

EMBARGOED UNTIL TABLED IN THE NEGOTIATING COUNCIL

**THIRD REPORT
FROM THE TECHNICAL COMMITTEE
ON THE REPEAL OR AMENDMENT OF
LEGISLATION IMPEDING
FREE POLITICAL ACTIVITY AND
DISCRIMINATORY LEGISLATION TO
THE NEGOTIATING COUNCIL
15 JULY 1993**

On 14 July 1993, the Technical Committee for the Repeal of Discriminatory Legislation and Free and Fair Elections met with, respectively, the Committees for the Transitional Executive Council, the Independent Electoral Commission, and the Committee for Fundamental Rights during Transition. The overlap and potential overlap of areas dealt with by the committees was discussed.

1. TRANSITIONAL EXECUTIVE COUNCIL TECHNICAL COMMITTEE

- 1.1. The discussions with the TEC committee confirmed the need for guiding principles to ensure that the elections are free and fair, and for machinery to enforce these principles. It was also agreed that judicial supervision of the electoral process would be necessary.
- 1.2. Both committees assume that the interim/transitional constitution and the interim bill of rights will only start to apply after elections for the constituent assembly have been held. There will therefore not be any special code to govern the elections beforehand unless created through the MPNP.
- 1.3. We accept that if this assumption is wrong - that is, if a fully equipped transitional constitution and bill of rights, to be enforced by a new constitutional court, were to come into existence in the immediate future - then the need for a special election code and machinery of enforcement should fall away.

2. INDEPENDENT ELECTORAL COMMITTEE TECHNICAL COMMITTEE

- 2.1. The IEC informed us that they are drafting a "Code of Conduct for Political Parties". They are also proposing a new Electoral Act. The enforcement of these 2 instruments is foreseen to take place through the IEC and directorates with a special focus.
- 2.2. After hearing our proposals they supported the need for a special "Electoral Code" and Electoral Tribunal. Our proposal for an electoral ombudsman can now fall away because the area of "administrative control" will be covered by the machinery proposed by the IEC.

(NOTE: 2 different types of code are therefore proposed which will probably have to be given appropriate names. One deals with political parties and officials. The other purports to be a supreme code/ "higher code" aiming to ensure free fair and democratic electioneering - binding on government and private bodies and people)

- 2.3. We were then requested by the IEC to finalise our proposal on the "higher code". The two committees will meet again to decide on how to integrate the "higher code" and Electoral Tribunal into the broader IEC structure.

3. TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING TRANSITION

- 3.1. This committee assured us that all the rights envisaged in the "higher code" being dealt with by our committee would be catered for in an Interim Bill of Rights.
- 3.2. It conceded that it had not paid sufficient attention to the machinery for the enforcement of the Interim Bill of Rights. It also acknowledged that it made no provision for the horizontal enforcement of the Bill of Rights.
- 3.3. It was agreed that our committee need not continue with the drafting of a "higher code", provided that:
 - 3.3.1. The Interim Bill of Rights would apply in the period running up to the elections.
 - 3.3.2. Effective judicial enforcement be provided for.
 - 3.3.3. Provision was made for the horizontal and vertical enforcement of the Interim Bill of Rights.

- 3.4. The Committee on Fundamental Rights agreed that there was a need for the enforcement of the rights contained in the Interim Bill of Rights or the "higher code" of the Committee on Repeal of Discriminatory Legislation by a proper judicial tribunal.
- 3.5. The committee for the Repeal wishes to raise two possible election irregularities for the purpose of illustrating the need for a "higher code" backed by a judicial tribunal:

Example 1: The Town Council of Blikkiesdorp prohibits the National Freedom Party from holding a meeting in the market square in terms of a municipal by-law. The previous week it had given permission to another party to do so.

