endorse a statement of the fact that it was taken or made before him and the date on which it was taken or made and append his signature thereto.

(3) Whenever it is for any reason expedient that a person be appointed to act as a judge in the place of any judge of that division or in addition to the judge of that division or in any vacancy in that division, the President may appoint some fit and proper person so as to act for a period as the President may determine.

(4) The Minister may in the circumstances mentioned in subsection (3) appoint some fit and proper person to act in that subsection for any period not exceeding one month.

(5) No person other than a judge or former judge of the Supreme Court shall be appointed to act as Chief Justice or Judge of appeal.

(6) Any appointment made under this section shall be deemed to have been made also in respect of any period during which the person appointed is necessarily engaged in connection with the disposal of any proceedings in which he has taken part as a judge and which have not been disposed of at the termination of the period for which he was appointed or, having been disposed of before or after such termination, are reopened.

(7) The Chief Justice, a judge of appeal, or any other judge of the Supreme Court, shall not be removed from office except by the President upon an address from both the National Assembly and the Senate in the same session praying for the removal on the grounds of misbehavior, incapacity or incompetence initiated by the Judicial Service Commission.

CHAPTER 12

General and transitional provisions

(1) Provisions relating to:

- The legal system (continuation of statutory and common law subject to the Constitution, unification of provincial ordinances, TBVC laws and laws of the self-governing territories with national and SPR law, recognition of indigenous law);

Continuation of laws

1. Subject to the provisions of this Constitution, all statutory and common law which will enforce in the Republic of South Africa excluding the TBVC states immediately prior to the entry in to force of this Constitution shall remain in force until repealed or amended by the competent legislative authority, or until declared unconstitutional by a competent court.
2. Any rule of law which was in force in the TBVC states immediately prior to the reincorporation of such a state, shall continue to be in force until repealed or amended by the competent authority, provided that laws which fall under the legislative competence of a SPR shall cease to exist on the date of reincorporation.

Existing International Agreements

Any rule of law which was in force immediately prior to the date of reincorporation of the TBVC state, shall continue to be in force until repeal or amended by the competent authority.

South African law shall apply to all the functional areas when SPR shall have no competence according to this Constitution.

- The status of international law;
 1. All international agreements binding on the Republic of South Africa immediately prior to the commencement of this Constitution shall remain in force, unless and until Parliament decides otherwise.
 2. (International agreements) entered into between the government of

the RSA and the governments of the TBVC states which are still in force prior to the commencement of this Constitution shall be taken over by the SPR into which a TBVC state is incorporated insofar as it relates to and is capable of being applied to such SPR.

3. International agreements binding upon the Republic of South Africa under this Constitution shall form part of the law of the land. Unless otherwise provided by this Constitution or Act of Parliament the rules of customary international law binding on South Africa shall form part of the law of the land.

GENERAL AND TRANSITIONAL ARRANGEMENTS

1. Prescription of penalties

Subject to the provisions of this Constitution the competent legislature may prescribe penalties in respect of the contravention of any provision of law which falls within the competence of such legislature.

2. Continuation of the electoral system

- (1) Subject to the provisions of this Constitution the provisions of Schedule 5, all other provisions of this Constitution relating to the holding of elections and the provisions of the Electoral Act, 1993 shall remain in force until a further parliament is elected in accordance with the provisions of Chapter 5 or in accordance with a new constitutional text adopted in terms of Chapter 5.
- (2) Any referendum shall take place in accordance with the provisions of this Constitution relating to the holding of elections and the provisions of the Electoral Act 1993, provided that:
 - (a) Such referendum shall be only for the ascertaining of the opinion of the electorate on a question formulated by the President;
 - (b) A referendum may take place in respect of any part of the country or any part of the electorate; and
 - (c) The Premier of an SPR may call a referendum in respect of the territory or electorate of the SPR concerned, in which event the other provisions of this subsection apply mutatis mutandis.

NEW SUBSECTION 66(6) PROPOSED FOR INSERTION IN IBA BILL

66(6) Where the Independent Media Commission established by section 2 of the Independent Media Commission Act, 1993, after due adjudication in terms of section 23 of that Act -

(a) has found a broadcasting licensee to have successively contravened the provisions of that Act;

(b) has made an order in terms of section 24(1)(c) of that Act; and

(c) has forwarded a certified copy of the said order and of the record of the adjudication proceedings relevant thereto to the Authority in accordance with the provisions of section 24(2) of that Act,

the Authority may, in relation to such broadcasting licensee make an order contemplated in subsection (1)(f) of this section as if such order were made pursuant to a finding of the Broadcasting Monitoring and Complaints Committee in terms of section 63(7) of this Act.

**WORKING DOCUMENTS FOR THE TECHNICAL COMMITTEE ON
CONSTITUTIONAL ISSUES
VOLUME 1**

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COMPOSITION AND FUNCTIONING OF THE ELECTED BODY

1. In par 5.1.2 of our Fifth Report it is stated:

In dealing with the composition and functioning of the body that will be elected to draw up the constitution, the first question is whether it should be vested only with constitution-making powers, or whether it should be vested with legislative powers as well. Although this issue has been raised in submissions made to us and it has been argued that the elected body should function only as a constituent assembly and not as a legislature, it seems to be implicit in the instruction to us to address the issue of the drafting by the MPNP of a constitution for the transitional period, that provision should be made for the elected body *to have both legislative and constitution-making powers*.

It is from this assumption that we proceed.

2. **The Elected Body as Legislature.**

2.1 **Composition of the elected body:** During the time of the transitional period, the elected body will constitute parliament. Parliaments may be unicameral or bicameral. A unicameral parliament during the period of transition could accommodate regional interests through an electoral system which makes provision for half of the members to be elected on regional lists. However, in the light of the constitutional principles adopted by the MPNP which imply a dispensation with safeguarded and entrenched regional autonomy as well as regional participation in the adoption and amendment of the constitution, it is suggested that a bicameral system would be more appropriate. The bicameral system would make provision for a National Assembly of 400 members and a Senate to be elected on a regional basis. In order to establish the equality of

regional dispensations, the Senate could be composed of an equal number of representatives for each region. With such regional representation on an equal footing, the Senate does not need to be a large body. At the time of Union, the Senate was composed of 25 senators per province; with probably 8 to 10 regions, representation in the Senate need not exceed 20 members per region. Regional representatives could be elected directly or indirectly by regional assemblies or the regional representatives in the National Assembly.

2.2 **Powers of the legislature:** The elected body, being the Parliament for the period of transition, will have full legislative powers, which means that all laws must be adopted by that body. Immunities and privileges of parliament and its members should be regulated by law.

2.3 **Procedures:** During the transitional period Parliament will have to pass ordinary laws, laws dealing with the budget, appropriations and regional affairs as well as laws amending the constitution for the period of transition. Different procedures and deadlock breaking mechanisms must be devised for these different kinds of legislation.

2.3.1 Generally, *ordinary legislation* must be passed with a majority in both the National Assembly and the Senate. If Senate rejects a bill, it can be passed by the National Assembly with a two-third majority. In order to prevent possible deadlocks between the National Assembly and Senate (not only in the case of ordinary legislation but also for other kinds of bills) a system of permanent joint committees of the National Assembly and the Senate could be instituted.

2.3.2 **Money bills** (namely budgetary measures and appropriations which do not affect the regions) must also be approved by both the National Assembly and the Senate, but in the case of

rejection by the Senate, such bills could be adopted by the National Assembly with an ordinary majority.

2.3.3 **Bills concerning regional affairs**, including bills providing for regional allocations, must also be approved by the National Assembly and the Senate. However, should the Senate reject such a bill, it cannot be overruled by the National Assembly. A bill which affects a particular region or regions must be approved by a majority of the Senate representatives of that particular region or regions.

2.3.4 **Amendment of the constitution** for the period of transition in which the legislature exercises its legislative powers and functions, is of the utmost importance. In this regard, it is suggested that the general constitutional principles which are adopted by the MPNP and form the basis of the constitution-making process, cannot be amended by the legislature during the period of transition. Other amendments to the constitution for the period of transition, can be passed by a two-thirds majority of both the National Assembly and the Senate, sitting together in joint session. The reason why the general constitutional principles should not be amended by the legislature during the time of transition, is that these principles constitute the basis of the future constitutional state and are contained in a solemn pact as agreed upon by the parties in the MPNP. Constitutionally, once the latter body is dissolved, there will be no other body which can change this solemn pact.

3. **The Elected Body as Constitution-making Body**

- 3.1 Parties wary of or even opposed to the idea of the elected body writing a constitution for the country, should be reminded how the actual processes evolved and developed in the MPNP. Instead of leaving the task of writing a constitution entirely to elected majorities, the MPNP, through the adoption of a solemn pact of constitutional principles, laid the foundations of the future constitutional state. The elected body acting as a constitution-making body, will have the legitimacy to perform the task of giving precise form and content to the constitutional state. In doing so, the elected body (whether it acts as legislature or constitution-making body) must act in terms of the constitution for the period of transition drawn up and approved by the MPNP. Seen in its total context, the elected body will not be a body on its own and charged by its own majorities to write a new constitution. In strict constitutional terms, the nature and task as well as the functions of the elected body acting as a constitution-making body should be described in the following way: The elected body, acting in accordance with the precepts of the general constitutional principles, concluded as a solemn pact by the MPNP, is specifically charged under the constitution for the transitional period, to undertake a *total revision* of that constitution. Constitutionally, total revision of a constitution means the writing of a new constitution. It is provided for in many constitutions of the world. An understanding of an elected body, authorized and charged by the MPNP to undertake a total revision of the constitution, will, we believe, put the present constitutional processes in their proper context.
- 3.2 The elected body acting as constitution-making body charged by the MPNP to undertake a total revision of the constitution, should ideally be seen as separate from the elected body acting as legislature or Parliament. It is therefore suggested that for the purposes of totally revising the constitution, the elected body should sit in conference. If it is decided to have a bicameral legislature as been suggested above, the National Assembly and Senate sitting jointly would constitute Parliament in conference for purposes of total revision of the constitution. Also, to indicate its constitution-making task, Parliament in

conference could have its own chairperson, for example the President of the Senate. Furthermore, provision should be made for Parliament in conference to appoint its own commissions, technical committees and advisory bodies to assist it in its task.

