

AGENDA AND DOCUMENTATION

for the meeting of the

PLANNING COMMITTEE

held at 08h30 on Friday

14 MAY 1993

[6]

**CONTENTS OF THE PLANNING COMMITTEE PACK
FOR 14 MAY 1993 AT 09H00**

Item	Page No.
1. Draft agenda for the Planning Committee meeting - 14 May 1993	1
2. Draft minutes of the Planning Committee meeting - 10 May 1993	2
3. First Reports from Technical Committees:	
3.1 Violence	19
3.2 Constitutional Issues	21
3.3 Fundamental Human Rights during the Transition	31
3.4 Independent Election Commission	36
3.5 Independent Media Commission	37
3.6 Amendment or repeal of legislation impeding free political activity and discriminatory legislation	39
3.7 TEC and its Sub-Councils	44
4. Report from the Technical Committee on Constitutional Issues on the advisability of a commission/committee on regions	56
5. Report from Administration on meeting with the SAP	61
6. Correspondence to be noted:	
6.1 Letter sent by Administration to New Applicants	63
6.2 Letter sent by Administration to all other Negotiating Fora	66
6.3 Letter received from Diocese of Christ the King	67
6.4 Letter received from the Social Workers Association of South Africa	68
6.5 Letter received from the Women's National Coalition	70
7. Draft agenda for the meeting of the Negotiating Council to be held on Tuesday 18 May 1993 at 09h00	71
8. Proposed schedule of Meetings	72

**DRAFT AGENDA FOR THE MEETING OF THE PLANNING COMMITTEE
TO BE HELD AT 09H00 ON FRIDAY 14 MAY 1993 AT
THE WORLD TRADE CENTRE**

Chairperson : C Eglin

1. **Moment of Prayer/Meditation**
2. **Welcome and Attendance**
3. **Ratification of Agenda**
4. **Minutes**
 - 4.1 Minutes of the meeting of 10 May 1993 (Addendum A, p2 - 18)
 - 4.2 Matters arising
5. **Substantive Issues**
 - 5.1 Technical Committees : Receipt of first reports (Addendum B, p19)
 - 5.1.1 Violence (p19 - 20)
 - 5.1.2 Constitutional Issues (p21 - 30)
 - 5.1.3 Fundamental Human Rights during the Transition (p31 - 35)
 - 5.1.4 Independent Election Commission (p36)
 - 5.1.5 Independent Media Commission (p37 - 38)
 - 5.1.6 Amendment or repeal of legislation impeding free political activity and discriminatory legislation (p39 - 43)
 - 5.1.7 TEC and its Sub-Councils (p44 - 55)
 - 5.2 Advisability of a commission/committee on regions (Addendum C, p56 - 60)
6. **Procedural Issues**
 - 6.1 Structuring of the discussion of Reports from Technical Committees in the Negotiating Council (Verbal report by Sub-committee available during the meeting)
 - 6.2 New Participants:
 - 6.2.1 Observers - decision needed
 - 6.2.2 Processing of Applications
 - 6.2.3 Administrations/Governments - decision needed
 - 6.3 Media Arrangements (Report from Administration, available at the meeting)
7. **Administrative and Financial Matters**
 - 7.1 Report on meeting with the SAP (Addendum D, p 61 - 62)
 - 7.2 Correspondence to be noted (Addendum E, p63 - 70)
8. **Report to and Agenda of Negotiating Council (Addendum F, p71)**
9. **Meetings Schedule (Addendum G, p72)**
10. **Closure**

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

DRAFT MINUTES OF THE MEETING OF THE PLANNING COMMITTEE HELD ON 10 MAY 1993 AT 10H30 AT THE WORLD TRADE CENTRE

PRESENT: B Alexander
R Cronje (Chairperson by rotation)
C Eglin
PJ Gordhan
FT Mdlalose
RP Meyer
MC Ramaphosa
J Slovo
Z Titus
M Webb

T Eloff (Administration)
G Hutchings (Minutes)

1. Moment of Prayer/Meditation

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

2. Welcome and Attendance

2.1 All members were welcomed.

2.2 An apology for late arrival by PJ Gordhan, FT Mdlalose and J Slovo was noted.

3. Ratification of Agenda

The agenda was ratified with no amendments.

4. Minutes

4.1 The minutes of the meeting of the Planning Committee of 3 May 1993 were

adopted with the following amendments:

- 4.1.1 Item 5.2.3 to read "It was noted that the Technical Sub-Committees would be responsible for their own meetings schedule, subject to the time frames given by the Planning Committee";
- 4.1.2 Item 5.3.8 read "It was agreed in principle to recommend to the Technical Sub-Committee dealing with constitutional issues to consider the advisability of setting up a commission on regions to deal with the issue of boundaries, functions and powers in terms of the CODESA Reports with regard to whatever dispensation is to be agreed upon. This would not imply commitment, decision or acceptance on behalf of any participant. The issues would still be debated within the Negotiating Council. The Technical Sub-Committee is to submit to the Planning Committee a recommendation on the composition, Terms of Reference, time frames and the way in which the commission would function. This commission would be a public commission. This recommendation should reach the Planning Committee before 14 May 1993."

It was noted that the formulation of this item is to be relooked at in order to ensure that it correctly reflects the decision.

- 4.1.3 Item 6.1.4, the first asterisk, first sentence to read "That the principle of provincial representation should be maintained, but the problems around the representivity of existing delegations should be addressed in consultation with and in a manner acceptable to all concerned";
 - 4.1.4 Item 6.2 to read, "It was agreed to recommend to the Negotiating Council that this issue be removed from the agenda until the Planning Committee is in a position to submit a recommendation to the Negotiating Council";
 - 4.1.5 Item 6.4.3, the word "from" be replaced by "with regard to";
 - 4.1.6 Item 6.6.2 to read "In the Plenary, the Negotiating Forum, the Negotiating Council, the Planning Committee or in any sub-structures as set up by these structures, non-South Africans cannot be participants on the basis that they are representing, in either delegate or adviser capacity, any participant";
 - 4.1.7 Item 6.6.3, the last sentence be deleted.
- 4.2 Matters arising from the minutes of the Planning Committee meeting of 3 May 1993:

4.2.1 Contact with other Negotiating Fora:

It was noted that the Administration has received a complete list of all other negotiating fora. This list was distributed to members. Furthermore, letters will be sent to these fora.

4.2.2 Meeting with the National Peace Accord members:

4.2.2.1 It was agreed that an ad hoc sub-committee of the Planning Committee (consisting of FT Mdlalose, RP Meyer, MC Ramaphosa and M Webb) meet with J Hall and A Gildenhuis of the National Peace Accord at 08h30 on Friday 14 May 1993. Any other members of the Planning Committee may be present if they so wish. The meeting of the Planning Committee would, therefore, commence at 09h00 on Friday 14 May 1993.

4.2.2.2 It was agreed that the following three points should be conveyed to the members of the National Peace Committee by the ad hoc sub-committee:

- * That the problem of violence has to be addressed within the Negotiating Council. It should be noted that the Negotiating Structures do not want to supersede or override the authority of the Peace Committee, but since constitutional negotiations should move forward in tandem with an effective resolution of the problem of violence, the Negotiating Structures have a responsibility to deal with the matter of violence;
- * Furthermore, as not all participants are signatories to the National Peace Accord, the issue of violence should also be attended to within the Negotiating Council;
- * The Technical Committee will therefore link the interests of the Peace Committee and the Negotiating Structures.

4.2.2.3 It was noted that four members of the National Peace Committee Executive would form part of the Technical Committee on Violence and would attend the briefing for the Technical Committees scheduled for 14h30 on 10 May 1993.

4.2.2.4 It was suggested that the Technical Committee on Violence submit recommendations to the Planning Committee on how contact could be made between this process and other bodies, for example, the Goldstone Commission.

5. Substantive Issues

5.1 Technical Committees : Management and Briefing

The Sub-Committee presented a report to the Planning Committee. The following was noted:

5.1.1 A basic core set of documentation would be distributed to the members of the Technical Committees at the briefing. This included:

- * The Resolution on the Transition Process as adopted at the meeting of the Negotiating Forum on 1 April 1993;
- * The Resolution on Violence as adopted at the meeting of the Negotiating Forum on 1 April 1993;
- * The Structures and Standing Rules of the Negotiating Process;
- * The decision of the Negotiating Council with regard to the trilogy of documents and the inclusion of these documents;
- * The decisions of the Negotiating Council at their meeting of 30 April 1993 with regard to Technical Committees;
- * Transcriptions from meetings of the Negotiating Council and of the Negotiating Forum of the sections relevant to the Technical Committees on violence and the transition process;
- * The relevant Guidelines as per each Technical Committee;
- * The Declaration of Intent with regard to an Election Date as adopted by the Negotiating Council meeting on Friday 7 May 1993;
- * The schedule of meetings of the Negotiating Process until 3 June 1993.
- * Any inputs as submitted by participants;

5.1.2 It was agreed that submissions from participants to the Technical Committees should be sent to the Administration who would record the date the submission is received. The Administration would then distribute the submission to the

relevant Technical Committee and to the Sub-Committee (consisting of M Maharaj, B Ngubane and M Maharaj). The Sub-Committee should report back to every meeting of the Planning Committee in this regard.

- 5.1.3 It was agreed that the Sub-Committee draft a document to use in the briefing to the Technical Committee members. After lunch the document, as submitted to the Planning Committee, was agreed to with amendments. This document would supplement the verbal briefing of the Technical Committees. (See Addendum A)
- 5.1.4 It was further agreed that the Sub-Committee draft a circular to all participants requesting inputs/submissions from participants to Technical Committees. After lunch the draft circular was approved as amended. It was agreed that this circular be faxed immediately to all participants. It was noted that all submissions are to be in writing. This also applies to submissions received from experts. (See Addendum B)
- 5.1.5 After lunch the Sub-Committee presented a report to the Planning Committee stating the process and time frames as agreed to in the Planning Committee up to the meeting of the Negotiating Council on 18 May 1993. (See Addendum C)
- 5.1.6 It should be noted by the Technical Committees that Item 6 and 7 of the "Explanatory Memorandum" form the basis of the relationship between the Technical Committees and the Negotiating Structures.
- 5.1.7 It was suggested that members of the Technical Committees attend meetings of the Negotiating Council and the Negotiating Forum as observers to listen to relevant discussion. It was agreed that the Sub-Committee submit a proposal to the Planning Committee in this regard.
- 5.1.8 It was noted that the necessary Administrative back-up and facilities had been arranged for the Technical Committees.
- 5.1.9 It was agreed that the Administration be mandated to negotiate with any member of a Technical Committee on the issue of remuneration, bearing in mind the decision of the Planning Committee on this issue. This should be stated at the verbal briefing for the Technical Committees. It was further noted that the parameters for remuneration fall between R300 per day to R160 per hour (only working hours apply and not travelling time). It was noted that all relevant expenses incurred by

members of the Technical Committees would be carried by the process.

- 5.1.10 The Sub-Committee was mandated to recommend replacement names for members of Technical Committees who had not accepted nominations, where necessary.
- 5.1.11 It was agreed that the issues as referred to in the initial proposals of the Planning Committee (i.e. Strengthening of the Peace Accord Structures, the Security Forces and Armed Formations and a Peace Corps, cf Documentation distributed at the meeting of the Negotiating Council of 26 April 1993, Addendum C p56), be referred to the Technical Committee on Violence with a request to consider these outstanding issues and submit recommendations to the Planning Committee in their initial report.
- 5.1.12 It was noted that in line with the proposals of the Planning Committee, the issue of the Security Forces and Armed Formations be dealt with in the Technical Committee on the TEC.
- 5.1.13 It was agreed to defer the resubmitting of the Draft Resolution on Violence to the Negotiating Council to a later date.
- 5.1.14 After lunch the following process for the briefing of members of the Technical Committees was agreed to:
- * The current Planning Committee Chairperson would welcome the members and introduce the Planning Committee, after which members of the Technical Committees would be requested to introduce themselves;
 - * The Sub-Committee would deal with the pack of core documentation and the document to brief the Technical Committees, followed by a period of questions and answers;
 - * The Technical Committees would then convene and decide on their programme of work and any other business;
 - * The Technical Committee dealing with Constitutional Issues would be requested to remain behind and the issue of the proposed commission/committee be dealt with (see below Item 5.3).

7

5.1.15 At 14h30 a briefing was given to all members of the Technical Committees by the Planning Committee with the assistance of the Sub-Committee as mandated by the Planning Committee.

