CONFIDENTIAL

EMBARGOED UNTIL TABLING IN THE
NEGOTIATING COUNCIL ON 1 November 1993

FIRST SUBSTANTIAL REPORT OF THE TASK GROUP ON THE IDENTIFICATION AND REPEAL OF LEGISLATION IMPEDING FREE POLITICAL ACTIVITY AS WELL AS DISCRIMINATORY LEGISLATION

29 October 1993

CONTENTS

Copies of Statutory Clauses referred to will be available or accessible

1. INTRODUCTION

On 6 September 1993 the Planning Committee made a recommendation to the Negotiating Council, namely to propose a two person Overall Task Group which would be responsible for identifying legislation in the South African statute book, as well as setting up and coordinating four sub-groups charged with identifying legislation in each of the TBVC territories. In setting up sub-groups, the overall Task Group had to ensure that in the case of each of the TBVC territories a person seconded by the Ministry of Justice from the respective territory was included. In terms of the proposal, the overall Task Group would consist of a person seconded from the South African Ministry of Justice, and Professor Johann van der Westhuizen of the Centre for Human Rights of the Law Faculty of the University of Pretoria. The Planning Committee's proposal was apparently thereafter accepted by the Negotiating Council. Adv Jaap du Bruyn was seconded by the Ministry of Justice. Prof van der Westhuizen has acted as the de facto convenor of the group.

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2. BACKGROUND AND APPROACH

2.1 In view of the difficulties regarding the availability of legislation of the TBVC states, as well as access to the necessary documentation, it was thought best to appoint people to the sub-groups who have been or are active in the relevant areas. Members of sub-groups were asked to go ahead, in order to save time, rather than to have meetings and to work as a committee at the World Trade Centre. Up to now, one meeting of the overall Task Group and the members of the sub-groups has taken place, in order to standardise information and to discuss general strategy. The recommendations of the Task Group are essentially those of the members of the overall Task Group, with the advice and input of members of the sub-groups. However, at the meeting there was considerable consensus - at least in principle - on most matters.

2.2 Technical Committee No 7, the committee on Discriminatory Legislation, submitted several reports between May and August 1993 and followed the following approach:

The Committee found that a comprehensive list of all discriminatory and repressive laws in South Africa, the self-governing territories and the TBVC territories would constitute a useful compilation of statutory enactments, but that repealing or amending these will have to be implemented by 11 different legislative bodies, numerous local authorities and other law-making persons and bodies. The Committee found that the likelihood of obtaining uniformity on non-discrimination and free political activity from 11 different legislative bodies is small. If no uniformity in legislation is obtained, this will inevitably result in discrimination. They preferred a single structure for the enforcement of laws and regulations pertaining to free political activity and equality. Therefore they proposed a "higher code", which was not supposed to be an interim Bill of Rights, but a code prescribing principles for free political activity, free and fair elections and non-discrimination. They regarded such a higher code as a useful measure to set aside any law, administrative act or private activity in violation of the code and was of the opinion that parties taking part in the negotiating process should all be given the opportunity to endorse the higher code. The higher code would have "supreme legal status" and cancel out objectionable provisions in a statute while the rest will remain intact. The Committee thought that the typical characteristics of free political activity in a democratic society include principles such as:

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(ii) **freedom of the press;**
(iii) **freedom of association;**
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As far as discrimination is concerned, the Committee considered:

(i) discriminatory laws which constitute the **foundations of political apartheid,**
(ii) discriminatory laws which **flow from the above laws,**
(iii) laws which are **inherently discriminatory** and
(iv) laws which may **impede free and fair elections.**

The Committee relied on the definition of discrimination in Article 1 of the International Convention on the Elimination of All Forms of Race Discrimination of 1965, as well as in Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979.

Laws that may impede free and fair elections, according to the Committee, include any law that may:

(i) deny or interfere with the right to vote;
(ii) deny the equality of treatment of voters in the whole election process from the time of qualification as a voter to the casting of the ballot;
(iii) prevent the free exercise of freedom of speech, expression or access to information; and
(iv) deny political parties equal access to voters, to venues for meetings, to the media, to funding resources etc;
(v) interfere with the freedoms of association and assembly (including the right to demonstrate);
(vi) interfere with or deny freedom of the press or media;
(vii) prevent an election from being conducted in accordance with uniform rules for the whole country;
(viii) deny the right to stand for election;
(ix) deny the right to vote freely without fear of victimisation;
(x) deny the right of political parties to canvas voters.

The Committee furthermore identified discriminatory legislation and legislation impeding free political activity and provided a list of discriminatory laws constituting the foundations of apartheid, discriminatory laws which flow from the laws constituting the foundations of apartheid, laws which discriminate on grounds of sex and religion and laws which may impede free and fair elections in the TBVC territories and in South Africa.