- 3.3 The general constitutional principles which are agreed to by the MPNP in the form of a solemn pact are fundamental to the total revision to be undertaken by parliament in conference. As stated above, these principles cannot be amended. In elaborating the constitution, Parliament in conference must submit its draft proposals for the constitution, whether in part or in whole, to an independent Constitutional Commission of experts or a Constitutional Tribunal for endorsement. Draft constitutional proposals which are not endorsed by such a Commission or Tribunal will lapse.
- 3.4 It must be envisaged that Parliament in conference, with the endorsement by a Constitutional Commission or Tribunal, will adopt certain separate parts of the constitution, eg a Bill of Rights or regional constitutions. Such approved and endorsed parts may be passed by Parliament as constitutional laws after obtaining a two-thirds majority in both the National Assembly and the Senate, with the additional requirement that regional dispensations must also be ratified by popular referendum in that particular region before they become implemented.
- 3.5 Approval and implementation of the final or rather totally revised constitution, including those constitutional laws which have been passed and implemented as suggested in the foregoing paragraph, will follow upon endorsement by the Constitutional Commission or Tribunal and a two-thirds vote in Parliament in conference. If such a vote cannot be obtained, Parliament in conference may refer the draft constitution for approval by popular vote in a referendum, or a vote by referendum which has the support of the majorities in three-quarters of the regions.

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CHAPTER 4

THE LEGISLATURE

1. *Legislative Authority*

1.1 The legislative authority of the Republic shall be vested in the Parliament of the Republic which shall consist of the National Assembly and the Senate and shall, subject to the provisions of this Constitution, have the power to make laws applying equally in all regions of the Republic.

1.2 Parliament shall be competent to delegate by law any matter within its powers to the legislature of a region or of a local authority.

2. *Duration of Parliament*

Parliament shall continue until the adoption and entering into force of the totally revised Constitution under Chapter 5, provided that the said new Constitution may make provision for the life of Parliament to be prolonged.

3. *Franchise*

Every South African citizen who is over the age of 18 years, ordinarily resident in the Republic and who is not of unsound mind, serving a sentence of imprisonment without the option of a fine or an unrehabilitated insolvent, shall be entitled to vote in the election of members of Parliament.

4. *Composition of the National Assembly*

The National Assembly shall consist of four hundred members elected according to the system of proportional representation, half of which to be

elected on national party lists and half on regional party lists.

5. ***Speaker of the National Assembly***

The Speaker shall be elected by the National Assembly; he shall preside at meetings of the National Assembly. The Speaker shall be vested with all powers, duties and functions assigned to him by the rules and orders approved by the National Assembly.

6. ***Composition of the Senate***

The Senate shall be composed of 10 members from each region, elected by regional assemblies according to the principle of proportional representation, each voter having one transferable vote. The Senate shall be composed of 10 members from each region elected directly by voters in each region according to the principle of proportional representation. The Senate shall be composed of 10 members elected by those members of the National Assembly who have been elected on regional party lists according to the principle of proportional representation.

7. ***President of the Senate***

The President of the Senate shall be elected by the Senators. He/she shall be elected by a majority of the regions represented in the Senate and shall be appointed by the State President. The President shall preside at meetings of the Senate and at joint sessions of the National Assembly and the Senate.

8. ***Immunities and privileges*** of Parliament and its members shall be regulated by law.

9. ***Parliamentary Procedure***

- 9.1 **Ordinary legislation** shall be passed with a majority in both the National Assembly and the Senate; if Senate rejects a bill, it may be passed by the National Assembly with a two-thirds majority at the following sitting of the Assembly.
- 9.2 **Money Bills**, ie budgetary measures and appropriation bills, shall be approved by both the National Assembly and the Senate; if the Senate rejects a money bill, it may be approved by the National Assembly at its next sitting.
- 9.3 **Bills concerning specified regional affairs** shall be approved by the National Assembly and the Senate; a bill which affects a particular region or regions shall be approved of the Senate representatives of that particular region or regions.
- 9.4 Parliament shall have the power to institute standing committees of the National Assembly and the Senate in order to resolve possible disagreements and to make joint reports.

10. **Amendment of the Constitution**

Subject to the provisions of Chapter 5, amendments of this Constitution which do not violate the essence of the Constitutional Principles embodied in Ch 5 shall be passed by a two-third majority of both the National Assembly and the Senate sitting together in joint session.

CHAPTER 5

TOTAL REVISION OF THE CONSTITUTION

1. *Parliament in Conference*

The National Assembly and the Senate, shall sit in joint session as Parliament in Conference under the chairmanship of the President of the Senate, to undertake a total revision of the present Constitution and to adopt a new constitutional text in accordance with the provisions and procedures of this Chapter.

2. *Constitutional Principles*

2.1 In undertaking its task of total revision of the present Constitution and the drafting of a new constitutional text, Parliament shall adhere and give effect to the following Constitutional Principles:

.....

.....

2.2 No part of the new constitutional text, whether in part or in total, shall be adopted unless it is endorsed by the constitutional court as being in conformity with the Constitutional Principles. During the course of undertaking the total revision and the drafting of the new constitutional text, any constitutional proposal pertaining to such revision and drafting may be referred to the Constitutional Court by the Chairman or be petitioned by 30 members of Parliament in

Conference in order to obtain an opinion from the Court whether such proposal, if adopted, conforms with the Constitutional Principles.

3. ***Procedures***

- 3.1 Parliament in Conference shall have the power to appoint its own commissions, technical and parliamentary committees and other advisory bodies to assist it in its task.
- 3.2 The Chairman of Parliament in Conference shall have the power to appoint a panel of independent constitutional experts to allow him to solve possible disagreements and make the necessary rulings.

4. ***Adoption of a New Constitutional Text***

- 4.1 Separate parts of the new constitutional text, once endorsed by the Constitutional Court, may be passed by the Parliament in Conference with a two-third majority before the completion of its task of total revision, on condition that regional dispensations shall not enter into force unless they have been adopted, after endorsement by the Constitutional Court, in a popular referendum by the Parliament in Conference and ratified by a majority in that particular region.
- 4.2 The total revision under this Chapter must be undertaken within two years from the commencement of Parliament's first session and the new constitutional text be adopted by parliament in Conference with a two-third majority; if such majority cannot be obtained, the new constitutional text shall be adopted by a majority of the members of Parliament in Conference and referred to approval of all voters in a popular referendum; if a majority of 60 percent of the voters in such popular referendum approves of the new constitutional text, it shall become the new constitution; if not approved by such majority in

popular referendum, Parliament shall be dissolved by the State President and elections be held; Parliament in Conference, composed of the newly elected National Assembly and Senate shall then with the endorsement of the Constitutional Court, within a period of one year approve and pass the new constitutional text by ordinary majority.

5. **Amendment of Chapter 5**

No amendments of the provisions of this Chapter in so far as they relate to the duty of Parliament in Conference to undertake the total revision of the present Constitution as well as those amendments affecting the essence of the Constitutional Principles embodied in this Chapter shall be permitted.

MW102

SIXTH REPORT

1. In view of the submissions received, the Negotiating Council adopted a resolution at its meeting on 17 June 1993, requesting the Technical Committee on Constitutional Issues to consider and report, *inter alia*, on:
 1. *alternative ways of drafting and adopting a new constitution, including the bottom-up and top-down approaches, and*
 2. *alternative views regarding the need for SPR-constitutions and different options for such constitutions.*
2. From our analysis of all relevant submissions and points raised in the debates of the Negotiating council, it is evident that this request emanated principally from those parties presently operating from or propagating a firm regional base. In particular, these parties are motivated by the following considerations:
 - * There is no guarantee that a proportionately elected Constitution Making Body will favour or tolerate the establishment of autonomous SPR's, especially if the majority of the members of such a CMB are members of a party or parties which favour a centralized form of state and government.
 - * Existing regional institutions which are presently functioning, and to a large extent form the political bases of these parties, will be abolished.
 - * SPR interests, and indeed the whole rationale for SPR's as is currently debated in the MPNP, may be side-lined or even be discarded in a national constitution drafted by an elected CMB.

In our opinion, there is every reason to be sensitive and aware of these fears and

apprehensions, and we welcome the opportunity to express our views on the matters raised by the Negotiating Council.

3. **The Bottom-up and Top-down Approaches**

Both these approaches relate to the processes of constitution-making and in particular, the ways in which SPR autonomy must be established. Whereas the top-down approach, foresees a central constitution-making process to map out and establish such SPR autonomy or autonomies, a bottom-up approach foresees various mechanisms and procedures whereby SPR autonomy is without further ado acknowledged as federalism and established either beforehand or simultaneously with the national constitution-making process. Parties favouring the so-called bottom-up approach, although they differ as regards their views on the establishment of SPR autonomy and the participation of SPR representatives in the overall, national constitution-making process, share the common view that SPR autonomy must not entirely be left in the hands of a CMB established by general elections. Two parties even went so far as to make the constitutionally untenable proposal that their SPR should be acknowledged as a "sovereign member state of the Federal Republic of South Africa" which at its behest and subject to its wishes, provisionally hands some of its powers and functions upwards to the national government. Furthermore, in conformity with the bottom-up approach, parties favouring such an approach, generally insist on having entrenched SPR constitutions.

Seen pragmatically, the bottom-up approach as propagated by these parties presents various, and often severe, constitutional problems:

- * As evidenced by the submissions, bottom-up approaches cause considerable confusion as regards the entire constitution-making process. Whereas some parties suggest that SPR-constitutions should be negotiated and endorsed solely on SPR level, others are of the opinion that SPR constitution-making bodies should be elected not only to draw

up SPR-constitutions but also to contribute to the process of national constitution-making.

- * Generally, parties favouring a bottom-up approach, proceed from an existing state of affairs which cannot be sustained, or they assume a state of affairs which constitutionally does not exist. Thus it is found that a party representing a TBVC administration supports a bottom-up approach without indicating how its TBVC administration will be accommodated in a future SPR or SPR's and what kind of bottom-up contribution it will be able to make. Also, it is found that parties representing the interests of an existing national state which under present constitutional law, is in the position of a subordinate entity, assume that such national state can on its own accede to a "sovereign" status in order to lay claim to exclusive powers and functions.
- * Parties favouring bottom-up approaches ignore the fact that constitutionally, the entire process of reconstruction and reform in which they are engaged must be centrally planned, ratified and implemented. No bottom-up approach can deny the fact that under present South African constitutional law, the existing parliament, which is very much an organ of central government, must ratify and through legislation implement, schemes for constitutional reconstruction. Simply stated, administrations of TBVC or national states cannot insist on or implement a bottom-up approach unless it is endorsed by the central processes of constitutional reconstruction. This in itself, makes the application of a pure bottom-up approach as propagated by certain parties, a contradiction in terms.
- * From a practical point of view, the bottom-up approach could entail considerable delays and possible dead-locks in the entire constitution-making process. Nowhere in the submissions before the Committee

is it explained what the position will be if in an SPR election for SPR autonomy, the majority of voters in that SPR reject such autonomy.