5.2 Proposed Resolution to ensure peaceful conditions for Constitutional Negotiations and free political activity in South Africa

It was agreed that this Resolution be submitted to the Technical Committee on Violence and the Technical Committee dealing with the TEC. A report in this regard should be submitted to the next meeting of the Negotiating Council on 18 May 1993.

5.3 Advisability of a commission/committee on regions

It was agreed to refer this issue to the Technical Committee on Constitutional Issues. A recommendation encompassing the type of structure, the Terms of Reference, the Composition, Time-Frames, etc. of such a commission/committee on regions should be included in the initial report of the Technical Committee to the Planning Committee. A proposal in this regard would then be submitted to the meeting of the Negotiating Council on 18 May 1993. This would ensure the issue had been specifically dealt with, but also within an overall context.

6. Procedural Issues

6.1 New Participants:

6.1.1 It was noted that letters to all applicants are to be sent out by the Administration informing them of the decision of the Negotiating Council of 7 May 1993.

6.1.2 Furthermore, the Administration is to send letters to the Traditional Leaders (excluding the Orange Free State Traditional Leaders) requesting them to solve problems of representivity within their delegations amongst themselves and to inform them of the decision of the Negotiating Council (the principle of provincial representation remains). The Administration was mandated to assist the Traditional Leaders if so requested.

6.2 Media Arrangements:

It was noted that a report would be submitted to the next meeting of the Planning Committee on Friday 14 May 1993.

● 7. **Administrative and Financial Matters**

- 7.1 A request to distribute Bibles to participants had been received by the Administration. It was agreed to have these available at registration and participants who wished to take one, could do so.
- 7.2 It was agreed that the Administration should be flexible on the issue of the number of bodyguards per delegate.

8. **Closure**

- 8.1 All members were requested to apply their minds to the question of how debates in the Negotiating Council on the reports of the Technical Committees are to be structured. This would be dealt with at the next meeting of the Planning Committee on Friday 14 May 1993.
- 8.2 The meeting closed at 17h30.

BRIEFING OF TECHNICAL COMMITTEES

1. The Negotiating Council agreed to establish seven Technical Committees. It is envisaged that each of these Technical Committees will facilitate discussion and the reaching of agreements in the Negotiating Council.
2. The purpose of the Technical Committees is outlined in an Explanatory Memorandum which was agreed to by the Negotiating Council on 7 May 1993. In particular we refer to paragraphs 6 and 7 of this Memorandum:

"6. It is expressly understood by all participants that each of the above proposals and the documentation emanating from such Technical Committees shall be discussed in the Negotiating Council with the view to arriving at an agreement on these matters. Furthermore, that as and when agreement is reached on each of these matters the Council shall expressly determine when and how the specific agreement shall be implemented. This provision is made so as to ensure that participants have a clear understanding of the package of agreements which would constitute the key elements of the transition process."

"7. Technical Committees are not fora for negotiating substantive issues. They are instruments of the Negotiating Council in order to produce systematic documentation to facilitate discussion and negotiating in the Negotiating Council. Documentation produced by each of these Technical Committees shall be discussed at the Negotiating Council and on the basis of those discussions sent back to the Technical Committees for further development. This process would be repeated until agreement is reached in the Negotiating Council on a final document on the issue in question."

3. **The Seven Technical Committees are:**

- 3.1 On Violence
- 3.2 Constitutional Issues (including Form of State and Constitutional Principles, Constitution Making Body/Constituent Assembly, Transitional /Interim Constitution, Transitional Regional/Local Government, Future of the TBVC States, Self Determination)
- 3.3 Fundamental Rights During the Transition
- 3.4 The Independent Election Commission
- 3.5 The Independent Media Commission and the Independent Telecommunications Authority
- 3.6 Amendment or Repeal of Legislation Impeding Free Political Activity as well as Discriminatory Legislation
- 3.7 The Transitional Executive Council and its Sub-Councils.

4. The issues allocated to each of the above Technical Committees arise from key elements of the negotiating process which will enable South Africa to move from the current order to a democracy. Detailed guidelines were agreed to at the Negotiating Council in respect of each of these Technical Committees. These are being made available to each Technical Committee in order to guide their work as well as provide each with an overview of the tasks entrusted to all the Technical Committees.
5. The Technical Committees, as was stated earlier, are not Negotiating Fora. It is expected that the basic working documents of each Technical Committee would be:
 - 5.1 The trilogy of documents emanating from the CODESA process, namely the Report on CODESA Agreements, the Summary of these CODESA Reports and the Consolidated Document on CODESA Reports.
 - 5.2 The proposals of the Planning Committee (the first and the second reports) which are partially derived from the Consolidated Document on CODESA Reports, and which constitute the guidelines in respect of each Technical Committee.
 - 5.3 Submissions and inputs from the participants to the current negotiating process: A special circular is being sent out by the Planning Committee to all participants inviting these submissions and setting deadlines for such submissions to be made.
 - 5.4 Discussions on any of the substantive issues which have taken place in the Negotiating Forum and the Negotiating Council before the Technical Committees were set up (these have been extracted from the relevant minutes and are included in the files being prepared for each Technical Committee).
 - 5.5 Discussions which shall take place in the Negotiating Council on the basis of the reports and documents prepared by each Technical Committee.
 - 5.6 Any other submissions which may be made to the Technical Committees by individual experts and interest groups, provided these are submitted within the time frames of the Negotiating Process
6. The basic process within which the Technical Committees shall function are as follows: Each Technical Committee shall prepare systematic documentation (which may even take the form of draft legislation) for structured discussion, amendment etc in the Negotiating Council. If no agreement has been reached on any specific issue on aspects of a Technical Committee report, such aspects would be referred back to the Technical Committee for their further development which would take into account the discussions in the Negotiating Council. The process would be repeated until participants in the Negotiating Council reach agreement.
7. In addition to the above guidelines etc we refer you to the Declaration of Intent which

was adopted by the Negotiating Council on 7 May 1993. This Declaration imposes certain time frames with regard to the work of the Technical Committees. In this context we draw your attention to the fact that the following dates have been set for meetings of the Negotiating Council during the month of May: The Negotiating Council is scheduled to meet on Tuesday 18 May, Tuesday 25 May and Friday 28 May. The meetings are preceded by meetings of the Planning Committee which are scheduled for Friday 14 May, Monday 17 May, Tuesday 18 May, Monday 24 May, Tuesday 25 May.

8. It is important that participants in the Negotiating Council and members of the Planning Committee receive reports and documentation from the Technical Committees at least 24 hours before their meetings.
9. It should be noted by the Technical Committees that the negotiations take place in the Negotiating Council. The Planning Committee is a facilitating body and has been entrusted by the Negotiating Council with the task of managing and coordinating the work of the Technical Committees. To this end the Planning Committee will use the services of a three person Sub-Committee working under the guidance of and accountable to the Planning Committee. In the context of this structural framework, the Technical Committees are committees of the Negotiating Council to whom they are accountable.

10. **Relations with the media:**

It should be further noted that persons serving in the Technical Committees do so in their individual capacities and not as representatives of any party/organisation. It should be expressly understood that neither the Technical Committees nor individuals serving on any of these Technical Committees are to make statements or comments to the media on matters relevant to the work of the Technical Committee on which they are serving.

11. **Submissions and inputs to Technical Committees:**

Submissions by participants, interest groups and experts shall be made to the Technical Committees in writing. These shall be received by the Administration and forwarded to the three person Sub-Committee for transmission to the respective Technical Committees. No oral evidence shall be entertained.

12. **Reports of the Technical Committees**

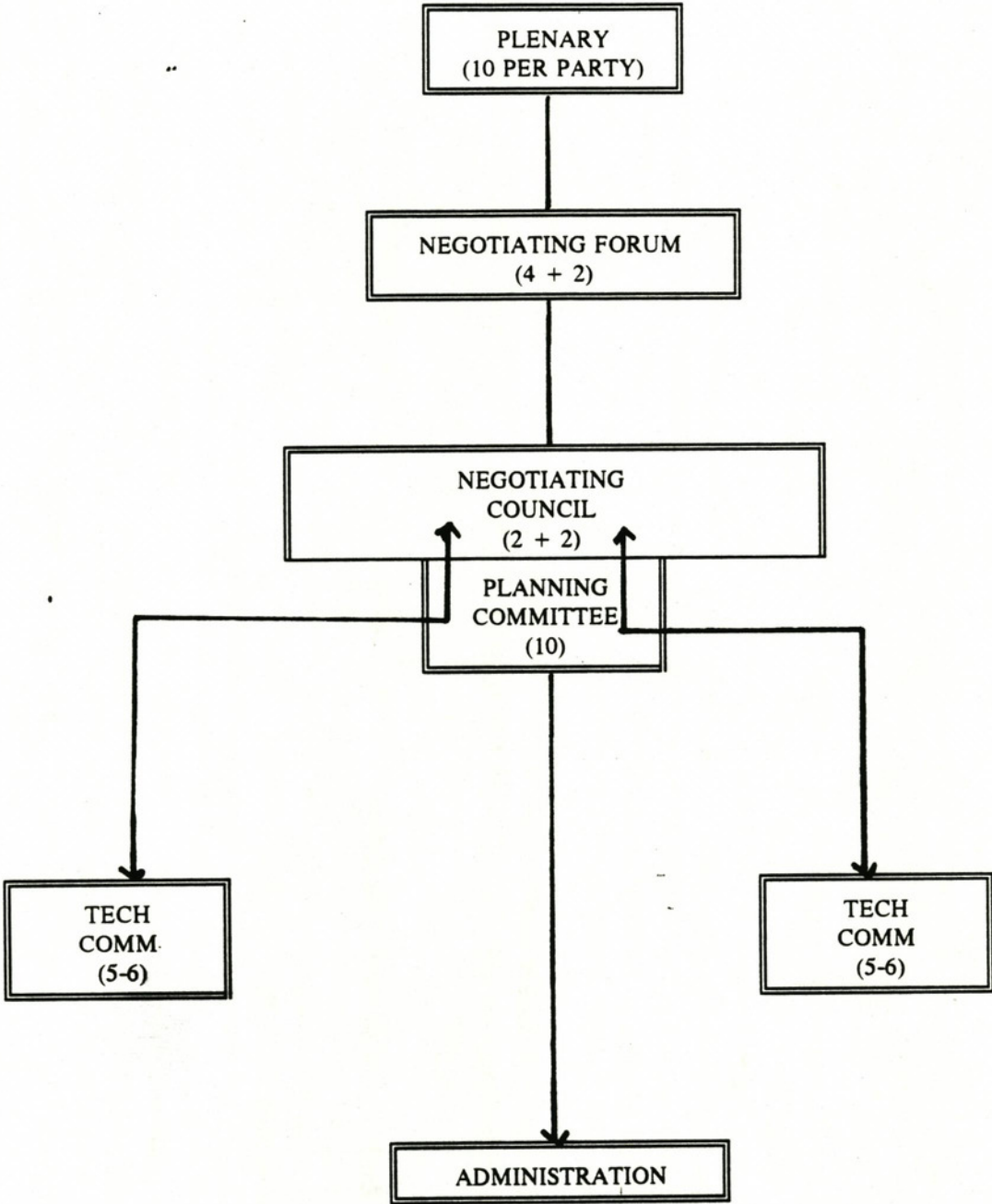
These shall be made available in the first instance to the Planning Committee, through its Sub-Committee, for submission to the Negotiating Council.

13. The relevant Technical Committee shall attend meetings of the Negotiating Council when its report/s are under consideration. From time to time a Technical Committee

or its rapporteur/convenor may be requested to attend specific meetings of the Planning Committee as and when necessary.

14. The three person Sub-Committee shall be available on a day to day basis to clarify any matters relating to the guidelines outlining the tasks of specific Technical Committees. On matters that go beyond these guidelines the Sub-Committee shall bring the matter to the attention of the Planning Committee for guidance.
15. The Administration shall provide each Technical Committee with a secretary. The secretary shall also facilitate contact between the Technical Committee and the Administration for production of documents and all administrative needs. Each Technical Committee is being provided with an office/ working space at the World Trade Centre by the Administration. Each Technical Committee is free to structure itself in a manner that will enable it to function effectively. To this end they may appoint a convenor/rapporteur from amongst themselves as they see fit.
16. Attached hereto is an organogram of the structures of the Multi-Party Negotiating process.