The Committee furthermore made a draft "higher code" available.

After some liaison between the Committee on the Repeal of Discriminatory Legislation and the Technical Committees dealing with Elections, with the Transitional Executive Council and with Fundamental Rights, it became clear that there were areas of overlap or potential overlap, especially as far as the idea of a "higher code" was concerned. Some of the principles proposed in the higher code would have been included in the Electoral Bill, others in the Interim Bill of Fundamental Rights, etc. It now seems that the proposed aims and functions of a "higher code" have indeed been covered by other proposals and structures, and there is little time left to establish new structures, especially for the "higher code".

It is not clear to the Task group what the present status of the concept of the "higher code" is, and whether the idea ought to be investigated further as a possible "safety net mechanism", in as far as this may be necessary to deal with legislation which may be over-looked.

2.3 It would seem that the instructions of the Planning Committee to the Task Group emphasised the need to identify legislation impeding free political activity, for such legislation to be repealed, or amended, on an urgent basis. Therefore the Task Group decided, as a first step, to concentrate on the most crucial aspects of legislation possibly impeding free political activity and discriminating as far as free participation in elections is concerned, in the relevant territories. Lawyers working in the relevant areas, and the representatives of the different administrations, were asked to concentrate on those aspects of legislation which seem to have a very direct and immediate effect concerning free political activity.

In principle the Task Group agrees with the definitions and descriptions, as well as the findings and approach of the Technical Committee on Discrimination. The Task Group attempts to give more substance to the last mentioned leg of the Technical Committee's approach, namely to make concrete submissions as to legislation which has to be repealed or amended in South Africa and the TBVC territories, as a matter of urgency.

It is to be hoped that aspects of legislation identified by the Task Group as impeding free political activity, will indeed receive the urgent attention of the relevant legislatures, after decisions have been taken or sufficient consensus has been reached in the MPNP.

2.4 The Task Group was also guided by the rights and principles set out in several international and regional human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the African Charter on Human and Peoples Rights and the Council of Europe Convention for the Protection of Human Rights and Freedoms.

2.5 At this stage the Task Group has identified aspects of legislation and briefly recommends the substance of proposed amendments. The Task Group has not been mandated to draft legislation in this regard, but could possibly proceed to do so, if necessary.

2.6 On the longer term, the Task Group could proceed with the identification of legislation which is inherently or otherwise discriminatory, and to make recommendations in this regard. Obviously future structures such as the Transitional Executive Council, Electoral Commission, Electoral Court and Constitutional Court and the provisions of the Interim Bill of Fundamental Rights will have to be taken into account.

2.7 As was the case with the Technical Committee on Discrimination, the Task Group does not regard it as falling within its present mandate to pronounce on the statehood or constitutional position of the TBVC territories. Therefore the constitutional position of the territories is addressed only insofar as it is directly related to specific laws impeding free political activity. In some cases the possible unconstitutionality of legislation, judged by the present constitution, is pointed out, rather than expressing an opinion on the constitution as such.

2.8 In previous submissions aspects of citizenship in South Africa and the TBVC states were mentioned. The Task Group considered this facet, but decided not to go into the issue of citizenship and franchise, in view of the work of the Technical Committees on the Electoral Bill and on Constitutional Principles, as well as ad hoc committees. Inherently discriminatory aspects of citizenship legislation may be considered in future reports.

2.9 In the reports of the different sub-groups and the overall Task Group, certain differences in emphasis and viewpoints occurred. This is due to, amongst other things, the different experiences of people and atmospheres prevailing in the various territories. An aspect which may be experienced as a significant problem in one area, may be much less relevant in another, even though the legislation in force may technically be the same, or similar. An attempt was made to formulate a standardized approach as far as possible, but differences may still occur. In some cases legislation in one territory may have been amended in others, which could make a difference as to its meaning and impact.

2.10 In terms of the Task Group's mandate and above mentioned approach, the focus in this report is on relatively urgent matters related to free political activity. These recommendations do not represent an attempt to "purify" the statute books in order to get rid of all legislation which violate basic human rights or other principles. Various aspects are not addressed - including other provisions in Acts which need to be revised and reformed or repealed to

conform with a Bill of Fundamental Rights, as well as with principles of democracy and common law.

2.11 In the following tables, the contents of certain provisions are stated very briefly. Thereafter more comprehensive motivations follow.