From the above considerations, we must draw the conclusion that the so-called bottom-up approach as advanced by certain parties, gives rise to severe constitutional misgivings. However, this does not mean that concrete SPR contributions and participation in shaping the overall form of a future South African state, should be rejected out of hand.

4. **SPR Constitutions**

Intrinsically bound up with the bottom-up approach as advocated by some parties and explained above, is the insistence on having SPR constitutions either before or together with the adoption of a national constitution. However, it is extremely difficult, if not impossible, to see how SPR constitutions could be adopted and implemented if they do not emanate from and are not sanctioned by the national constitution. SPR constitutions with their separate Bills of Rights, constitutional courts and other institutions such as an independent State Bank would be glaring constitutional anomalies. On the other hand, SPR constitutions emanating from and supplementing the provisions of the national constitution could give concrete form to an overall system of fortified, two-tier constitutionalism which, on the one hand, assures national unity and on the other hand, gives concrete shape to the ideals of subsidiarity and grassroot democracy.

5. **An Equilibrium**

What is needed, is a balance between the so-called top-down and bottom-up approaches. We believe that such an equilibrium which will assuage fears and apprehensions and put the matter of SPR constitutions in the correct perspective, can be attained in the following way:

- 5.1 The deliberation and adoption of general constitutional principles pertaining to SPR autonomy which is presently undertaken by the Negotiating Council. In fact, by so doing, the Negotiating Council is positively seeking an equilibrium between a top-down and bottom-up approach.
- 5.2 Once these constitutional principles have been adopted, the Negotiating Council will have to decide how the principles pertaining to SPR autonomy will be incorporated and applied in the constitution for the transitional period. In this respect, special regard will have to be given to existing boundaries and institutions, the recommendations of the Commission on the Demarcation/Delimitation of Regions, and the role and functions of SPR representatives in the national government. It may very well be that the constitution for the transitional period creates mechanisms for consolidating SPR administrations and the election of SPR representatives both on national and second-tier level.
- 5.3 Once SPR government has been instituted for the transitional period, the CBM can call on these SPR governments, in conformity with the constitutional principles adopted by the MPNF, to propose their separate SPR constitutions (or one standard SPR constitution) to be incorporated in the final constitution. In case of separate SPR constitutions, it may be for the CBM to call on referenda within the SPR's.
- 5.4 Nothing would prevent the coming into operation of SPR constitutions or a single, standard SPR constitution even before the conclusion of the CBM's work and the adoption of the final constitution (which will then of necessity include and entrench the standard or separate SPR constitutions). Again, by installing and entrenching SPR constitutional dispensations in the period of transition, and before the coming into operation of the final constitution, an equilibrium between top-down and bottom-up approaches will be achieved.

MW80

RESPONSE TO THE CONSERVATIVE PARTY OF SOUTH AFRICA'S ANALYSIS OF THE PRESENT SOUTH AFRICAN SITUATION AND ITS PROPOSALS FOR A PEACEFUL RESOLUTION TO THIS QUESTION. (Read in conjunction with the Conservative Party's submission on the First Report of the Committee.)

1. In its submissions, the Conservative Party of South Africa clearly states its views on the history of the Afrikaners, the course of democracies in Africa, political and constitutional realities in South Africa as well as their legal interpretation of concepts such as self-determination, confederation, etc. It is not for this Technical Committee to cross swords with the Conservative Party on their political views and opinions; in a very real sense they are the expressions of a political party's own right of self-determination to which we alluded in our First Report (paragraph 3.4.2).

2. At the outset, however, it must be pointed out that this Committee in its reports did not, as far as the form of state is concerned, adopt any preconceived attitude or views. Contrary to the impression which the Conservative Party of South Africa might have gained from this Committee's Reports, it was expressly stated in paragraphs 3.4 of the Second Report:

"There is no universally accepted definition of federalism, and we are not convinced that in a discussion on the form of state, it would be useful or indeed possible to use as a point of departure preconceived concepts such as unitary or federal states."

3. On the matter of confederation, this Committee in paragraph 3.6 of its Second Report suggested:

"It would be helpful if participants in the Negotiating Council in favour of confederation as an option would provide us with more clarity on their proposals and in particular the territory and population of the envisaged separate state, and how it will meet the international law requirements of secession (in this respect, the concept 'partition'

should also be added) and self-determination."

Again, although this Committee expressed some strong reservations about the feasibility of a South African confederation of states, it did not intend to prejudge the issue.

4. What remains are the practicalities of the views of the Conservative Party of South Africa which will assist this Committee to make definite proposals to the Council. In the view of this Committee, there is no reason to deny collective rights of self-determination to the Afrikaners which should be protected in the manner explained in paragraph 3.5 of the First Report (inter alia by watchdog bodies, regional and local institutions, and specially accredited bodies of a representative nature and freely associated). What is problematic, is the possibility of affording pre-established and exclusive constitutional and political rights to Afrikaners in a given state. As much as the clear political views of the Conservative Party of South Africa on this matter can be assessed from their submissions, this Committee is still unedified about the feasibility in a practical situation, of such political views. In particular, this Committee should like to endorse the statement of the Conservative Party of South Africa itself (cf paragraph 8.6.4 of the second submission) that "(f)undamentally, the external features of the form of state must be determined first." It is the understanding of this Committee that the external features of the form of state do not mean a theoretical discussion of forms of state, but relate to all those concrete elements which constitute statehood and determine the nature of the state. These concrete elements are:

- the territory and boundaries of the state
- the creation and establishment of the state, whether through
- partition or secession;
- the population of the state, which implies a clear and legally defined explanation of citizen- and alienship;

- the governance and legal system of the state.

This Committee notes that the Conservative Party of South Africa intends to submit concrete proposals on the first element (ie the territory and boundaries of the proposed Afrikaner state) to the Commission on Boundaries. As far as the other elements are concerned, no concrete proposals have been made by the Conservative Party of South Africa, and this Committee shall be most grateful if such proposals could be made since they will be extremely helpful in assisting this Committee in its work.

Response to the Submission of the Government of Bophuthatswana re paragraphs 3.5 and 3.6 of the Second Report of the Technical Committee on Constitutional Issues:

1. In its submission, the Government of Bophuthatswana, while not contesting the Committee's broad exposition on confederations, states: "The classic definitions and examples of confederations are well known and do not call for further elaboration. It may even be better to disregard all of it for the time being, in order to approach this whole matter with an open mind in designing a constitutional model *sui generis* perhaps even including new terminology to describe it." As "relevant and applicable aspects of such a model", the examples of Berlin until German unification, the Commonwealth of Puerto Rico and the former French Community are briefly alluded to. In conclusion it is said: "These are some examples of a 'non-classical' approach to this issue (ie confederalism), which indicates a need, in certain exceptional cases, for an original, innovative and flexible approach".
2. In response to the submission of the Government of Bophuthatswana, it must be pointed out immediately that confederations, being an association of separate, independent states, do differ according to the manner in which they come about, their histories and their respective confederal pacts. The classic example of a confederation in the form of the German Bund (1815-1866) differs in many respects from modern confederations such as the (former British) Commonwealth and the European Community. At least two examples cited in the submission, ie those of Berlin and Puerto Rico, do not constitute confederations in any real sense of the word. They are what is sometimes called hegemonic state systems which are often transient in nature, are the result of a particular course of history and which are characterised by the fact that the particular state or geographical entities possess a certain kind of autonomy *vis-à-vis* the dominant or mother-state which is less than that enjoyed by an independent state. Examples of such hegemonic state systems abound and mostly exist under the following circumstances:
 - 2.1 Very often *islands*, entirely detached from the mainland of the dominant mother-state are drawn into such a system by way of international accord, constitutional

arrangement or a combination of the two (eg, the Aaland Islands, Puerto Rico, the New Hebrides, the Canton and Enderbury Islands, as well as the Channel Islands and the Isle of Man); in some instances, these islands acquire the status of protectorates or semi-protectorates for some time before they become fully independent; in other cases they are incorporated into the constitutional body of the mother-state (eg Réunion).

2.2 Sometimes an enclave or city is given a particular status as a result of an international and internal (national) arrangement which usually follows a period of colonisation, war or conflict, eg the free city of Danzig, Hong Kong, Berlin and Trieste (in the case of Trieste the arrangement was, however, not implemented). As a rule these enclaves and cities lose their special status after the expiry of a certain time or the occurrence of certain events.

2.3 In some cases, territories have, via an international agreement, been given *sui generis* status which is neither that of a component state in a federation nor that of an independent state in a confederation. The well known example which is close to our experience, is the status of the erstwhile mandated territory of South West Africa.

3. All the above examples of so-called hegemonic state systems point to the fact, which is argued in the submission of the Government of Bophuthatswana, that the constitutional relations between states and other territories need not and simply cannot be explained in simple confederal terms. However, what is of overall importance, is that all the abovementioned state relations are the direct products of given historical and other realities. It is certainly not for this Committee to preach the continuation or incorporation of the TBVC states. If the political decision is taken that these states, or some of them, should acquire a status which is neither federal nor confederal, it may well be worth while giving closer consideration to the examples mentioned. In the meantime, it must be reiterated that all these arrangements stemmed from very specific historical, economic, political and other factors. Similarly, in considering the position

of the TBVC states, the following objective factors must not be lost sight of:

- 3.1 The demographics, economic systems and politics of the TBVC states are intrinsically linked to those of the RSA. Transport (two of the states are landlocked and the other two possess no harbours), infra-structures, etc are almost totally dependent on systems and networks of the RSA. Objectively and without any intention to denigrate them, the extent of vassalage of the TBVC states to the RSA cannot be denied.
- 3.2 None of the TBVC states is in the nature of islands detached from the territory of the RSA. The territories of these states are interspersed between the existing regions and provinces of the RSA and they are inexorably a part of the South African geography and its accompanying geo-politics. In this respect, the often-cited *Article 6* of the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) must be mentioned: "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 principles of the Charter of the United Nations."
- 3.3 The majority of the inhabitants and citizens of the TBVC states were South Africans by birth before these states became independent and there is a strong, almost irrebuttable presumption, that they wish to regain this status.
- 3.4 There is no element of statehood in the TBVC states' existence which is supported, underwritten, sanctioned or recognised by the international community or international organisations and which could form the basis for their particular status, in either international or national law.
- 3.5 From the previous and present negotiations, it would seem to be accepted that the TBVC states will not continue to exist in their present form and that their incorporation in some or other form is an inescapable reality.

4. **Conclusion** It would appear from the foregoing that the possibility that Bophuthatswana or any other of the TBVC states will continue in a semi-confederal relationship or hegemonic state system with the RSA is rather slight. Furthermore, such a relationship or system cannot be brought about unilaterally and it has very little chance of being successful if not supported by the international community. Semi-confederal or hegemonic state systems for the RSA and the TBVC states can be fully considered only if more detailed proposals are put before the Technical Committee.