SUMMARY OF PROPOSED STRUCTURES



MULTI-PARTY NEGOTIATING PROCESS

Telephone (011) 397-1198 Fax (011) 397-2211

URGENT

To : All Participants in the Multi-Party Negotiating Process
From : The Planning Committee
Date : 11 May 1993
Re : Written Inputs from Participants to Technical Committees

1. On Friday, 7 May 1993, the Negotiating Council appointed seven Technical Committees and identified the experts to be asked to serve on them. Attached is a list of the Technical Committees and the names of the experts who have agreed to serve.
2. The Negotiating Council decided that the Technical Committees should not be negotiating forums and that, for purposes of their reports, they should take into account the discussions in the Negotiating Council and the submissions received from participants in the Council.
3. The Planning Committee requests the participants to make their initial written submissions on the substantive issues to each of the Technical Committees as soon as possible, but to reach the Administration preferably by 17h00 on Thursday 13 May 1993. If this is not possible, then a framework of intended submissions (heads of arguments) should reach the Administration not later than Thursday 13 May 1993 at 17h00 and the detailed submissions not later than Wednesday, 19 May 1993 at 12h00.
4. Submissions received by the Administration at the World Trade Centre not later than 17h00 on Thursday, 13 May 1993, together with the first reports of the Technical Committees, will be made available to participants timeously for discussion by the Negotiating Council on Tuesday, 18 May 1993.

PLANNING COMMITTEE

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)

17

**REPORT FROM SUB-COMMITTEE TO THE PLANNING COMMITTEE
10 MAY 1993**

1. Draft circular on Technical Committee (See Addendum B above).
2. The following procedure is suggested:
 - a. Submissions handed to the Technical Committees as soon as they are received.
 - b. Technical Committees' first reports include submission received before 17h00 on Thursday 13 May 1993.
 - c. Planning Committee members will not receive reports before the meeting on Friday 14 May 1993.
 - d. Planning Committee take note of reports and instruct administration to distribute to participants to reach them not later than Saturday 15 May 1993.
 - e. Planning Committee decide on how reports are to be presented to the Negotiating Council and interact with the Technical Committees in this regard.
 - f. Planning Committee decide on agenda for the Negotiating Council meeting of 18 May 1993 taking into account the necessity for the Council to receive and deal with the reports. Draft agenda is distributed together with Technical Committee reports.
 - g. Planning Committee decide whether or not to meet on Monday 17 May 1993. Members might prefer to spend Monday with their own delegations preparing for the next day's Negotiating Council and to rather meet at 08h00 on Tuesday to discuss whatever preparatory matters are to be dealt with.

**REPORT NUMBER ONE OF THE TECHNICAL COMMITTEE ON VIOLENCE
THURSDAY 13 MAY 1993**

- 1 This Technical Committee comprises the following members:
Mr W Felgate
Mr P Hatty
Mr S Mufamadi
Mr GB Myburgh
Mr V Ntsubane
Adv P Oosthuizen
Prof A Seegers
Prof HW Vilakazi
2. Mr P Hatty was appointed by the Committee to act as chairperson and would be responsible for co-ordinating the reports of this Committee.
3. The Committee examined the following background documents:
 - The report by Working Group 1 of Codesa
 - National Peace Accord
 - Submissions for the strengthening of the National Peace Accord
4. The Committee further familiarised itself with the structures and workings of the National Peace Accord.
5. As a result of discussion the Committee decided to familiarise itself with the "Goldstone Commission" recommendations.
- 6 The Committee has to date received the following submissions:
 - 6.1 Opening statement by Dr FT Mdlalose, National Chairperson of the IFP, to the Negotiating Council, 26 April 1993
 - 6.2 Resolution to ensure peaceful conditions for constitutional negotiations and free political activity in South Africa
 - 6.3 Solidarity Party
 - 6.4 Inyandza National Movement
 - 6.5 Venda Government
 - 6.6 Submission to the Negotiating Council: United Peoples Front
 - 6.7 South African Government proposals to the Technical Committee on Violence as to measures to be taken to curb violence, 13 May 1993

- 6.8 African National Congress Submissions to Technical Committee on Violence, 12 May 1993
 - 6.9 South African Government proposals for strengthening the National Peace Accord, 13 May 1993
 - 6.10 Office of the Military Council, Republic of Transkei: Recommendations on the formulation of a negotiations agenda, 28 April 1993
 - 6.11 Submission by the Democratic Party, 10 May 1993
 - 6.12 Government of the Republic of Bophuthatswana - Initial submission on violence
 - 6.13 Ciskei Government submission - Violence
7. The Committee had substantial discussions on the process to evaluate and consider these submissions and decided to first study the submissions before proceeding. During this process the Committee members will develop draft procedures for dealing with them and report back at the next Technical Committee meeting, when the submissions will be discussed in accordance with an agreed procedure.
8. The next meeting of this Committee will be at 09h15am, Tuesday 18 May 1993.



PR Hatty
(Chairperson)
13 May 1993

**FIRST REPORT OF THE TECHNICAL COMMITTEE ON CONSTITUTIONAL
ISSUES TO THE NEGOTIATING COUNCIL: 13 MAY 1993**

1. INTRODUCTION

- 1.1 Our instructions require us to prepare systematic documentation to facilitate discussion in the Negotiating Council. It has been made clear to us that we are not ourselves to engage in negotiation. What is expected is that we should address the issues raised in the Codesa documents, the discussions in the Negotiating Forum and the Negotiating Council, and the submissions and inputs of the participants in the current negotiating process which are relevant to the terms of reference of our committee, and on the basis of such information prepare documentation for the Negotiating Council which will enable the debate to be taken forward in that forum. For that purpose we can also have regard to submissions that may be made to our committee in writing by individual experts and interest groups.
- 1.2 On one issue we have been asked to go beyond these instructions and to make recommendations to the Planning Committee. That issue concerns the process to be followed in dealing with the debate on the boundaries, powers and functions of regions. This is clearly a core issue in the negotiations and directly relevant to the disputes which exist in relation to the form of the state and self determination. The way in which this matter is dealt with will have a bearing on several matters that are included in our terms of reference.
- 1.3 We were asked to make our report to the Planning Committee by Thursday 13 May, and to deal with the process for taking the regional debate further in that report. We have done so.
- 1.4 We are of the opinion that the debates in the Planning Committee and the **Negotiating Council** will be facilitated by a brief analysis of the constitutional **issues** that have been identified in our instructions as being the concern of our committee. The issues are interrelated and reflect in particular the concerns of the different participants in respect of the legitimacy of the constitution making process, and the position of minorities in any new constitutional order. The process for determining the boundaries, powers and functions of regions could be crucial to finding an acceptable solution to these fundamental concerns.
- 1.5 The framework within which the earlier debates took place, and the particular issues that have been raised appear from the documents with which we have been briefed. They include three documents dealing with deliberations at Codesa. These are a bundle of Codesa agreements, a summary of these agreements and a consolidated document based on Codesa reports. We will

refer to these documents as the agreements, the summary and the consolidated document respectively. We have also been briefed with a resolution on the transition process taken by the Negotiating Forum on the 1st and 2nd April, extracts from minutes of the Negotiating Council of the 26th April, 30th April and the 7th May, the declaration of intent on the negotiating process made by the Negotiating Council on the 30th April, and a transcript of discussions held in the Negotiating Council of matters relating to the transitional process.

- 1.6 We have not yet received representations from all the participants in regard to these issues. Once we have the representations we will be able to identify the compatibilities and differences that may exist. We may then be able to suggest appropriate ways of addressing these matters.
2. We begin our report by setting out our views on the relationship between the questions concerning self determination and the form of state and the other issues which form part of our terms of reference. As directed, we have given consideration to each of the issues mentioned in our terms of reference, using the terminology thereof.

3. **SELF-DETERMINATION**

- 3.1 Self-determination, in the sense of making one's own choices, developing one's own potential, securing one's own well-being and of not being subjected to undue external pressures and domination, is certainly a very basic human need and aspiration. Similarly, it has to be conceded that nations and national sub-groups have similar aspirations. It is therefore only natural that the law, which is a normative system defining and regulating human freedoms and aspirations, should also give recognition to this very essential need. For this reason it is unproductive and not even necessary to contest the existence of the general right of self-determination of individuals, organised groups and nations. Stated succinctly, self-determination, being the expression of a basic urge to be master of one's own destiny, is recognised in law. What is of **importance** for the purposes of this report, is not the existence of such a right, **but the actual content, scope, application and protection of this right.**
- 3.2 In **international law**, the right of self-determination has been one of the strongest factors in promoting the liberation of countries and peoples from colonial rule, foreign subjection and external domination. In recent years some countries and peoples, especially in certain parts of Eastern Europe, have exercised their right of self-determination to liberate themselves from foreign rule.

3.3 In **national legal systems**, the right of self-determination manifests itself at different levels of society and of the life of the nation, as regards the individual as well as groups. It would be wrong to assert that the right of self-determination is a right which finds application in only one sphere of life or pertains only to some individuals or groups. For this reason, it is more appropriate to speak of the **rights** of self determination. In order to understand the scope of the rights of self-determination and their manifestations in a national legal system, it is necessary to distinguish between the recognition and the protection of the rights of self-determination and, at the same time, to appreciate the limitations which the law imposes on these rights (in the same way that all rights and freedoms have certain limits).

3.4 In a democratic constitutional system, the rights of self-determination are recognised in different ways:

3.4.1 Generally, when mention is made of the rights of self-determination, it is immediately thought of the rights of organised and other national groups to protect themselves from undue influence or coercion. It is often forgotten that the individual's rights to self-determination takes precedence and that virtually no collective rights of self-determination can be recognised effectively without ensuring the individual's rights to freedom, own choice and self-fulfilment. Individual self-determination covers a whole range of human activities: thus, the right to life, liberty and property and public freedoms of contract, conscience, movement, association, etc, all serve to secure the individual's overall right to self-determination, in one way or another. (It is noteworthy that the German Constitution goes even further and expressly recognises the right to the full development of every person's personality).

3.4.2 Collective rights of self-determination necessarily require preceding constitutional rights and freedoms such as freedom of association, assembly, conscience, etc. to give effect and meaning to these rights. It is self-evident that no group or groups will be able to maintain their identity and pursue their interests if they are not allowed to contract freely, associate at will, disseminate their views openly, etc. Collective rights of self-determination, either separately or conjunctively, are exercised in different ways: in the labour field, trade unions, either on their own, or with employers' organisations, exercise collective rights of self-determination by means of collective bargaining, the withholding of labour, etc; in the civic field citizen organisations also exercise their collective rights of self-determination in various recognised forms of group activities, be they of social, cultural, linguistic or religious nature (as a matter of fact, it is through the exercise of these rights of self determination that the foundations for a civil society are established and fortified); in the political field collective rights of self-determination are best ensured by a pluralistic electoral system which allows free participation in elections and

institutions of government.

(In this respect it might very well be necessary to have representative institutions on different levels of government to give greater opportunities of representation to political parties which enjoy less support on the national level, for effective representation, for it is clear that a political party with stronger regional support will feel more comfortable in the exercise of its right of self-determination if it is well-represented in the regional institutions where its support lies.) What needs to be emphasised, is that collective rights of self-determination in a democratic society are not singular, solitary rights which can be claimed and exercised as such, but entail a totality of specific legal rights and freedoms which groups can rely on in the context of predetermined social, economic and political relationships.

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

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

3.5.1 A justiciable bill of rights and an independent judiciary.

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

3.5.3 Regional and local institutions as well as national bodies in which collective interests can be accommodated.

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

- 3.6 Rights of self-determination, whether they are individual or collective, and which form the basis of a democratic society, have certain limitations. They may not be exercised in such a way that they impinge upon the rights and freedoms of others or endanger national safety or the integrity of the state. It is for this reason that international law is extremely hesitant to recognise any unilateral secession from national state territory. What is of the utmost importance is that the law will not recognise or enforce rights of self-determination which may lead to discrimination or unequal treatment on the basis of colour, race, gender, etc. In other words, this means that the law does not recognise one person's rights of self-determination in such a way that it infringes on another's rights, particularly where issues of colour, race, gender, ethnic origin or creed are concerned.
- 3.7 Conclusion: The Committee is convinced that, bearing in mind what has been said about the contents, scope and limitations of these rights of self-determination, a much more fruitful and constructive discussion will follow in the Council if these rights are viewed and assessed under the headings of concrete topics such as the recognition and protection of fundamental rights and freedoms; regionalism and the form of state; representative institutions; free political activities; etc.