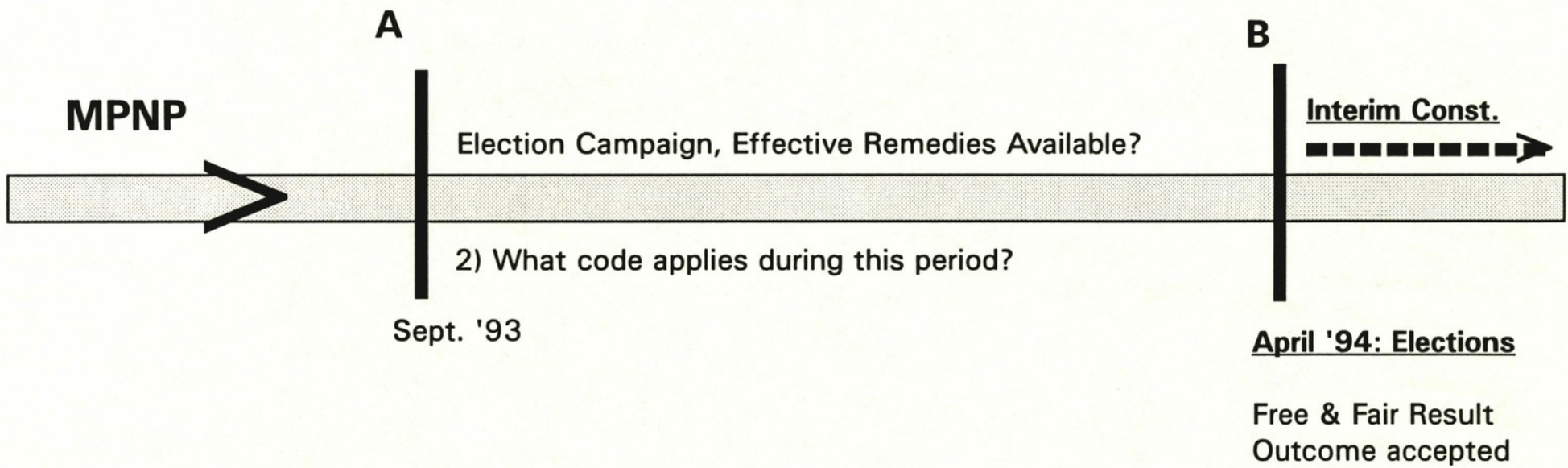
Example 2: The Society for the Preservation of Male Rights, a private association, decides that none of the women in the families of members of the society should attend political meetings or vote. Members of the society agree to enforce this situation domestically.

If the existing structures alone are retained, the decision of the Blikkiesdorp Town Council will have to be challenged through the ordinary courts. This will be both expensive and extremely time consuming (the outcome of the proceedings is unlikely before 27 April 1994). The same consideration will apply in the second example. In addition, courts are unlikely to interfere in such a "private matter". Moreover, even if the traditional Bill of Rights is adopted for the interim period and does not provide for horizontal enforcement, the women denied their political rights in this way would have no redress.

4. CONCLUSION

It seems clear to us that there must be machinery which can deal urgently and effectively with such irregularities to ensure that at the end of the elections on 27 April 1994, no party can claim that irregularities of this kind occurred and were not addressed immediately. We repeat, the Angolan spectre must be avoided at all costs. No party must be able to claim after the election of 27 April 1994 that it was not free, fair and democratic.

The committee's proposed "higher code" setting out the guiding principles to ensure free and fair elections, backed by an Electoral Tribunal to redress irregularities immediately and effectively, therefore remains valuable.



MPNP

A

Sept. '93

Election Campaign, Effective Remedies Available?

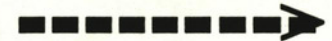
2) What code applies during this period?

B

April '94: Elections

Free & Fair Result
Outcome accepted

Interim Const.



Requirements for democratic, free and fair Elections

1. Peace structures (Technical Committee on Violence)

2. IEC

- Code for political parties == > How to enforce?
- Electoral Act == > How to enforce?

3. Tech Comm 7

Electoral Code

Binds Govt Structures

Binds individuals

Enforcement
Electoral Tribunal(Court)

- * Central
- * Regional
- * Effective
- * Expeditious
- * Legitimate

Supreme Principles

- Meetings
- Movement
- Access
- Press