MW96

10.50

Tuesday 8 June 1993

Message for Arthur Chaskalson

George Bizos phoned. The judge granted the application to postpone the matter until Monday despite opposition and contest that it should not be postponed beyond Thursday morning. They are going to stay for a day or two to do further investigation. You can phone him at the hotel but there is no urgency. Tel. 041-562056.

SOUTH AFRICA CONSTITUTION ACT, 1993

WHEREAS representatives of all political organisations with significant support, meeting at the Multi Party Negotiating Process in Kempton Park, have agreed that a new constitution should be adopted for South Africa, providing for the establishment of a single sovereign state in which there will be a common South African citizenship and a democratic system of government committed to achieving equality between men and women and people of all races.

AND WHEREAS it was also agreed at the Multi Party Negotiating Process that an election should be held on the basis of universal adult suffrage according to a system of proportional representation for a constitution making body to draft and adopt a new constitution in accordance with principles agreed upon by the Multi Party Negotiating Process.

AND WHEREAS it was also agreed that the elected body would function as a legislature for the transitional period between the time of the election of the constitution making body and the adoption of a new constitution and that it would appoint a government of national unity to govern the country during such period.

AND WHEREAS it is necessary to change the present constitutional structure of South Africa in order to make provision for the reconstitution of South Africa as a single sovereign, and for the election of such constitution making body and legislature and the appointment of a government of national unity.

NOW THEREFORE the following constitution for the transitional period is adopted in place of the Republic of South Africa Constitution Act No 110 of 1983.

CHAPTER ONE

Formal and Constituent Provisions

1 Establishment of the New Republic of South Africa

- (1) South Africa is hereby reconstituted as a single sovereign State.
- (2) The national territory shall consist of the whole of the territory which is recognised by the International Community as South Africa and shall include the Transkei, the Ciskei, Venda and Bophuthatswana.

2 National Symbols

- (1) The national flag of South Africa shall be the flag described in schedule 1 hereof.
- (2) The national anthem of South Africa shall be _____.
- (3) The national coat of arms shall be in accordance with the description set out in schedule 2 hereof.
- (4) The national seal of South Africa shall be in accordance with the description set out in schedule 3 hereof.

3 Languages

CHAPTER TWO

Citizenship

CHAPTER THREE

Fundamental Rights

CHAPTER FOUR

The Legislature

6 Quorum

The presence of at least _____ members of the national assembly entitled to vote, other than the Speaker or the Presiding Member, shall be necessary to constitute a meeting of the national assembly for the exercise of its powers and for the performance of its functions.

7 Speaker

- (1) At the first sitting of the newly elected national assembly, and before proceeding to despatch any other business, the national assembly with _____ acting as Chairperson, shall elect one of its members to be the Speaker. The national assembly shall then elect a Deputy

Speaker from amongst its members, and the Deputy Speaker shall act as Speaker, whenever the Speaker is not available, and for that purpose shall have all the powers vested in the Speaker by this constitution.

- (2) The Speaker, or in his or her absence the Deputy Speaker, shall preside over meetings of the national assembly.
- (3) The Speaker or Deputy Speaker shall vacate his or her office if he or she ceases to be a member of a national assembly, may be removed from office by a resolution of the national assembly, and may resign by resignation tendered in writing under his or her hand to the Prime Minister.
- (4) When the office of Speaker or Deputy Speaker becomes vacate, the national assembly shall in like manner elect a member to fill the vacancy.
- (5) Where neither the Speaker nor the Deputy Speaker is available, the national assembly, with the Secretary acting as Chairperson, shall elect a member to act as Speaker.

8 Casting Vote

The Speaker or the Deputy Speaker or the Acting Speaker residing at a meeting of the national assembly shall not have a deliberative vote, but shall

and exercise a casting vote in the case of equality of votes.

9 Oath/Affirmation

Every member of the national assembly shall make and subscribe to an oath or solemn affirmation before the Chief Justice, or a judge designated by the Chief Justice for this purpose, in the terms set out in schedule .

10 Members of the National Assembly

- (1) All members of the national assembly to regard themselves as servants of the people of South Africa and seek to discharge their duties with dignity and integrity.
- (2) A private members bill may be introduced in the national assembly if supported by one third of all the members of the national assembly.
- (3) The national assembly shall be entitled to require such disclosure as may be considered appropriate in regard to the financial or business affairs of its members.

11 Public Access to Sitings

All sessions of the national assembly shall be held in public and members of

the public and the media shall have access to such meetings: provided that reasonable safeguards may be instituted to search or refuse entry to persons in order to protect the safety of members of the national assembly.

12 Committees

- (1) The national assembly may make rules or procedure for the conduct of its business and proceedings and may also make rules for the establishing, functioning and procedures of committees, and formulate such standing orders, including restrictions on access to such committees as may appear to it to be expedient or necessary, having regard to the business of such committees.
- (2) For the purposes of exercising its power and performing its functions any committee of the national assembly established in terms of sub-article (1) hereof shall have the power to subpoena persons to appear before it to give evidence on oath and to produce any documents required by it, and to herein receive representations from interested parties.

13 Sessions

- (1) The national assembly shall sit:
 - (a) at the Houses of Parliament in Cape Town, unless the Speaker directs

otherwise on the grounds of public interest, security or convenience;

- (b) before a session commencing as soon as reasonably possible after the election of the national assembly and not later than _____ days after such election, and such session shall terminate on such date as the national assembly may determine;
- (c) for such special sessions as may be directed by proclamation by the President from time to time.
- (2) During such sessions the national assembly shall sit on such days and during such times of the day or night as the national assembly by its rules and standing orders may provide.
- (3) The President may alter the date of commencement of any session directed in terms of section 1(c) if he or she is requested to do so by the Speaker on the grounds of public interest or convenience.

CHAPTER FIVE

Total Revision of the Constitution and the Adoption of the New Constitutional Text

14

CHAPTER SIX

The Executive Power

15 Head of State and Government

- (1) The President shall be the head of State and of the Government and the Commander in Chief of the defence force.
- (2) The executive power of South Africa shall vest in the President and his or her cabinet.

16 Elections

- (1) The President shall be elected by the members of the national assembly from amongst their numbers at a meeting to be called in accordance with the provisions of this article and presided over by the Speaker of the national assembly.

- (2) The election of the President shall be held at the commencement of the first session of the national assembly immediately after the election of the Speaker.
- (3) The Speaker shall preside over the elections and shall call for the nomination of candidates for the election of the President.
- (4) Every nomination shall be submitted in writing and shall be signed by two members of the national assembly and also by the person nominated, unless he or she has in writing signified his or her willingness to accept nomination.
- (5) The names of the persons duly nominated as provided in sub-article (4) hereof shall be announced by the Speaker at a meeting at which the election is to take place.
- (6) If only one nomination is received, the Speaker shall declare the candidate in question to be duly elected as President of South Africa.
- (7) If more than one candidate is nominated for election, a vote shall be taken by the national assembly, each person present at the meeting having one transferable vote.
- (8) If any candidate obtains more than 50% of the votes calculated in accordance with the provisions of subsection (7) hereof, such candidate shall be duly elected as President of South Africa.

- (9) The person elected as President shall vacate his or her seat as a member of the national assembly, and the vacancy occasioned thereby shall be filled in accordance with the provisions of ____.

17 Tenure of Office of State President

- (1) The President shall hold office under this constitution until a new constitution has been adopted in accordance with the provisions of ____, unless he or she dies or resigns before the expiry of the said term or is removed from office in accordance with the provisions of this constitution.
- (2) The President shall be removed from office if a two thirds majority of the national assembly and the senate sitting together in joint session adopts a resolution impeaching the President on the grounds that he or she has been guilty of a violation of the constitution or guilty of a serious violation of the laws of the land or is otherwise guilty of such gross misconduct as to render him or her unfit to hold the office of President.
- (3) If the President is unable to perform his or her duties as President for a period exceeding three months due to disability or illness, or if the President is absence from South Africa for a period exceeding three months without a resolution of the national assembly consenting to such absence having been passed, the national assembly may by resolution declare the office of President to be vacated, in which

event the President shall be deemed to have resigned, and the office of President shall become vacant.

(4) A resolution shall not be taken in terms of sub-sections (2) or (3) hereof -

(a) unless a report of the joint committee of the national assembly and the senate has been made to and considered at a joint sitting of the national assembly and the senate;

(b) the joint committee referred to in sub-article (a) hereof shall consist of the Speaker, three persons nominated by the national assembly, and three persons nominated by the senate, and shall only be appointed if a resolution to that effect is adopted at a joint session of the national assembly and the senate: provided that, a resolution for the appointment of such a joint committee shall not be placed before such joint sitting unless it has been submitted to the Speaker by the Prime Minister, or is supported by a petition to the Speaker, which has been signed by not less than 50% of all the members of the national assembly and the senate, requesting that such a joint committee be appointed.

(5) The President may resign by lodging his or her resignation in writing with the Speaker of the national assembly, who shall forthwith inform the Prime Minister and the President of the senate of such resignation.

- (6) If a President dies, resigns or is removed from office in terms of this constitution, the national assembly shall as soon as reasonably possible thereafter, be convened at a time and a place to be fixed by the Speaker or in his or her absence, by the Deputy Speaker, and made known by notice in the gazette published not less than seven (7) days before such time for the purpose of electing a new President.
- (7) Pending the election of a new President the acting President, appointed in terms of section ____, shall be vested with all the powers and perform the duties of the President.
- (8) The election of the new President shall be held as soon as reasonably possible after the office of President has been vacated and shall otherwise be conducted in accordance with the provisions of section ____, and the person duly elected as President of South Africa at such election, shall hold office until the new constitution has been adopted in accordance with the provisions of Chapter _____, and a new President has been appointed in terms of that constitution to assume office.

18 Acting President

Whenever the office of President is vacant or the President is for any reason unable to perform the duties of his or her office, a person appointed by the cabinet shall serve as Acting President.

19 Oath or Affirmation

Before formally assuming office, a President elect or person designated to be Acting President shall make the following oath or affirmation which shall be administered by the Chief Justice or a judge designated by the Chief Justice for such purpose:

I, _____, in the full realisation of the high calling I assume as President of the new Republic of South Africa, hereby swear/solemnly affirm that I will, to the best of my ability, uphold and defend the constitution and protect the sovereignty, territorial integrity and resources of South Africa. I will administer the laws fairly and without fear or favour, striving always to promote the welfare of the people of South Africa, to protect their fundamental rights, to promote reconciliation and to achieve a just and democratic society in which all can live in peace and harmony.

(In the case of case of an oath)

So help me God.