4. FORM OF STATE

The second report of the Planning Committee to the Negotiating Council (29/4/93) deals with the form of state in paragraphs 3.2.1 and 3.2.2. We are in substantial agreement with the views expressed in these paragraphs.

The form of state will be shaped by decisions taken in regard to the structures of the Constitution. Concepts such as the separation of powers, the entrenchment of fundamental rights, the powers of the judiciary, the boundaries, powers and functions of the regions, and the like, all have a bearing on the form of state. It seems to us that the most expeditious way of dealing with this matter is to deal with these component parts. By resolving them, the Negotiating Council will determine the form of the South African state. Our report on Regional Demarcation and Related Issues (13/5/93) to the Planning Committee is consistent with this approach and should serve to advance the debate on the form of state.

5. CONSTITUTIONAL PRINCIPLES

The process of developing constitutional principles has as its object the establishment of a broad framework within which a future constitution could be developed. The development of such a framework commends itself as a sensible mechanism for the promotion of a successful resolution of constitutional negotiations.

A multi-party agreement on constitutional principles would in the first place provide fundamental direction to the constitutional debate, and secondly, should they be formalised as a set of principles binding on further constitution making, they will give direction and security to all relevant interests. The adoption of a comprehensive set of constitutional principles could therefore be an expression of a national consensus on the constitutional way forward for South Africa.

From the documentation provided to this committee, it appears that a broad area of agreement has already emerged. Thus the notion of a constitutional state seems to enjoy wide acceptance, implying the establishment of a modern democracy based upon universal adult suffrage, the supremacy of the constitution, the separation of the legislative, executive and judicial powers and justiciable fundamental rights binding all organs of the state. Furthermore it has become clear that the idea of the constitutional distribution of governmental powers and functions between the different levels of government has received general acceptance. These and other principles, when finalised and formalised, should serve as an important factor in the debate on the future form of state, the constitution making process and self determination.

The Committee therefore urges the Negotiating Council to discuss the content of a set of constitutional principles as a matter of urgency. As soon as this may be practicable, the Committee proposes to compile a report on the inputs received from all parties regarding constitutional principles in which it will identify areas of commonality, and issues which require further discussion and debate within the Negotiating Council.

6. CONSTITUTION MAKING BODY/CONSTITUENT ASSEMBLY

6.1 As appears from paragraph 5 of this report the principles are directed towards the development of a constitutional structure which would offer a democratic form of government, protection of minority interests, and safeguards against the abuse of power. They would provide guarantees in respect of such matters in an elected constitution making body/constituent assembly.

6.2 It appears to have been accepted by working groups 2 and 3 at Codesa that the final constitution would be drawn up by an elected constitution making body/constituent assembly within the framework of agreed constitutional principles, and that the body/assembly would also be vested with powers enabling it to act as a interim legislature. See: The report on the status of

discussions in working group 2 at page 33 of the agreements, and paragraph 2 of the section dealing with the constitution-making process at pages 34 to 36 of the consolidated document.

- 6.3 The Declaration of Intent on the Negotiating Process adopted by the Negotiating Council on 30 April 1993 records a commitment by the Council to reach agreement on binding constitutional principles, the constitutional framework and the constitution making process in terms of which elections will be held. It contemplates that a date will be set before the end of May 1993 for an election to be held not later than the end of April 1994.
- 6.4 If the Negotiating Forum agrees in due course that the final constitution will be drawn up by an elected constitution making body/constituent assembly within the framework of agreed constitutional principles, then in addition to agreement upon the relevant principles, agreement will also be required on the following matters:

Constitution Making

- 6.4.1. How the constitution making body/constituent assembly will be structures, including whether it will be unicameral or bicameral
- 6.4.2 How many members will it have.
- 6.4.3 What electoral system will be adopted.
- 6.4.4 Who will be entitled to vote.
- 6.4.5 How will decisions be taken.
- 6.4.6 Will time frames be set for the taking of decisions.
- 6.4.7 How will conflicts be resolved and deadlocks be broken.
- 6.4.8 How and by whom will questions concerning the application of the constitutional principles be resolved.

Acting as a Legislative Function

- 6.4.9 How will the body/assembly be composed, how will it function when it acts as a legislature.

A Transitional/Interim Executive

- 6.4.10 How will the transitional/interim executive be appointed, how will it be composed and how will it take decisions

The Constitutional Framework

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

6.5 If the Negotiating Forum decided upon a process other than the one envisaged in 6.4, it should specify the details and constitutional and legislative framework which will be necessary to implement it.

7. TRANSITIONAL/INTERIM CONSTITUTION

7.1 A Transitional/Interim Constitution will be necessary if it is decided by the Negotiating Forum that the Constitution should be adopted by an elected constitution making body/constitutional assembly within the framework of agreed constitutional principles. The transitional/interim constitution will ensure constitutional continuity and provide the legislative framework for the functioning of a constitution making body/constituent assembly with legislative power.

7.2 If this process is adopted the Negotiating Forum will have to reach agreement on the structure of the transitional/interim constitution, which will require it to give consideration to and take decisions on the following matters:

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

7.2.2 The constitutional framework governing the functioning of the assembly when it sits as a constitution making body.

7.2.3 The constitutional framework governing the functioning of the assembly when it sits as a legislature.

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

7.2.5 Regional government, including the position of the self governing territories and the TBVC states prior to and subsequent to the election of the constitution making body/constituent assembly.

7.2.6 Local government, including the periods prior to and subsequent to the election of the constitution making body/constituent assembly.

7.2.7 Whether provision should be made in the transitional constitution for the protection of certain fundamental rights. This issue is being considered by the Technical Committee on Fundamental Rights in the Transition.

7.2.8 Constitutional amendments during the transitional period.

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

7.2.10 National symbols

7.2.11 Miscellaneous provisions including transitional provisions needed to ensure constitutional and legal continuity and effective government. Under this heading would be included any special structures or procedures that the Negotiating Forum may require to be included in the interim constitution.

7.3 These matters will have to be addressed in the Negotiating Council as a matter of urgency if the commitment made in the Declaration of Intent is to be met.

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

8. **TRANSITIONAL REGIONAL/LOCAL GOVERNMENT**

This is dealt with in paragraph 7.2.5 and 7.2.6 above.

9. **FUTURE OF THE TBVC STATES**

If reincorporation takes place, it will be necessary to formulate the draft legislation according to which this will happen, and to address the practical implications of absorbing existing administrations into appropriate regional and local structures. The issue of the future of these states is closely linked to the demarcation of regions and regional powers. It requires urgent resolution, to facilitate the work of the Commission referred to in our report to the Planning committee on Regional Demarcation and Related Issues of 13 May 1993.

10. Submissions by Parties

As at 18h00 on 13 May we had received submissions from the following participants. These reports will be discussed as soon as possible.

1.	ANC	12/05/93	Form of state and Constitutional principles
2.	AZANYU	27/4/93	Demand for a constituent assembly
3.	AVU	13/05/93	Constitutional proposals
4.	Bophuthatswana	12/05/93	Submission on constitutional matters
5.	Ciskei	12/5/93	Constitutional Affairs
6.	Democratic	12/05/93	Submission re constitutional Party matters
7.	Dikwakwetla	28/4/93	Constitution making process
8.	IFP	13/05/93	Heads of argument and positions on the form of state
9.	PAC	29/4/93	Input on constitutional principles and the form of state
10.	SA GOVT	12/05/93	Principles governing constitution making in SA
11.	Venda	13/05/93	Position paper on the form of state

C O N F I D E N T I A L**MULTI-PARTY NEGOTIATING PROCESS****TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING THE TRANSITION****FIRST PROGRESS REPORT****1 Introductory remarks**

The Committee first met on 10 May 1993 at The World Trade Centre ('the first meeting') and thereafter on 13 May 1993 in Cape Town ('the second meeting'). It has also scheduled a meeting for 18-20 May 1993 at The World Trade Centre ('the third meeting'). Dates for further meetings will be determined at the third meeting. Meetings with other technical committees, such as the Committees on Constitutional Matters and the Repeal of Discriminatory Legislation, may also be necessary, since this Committee envisages that it will, from its particular perspective, somehow have to address concerns such as the mechanisms for the enforcement of fundamental rights and freedoms, and constitutional principles to be embodied in an interim constitution which will serve as guidelines for the eventual drafting of the final bill of rights by a constituent assembly.

2 Guiding considerations

At its first meeting the Committee, after having appointed Prof LM du Plessis as its Convener, agreed that the following considerations -- which could in due course still be amplified -- should guide it in its further deliberations:

- 2 1 The means and mechanisms for the entrenchment of fundamental rights and freedoms in the transitional period should enjoy legitimacy among the vast majority of the population so as to facilitate the legitimacy of similar means and mechanisms in a final dispensation.
- 2 2 Apart from identifying fundamental rights and freedoms which are to be protected in the transitional period, their enforceability and the enforcement mechanisms invoked to this end, are vital questions which will have to receive the Committee's serious attention. The said mechanisms should also be accessible and practicable.
- 2 3 The Committee should start off by exploring "common ground", i.e. areas of agreement on minimal or essential fundamental rights and freedoms which can simply not be excluded in the transitional period. To this end the Committee ought to start by comparing bill of rights proposals for South Africa which have already been published.

3 Methodology

As a guide to its deliberations, the Committee distinguishes the following three categories of rights and freedoms in the context of the entrenchment of fundamental rights and freedoms during the transitional period:

- 3 1 minimal or essential rights and freedoms which must be accommodated;
- 3 2 desirable rights and freedoms i.e. those which ought to be accommodated, and
- 3 3 debatable rights and freedoms the inclusion of which is uncertain at this stage.

At its second meeting the Committee dealt with 3 1. This report therefore reflects the Committee's initial position on the accommodation of the first category of rights and freedoms in the transitional period. The Committee's position is, however, subject to change in view of the submissions only just received or which may still follow.

4 Rights and freedoms identified for purposes of category 3 1

- 1 The right to life.
- 2 The right to dignity.
- 3 Freedom of speech and expression which shall include freedom of the press and other media.
- 4 Freedom of conscience, religion, thought and belief.
- 5 The right to personal freedom, including the right not to be detained without trial.
- 6 The right to the security of the person.
- 7 The right to assemble and demonstrate with others, peacefully and unarmed, and to draw up and submit petitions.
- 8 The right to equal protection and equal benefit of the law which shall not prevent measures which have as their objective the improvement of the conditions of disadvantaged people.
- 9 Freedom from slavery, servitude and forced labour.
- 10 The right to form trade unions and employers' organisations and to engage in collective bargaining.
- 11 Freedom from physical, mental or emotional torture, or inhuman or degrading treatment or punishment.

- 12 Freedom of association.
- 13 The right to vote and stand for election to public office.
- 14 The right to form and join political parties and the freedom to make political choices.
- 15 The right to move freely and to reside and to pursue a livelihood at any place within South Africa.
- 16 The right to leave and to return to South Africa, including the right to a passport.
- 17 The right to language and culture.
- 18 The right of an accused person
 - to be brought before a Court within 48 hours of arrest;
 - to be informed immediately of the reason for the arrest, to remain silent and to have access to a lawyer;
 - to a lawyer provided by the State where the interests of justice so require;
 - upon good cause shown to a court of law to be released from detention with or without bail;
 - to a fair trial in public within a reasonable period.
- 19 The right of detained and convicted persons to be treated with dignity.
- 20 The right to be released when the reason for detention falls away.
- 21 The right to physical and mental integrity.
- 22 The right to privacy.
- 23 Freedom to participate in economic activity.
- 24 The right to have disputes settled by a court of law or other independent forum.

- 25 The right to reasonable, procedurally-proper and lawful administrative decision-making.
- 26 The right of access to that information which is necessary for the implementation of a person's rights.
- 27 The right to reasons for administrative action which affects a person's rights.
- 28 The right to an environment which is safe and not detrimental to health.
- 29 Freedom from eviction from a person's lawful home.
- 30 The right of children not to be subject to neglect, abuse or forced labour.
- 31 The right of equal access to State or State-aided educational institutions.

Almost all these rights will have to be subject to a limitations clause which will be provided for by this Committee in a later Report. The Committee will also attend to the circumstances in which these rights may be legitimately suspended.