20 Immunity from Civil and Criminal Proceedings

- (1) No person holding the office of President or performing the functions of President may be sued in any civil proceedings save where such

proceedings concern an act done in his or her official capacity as President.

- (2) No person holding the office of President shall be charged with any criminal offence or be amenable to the criminal jurisdiction of any court in respect of any act allegedly performed, or any omission to perform any act, during his or her tenure of office as President.
- (3) After a President has vacated that office:
 - (a) no court may entertain any action against him or her in any civil proceedings in respect of any act done in his or her official capacity as President;
 - (b) a civil or criminal court shall only have jurisdiction to entertain proceedings against a former President, in respect of acts of omissions alleged to have been perpetrated by the President in his or her personal capacity whilst holding office of President, if a resolution is adopted at a joint session of the national assembly and the senate by a two thirds majority resolving that such proceedings are justified in the public interest notwithstanding any damage such proceedings might cause to the dignity of the office of President.

- (1) There shall be paid to the President out of and as a charge on the State revenue fund such salary and allowances as may be determined from time to time by resolution of the national assembly.

22 Powers

- (1) In addition to powers specifically conferred upon the President by this constitution or any other law, but subject always to the provisions of this constitution, the President shall have the following powers:

(a)

23 National Defence and State of Emergency

24 Proclamation of National Defence and Emergency Measures

25 Supervisory Powers of the National Assembly in respect of National Defence

and Emergency Measures

CHAPTER SEVEN

The Administration of Justice

26 The Judiciary

26.1 Judicial Authority

- (1) The judicial authority over South Africa shall be vested in the Supreme Court of South Africa which shall consist of a constitutional court, an appellate division and such regional and local divisions as may be prescribed by law.
- (2) The Supreme Court shall have the jurisdiction, including the inherent jurisdiction which vested in the Supreme Court of South Africa at the date of adoption of this constitution, and any such additional jurisdiction as may be conferred upon it by this constitution and by acts of Parliament.

- (3) **Save as otherwise provided by acts of Parliament, Johannesburg shall be the seat of the constitutional court and Bloemfontein the seat of the appellate division of the Supreme Court.**
- (4) The quorums required for cases in the various divisions of the Supreme Court shall be determined by acts of parliament or by the rules of such courts.
- (5) Judicial offices shall be independent, impartial and subject only to this constitution and the law.

27 The Constitutional Court

- (1) The Constitutional Court shall be the highest court in the land in regard to any matter arising in respect of -
 - (a) the interpretation of the constitution, or its application, including disputes for matters where the question and issue is whether or not an unlawful invasion of the bill of fundamental rights contained in Chapter ____ of the constitution has taken place or is threatened;
 - (b) the validity or invalidity of any proposed legislation;
 - (c) the validity or invalidity of any legislation;

- (d) matters arising under Chapter ____ of this constitution;
 - (e) the conditions upon which access to the Constitutional Court may be exercised shall be regulated by rules prescribed by the President of the Constitutional Court and published in the gazette, which, without limiting the generality of such power, may include provisions enabling applications to be made directly to the Constitutional Court in particular circumstances, and may also include provisions requiring the leave of the Constitutional Court to be obtained in respect of any matter other than one arising under the provisions of Chapter ____.
- (2) A decision of the Constitutional Court shall be binding upon all other courts, including the appellate division, and upon the State and all persons in South Africa, unless and until it is reversed by the Constitutional Court itself.

28 Lower Courts

There shall be a Magistrate's Court and such other lower courts which shall exercise the powers and perform the functions prescribed by Acts of Parliament.

29 Appointment of Judicial Officers

- (1) The Chief Justice and the President of the Constitutional Court shall be appointed by the President.
- (2) All other judges of the Supreme Court shall be appointed by the President in accordance with the following procedure:
- (3) The tenure of judges appointed to the Constitutional Court shall be ____.
- (4) All other judges shall hold office until the age of _____ or until they resign or are removed from office in terms of section _____.

30 The Removal of Judges from Office

- (1) A judge may be removed from office before the expiry of his or her tenure only on the grounds of physical or mental incapacity or for gross misconduct and in accordance with the provisions of subsection (2) hereof.
- (2)

31 The Attorney General

- (1) There shall be an Attorney General appointed by the President.
- (2) No person shall be eligible for appointment as Attorney General unless such person -
 - (a) possesses legal qualifications that would entitle him or her to practise in all courts of South Africa;
 - (b) is, by virtue of his or her experience, conscientiousness and integrity a fit and proper person to be entrusted with the responsibilities of the office of Attorney General.
- (2) The powers and functions of the Attorney General shall be:
 - (a) to prosecute in the name of the State in criminal proceedings;
 - (b) to prosecute and defend in the name of the State appeals and criminal proceedings in any court;
 - (c) to delegate to other officials, subject to his or her control and direction, authority to conduct criminal proceedings in any court;
 - (d) to perform all such other functions as may be assigned to him

or her in terms of any law.

CHAPTER TEN

Local Government

32

Finance

33 State Revenue Fund

There shall be a state revenue fund into which shall be paid all revenues raised or received by the State, and from which appropriation shall be made by the national assembly for the purpose of the State in a manner prescribed by this constitution and any other law, and subject to the charges imposed thereby.

34 Annual Budget

- (1) The Minister of Finance shall in respect of every financial year cause to be laid before the national assembly an annual budget reflecting the estimated receipts and expenditure of the Government for that year.
- (2) The annual budget shall distinguish expenditure on revenue account from all other expenditure.
- (3) If in respect of any financial year it is found -
 - (a) that the amount authorised to be expended on a particular service for the current financial year is insufficient, or that a need has arisen for expenditure upon some new service not included in the annual budget for that year; or
 - (b) that any money has been spent on any service during a financial year in excess of the amount granted for that service for that year;

the Minister of Finance as soon as reasonably possible after become aware thereof, shall cause to be laid before the national assembly a supplementary budget or an excess budget, as the case may be.
- (4) Appropriation in terms of the annual budget, supplementary budget or excess budget shall be detailed in appropriation bill which shall be submitted to the national assembly and dealt with in accordance with

the provisions of section _____.

- (5) If the national assembly is not in session, or if the budget has not been approved, the President may authorise expenditure to be made out of the State Revenue Fund in respect of estimated expenditure for a part of the financial year, not exceeding four months, and such expenditure shall be deemed to have been authorised by the national assembly in terms of sub-article _____ hereof, and shall be included in the budget estimates for such financial year.

35 Withdrawal of Money from the State Revenue Fund

No money shall be withdrawn from the state revenue fund, except under appropriation made by law in accordance with the provisions of this constitution.

36 Auditor General

- (1) There shall be an auditor general who shall be appointed by the President.
- (2) The auditor general shall hold office for _____ years unless removed earlier under sub-article (3) hereof, or unless he or she resigns in writing addressed to the President.

(3)

PROVISIONS TO BE INCLUDED IN CHAPTER ON SPRS

1. Establishment of SPRS
2. Establishment and election of SPR legislatures.
3. Establishment and election of SPR Executives and Premier.
4. Powers and functions of SPR legislatures, executives and premiers.
5. Transitional provisions dealing with the rationalisation of administrations and laws within the boundaries of SPR's or the time of coming into force of the Constitution.
6. Fiscal and Financial powers and functions of SPRs.
7. Convening and holding of sessions of SPR legislatures.
8. Qualification for election to SPR legislatures.
9. Vacation of seats by members of SPR legislatures.
10. Filling of vacancies.
11. Quorum of meetings of SPR legislatures.
12. Rules of Procedure for the Conduct of the Business of SPR legislatures.
13. Duties, privileges and immunities of members of SPR legislatures.
14. The requisite majority for decisions by SPR legislatures.
15. Public access to sittings of SPR legislatures.
16. Assent to bills passed by SPR legislatures.
17. Publication and Enrolment of SPR legislation.
18. Remuneration of members of SPR legislatures, members of Executive Councils and SPR Premiers.
19. Duration of the SPR legislature.
20. Oath or affirmation of office by Premier, members of Executive Councils and members of SPR legislatures.
21. Appointment of secretary and other officers for SPR's.
22. Vacation and removal from office of SPR Premiers and members of SPR Executive Councils.
23. Development of SPR Constitutions for submission to Parliament in Conference.
24. Commission for SPR government and rationalisation.

QUERIES

1. When will first meeting of SPR legislatures be held?
2. Who will convene first meeting and how will it be conducted?
3. Can TEC be given a special role in the process of rationalisation before the first election to ensure that existing administrations know what is going to happen.
4. Should there be a transitional provision to allow for joint authority of TEC regional sub-committees and SPR Executive Councils for a limited period of time to facilitate the transition?

EXECUTIVE GOVERNMENT

Executive Power

Article 1. The executive power of the Republic shall vest in the State President who shall exercise his power after consultation with the cabinet and subject to the provisions of this Constitution.

State President/President

Article 2. Head of State and of Government

2.1. The State President shall be the head of State and of the government and the commander-in-chief of the Defence Force.

Article 3. Election of State President

3.1. The State President shall be elected by all members of the National Assembly at its first session [at a joint sitting of both houses of the legislature] presided over by the Chief Justice or a judge of appeal designated by him.

3.2. The President shall be elected by a simple majority of all present members of the National Assembly, and in accordance with the procedure provided for in Schedule 2.

3.3. No person may be elected or serve as State President unless he or she is qualified to be nominated or elected and take his or her seat as a member of the National Assembly.

3.4. Any person who holds a public office in respect of which he or she receives remuneration out of public funds and is elected as State President shall vacate

such office with effect from the date on which he or she is elected.

- 3.5. No person shall hold office as State President for more than two terms.

Article 4. Oath or affirmation

A President-elect shall, before formally assuming office, make an affirmation or take an oath which shall be administered by the Chief Justice or a judge designated by the Chief Justice for this purpose.

The affirmation or oath shall be in the form contained in Schedule 3.

Article 5. Tenure of office

- 5.1. The term of office of the State President shall be the period of the continuance of the National Assembly at which the State President was elected; and

- 5.2. after the dissolution of that National Assembly, whether by effluxion of time or otherwise, until a State President has at or after the commencement of the first session of the newly constituted National Assembly, been elected in terms of this Constitution and has assumed office.

Article 6. Functions, powers and duties

- 6.1. The State President shall uphold, protect and defend the Constitution as the Supreme Law, and shall perform with dignity and leadership all acts necessary, expedient, reasonable and incidental to the discharge of the executive functions of the Government, subject to the overriding terms of this

Constitution and the laws of the Republic, which he or she is constitutionally obliged to protect, to administer and to execute.