Prof H Corder

Prof LM du Plessis (C)

Mr G Grové

Ms S Nene

Adv Z Yacoob

FIRST INTERIM REPORT OF THE TECHNICAL COMMITTEE ON THE INDEPENDENT ELECTORAL COMMISSION DATED 13 MAY 1993

1. Following the Briefing Meeting held with the Planning Committee on Monday 10 May 1993, the Committee held initial discussions regarding the ambit of its brief and the manner in which it would proceed with its task.
2. In order to facilitate its further consultation, it has prepared a first rough draft of a statute providing for the establishment of an Independent Electoral Commission and the various other matters which require enactment.
3. Lengthy discussion has taken place concerning the provisions of the proposed statute, resulting in the necessity to incorporate extensive amendments in order that the second draft should reflect the preliminary proposals of the Committee. In the circumstances, it is not proposed to distribute the first rough draft prior to its amendment, in view of the fact that the next draft will be available shortly and will be a more appropriate document.
4. The Committee is now engaged in the process of drafting the required amendments and will meet again on Sunday in order to review the document in the light of various submissions received.
5. Written submissions have been received from the following parties:
 - * African National Congress
 - * South African Government
 - * Lawyers for Human Rights
 - * Government of the Republic of Bophuthatswana
 - * Democratic Party
 - * PAC
 - * Venda Government
6. The Committee has also obtained copies of certain comparative legislation including laws enacted in:
 - * United Kingdom
 - * United States
 - * Namibia
 - * KwaZulu
 - * Zimbabwe (Rhodesia Act)
7. The task of the next few days will be to review the submissions and comparative legislation with a view to enhancing the present draft and submitting a first proposal to the Planning Committee as requested by 12h00 on Wednesday 19 May 1993.

FIRST REPORT OF THE TECHNICAL COMMITTEE ON INDEPENDENT MEDIA COMMISSION AND THE INDEPENDENT TELECOMMUNICATIONS AUTHORITY/ 13 MAY 1993.

1. THE INDEPENDENT MEDIA COMMISSION

The Committee feels that there should be an Act of Parliament setting up an Independent media Commission (to be appointed by the TEC/Multi-Party Forum) with powers to enforce compliance with a code of conduct for broadcasters. The code of conduct will inter alia require broadcasters to comply with guidelines relating to political broadcasts, political advertising, and fairness. The Act should make provision for the possibility that a broadcaster may be exempted from the jurisdiction of the Independent Media Commission if he subjects himself to a recognised self-regulatory body which will enforce the code of conduct. The IMC would also have the power to monitor the political content of state financed publications and state information services against pre-determined guidelines or criteria (Pierre Pretorius would prefer a separate body for this function). Furthermore, the IMC will have powers to monitor compliance with the said code, to enforce it (excluding suspension of licence), and to adjudicate upon it.

Issues that have arisen in this regard:

- a) The limits of the jurisdiction of the IMC vis-a-vis the IEC as regards disputes. The Committee's view is that the IMC should have power to adjudicate complaints made against all **broadcasters**, by political parties, organisations, administrations and other interested parties. The IEC will deal with disputes between **political parties** in relation to electoral matters.
- b) The Committee feels that under the umbrella of the IMC there should be a number of different Committees dealing with on the one hand political broadcasts and political advertising in the broadcast media, and on the other hand State publications and State Information Services.
- c) The Committee was unable to come to a final conclusion as to whether the IMC should be a body which outlives the TEC or not. Mr Dison is of the view that the IMC should be a transitional structure, whereas Mr Pretorius feels that the functions of the IMC in respect of the electronic media should become a permanent feature of the legislation (i.e as complaints tribunal)

2. THE INDEPENDENT TELECOMMUNICATIONS AUTHORITY

The Technical Committee is of the view that for practical purposes, bearing in mind the need to create independent broadcast regulatory mechanisms as a matter of urgency, the authority which should be set up initially should be a **broadcasting** authority only. We do not preclude the possibility that a structure that regulates point to point telecommunications might not be merged with the broadcasting authority in the longer term. However, in the short term the Technical Committee foresees that the broadcasting authority would only have jurisdiction over that part of the electromagnetic spectrum which is assigned for broadcasting use. In addition to this it would also regulate telecommunications **media** such as cable and satellite television.

Issues:

- a) It must be pointed out that this view of the Technical Committee constitutes a divergence from the terms of reference that have been circulated by the Planning Committee. We need guidance as to whether this route is acceptable to the political parties;
 - b) Issues which still need to be resolved in relation to a broadcasting authority and commission would be those such as funding of the broadcasting commission, ownership provisions, local content provisions and affirmative action and a code of conduct.
3. The Technical Committee is of the view that before the end of the month it could produce drafts of the two pieces of legislation that are required in this sector.

FIRST REPORT OF THE TECHNICAL COMMITTEE ON THE REPEAL OR AMENDMENT OF LEGISLATION IMPEDING FREE POLITICAL ACTIVITY AND DISCRIMINATORY LEGISLATION, 13TH MAY 1993

This technical committee has been mandated with the task of investigating legislation and administrative acts impeding free political activity and discriminatory legislation. It is clear from the Codesa Consolidated Document that the emphasis is on discrimination in the area of free political activity and free and fair elections. The committee has been asked to prepare a report which would include a schedule dealing with laws to be repealed and laws to be amended. The committee has considered its mandate and, in order to compile a report and table a submission, has decided first to obtain clarity on the most effective method to approach the assignment.

1. The committee has identified the following two ways of proceeding to accomplish its task

1.1 To study all the laws and subordinate legislation pertaining to all forms of political activity normally associated with democratic elections. In doing so, not only South African legislation, but also laws and regulations of the TBVC states and the self-governing territories will have to be identified, analyzed, interpreted and put into an integrated report.

After identifying such laws, regulations etc a second comprehensive study would be required to propose amendments to or the repeal of all sections and provisions identified to be inimical to the conduct of free and fair elections. Only then can the actual amendment or repeal process be undertaken in the various legislative bodies.

1.2 To prepare a "higher code" by which to judge the validity of laws, administrative actions and the acts of private individuals that impede free political activity, as well as discriminatory legislation. Such a code would establish the necessary judicial, administrative and political structures to pronounce on the validity of objectionable laws and to provide effective remedies for violations of such a higher. This code will enjoy supreme legal status.

2. Advantages and disadvantages of each option

2.1 Advantages of option 1.1

2.1.1 A comprehensive list of all discriminatory and repressive laws in South Africa, the self-governing territories and the TBVC states would constitute a useful compilation of statutory enactments for scholars and historians to study. (Such a study would also involve an examination of the laws of local authorities, statutory bodies and functionaries.)

2.2 Disadvantages of option 1.1

2.2.1 Such a study would take enormous time and is completely beyond the resources of the technical committee. It has been suggested that technical sub-committees might be established to investigate such legislation in the TBVC states. This would however be insufficient as all self governing territories have their own electoral laws and several have their own security legislation. To identify all the relevant laws could certainly not be done properly and accurately in less than six months. This conclusion is borne out by the experience of other groups that have considered compiling a list of such legislation.

Whether these laws are in fact discriminatory or impede free political activity will then have to be considered in the negotiating process. If it is agreed there that these laws are indeed objectionable, it will then be necessary for each legislative body to repeal or amend the legislation in question. To this committee it seems that, in view of the present political climate, there is not sufficient time available for this process.

2.2.2 There is a real possibility that such a list of legislation would not be perfectly accurate and complete. Legislation could be overlooked for a number of reasons, such as:

- a) lack of time for research
- b) suppression of information by regional sub-committees acting negligently or in bad faith.

An inaccurate compilation could have serious consequences, because it would in effect give the stamp of approval to any discriminatory or repressive legislation not included.

2.2.3 The compilation of such a list will obstruct the negotiating process and the search for consensus because some of the parties present in the negotiating process will feel constrained to defend their laws.

2.2.4 The identification of objectionable legislation will result in demands from the negotiating process to the legislative body in question to repeal or amend the law in question. This is likely to lead to tremendous delay and could strain the negotiating process.

2.2.5 Repealing or amending of legislation will have to be implemented by eleven different legislative bodies, numerous local authorities and other lawmaking persons and bodies. The likelihood of obtaining uniformity on non-discrimination and free political activity from eleven different legislative bodies is

small. If no uniformity in legislation is obtained, this will inevitably result in discrimination because one cannot justify a doctrine of "separate but equal" in different regions of South Africa in matters relating to free elections and equality.

- 2.2.6** A further problem is the absence of any single structure for the enforcement of laws and regulations pertaining to free political activity and equality. This would inevitably lead to unequal and unfair application of laws.

2.3 Advantages and disadvantages of option 1.2

With respect to the second option, which entails the adoption of one single "higher code", the following observations could be made. The higher code contemplated by the committee is not an interim Bill of Rights although it will certainly include many of the fundamental rights contained in a Bill of Rights. What we propose is a uniform code prescribing principles for free political activity, free and fair elections and non-discrimination in this process. It will also contain provision for effective and expeditious judicial, administrative and political remedies.

The advantages of such as code are the following:

- 2.3.1** Consensus. To us it seems there is general agreement on the part of all political parties that the election should be free and fair and preceded by a period of free political activity, without discrimination on the grounds of race, sex, religion, ethnic origin or political opinion etc.
- 2.3.2** The likely delays pointed out above could be avoided.
- 2.3.3** Such a higher code could be used to measure and to set aside any law, administrative act or private activity in violation of the code.
- 2.3.4** The parties taking part in the negotiating process should all be given an opportunity to endorse such a higher code. This will give it a uniform legitimacy. The adoption of such a higher code by all the parties in the negotiating process will send out a positive signal to all the people of South Africa that consensus has been achieved on certain principles and that real progress has been made.
- 2.3.5** An independent judicial or administrative body charged with enforcing such a code is more likely to be acceptable to parties than the procedure outlined in option 1.1.
- 2.3.6** The same standards will apply in all parts and sectors of the

country and would lead to uniformity, predictability and certainty.

2.3.7 The higher code will only cancel out the objectionable provisions in a statute whilst the rest will remain intact.

2.3.8 An additional advantage of this approach is that unwritten common law powers vested in the executive (e.g. prerogative powers) will also be subject to testing.

3. **Reasons for adopting option 1.2**

The ultimate aim of the electoral process must be to provide results which will be accepted by all participants as free and fair. All political parties participating in the preceding campaigns and the election itself must be prepared to live with the outcome of the process. The "Angolan Spectre" must be avoided at all costs. It should not be possible for any participant to cast doubt on the fairness of the whole electoral process and jeopardise the establishment of a democracy. In order to achieve this objective all practices that could subsequently be cited as having impeded free political activity must be addressed and remedied timeously in terms of the higher code.

4. **Mechanisms for implementing the code**

4.1 The implementation of the higher code approach will require a structure providing for judicial, administrative and political control.

4.2 Other technical committees also address matters relating to this particular aspect. This could perhaps be an area for cooperation between more than one technical committee. We would however like to suggest a number of general principles and powers to be contained in such a higher code.

5. **General principles and powers to be contained in a "higher code".**

5.1 If the objective of free and fair elections is to be achieved, the bodies responsible for deciding disputes in the period immediately preceding the election itself will have to enjoy legitimacy.

5.2 In order to be able to decide particular disputes the typical characteristics of free political activity in a democratic society will have to be incorporated into the code. This will include principals such as:

- * **freedom of expression**
- * **freedom of the press**

- * **freedom of association**
- * **freedom of movement**
- * **freedom of assembly**
- * **free access to information**

All public and private activities which impair these freedoms, such as intimidation, denial of access etc should therefore be prohibited.

- 5.3 Effective and expeditious remedies are required and this structure should therefore be adequately empowered. In particular all affected and interested parties should enjoy standing before the structures established.
- 5.4 The type of behaviour that interferes with free political activity could result not only from actions by government bodies and officials but also originates in the behaviour of private individuals and groups.
- 5.5 The full participation of women in the political and electoral process is open to suppression at the instance of governmental bodies and/or private individuals and groups. The structures envisaged in terms of the proposal would have authority to address and remedy discriminatory and repressive acts of this kind.

6. Conclusion

- 6.1 The committee has noted that the Goldstone Commission has proposed a draft bill on ensuring freedom of assembly which has a bearing on free political activity. This Bill should be studied by political parties and should be analyzed for purposes of a final proposal on free political activity.
- 6.2 All parties in the negotiating process have been invited to submit reports to the technical committee. We attach the only submissions received.