6.2. The State President shall subject to the provisions of this Constitution have power to:

6.2.1. appoint times for the sessions of the National Assembly and for its prorogation;

6.2.2. address any session of Parliament;

6.2.3. confer honours on citizens, residents and friends of the Republic in consultation with interested and relevant persons and institutions;

6.2.4. appoint, accredit, receive and recognise ambassadors, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;

6.2.5. enter into and ratify international conventions, treaties and agreements;

6.2.6. assent to, sign and promulgate laws duly passed by Parliament, or refer such laws back to Parliament in the event of procedural shortcomings in the legislative process;

6.2.7. convene the Cabinet for the purpose of consultation or the resolution of disputes among the members of the Cabinet or the political parties represented in the Cabinet;

6.2.8. refer disputes of a constitutional nature between political parties represented in Parliament or between organs of the State at

any level of government to the Constitutional Court or other appropriate institution or body for resolution;

6.2.9 pardon or reprieve offenders, either unconditionally or subject to such conditions as he or she may deem fit and to remit any fines, penalties or forfeitures;

6.2.10 enter into and ratify international conventions, treaties and agreements;

6.2.11 proclaim or terminate martial law;

6.2.12 declare war and make peace;

6.2.13 make such appointments as he or she may deem fit under powers conferred upon him or her by any law and to exercise such powers and perform such functions as may be conferred upon or assigned to him or her in terms of this Constitution or any other law;

6.2.14 proclaim referenda and plebiscites.

Article 7

Prerogatives and immunities

7.1. The State President shall, as head of State, in addition have such powers as were immediately before the commencement of this Constitution possessed by the State President by way of prerogative.

7.2. No person holding the office of State President or performing the functions of State President may be sued in any civil proceedings save where such proceedings concern an act.....

7.3. No person holding the office of State President shall

be charged with any criminal offence or be amenable to the criminal jurisdiction of any Court in respect of any act allegedly performed, or any omission to perform any act, during his or her tenure of office as State President.

7.4. After a State President has vacated that office:

7.4.1. no Court may entertain any action against him or her in any civil proceedings in respect of any act done in his or her official capacity as President;

7.4.2. a civil or criminal Court shall only have jurisdiction to entertain proceedings against him or her, in respect of acts of commission or omission alleged to have been perpetrated in his or her personal capacity whilst holding office as State President, if National Assembly by resolution has removed the State President on the grounds specified in this Constitution and if a resolution is adopted by the National Assembly resolving that any such proceedings are justified in the public interest notwithstanding any damage such proceedings might cause to the dignity of the office of the State President.

Article 8. Replacement and removal of SP/Succession

8.1. Whenever the State President is for any reason
unable to perform
the duties of his

office, a member of the cabinet shall serve as Acting State President.

8.2. Whenever:

8.2.1. the State President is unable to nominate a member of the Cabinet in terms of sub-clause 8.2.; or

8.2.2. the member so nominated is for any reason unable to act; or

8.2.3. the office of State President is vacant and there is no member so nominated or the member so nominated is unable to act,

a member of the Cabinet designated by the remaining members thereof shall serve as Acting State President during the incapacity of the State President or of the member nominated by him, as the case may be, or until a State President has been elected and has assumed office.

8.3. The State President shall be removed from office if 2/3 majority of all the members of the National Assembly [at a joint sitting of both legislatures] adopts a resolution impeaching the State President of a serious violation of the laws of the land or otherwise guilty of such gross misconduct or ineptitude as to render him or her unfit to hold with dignity and honour the office of the State President.

- 8.4. If the State President dies, resigns or is removed or ceases to hold office for any reason the vacant office of State President shall be filled for the unexpired period thereof in exactly the same manner as the first State President was elected.

Article 9.

Remuneration

There shall be paid to the State President out of and as a charge on the State Revenue Fund such a salary and allowances and pension, including pension to a State President's widow or widower, as may be determined from time to time by resolution of the National Assembly.

The Cabinet

Article 10.

Composition

- 10.1. The Cabinet shall consist of the State President and such other ministers as the State President may appoint in accordance with the provisions hereof.
- 10.2. The Cabinet will be appointed by the State President who will be obliged to offer appointments to the parties elected to the National Assembly in direct proportion to their representation therein, provided that this will not apply to parties which are allocated fewer than 5% of the seats in the National Assembly;
- 10.3. No party will be obliged to accept seats in the Cabinet or to serve therein;

- 10.4. Each individual member of the Cabinet will be appointed by the State President acting on the advice of the leader of the party in the National Assembly which is entitled to the Cabinet seat or seats;
- 10.5. The allocation of specific portfolios will be designed by the State President and in consultation with the leader of the party in the National Assembly whose member is appointed to such portfolio;
- 10.6. The State President shall be obliged to terminate the appointment of any member of the Cabinet if the National Assembly by a majority of its members resolves that it has no confidence in that Minister.
- 10.7. In the event of a vacancy in the Cabinet, occurring in the manner described in sub-article 10.6. hereof, or as a result of the death or resignation of a member of the Cabinet, the State President will be obliged to appoint a successor Minister from the ranks of the qualifying party on the recommendation of the party leader concerned.

Article 11. Appointment of Deputy Ministers

- 11.1 The State President may after consultation with members of the Cabinet appoint any person to hold office during the State President's pleasure as Deputy Minister of any specified Department of State or Deputy Minister of such other description as the State President and the Cabinet may determine and to exercise or perform on behalf of a Minister any of

the powers, functions and duties entrusted to such Minister in terms of any law or otherwise which may, subject to the directions of the State President and Cabinet be assigned to him from time to time by such Minister.

- 11.2. Deputy Ministers shall be appointed in a manner similar to the method prescribed by this Constitution for the appointment of Members of the Cabinet provided that Deputy Ministers need not be members of the National Assembly and shall not be members of the Cabinet.

Article 12.

Oath or affirmation

Before assuming office Ministers shall make and subscribe to an oath or affirmation before the State President or a person designated by the State President for this purpose in the terms set out in Schedule ? hereof.

Article 13.

Functions, duties and powers

Members of the Cabinet shall have the following functions:

- 13.1. to direct, co-ordinate and supervise the activities of ministries and government departments, including parastatal enterprises, and to review and to advise the State President and the National Assembly on the desirability and wisdom of any prevailing subordinate legislation, regulations or orders pertaining to such

parastatal enterprises, regard being had to the public interests;

- 13.2. to initiate bills for submission to the National Assembly;
- 13.3. to formulate, explain and assess for the National Assembly the budget of the State and its economic development plans and to report to the National Assembly thereon;
- 13.4. to carry out such other functions as are assigned to them by law or are incidental to such assignment;
- 13.5. to attend meetings of the National Assembly and to be available for the purposes of any queries and debates pertaining to the legitimacy, wisdom, effectiveness and direction of Government policies;
- 13.6. to take such steps as are authorised by law to establish such economic organisations, institutions and parastatal enterprises on behalf of the State as are directed or authorised by law;
- 13.7. to formulate, explain and analyse for the members of the National Assembly the goals of the Republic foreign policy and its relations with other States and to report to the National Assembly thereon;
- 13.8. to formulate, explain and analyse for the members of the National Assembly the directions and content of foreign trade policy and to report to the National Assembly thereon;
- 13.9. to assist the State President in determining what international agreements are to be concluded,

acceded to or succeeded to and to report to the National Assembly thereon;

13.10 to advise the State President on the state of national defence and the maintenance of law and order and to inform the National Assembly thereon;

13.11 to issue notices, instructions and directives to facilitate the implementation and administration of laws administered by the Cabinet, subject to the terms of the constitution or any other law;

13.12 to uphold, protect and defend the Constitution as the supreme law and to remain vigilant and vigorous with the purpose of ensuring that the scourges of apartheid, tribalism and colonialism do not again manifest themselves in any form in a free and independent, democratic South Africa.

13.13 to protect and assist disadvantaged citizens who have historically been the victims of these pathologies.

Article 14. Decision making process in the Cabinet

14.1. Save in respect of the budget and the other money bills, the State President who will chair every meeting of the Cabinet will assess consensus on any agenda item at the Cabinet meeting. If there is dissent within the Cabinet, and any Minister requests a vote, then the particular matter shall be put to a vote. A two-thirds majority of the Cabinet Ministers present and voting shall constitute "sufficient

consensus" for a decision to be taken on any particular item or aspect of legislation and any member who dissents therefrom shall be entitled to reserve his or her position and publicly declare his or her dissent.

- 14.2. In respect of the budget and monetary bills a simple majority of the Cabinet Ministers present and voting shall be sufficient to achieve consensus.

Article 15. Ministerial accountability

- 15.1. All ministers shall be accountable individually for the administration of their own ministries and collectively for the administration of the work of the Cabinet both to the State President and the National Assembly.
- 15.2. During their tenure of office as members of the Cabinet, Ministers may not take up any other paid employment, engage in activities inconsistent with their position as Ministers, or expose themselves to any situation which carries with it the risk of a conflict developing between their interest as Ministers and their private interests.
- 15.3. No members of the Cabinet shall use their positions as such or use information entrusted to them confidentially as such members of the Cabinet, directly or indirectly to enrich themselves [or their families].

Article 16. Replacement and removal of ministers

- 16.1. Subject to the provisions of clause ?, whenever any Minister or Deputy Minister is for any reason unable to perform any of the functions of his office the State President may appoint another Minister or Deputy Minister to act in the said Minister or Deputy Minister's stead, either generally or in respect of any specific function.
- 16.2. The State President shall be obliged to terminate the appointment of any member of the Cabinet if the National Assembly by a majority of all its members resolves that it has no confidence in that member.

CHAPTER 8

THE OMBUDSMAN AND HUMAN RIGHTS COMMISSION

Appointment of the Ombudsman

1. (1) There shall be an Ombudsman for the Republic who shall be appointed in a manner and have the functions, powers and duties prescribed by this section and any other law.
- (2) Whenever the appointment of the Ombudsman is due the Judicial Service Commission shall forthwith submit to the Speaker a list containing at least three and not more than five persons qualified and willing to occupy the office of an Ombudsman.
- (3) The National Assembly shall within 30 days after receipt of the list referred to in subsection 2 by the Speaker or if Parliament is not then in session, within 30 days after the commencement of the next ensuing session, elect one of the persons on the list and appoint such person as the Ombudsman provided such person has been found to be fit and proper person for appointment by a joint committee of Parliament.
- (4) The Ombudsman shall be a South African citizen holding the appointment of a Judge of a Supreme Court or possessing legal qualifications entitling such a person to practice in the Supreme Court.
- (5) The Ombudsman will hold office for the duration of this chapter.