FIRST REPORT OF THE TECHNICAL COMMITTEE ON THE TRANSITIONAL EXECUTIVE COUNCIL / 13 MAY 1993

INTRODUCTION

1. THE NEED FOR A TRANSITIONAL EXECUTIVE COUNCIL

For the reasons that follow, **the committee is of the opinion** that there is a need for a Transitional Executive Council/Authority (TEC) during the period leading to the first elections:

- 1.1 In view of the wide acceptance of the need for democratic elections in South Africa, the date of which has provisionally been set for not later than the end of April 1994, it is important that the electoral process be seen as fair, open, free and unbiased;
- 1.2 A TEC will offer all participants in the Multi-Party Negotiating Process (MPNP) the opportunity of participating in matters relating to the effective and satisfactory management of the first stage of the transition to democracy;
- 1.3 In view of the multi-party participation in the process, a TEC will provide the required acceptance and acceptability of the process (legitimacy);
- 1.4 With increased legitimacy and acceptability of the management of the process, stability will be promoted and the levels of violence are likely to diminish;
- 1.5 This, in turn, will foster a climate conducive to fair and free elections;
- 1.6 A TEC will have the added advantage of making the process leading to the election more transparent;
- 1.7 A TEC will promote domestic and international confidence in the constitutional process.

2. THE TEC AND SUB-COUNCILS

Within its terms of reference, and having regard to the decisions of the MPNP, other submissions made documents furnished to it including the report of Working Group 3 of Codesa, **the Committee recommends as follows:**

- 2.1 That legislation be drafted to provide for the establishment and functioning of a TEC and sub-councils.
- 2.2 That the proposed legislation adopts the following scheme:
 - 2.2.1 Establishment and Purposes / Objectives
 - 2.2.2 Composition
 - 2.2.3 Powers
 - 2.2.4 Sub-Councils: Establishment, Composition, Appointments and Powers
 - 2.2.5 Jurisdiction and Disputes
 - 2.2.6 Meetings
 - 2.2.7 Decisions
 - 2.2.8 Finances
 - 2.2.9 Amendment

SYSTEMATIC AND ITEMISED SET OF PROPOSALS TO FACILITATE DISCUSSION IN THE PLANNING COMMITTEE AND NEGOTIATING COUNCIL OF THE MULTI-PARTY NEGOTIATING PROCESS

(This report has been submitted in a format resembling draft legislation)

More specifically, the Committee recommends the following on the basis of the above scheme:

1. ESTABLISHMENT AND PURPOSES/OBJECTIVES

The Transitional Executive Council shall be constituted with executive powers to facilitate, in conjunction with existing legislative and executive structures, the transition to a democratic order in South Africa by:

- (1) creating and promoting a climate for free political participation by seeking
 - (a) to eliminate any impediments to legitimate political activities;
 - (b) to eliminate intimidation;
 - (c) to ensure that political parties and organisations will be free to canvass support from voters, to organise and hold meetings, and to have access to voters for such purposes;
 - (d) to ensure that the power of government will not be used to favour or prejudice any political party or organisation;
- (2) promoting conditions conducive to the holding of free and fair elections pursuant to decisions of the Multi-Party Negotiating Process.

2. COMPOSITION

- (1) Each of the governments, administrations and organisations which constitute the Multi-Party Negotiating Process, and which commit themselves to the achievement of the objectives set out in paragraph 1 and which undertake to be bound by and implement the decisions of

the Transitional Executive Council, shall be entitled to one representative on the Council: Provided that each representative may be represented by a substitute if he or she is unable to attend a meeting of the Council.

NOTE: *The implications of this sub-paragraph are that the size of the TEC will not be greater than the number of parties involved in the MPNP, that representation is confined to one representative per party in view of the large number of parties already involved in the process, and that every party does not have to be represented on the TEC. Substitutes have been provided for in view of the high percentage of concurring votes required for decisions to be reached.*

- (2) Appointments to the Transitional Executive Council, including substitutes referred to in sub-paragraph (1), shall be made by the State President by proclamation in the Government Gazette: provided that in making such appointments, the State President shall act on the recommendations of the government, administration or organisation concerned.
- (3) If a member of the Transitional Executive Council loses the confidence of the government, administration or organisation which recommended his or her appointment, the State President, on being advised thereof by such government, administration or organisation shall, by proclamation in the Government Gazette, remove such person from the Transitional Executive Council.
- (4) If a member of the Transitional Executive Council dies, resigns from office, or is removed from office in terms of sub-paragraph (3), the government, administration or organisation previously represented by such member shall be entitled to a new representative on the Transitional Executive Council, and such appointment shall be made by the State President in accordance with the provisions of sub-paragraph (2).
- (5) The conditions of service, remuneration, allowances and other benefits of members of the TEC shall be determined by State President in consultation with the Multi-Party Negotiating Process.

NOTE: *The committee has noted that the Report of Working Group 3 to Codesa 2 (par 38) suggests that members of the TEC should be full-time executives. The Committee is not persuaded that this would be necessary, and would prefer not to make a specific recommendation until the full picture of the TEC and its sub-councils has evolved.*

Factors that influenced the Committee include the following:

- (i) the TEC itself may be in a better position to judge on this matter;*
 - (ii) sub-councils might rather be engaged on a daily basis, and the TEC on a periodic basis;*
 - (iii) while some members of the TEC will have full-time briefs as members of sub-councils, others may not. This issue can be revisited later.*
- (6) The Transitional Executive Council shall have the power to recommend that any party not presently in the Multi-Party Negotiating Process but wishes to participate in the Transitional Executive Council structure, should be allowed to recommend to have a representative appointed to the TEC by the State President.

3. POWERS

- (1) The TEC will have the necessary powers relating to its objectives, including the overriding responsibility in respect of the sub-councils.

NOTE: *The question of powers is still to be dealt with by the Committee.*

- (2) Included in these powers will be the power-
- (a) to request information relating to its mandate,
 - (b) to establish and receive reports from sub-councils,
 - (c) to initiate or participate in negotiations in respect of its mandate,
 - (d) to appoint required staff and to determine their terms of employment and remuneration,
 - (e) to request seconded staff from the Public Service(s);
 - (f) to make rules governing the convening and conduct of its meetings and those of its sub-councils, and

- (g) to appoint/elect its own office bearers on a permanent or rotational basis.
- (h) to appoint a person to investigate a matter or matters relating to its functions, and to report thereon.

4. SUB-COUNCILS: ESTABLISHMENT, COMPOSITION, APPOINTMENTS AND POWERS

- (1) The Transitional Executive Council will have the following sub-councils which will report to it in such manner and at such times as it may determine:

- (a) A sub-council on local government;

NOTE: The committee is aware of the fact that Working Group 3 of Codesa has anticipated the establishment of a sub-council on regional and local government, and will in due course advise as to whether it is of the view that, in the light of the possible establishment of a commission on regions, there is a need for this sub-council to also concern itself with regional government.

- (b) A sub-council on law and order, stability and security;
- (c) A sub-council on defence;
- (d) A sub-council on finance; and
- (e) A sub-council on foreign affairs.

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

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

NOTE: *The Committee interprets this clause to mean, first, that not more than two persons from the same party would serve on a sub-council, and second, that the inclusion of individuals who are not members of the TEC is not precluded. The very function of a sub-council is to be a small and effective working group, and some sub-councils may not even have to have six members, whereas others may require more.*

- (4) Appointments to sub-councils, the removal and replacement of members of sub-councils, and the temporary appointment of a person as a substitute for a member who is absent or unable to perform his or her duties, will be made by the State President by proclamation in the Government Gazette: provided that such appointment, removal, replacement, or temporary appointment will be made by the State President in accordance with the recommendations of the Transitional Executive Council.
- (5) The conditions of service, remuneration, allowances and other benefits of members of the sub-councils shall be determined by State President in consultation with the Multi-Party Negotiating Process.

NOTE: *Members of sub-councils should serve in a full-time capacity, but the Committee is not convinced that this should be prescribed by statute. It is not anticipated that persons who are in the full-time service of any government or administration will have to be remunerated.*

- (6) The TEC may delegate to sub-councils such of its powers and functions as pertain to their areas of particular concern.

NOTE: *The TEC will have general powers to establish any sub-council in addition to those mentioned in (1) above, to assist it in performing its functions. In view of the more extensive jurisdiction of the IEC and in view of the general brief of the TEC, the Committee did not deem it necessary to rigidly prescribe a further sub-council on elections, as envisaged in the Codesa report.*

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

- (1) Notwithstanding the provisions of any other law, the Transitional Executive Council and its sub-councils shall be entitled to exercise the powers and functions, conferred on them by the enabling legislation, in the Republic of South Africa (including the Self-governing Territories), Transkei, Bophuthatswana, Venda and Ciskei.
- (2)
 - (a) All governments and administrations will keep the Transitional Executive Council informed of, and will provide it with copies of all proposed legislation, including proclamations, bills and regulations of governments or administrations that may be relevant to the purposes referred to in paragraph 1.
 - (b) If the Transitional Executive Council has reason to believe that any proposed legislation, including bills, ordinances, proclamations or regulations, will have an adverse impact upon any of the purposes referred to in paragraph 1, it may, after taking into account the necessity for such legislation, require the government or administration concerned not to proceed therewith.
- (3)
 - (a) All governments, administrations and participants will keep the Transitional Executive Council informed and the Transitional Executive Council will be entitled to ask for and to receive from them, information in regard to proposed executive actions by any government or administration, or contemplated actions on the part of any other participant in the Transitional Executive Council, that may have an impact on any of the matters referred to in paragraph 1.
 - (b) If the Transitional Executive Council has reason to believe that the implementation of such executive or other action will have an adverse impact upon the purposes referred to in paragraph 1 it may, after taking into account the necessity for such action as far as such government, administration or participant is concerned, require the government, administration or participant not to proceed therewith.
- (4) All participants in the Transitional Executive Council, and all governments and administrations will be required to comply with requests made to them by the Transitional Executive Council in terms of of sub-paragraphs (2)(b) or (3)(b), and all decisions made in terms of then enabling legislation by the Transitional Executive Council, or

a sub-council having the authority to do so, will be binding on and will be implemented by such governments, administrations and participants: Provided that if in relation to a requirement of the Transitional Executive Council made in terms of sub-paragraphs (2)(b) or (3)(b), the government or administration concerned contends that the necessity for the proposed legislation or executive or other action outweighs its adverse impact, it may refer such issue to the Independent Election Commission for a decision thereon, and may only proceed with such legislation, executive or other action if the Independent Election Commission upholds its contention.

- (5) Any differences as to whether or not in any particular instance a matter falls within the scope of the powers of the Transitional Executive Council, or one of its sub-councils, or whether any proposed action or legislation will have an adverse impact on any of the objectives referred to in paragraph 1, such difference may be referred by any government, administration or participant to the Independent Election Commission for its decision.
- (6) If any issue is referred by any government, administration or participant to the Independent Election Commission for a decision, in accordance with the provisions of the enabling legislation, the Independent Election Commission shall as soon as possible, and after consideration of -
- (a) the disputed issue;
 - (b) the views expressed thereon by the members of the Transitional Executive Council and by the complainant government, participant or administration; and
 - (c) any other matter considered by the Independent Election Commission to be relevant to its decision

determine the difference and give its decision thereon.

- (7) Any decision of the Independent Election Commission made in respect of any matter referred to it in terms of the enabling legislation shall be final and binding and not subject to appeal or review in any court.

NOTE: *A final recommendation on the adjudicatory function of the Independent Election Commission will only be possible after consideration of the report and recommendations of the Technical Committee on the Independent Election Commission.*

- (8) A request to the Transitional Executive Council or to a sub-council thereof to procure information pursuant to the powers which it has in terms of the enabling legislation, which is supported by at least one-third of the members of the Transitional Executive Council, shall be given effect to by the Transitional Executive Council or the sub-council, as the case may be, and the information gathered in consequence of such request, shall unless otherwise provided for in the enabling legislation, be made available to all members of the Transitional Executive Council.

NOTE: The question of restricted access to certain categories of information has still to be discussed. In this regard the Committee does not want to anticipate the outcome of this discussion.

6 MEETINGS

- (1) The notice in the Government Gazette announcing the appointment of the first members of the Transitional Executive Council, shall also specify the date and place of its first meeting, which shall in any event not be later than fourteen days after the publication of the above-mentioned Gazette.
- (2) The Transitional Executive Council shall thereafter meet as often as it deems necessary.
- (3) A person appointed by the Multi-Party Negotiating Process shall preside at the first meeting of the Transitional Executive Council. At this meeting the Transitional Executive Council shall appoint a secretary, who shall be a full-time official of the Council, and who shall decide upon the procedures to be followed in convening and conducting its meetings until rules governing such procedures have been made in terms of paragraph 3(2)(f).
- (4) The secretary shall-
 - (a) carry out all duties assigned to him or her by the Transitional Executive Council;
 - (b) convene special meetings of the Transitional Executive Council if required to do so in writing by not less than one third of its members;

- (c) fix a time, date and venue for any meeting called in terms of sub-paragraph (b) which, save in the case of urgency, shall be convened on not less than three days notice to the members of the Transitional Executive Council: provided that an urgent meeting may be called on short notice if the calling of the meeting on short notice is ratified by the Transitional Executive Council at such meeting.
- (5) Fifty percent of the members of the Transitional Executive Council shall constitute a quorum for any meeting: provided that this provision shall not detract from the provisions of paragraph 7.
- (6) Members of sub-councils and ministers of governments and administrations whose departments may be affected by the functioning of the Transitional Executive Council may attend meetings of the Council by invitation and speak on matters affecting their sub-councils or departments and shall attend when matters relating to their sub-councils or departments are being discussed.
- (7) The Transitional Executive Council may invite any other person to attend its meetings, and at its discretion allow any person present at its meetings to speak.
- (8) Members of governments and administrations whose departments may be affected by the functioning of a sub-council and who are not members of the sub-council concerned, may attend meetings of the sub-council and speak on matters affecting the functioning of their departments and shall attend by invitation if a matter affecting the functioning of their departments is being considered.

7 DECISIONS

- (1) Decisions of the Transitional Executive Council shall be taken only by the members thereof, and persons who are present at meetings, but are not members of the Transitional Executive Council, shall have no right to vote on any decision.
- (2) The Transitional Executive Council and its sub-councils will endeavour to take decisions on a consensus basis.

- (3) If, notwithstanding attempts to reach consensus, such consensus has not been achieved, a decision which has the support of at least 80% of the members of the Transitional Executive Council shall be deemed to be a decision of the Council.
- (4) If any government, administration or participant in the Transitional Executive Council wishes to refer a decision made in terms of sub-paragraph (3) to the Independent Election Commission to be dealt with in accordance with the provisions of the enabling legislation, it shall refer such matter in writing to the such Commission not later than three days after such decision has been made.
- (5) If a decision taken in terms of sub-paragraph (3), is not referred to the Independent Election Commission in terms of sub-paragraph (4) , it shall, after the expiry of the period of three days, become final and binding, and shall not be subject to appeal or review in any court.
- (6) If any member of the Council or his or her substitute fails to attend two consecutive meetings of the Council, at any subsequent meeting at which such member or substitute fails to attend, he or she shall not be counted as a member for the purposes of sub-paragraph (1), (2), (3).
- (7) The provisions of this paragraph shall apply mutatis mutandis to sub-councils.

8 FINANCES

NOTE: The method of financing the TEC and sub-councils will require further investigation and the Committee will report in due course on such further investigation.

9 AMENDMENT

- (1) The State President, in consultation with the Transitional Executive Council, shall be entitled by way of proclamation in the Government Gazette, and for the purposes referred to in paragraph 1, to repeal or amend any of the provisions of the enabling legislation.
- (2) Such proclamation shall have the force and effect of an Act of Parliament.

REGIONAL DEMARCATION AND RELATED ISSUES
Report to the Planning Committee: 13 May 1993

1 Instructions

The Planning Committee has requested this Technical Committee to give priority to considering to the best way of addressing the issue of the demarcation of borders, functions and powers of Regions, the following alternatives being suggested as possible mechanisms for handling the matter:

- the Technical Committee on Constitutional Issues;
- an additional technical committee specially appointed for the purpose;
- a special commission on regional government.

2 Introductory considerations

2.1 There appears to be broad agreement that the most suitable form of government for the future will be one which involves an allocation of powers to a central government and regional governments. The differences that exist relate essentially to the boundaries, powers and functions of the regions and the process whereby such differences may be resolved. Boundaries will be relevant to the electoral process, as well as the structures of the Constitution. The powers and functions of the regions are crucial to issues such as the form of state and selfdetermination, and will be a fundamental part of the Constitution.

2.2 As far as demarcation of boundaries is concerned, there seems to us to be a clear role for a commission. The task is one which appropriately should be performed by a body of suitably qualified people, who will hear representations and possibly conduct public hearings. We will have our hands full in this Committee in dealing with the many issues referred to us. But apart from that, we are of the opinion that demarcation issues are more appropriately dealt with by a broadly based commission than a small technical committee.

- 2.3 As far as powers and functions of regions are concerned, the issues could be dealt with by ourselves or another technical committee, but because of the centrality of the issue, there may be an advantage in having this issue allocated to the Commission as well.
- 2.4 The precise terms of reference of the Commission will be influenced by the views of the Negotiating Council in regard to the process of constitution making, the constitutional principle on regions, and the electoral system.
- 2.5 A constitutional principle on regions was developed at Codesa, but it has not yet been adopted by the Negotiating Council, and it seems to us that the principle could usefully be expanded to accord greater security to all involved, and in particular to those that have regional interests at heart. We suggest that consideration be given to whether the Codesa principle could therefore be elaborated to include the following:
- The idea of a special role for regions in the formal amendment procedure of the Constitution, especially on matters affecting regions;
 - The concept of regional representation possibly in a Senate in the central legislature; and
 - A list of justiciable criteria conditioning conflicts between central and regional governments to guard against the possibility that the party or parties at the centre might exercise governmental powers for the purpose of penalising regional opponents.
- 2.6 It is clear from the Codesa documents that there is substantial support for an electoral system based on proportional representation, with a regional component. This, however, has not yet been debated in the Negotiating Council.
- 2.7 We suggest that the issues that we have raised be debated in the Negotiating Council as a matter of urgency so that the terms of reference of the Commission in so far as demarcation is concerned can be formulated, and a final decision be taken in regard to the desirability of including the issue of powers and functions of regions in the terms of reference of the Commission.

2.8 If decisions are taken on these issues we would be able to formulate terms of reference of a Commission for consideration by the Negotiation Council. Because of the urgency of the matter, we have addressed some of the considerations that may have to be taken into account in the appointment and functioning of the Commission. These are set out below.

3. A Commission on Regional Government

3.1 Appointment

The Negotiating Council should seek agreement on the membership and the terms of reference of a Commission for Regional Government. Regarding the establishment of the Commission, the following alternatives may be considered:

- formal appointment and instruction by proclamation in the *Government Gazette*; or
- appointment and instruction by the Negotiating Council.

3.2 Composition of the Commission

The Commission should in our view consist of ten members. The members should be persons suitably qualified for the various tasks of the Commission and be persons whose personal integrity is generally acknowledged.

The Negotiating Council could either appoint from among the members of the Commission a chairperson and vice-chairperson or such appointments could be left to the members of the Commission itself.

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

3.3 The Commission's Suggested Terms of Reference

3.3.1 The Commission should be required, as a matter of urgency, to make recommendations to the Negotiating Council on the delimitation of regions

for the purposes of elections. For this purpose the Commission may be required to take into consideration the following criteria:

- 3.3.1.1 historical boundaries, including provincial, magisterial and district boundaries and infrastructures
 - 3.3.1.2 administrative considerations including the availability or non availability of infrastructures and nodal points for services
 - 3.3.1.3 the need to rationalise existing regional structures (including the TBVC states, self-governing territories and regional governments)
 - 3.3.1.4 the necessity of limiting financial and other costs as much as is reasonably possible
 - 3.3.1.5 the need to minimize inconvenience to the people
 - 3.3.1.6 the need to minimize the dislocation of services
 - 3.3.1.7 demographic considerations
 - 3.3.1.8 economic viability
 - 3.3.1.9 developmental potential
 - 3.3.1.10 cultural and language realities
- 3.3.2 The Commission should be required to invite all interested parties and persons to submit their views and recommendations regarding the delimitation of regions either in writing or orally on or before a date determined by the Commission.
- 3.3.3 The Commission should be instructed to submit its recommendations regarding the delimitation of regions to the Negotiating Council not later than one month after its appointment.

- 3.3.4 Depending upon the progress made in the Negotiating Council on reaching agreements regarding the structures, procedures, functions and powers of regional governments under the Constitution replacing the present constitutional dispensation, the Commission might be required, within a specified period, to submit recommendations to the Negotiating Council on such matters.
- 3.3.5 In the performance of all of its functions the Commission should be required to take cognizance of the progress made in the Negotiating Council in the formulation of agreements on constitutional matters.
- 3.3.6 The Constitution replacing the present constitutional dispensation should make special provision for the continuation, appointment, composition and terms of reference of the Commission or a similar commission, as well as for the procedures regarding the acceptance, rejection or referral of its recommendations by a constitution making body.
- 3.3.7 The terms of reference of the Commission should in terms of the Constitution replacing the present constitutional dispensation include inquiry into and the making of recommendations to a constitution making body regarding the final boundaries, powers, functions and constitutional structures of regions in the future constitutional dispensation.

4 Functioning of the Commission

- 4.1. The Commission should be allowed to determine its own procedures for gathering and considering evidence, provided that evidence and representations must be gathered from all parts of the country, and that cognizance must be taken of ongoing negotiations in the Negotiating Council, which should continue notwithstanding the appointment of the Commission.
- 4.2. The Commission should be provided with sufficient and suitably qualified staff and resources to perform its task as expeditiously and impartially as possible.

**REPORT FROM ADMINISTRATION TO THE PLANNING COMMITTEE
ON 14 MAY 1993 ON
SECURITY OUTSIDE THE WORLD TRADE CENTRE ENTRANCE**

1. As mandated, by the Planning Committee, the Administration and a representative of Multi-Party Security met with the SAP Officer in charge of demonstrations outside the World Trade Centre Entrance.

2. Out of the discussion with the Officer and five of his colleagues, the following emerged:
 - 2.1 The biggest problem which the SAP encounters is that there is not sufficient space between the existing fence and the road for demonstrators to gather.
 - 2.2 Consequently, there are serious traffic problems, even with small demonstrations.
 - 2.3 A third problem is that demonstrators normally do not know that the political negotiators had taken the decision that demonstrations should take place outside the premises of the World Trade Centre, and perceive the police as restricting their entry. This leads to the SAP's orders not being adhered to.

3. After intensive discussions, the following was agreed to and is recommended to the Planning Committee:
 - 3.1 That, in co-operation with the World Trade Centre Management, the fence at the entrance is moved into the terrain, so as to create more space for demonstrations. In addition, a proper gate should be put up next to where the fence will be moved. The present boom should be moved 50 metres inside the terrain. This should create adequate space for demonstrators to be accommodated.
 - 3.2 That a permanent water point be established for demonstrators to use and that for the duration of demonstrations, mobile public toilets be hired for use by the demonstrators (this has been agreed to by the World Trade Centre Management).
 - 3.3 That the Guidelines for Demonstrations outside the World Trade Centre should be better publicised, not only by political parties/administrations/organisations internally, but also in the media.
 - 3.4 That a notice board with a summary of the Guidelines for Demonstrations be put up at the gate, so that demonstrators can be aware of the decisions of the Negotiating Council with regard to demonstrations.

- 3.5 . That, when necessary, members of political parties/administrations/ organisations should be requested to communicate with demonstrators in order to avert any clashes between the SAP and demonstrators. In this regard, the SAP assured the Administration that the utmost restraint will be exercised and that before any drastic measures are employed, the Multi-Party Security and Administration will be consulted.

- 4. The Administration believes that, with these guidelines and actions, the issue of demonstrations could be handled in a constructive manner.

MULTI-PARTY NEGOTIATING PROCESS

Tel (011) 397-1198 Fax (011) 397-2211

11 May 1993.

XYZ
PO Box XYZ
XYZ
11111

Dear

Re : Application for Participation in the Negotiating Structures

With regard to your recent application to participate in the Multi-Party Negotiating Process, we can now supply you with the following information:

At the meeting of the Negotiating Council on 7 May 1993, it was agreed that:

"1. Political Parties or Organisations to qualify, must show:

- 1.1 That it is indeed a political party or organisation intending to participate as such (i.e. in the political party or organisations own name) in the first election under a transitional/new constitution;
- 1.2 That it has proven substantial support in a national context;
- 1.3 That its admission will enhance the peaceful negotiating process.

2. Traditional Leaders

The principle of provincial representation should be maintained, but the problems around the representivity of existing delegations should be addressed in consultation with and a manner acceptable to all concerned.