Independence and impartiality of the Ombudsman

2. (1) The Ombudsman shall be independent and impartial and carry out his or her functions, powers and duties and subject only to the Constitution and law.
- (2) The Ombudsman shall be entitled to all the immunities and privileges of the Judge of the Supreme Court.
- (3) No member of the Cabinet or the Legislature or of any organ of the state or any person shall interfere with the Ombudsman in the exercise of the powers, duties and functions assigned to the Ombudsman by the Constitution.
- (4) All organs of the state shall accord such assistance as may be reasonably

required for the protection of the independence, impartiality, dignity and effectiveness of the Ombudsman in the execution of his or her functions, powers and duties.

Powers, Functions and Duties

3. (1) In addition to the powers, functions and duties vested in him or her by an Act of Parliament, the Ombudsman shall have the following functions:
 - (a) To investigate, on own initiative or on receipt of a complaint, any alleged -
 - (i) infringement or threatened or apparent infringement of a fundamental right and freedom of an inhabitant entrenched in chapter 3 by an admissible act at any level of government or by an official in the employ of any organ or any level of government;
 - (ii) maladministration in the public administration or in connection with the affairs of government at any level or by a person in public function;
 - (iii) abuse or unjustifiable exercise of power or unfair, capricious or discourteous or other improper conduct or undue delay by a person performing a public function;
 - (iv) improper acts, omission or corruption with respect to public funds;
 - (v) improper enrichment or the receipt of any improper advantage or promise of such enrichment or advantage by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or
 - (vi) improper prejudice or act or omission other than that referred to above as maybe prescribed by law.
 - (b) To endeavour to resolve any dispute or rectify any act or omission, complaint of, by -
 - (i) mediation or conciliation between, or negotiation with, the opposing parties;
 - (ii) recommending to an appropriate authority measures to achieve such settlement or rectification;

- (iii) assisting, where necessary, any complaint in the taking of appropriate legal steps against any offending authority;
 - (iv) submitting a report to Parliament or other appropriate legislature or authority on any matter investigated by him or her; or
 - (v) any other means as may be deemed expedient in the circumstances by the Ombud or prescribed by law; and
 - (c) generally to advise government at any level on ways and means to enhance respect for fundamental rights and democratic values within the public administration and to perform such other functions as may be prescribed by law.
- (2) The Ombud shall conduct an investigation under section (1) in a manner he or she deems expedient in the circumstances, and shall for the purposes of such investigation, in addition to such powers as may be prescribed by law -
 - (a) have the powers a judge of the Supreme Court has to require any person to appear before him or her to give evidence or to produce any document or other article; and
 - (b) have access to such information or evidential material which in the opinion of the Ombud may be relevant to the investigation.
 - (3) The Ombud may publish for general information particulars of his or her findings on any matter investigated under subsection (2).
 - (4) Recourse to or exercise of any powers, functions and duties of the Ombud, shall not oust the jurisdiction of the Court to hear any matter or cause whatsoever.
 - (5) The Ombudsman shall report on his or her activities to Parliament annually.

Deputy Ombuds and Assistants

4.
 - (1) The Ombud may appoint one or more deputy Ombuds and as many assistants as are necessary for the discharge of the work of the office of Ombud.
 - (2) The Ombud may assign any of or all the functions referred to in section 2 to a deputy Ombud or an assistant subject to such conditions as he or she may deem expedient.

Conditions of Service

5. (1) Remuneration and other conditions of service of the Ombudsman, which shall not be less favourable of those of a judge of a Supreme Court, shall be prescribed by an Act of Parliament.
- (2) The Ombudsman shall not be disciplined or removed from office except by a resolution of the majority of members of Parliament sitting jointly and upon a finding by the Judicial Service Commission, after a proper inquiry, that the Ombudsman committed misconduct or is unable to continue effectively with his or her functions.
- (3) A deputy ombud or an assistant who is not subject to the laws applicable to the public service and seconded to the office of the Ombud shall be appointed subject to such conditions of service as may be determined by the State President after consultation with the Ombud: Provided that a deputy ombud or an assistant -
 - (a) shall hold his or her office and perform his or her functions subject to the exclusive control and supervision of the Ombud; and
 - (b) shall not be transferred, disciplined or removed from office without the concurrence of the Ombud.

Regional Ombuds

6. (1) The Constitution of an SPR may provide for the appointment of a regional ombud to perform the functions referred to in section 2 with regard to all matters under the jurisdiction of such SPR.
- (2) The Ombud shall have concurrent jurisdiction with a regional ombud in all matters except a matter in relation to which the SPR legislature has exclusive powers in terms of this Constitution.

Human Rights Commission

Appointment of Commission

7. (1) There shall be a Human Rights Commission which shall consist of -
 - (a) two persons elected by the National Assembly;
 - (b) a Judge of the Supreme Court, a magistrate an attorney, advocate or a teacher of law; and
 - (c) nine persons selected on the basis of their knowledge of or experience in

human rights matters.

- (2) (a) No person referred to in subsection (1) (b) and (c) shall subject to paragraph (a) be appointed by the President.

THE STATUS OF INTERNATIONAL LAW

193(1) All international agreements binding on the Republic immediately prior to the commencement of this Constitution shall continue to be binding, unless parliament decides otherwise.

193 (2) International agreements binding on the Republic and approved by Parliament in terms of section , unless otherwise provided for in this Constitution or by express provisions in an Act of Parliament, shall form part of the law of the land

193 (3) The rules of customary international law binding on South Africa, unless inconsistent with the provisions of this constitution or an act of Parliament, shall form part of the law of the land.

61(a) Parliament shall have the power and function subject to this Constitution:

- (1) to consider and decide whether international agreements entered into by the Republic prior to the commencement of this Constitution, shall remain binding on the Republic
- (2) to agree to the ratification of or accession to international agreements negotiated and signed in terms of section.....
- (3) all agreements referred to in section.... shall be published in the Government Gazette

7(1)(g) To negotiate and sign international agreements and to delegate such power subject to this Constitution.

All international agreements referred to in section..... shall be placed before
parliament
for
ratification
or
accession
within 24
months.

INDEPENDENT ELECTORAL COMMISSION ACT WITH THE CONSTITUTION

During the debate in the Negotiating Council the question was raised whether the Independent Electoral Commission Act is compatible with the Constitution. Section 4 (1) of the Constitution provides that the Constitution shall be the supreme law of the land. According to Section 3.1 of the Independent Electoral Commission Act the Act shall be binding on the State. Where a conflict may arise between the provisions of the Act and the inherent powers of the state or the provisions of any other statute, save for other transitional legislation, it shall override such powers and provisions insofar as they relate to the conduct and supervision of elections, referenda and other matters dealt with in terms of the Act.

'Transitional legislation' is defined by the Act to include inter alia the 1993 Constitution.

As the 1993 Constitution enjoys supremacy, which supremacy is reflected by the Independent Electoral Commission Act, no conflict arises between the two.

The provisions of the Independent Electoral Commission Act will apply in respect of the first and subsequent Election for Parliament and SPR legislatures.

The 1993 Constitution will only come into force after the first election. The provisions of the Act will therefore already be implemented under the present Constitution which does not enjoy supremacy and is not included in the definition of 'Transitional legislation' of which the supremacy is acknowledged. The Act may also apply under a constitution subsequent to the 1993 Constitution. The reference to the Constitution in the Act should therefore be amended to make provisions for other Constitutions in the 1993 Constitution.

EXTRACTS OF MINUTES OF THE NEGOTIATING COUNCIL PERTAINING TO THE TECHNICAL COMMITTEE ON REPEAL OF DISCRIMINATORY LEGISLATION

5. Substantive Issues (7 May 1993)

5.1 Composition and Appointment of Technical Committees

- 5.1.1 It was proposed, seconded and agreed to meet in-committee as recommended by the Planning Committee, to discuss the issue of the composition of the Technical Committees. The reason given for meeting "in-committee" was that the merits or demerits of the nominees should not be discussed in front of the media.
- 5.1.2 It was noted that the Planning Committee had mandated the Sub-Committee (consisting of M Maharaj, B Ngubane and SS van der Merwe) to submit recommendations to the Planning Committee, who in turn submitted recommendations to the Negotiating Council with regard to the composition of the Technical Committees.
- 5.1.3 It was agreed that the Sub-Committee, on behalf of the Planning Committee, present to the Negotiating Council a report on the background as to how the lists were composed. This background information would assist members to make an informed decision. It was further noted that the lists with the nominations as received from participants, plus the recommended composition from the Planning Committee were distributed at this point in the meeting.
- 5.1.4 The following criteria, used by the Sub-Committee in composing the Technical Committees, were noted:
- * The necessary expertise of individuals should be considered, no matter which participant nominated them;
 - * Individuals nominated to participate in Technical Committees would serve as individuals and not as representatives of any participant in the process;
 - * There should, nevertheless, be a spread of interests in the Technical Committees as far as possible;
 - * Some individuals were nominated by more than one participant;
- 5.1.5 With regard to the report by the Sub-Committee the following was noted:

- * The Technical Committees are not negotiating fora, but will facilitate structuring the discussions; all negotiations will take place in the Negotiating Council;
- * The composition of each Technical Committee was presented in detail;
- * The Technical Committee on Violence (consisting of 4 individuals) will be assisted by 4 persons nominated by the Executive of the National Peace Committee.
- * In the Technical Committee dealing with the Amendment or Repeal of Legislation impeding free political activity and discriminatory legislation, a person will be seconded from the Department of Justice. This will also apply to the Department of Justice of the TBVC States when their legislation is under discussion.

5.1.6 Once the report had been presented as recommended by the Planning Committee, and as the Negotiating Council had received these recommendations at the meeting, the meeting adjourned until 14h30. This would allow participants time to consult and/or caucus.

5.1.7 It was noted that any problems or suggestions by participants in this regard should be forwarded to members of the Planning Committee, who would meet at 14h00 and make a final recommendation to the Negotiating Council. It was noted that it was important that finality should be reached on this issue at this meeting.

5.1.8 It was agreed that the lists as distributed should remain confidential at this stage.

5.1.9 The final recommendation of the Planning Committee to the Negotiating Council was agreed to, as amended.

5.1.10 It was agreed that individuals who had been nominated, but not appointed by the Negotiating Council, could still be used as experts by the different Technical Committees.

5.1.11 If appointed individuals were unavailable to serve on the Technical Committees, the Planning Committee was mandated to recommend replacements. These recommendations, if any, would be brought before the Negotiating Council for ratification.

5.1.12 It was noted that all participants would receive a list of the composition of the Technical Committees as agreed upon.

5.1.13 It was agreed to go out of committee. A report back was given to the full meeting, after which the document was then formally proposed, seconded and adopted as amended. (See Addendum B)

THE COMPOSITION OF THE TECHNICAL COMMITTEES

NB. Each of the Technical Committees should be mandated to consult with experts on any issue they might consider necessary.