3. Other Applicants

That applications of organisations who are not political parties or organisations, be refused."

The following process for dealing with applications of political parties or organisations was agreed to:

1. Applicants should be informed of the criteria and requested to submit whatever facts and arguments they wish to, but they should be required to at least respond to the questionnaire annexed to this report (Annexure A);
2. Administration should cause a newspaper survey over the preceding year to be conducted to establish the type of press coverage every applicant has received;
3. As soon as all the information is at hand in respect of a particular application, it is put before the Negotiating Council for a decision."

Against this background, you are kindly requested to:

- * Respond in writing to the three general criteria mentioned above;
- * Complete the annexed questionnaire;
- * Supply us with whatever information you think necessary and important.

To expedite the process, you are requested to send your input before 12h00 on Tuesday 25 May 1993.

As soon as the newspaper survey has been completed, and your response received, the Negotiating Council will take a decision on your organisation's participation in the Multi-Party Negotiating Process.

We trust that you find this process to be beneficial and hope to hear from you soon.

Yours sincerely,

Dr Theuns Eloff
HEAD ADMINISTRATION

**QUESTIONS TO POLITICAL PARTIES/ORGANISATIONS
APPLYING TO JOIN THE MULTI-PARTY NEGOTIATING PROCESS:
FOR THE PURPOSES OF PROCESSING THE APPLICATION**

Note : Wherever necessary, please supply information on an attached sheet of paper.

1. Date of formation of party/organisation
2. Names of office bearers and designation
3. Statement of Political Intent/Constitution
4. Indicators of demonstrable support (signed up membership, attendance at rallies, elections results)
5. Activities: Meetings
 Publications
 Other
6. Participation in other organisations: Parliament/Legislative Assembly
 Local Government
 Civics
 Other
7. Offices: Address HQ and other offices
 Telephone, Fax
 Number of personnel employed by your party/organisation
8. Are you viable in regards to sustained funding?
9. Geographical area of operations: support, offices, etc?
10. Rules of membership

MULTI-PARTY NEGOTIATING PROCESS

Tel (011) 397-1198 Fax (011) 397-2211

11 May 1993

XYZ
PO Box XYZ
XYZ
1111

Dear

At a recent meeting of the Planning Committee of the Multi-Party Negotiating Process, it was decided that in the interests of greater transparency and openness in the Transition Process, to facilitate a programme of information exchange between the Multi-Party Negotiating Process and other negotiating fora.

It is the intention of the Multi Party Negotiating Process to keep your forum informed of all decisions which are relevant to the transition.

We hope that you, in turn, would be open to keeping the Multi-Party Negotiating Process informed of the work/decisions of your process in order to take more informed decisions.

As soon as we hear from you, we will start the exchange process. We trust that in this way, the different negotiating fora will be able to work in unison towards the country we all want.

If you have any further enquiries, please do not hesitate to contact me at tel (011) 397-1198 or fax (011) 397-2211.

Kind regards,

Dr Theuns Eloff
HEAD ADMINISTRATION



DIOCESE OF CHRIST THE KING

P O Box 1653
Rosettenville
2130

Tel: (011) 435 0097/8
Fax: (011) 435 2868
78 Daisy St (cnr. Victoria St)
Rosettenville 2197

FACSIMILE TRANSMISSION COVER SHEET

TO: The Multi-Party Forum

FAX NO: 011-397,2211

FOR THE ATTENTION OF: The members of the Multi-Party Forum.

MESSAGE: We, the undersigned, wish you to know our desire for Justice and Peace in the country and assure you that we pray regularly that God will bless your efforts and bring them to a successful conclusion in the interests of all South Africans.

1. Order of the Holy Paraclete,
2. Community of St. Mary the Virgin,
3. Community of the Holy Name (South Africa & Lesotho)
4. Community of the Resurrection,
5. Community of St. John the Baptist,
6. Community of St. Michael & All Angels,
7. Community of the Resurrection of Our Lord,
8. Tertiary Order of St. Francis,
9. Society of the Sacred Mission,
10. Society of St. John the Divine,
11. Society of the Sacred Blood (Lesotho)
12. Community of the Holy Name (Zimbabwe)
13. Community of the Holy Transfiguration (Zimbabwe).

PAGE: ONE OF: ONE

SENDER: The Anglican Religious Communities of Women & Men in S. Africa.

DATE SENT: 06 May 1993



MAATSKAPLIKEWERKERS-VERENIGING VAN SUID-AFRIKA
SOCIAL WORKERS' ASSOCIATION OF SOUTH AFRICA

Tel No : 0531-26237 (W)
0531-21802 (H)
Faks No: 0531-28212

POSBUS 287
KIMBERLEY
8300

Ons verwysing
Our reference

49/4

Die Sekretariaat
"Veelparty Samesprekings"
Wêreldhandelsentrum
KEMPTON PARK
1620

Geagte Meneer

**BOODSKAP VAN MAATSKAPLIKEWERKERS-VERENIGING
VAN SUID-AFRIKA**

Die Hoofbestuur van die Maatskaplikewerkers-vereniging van Suid-Afrika het tydens sy jaarvergadering op 4 en 5 Mei 1993 te Kempton Park sy diepe kommer uitgespreek oor die huidige onrustige en geweldadige omstandighede en klimaat in Suid-Afrika en die smart en lyding wat vir baie mense hiermee gepaard gaan. Daar is waardering vir die baie positiewe inisiatiewe wat gedoen is en gedoen word, en vertrou word, verder sal ontwikkel. Dit is egter so dat dienslewering deur maatskaplike werkers negatief beïnvloed word, omdat baie kliënte juis as gevolg van die omstandighede, dienste moet ontbeer wat slegs verdere swaarkry en gebreke veroorsaak.

Feitlik alle mense word deur die krisissituasie in ons land geraak en dit lei tot grootskaalse ontberinge, werkloosheid en verarming. Die Maatskaplikewerkers-vereniging van Suid-Afrika distansieer hom van geweld en doen daarom 'n beroep op alle partye om by te dra tot kalmte en 'n atmosfeer en omstandighede wat groei, ontwikkeling en verbeterde maatskaplike funksionering kan bevorder.

Deurdadig Maatskaplike Werk as professie veral gemoeid is met onderlinge verhoudinge, is dit dan ook in hierdie opsig dat daar gewerk moet word. Verdraagsaamheid, aanvaarding, nuwe gesindhede, begrip en 'n bereidwilligheid om na mekaar te luister, moet gekweek word. Leiers moet voorgaan in voorbeeld, gesagstrukture moet eerbiedig en in stand gehou word sodat 'n gevoel van sekuriteit kan ontwikkel. Dit sal almal aanspoor tot betrokkenheid, betrokkenheid bring begrip en begrip bevorder liefde en eensgesindheid.

Dit kan nie toegelaat word dat versteurde verhoudings verder alle sfere van ons samelewing ontwig en ons mense blootgestel word aan steeds groter onsekerheid, verarming en hartseer nie. Saam met so baie besorgdes glo en vertrou die Maatskaplikewerkers-vereniging van Suid-Afrika dat ons verhoudinge in ons land sal herstel sodat billikheid, regverdigheid en geleenthede elkeen se deel sal wees. Ons herhaal graag ons beroep op elkeen om hiervan 'n werklikheid te maak.

2/

Meld asseblief bostaande verwysingsnommer in u antwoord Please quote above-mentioned reference number in your reply

Sukses met u groot taak in belang van al die mense van ons
mooi land.

.....
MNR J PETZER : NASIONALE SEKRETARIS

JP/hp

NS. Boodskap ook op 7/5/93 van u gefaks.

WOMEN'S NATIONAL COALITION

Suite 3609 • Carlton Office Towers • Commissioner Street • Johannesburg • 2001
P.O. Box 62319 • Marshalltown • Tel: (011) 331 5958/9 • Fax: (011) 331 5957

12th May 1993

TO: ALL MEMBERS OF THE NEGOTIATING COUNCIL OF THE MULTI-PARTY FOR
FAX: 011-3972211

The WOMEN'S NATIONAL COALITION has been instructed by the International Conference on Gender Equality in the New South Africa to protest the virtual exclusion of women from the technical sub-committees of the Multi-Party Forum. We note that only about 10% of those appointed are women, and are particularly concerned at the absence of women from the Committees on Constitutional Matters and the Independent Elections Commission.

Among the matters on which the former is required to report are the constitutional principles which will bind the Constitution Making Body. Clearly such fundamental principles will determine the extent to which the new constitution will provide for a non-sexist South Africa. A great deal of research and comparative analysis has been undertaken on the constitutional framework required to provide genuine equality for women, most of it by women. We are not aware of any expertise in this area among any of those who have been appointed to this technical committee.

The Technical committee on the Independent Electoral Commission will be making recommendations which will have a significant impact on the numbers of women who will participate in the elections, and hence needs to be sensitive to women's particular experience so that it will facilitate their meaningful participation in the democratic process.

South African women took seriously the commitment of the negotiating parties to the establishment of a non-sexist South Africa. They are now fearful that this commitment was mere rhetoric and electioneering and devoid of serious intent.

If it was not, we hope that the Planning Committee/ the Negotiations Council and your Party or Organisation will urgently reconsider the composition of the technical committees.

Sincerely,



pp THOKO MSANE : SECRETARY-GENERAL

Convenor : Frene Ginwala • Co-Convenor : Anne Letsebe • Secretary General : Thoko Msane
Deputy Secretary General : Sandra Botha • Co-Treasurers : Miriam Stein ; Jennifer Ringhorn

**DRAFT AGENDA FOR THE MEETING OF THE NEGOTIATING COUNCIL
TO BE HELD ON TUESDAY 18 MAY 1993 AT 09H00**

Chairpersonship - FT Mdlalose assisted by R Cronje

1. **Moment of Prayer/Meditation**
2. **Welcome and Attendance**
3. **Ratification of Agenda**
4. **Minutes**
 - 4.1 Adoption of the minutes of the meeting of the Negotiating Council of 7 May 1993 (Addendum A1)
 - 4.2 Matters arising out of the minutes of the meeting of the Negotiating Council of 7 May 1993
 - 4.3 Other minutes to be noted:
 - 4.3.1 Planning Committee of 3 May (Addendum A2)
 - 4.3.2 Planning Committee of 10 May (Addendum A3)
5. **Substantive Issues - First Reports from the Technical Committees**
 - 5.1 Violence
 - 5.2 Constitutional Issues
 - 5.3 Fundamental Human Rights during the Transition
 - 5.4 Independent Election Commission
 - 5.5 Independent Media Commission
 - 5.6 Amendment or repeal of legislation impeding free political activity and discriminatory legislation
 - 5.7 TEC and its Sub-Councils
6. **Procedural Issues - Report of the Planning Committee**
 - 6.1 New Participants
 - 6.2 Media Arrangements
7. **Administrative Matters**
8. **Meetings Schedule**
9. **Closure**

PROPOSED SCHEDULE OF MEETINGS

Planning Committee	Friday 14 May 1993	09h00 - 13h30
Planning Committee	Monday 17 May 1993	14h00 - 18h00
Negotiating Council	Tuesday 18 May 1993	09h15 - 18h00
Planning Committee	Tuesday 18 May 1993	18h00 - 20h00
Planning Committee	Monday 24 May 1993	10h00 - 18h00
Negotiating Council	Tuesday 25 May 1993	09h15 - 18h00
Planning Committee	Tuesday 25 May 1993	18h00 - 20h00
Negotiating Council	Friday 28 May 1993	09h15 - 18h00
Planning Committee	Tuesday 1 June 1993	10h00 - 18h00
NEGOTIATING FORUM	Thursday 3 June 1993	10h00 - 18h00
Planning Committee	Thursday 3 June 1993	18h00 - 20h00
Planning Committee	Monday 7 June 1993	10h00 - 18h00
Planning Committee	Tuesday 8 June 1993	08h30 - 13h00
Negotiating Council	Friday 11 June 1993	10h00 - 18h00
Planning Committee	Monday 14 June 1993	10h00 - 18h00
Planning Committee	Tuesday 15 June 1993	08h30 - 13h00
Negotiating Council	Friday 18 June 1993	10h00 - 18h00
Planning Committee	Monday 21 June 1993	10h00 - 18h00
Negotiating Council	Thursday 24 June 1993	10h00 - 18h00
NEGOTIATING FORUM	Friday 25 June 1993	10h00 - 18h00



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