1. Violence

In addition to four representatives from the National Peace Committee the following:

- * Mr V Ntsubane
- * Prof P Oosthuisen
- * Prof A Seegers
- * Prof H Vilakazi

2. Constitutional Matters:

- * Mr F Cachalia
- * Adv A Chaskalson
- * Prof GE Devenish
- * Adv E Moseneke
- * Adv B Ngoepe
- * Prof W Olivier
- * Dr F Venter
- * Prof M Wiechers

3. Fundamental Rights During the Transition

- * Prof H Corder
- * Prof LM du Plessis
- * Mr G Grovè
- * Ms D Nene
- * Adv Z Yacoob

4. Transitional Executive Council

- * Ms Z du Toit
- * Prof F Haysom
- * Dr JC Heunis
- * Mr ME Mapheto
- * Adv J Renene

- * Prof D van Wyk

5. Independent Media Commission and Independent Telecommunications Authority

- * Ms A Armstrong
- * Dr B de Villiers
- * Adv D Dison
- * Mr EJ Mabuza
- * Adv P Pretorius

6. Independent Electoral Commission

- * Prof D Davis
- * Adv HR Laubscher
- * Mr SK Ndlovu
- * Mr RB Rosenthal

7. Repeal of Discriminatory Legislation

- * Prof J Dugard
- * Prof MG Erasmus
- * Adv P Langa
- * Adv P Moroka-Motlana
- * Adv J de Bruyn (ex officio, Department of Justice)

5.7 Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation: (18 May 1993)

5.7.1 The members of the Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation were welcomed.

5.7.2 An overview and issues to be highlighted or requiring decision/guidance from the Negotiating Council in the report was presented by a spokesperson of the Technical Committee. Discussion followed.

5.7.3 The Technical Committee was requested to take into account the concerns and views of delegates in formulating its second report (including the role of Traditional Leaders).

5.7.4 It was agreed to mandate the Technical Committee to:

- * Within the next two weeks identify those laws which are discriminatory and that inhibit free political activity which should be repealed; and report back to the Negotiating Council;

- * In addition, a the "higher code" spoken of in the report and an implementation mechanism should be suggested by the Technical Committee.

5.7.5 It was requested that the various governments/administrations co-operate with the Technical Committee with regard to the identification process.

5.7.6 The members of the Technical Committee were thanked for the work so far completed.

5.2 Technical Committee on The Repeal or Amendment of Legislation Impeding Free Political Activity and Discriminatory Legislation: (29 June 1993)

5.2.1 The Technical Committee was welcomed. Present were MG Erasmus, K Motlana-Moroke and T de Bruyn. Apologies were noted from J Dugard and P Langa. The Technical Committee presented an overview of its report and drew the attention of the meeting to matters that needed its consideration. Questions of clarity were put to the Technical Committee.

5.2.2 Extensive discussion and debate followed on the report, after which it was agreed to refer the following issues to the Planning Committee for consideration:

- * To look into what mechanisms need to be employed or what suggestions can be made in respect of the date of implementation of the Bill of Rights.
- * To look into the issue of "verticality" and "horizontal", pending the report from the Technical Committee on Fundamental Human Rights, and establish some mechanism to resolve these particular issues.
- * To consider the issue of the need for democratic government and the rule of law government between the present time and the elections (getting from point "A to point B").
- * To look into the issue of the uniformity of application of the Bill of Rights and the principles with regard to the elections.
- * The Technical Committee on Fundamental Rights during the Transition and the Technical Committee on the IEC have suggested or are considering a set of enforcement mechanisms. Enforcement mechanisms are also necessary for the enforcement of the Bill of Rights. The Planning Committee should apply it mind to this issue and bring various recommendations on how the overlaps could be avoided. This will give guidance to the

Technical Committee on the Repeal of Discriminatory Legislation.

- * The Planning Committee should submit recommendations as to how to deal with the part of the Second report of the Technical Committee, with regard to specific pieces of legislation.
- * How the possible tribunals would work.
- * The Technical Committee was free to make any submissions to the Planning Committee on the above issue if they so wished.
- * It was suggested that the brief of the Technical Committee should be clarified.

5.2.3 The Technical Committee was thanked for its work so far completed.

**RESOLUTION ON STEPS TO BE TAKEN FOR THE
PURPOSES OF ESTABLISHING A NEW CONSTITUTIONAL ORDER
ADOPTED BY THE NEGOTIATING COUNCIL ON 30 JUNE 1993**

1. The Negotiating Council agrees on the following steps to be taken for the purposes of establishing a new constitutional order:
 - 1.1 The MPNP shall adopt the Constitutional Principles, including principles of regional government, providing for both strong regional government and strong national government;
 - 1.2 The Constitutional Principles shall be binding on the Constitution-Making Body and shall be justiciable by a Constitutional Court/Tribunal;
 - 1.3 The Commission on Delimitation/Demarcation appointed by the MPNP will make recommendations to the MPNP on regional boundaries for the purposes of elections and regional government for the transitional phase;
 - 1.4 The MPNP shall agree on legislation to make provision for the following structures for the purpose of levelling the playing field and promoting conditions conducive to the holding of free and fair elections:
 - 1.4.1 A Transitional Executive Council;
 - 1.4.2 An Independent Electoral Commission;
 - 1.4.3 An Independent Media Commission and an Independent Broadcasting Authority;
 - 1.5 The MPNP shall agree on details of discriminatory legislation to be repealed;

- 1.6 The MPNP shall agree on a Constitution for the transitional period;
2. The Negotiating Council accordingly requests the Technical Committee on Constitutional Issues to draft a Constitution for the transition which shall make provision for:
 - 2.1 The election according to a system of proportional representation of a Constitution-Making Body, legislature and national government for the transitional phase which will include a national and regional component. With regard to constitution making, this Constitution shall provide for dead-lock breaking and special majorities by which decisions will be taken;
 - 2.2 The election of regional legislatures and the establishment of regional governments in the transition;
 - 2.3 The powers, functions and structures of regions for the transitional period;
 - 2.4 Fundamental human rights on a justiciable basis during the transitional period;
 - 2.5 A Constitutional Court/Tribunal to ensure the justiciability of the Constitutional Principles, of the fundamental rights and of the Constitution itself;
3. Participants are given until the 12th of July 1993, to make further inputs to the Technical Committee with regard to the above draft Constitution for the transition.
4. This is agreed against the background of paragraph 6 of the Explanatory Memorandum adopted by the Negotiating Council on 30 April 1993.

5.8 Technical Committee on the TEC and its Sub-Councils:

- 5.8.1 The members of the Technical Committee on the TEC and its Sub-Councils were welcomed.
- 5.8.2 An overview and issues to be highlighted or requiring decision/guidance from the Negotiating Council in the report was presented by a spokesperson of the Technical Committee. Discussion followed.
- 5.8.3 The Technical Committee was requested to take into account the concerns and views of delegates in formulating its second report.
- 5.8.4 It was agreed to not debate the merits or demerits of a TEC, but to request the Technical Committee to continue with its work, its next report and any draft legislation that may be necessary.
- 5.8.5 It was further noted that the Negotiating Council has not yet reached agreement on a TEC and that this could only be considered once

transition/negotiation process scenarios are before the Negotiating Council.

- 5.8.6 The members of the Technical Committee were thanked for the work so far completed.

WORK PLAN - JUNE 9, 1993

DBSA DATA COLLECTION

1. JANINE ERASMUS - DATA AND BIBLIOGRAPHY ON THE FOLLOWING:

- * Physical Infrastructure
 - Water and Sanitation
 - Transportation
 - Electricity
 - Telecommunication
- * Social Infrastructure
 - Health
 - Education
 - Nutrition
 - Social Services
- * Demographic Data
 - Population Distribution (Urban-Rural, Gender, Race, Age, Language)
 - Voter Distribution
- * Economic Data
 - GGP
 - Labour Force Participation Rates
 - Labour Force Composition
 - Dependency Ratios
 - Regional Development Indicators (Shift-Share Analysis, Location Quotients, Tress index)
- * Labour Force Characteristics ???
 - Productivity
 - Skills Profile

2. ADMINISTRATIVE AND FINANCIAL CAPACITY (TBVC AND SGT) --SAPRO GROUP

- * Number of employees by categories
- * Revenue raising capacity
- * Budgets and breakdown of costs

3. ADMINISTRATIVE AND FINANCIAL CAPACITY -OTHER REGIONAL GOVTS.

- * Same as above for provincial, magisterial and RSCs.

4. MAPS - CSIR and relevant bodies

- * Boundaries of Provincial, magisterial, districts and RSCs and infrastructure provision

5. QUALITATIVE INFORMATION

- * Analysis of current status and trends of the South African Economy (DBSA, ECONOMIC TRENDS UNIT, MERG ETC.)
- * Analyses of regional economies (BIBLIOGRAPHY)
- * Analyses of regional civil services and those of TBVC and SGTs (BIBLIOGRAPHY)
- * Documentation of Regionalism (HSRC, CPS)
- * Historical Information re: boundaries CPS (SHUBANE)
- * Language and Culture Issues -- HSRC, UNISA (FINLAYSON)
- * International Experience Re: regionalism and regional boundaries --HSRC, CPS)

6. Prepare initial discussion document re: (i) the meaning of criteria/issues pertaining to criteria, (ii) some problem issue already identified in the current discussions on regions (e.g., Border/Kei, Winterveld, Northern Cape, PWV), and (iii) additional criteria/issues to be considered (e.g. SATSWA issue raises question of who gets to decide who falls within what region) (iv) the role of referenda in the final decision on the demarcation of regions.

MEMORANDUM

To: The Sub-Committee

From: The Technical Committee on Violence

Date: 28 September 1993

The Technical Committee on Violence mentioned in its 3rd, 4th, and 5th Reports to the Negotiating Council that it was awaiting the final draft on the proposed Goldstone Bill on the Regulation of Public Gatherings.

The Committee has now received the final Bill and has examined it carefully. In the Committee's view, the Bill does not yet accord with the recommendations of Professor Heyman and his panel. It also contains a number of flaws which should be addressed by the drafters of the Bill before it is submitted to Parliament.

The matter is important, as the Bill will regulate the statutory procedures to be followed, the consequences of non-compliance with statutory procedures, and the consequences of riot damage in respect of all public gatherings and demonstrations in the course of the election campaign.

The Committee proposes to send two of its members, Piet Oosthuizen and Mark Phillips, both of whom are lawyers, to Cape Town next week to discuss changes which in the Committee's view should be made to the Bill, with Advocate Rossouw of the Goldstone Commission who is responsible for the Bill.

The Committee requests the Planning Committee to approve this procedure.

TECHNICAL COMMITTEE ON VIOLENCE
28 SEPTEMBER 1993