3. LIST OF LEGISLATION, WITH MOTIVATIONS

A SOUTH AFRICA

In identifying the relevant objectionable legislation in the Republic of South Africa the Working Group has taken into account the provisions of the proposed Regulation of Gatherings Act (popularly known as the Goldstone Bill), the Transitional Executive Council Act, the Draft Electoral Bill and the proposed functions of the Independent Electoral Commission and the Electoral Court. The following Acts or provisions in Acts are then those regarded as potentially dangerous or inhibiting towards the free political process, which are not dealt with in the aforementioned documents and which the working group consequently thinks should be repealed or amended. In some cases, eg the Internal Security Act 74 of 1982, it may be advisable or necessary to revise, repeal or amend the Act as a whole, in order fully to comply with a Bill of Fundamental Rights, other legislation and common law principles. Some sections clearly deserve immediate attention, even though other sections may also be debatable.

Title, No and Year of Law	Particular Sections Summary of Contents	Recommendations and Reasons
Repeal or Amend		
(1) Prohibition of Foreign Financing of Political Parties Act 51 of 1968	Prohibits the receipt of foreign funding by political parties	Repeal in toto - impedes free political activity and related rights

(2)	Affected Organisations Act 31 of 1974	Discretion to State President to declare political organisations receiving foreign funding to be affected organisations	Repeal <u>in</u> <u>toto</u> - same
(3)	Publications Act 42 of 1974	Section 47(2) permits the banning of publications or films deemed to be "undesirable" because it ... (c) brings any section of the inhabitants into ridicule or contempt (d) is harmful to the relations between sections of the inhabitants (e) is prejudicial to the safety of the state, general welfare, peace and good order	Repeal 47 (2)(e)- it could be used to impede free political activity; sections 47 (2)(c) and (d) are arguable. As to the Act as a whole, see below.
(4)	Parliamentary Internal Security Commission Act 7 of 1976	Wide ranging powers to Parliamentary Internal Security Commission	Repeal <u>in</u> <u>toto</u> - violates several fundamental rights, including access to court, access to information, etc.

(5)	Internal Security Act 74 of 1982	Section 4: The Minister has the power to declare certain organisations unlawful	Amend to narrow the scope - free political activity may be impeded
		Section 50: Power of police officer to arrest without warrant	Amend to subject decision of police to objective instead of subjective test - violates freedom of the person
		Section 58, 59, 60: Additional sanctions for unlawful behaviour, aimed at prohibiting civil disobedience	Repeal - freedoms essential to legitimate civil disobedience violated
		Section 62: Prohibition on causing hostility between population groups	Repeal, or amend to lessen vagueness and wide scope - violates freedom of expression.
(6)	Disclosure of Foreign Funding Act 26 of 1989	Powers to Registrar to declare an organisation a reporting organisation, which has to disclose information regarding funding; also, powers of search and seizure.	Repeal in toto - see (1)

	Other Matters		
(7)	Public Safety Act 3 of 1953	Grants unfettered power to State President, Minister of Law and Order to declare a state of emergency or an unrest area respectively and to promulgate emergency regulations or regulations in an unrest area. Jurisdiction of the courts ousted to a great extent.	Could violate several rights and freedoms; dealt with in TEC Bill; not an immediate problem.
(8)	Gathering and Demonstrations in the Vicinity of Parliament Act 67 of 1976	Prohibits demonstrations in the vicinity of Parliament	Could violate freedom of assembly and expression; to be repealed by "Goldstone Bill"
(9)	Demonstrations in or near Court Buildings Prohibition Act 71 of 1982	Prohibits demonstrations in the vicinity of Court Buildings	As above
(10)	Gathering or Demonstrations in or near the Union Buildings Act 103 of 1992	Prohibits demonstrations at the Union Buildings	As above

MOTIVATION

(1) **Prohibition of Foreign Financing of Political Parties Act 51 of 1968**

This act prohibits the receipt by any political organisation of foreign funding for political purposes. The Act clearly does not take account of the present political situation, where many political parties or movements do in fact receive extensive funding for political purposes from abroad. Furthermore, if the Act were indeed to be applied, such application would result in an impediment to the free political

process. Any regulation of foreign funding by political parties should be left to the Transitional Executive Council or the Independent Electoral Commission. The Working Group consequently recommends that the Act be repealed in toto.

(2) **Affected Organisations Act 31 of 1974**

This Act grants the discretion to the State President to declare any political organisation that receives foreign aid or monies for political purposes to be an affected organisation. An affected organisation is prohibited from receiving any aid or money from abroad. Such money already in possession of an affected organisation may furthermore not be used for any purpose other than to donate it to a welfare organisation specified by the Minister of Justice. The Act also provides for a Registrar of Affected Organisations, with wide ranging powers, to be appointed by the State President. The powers of the Registrar include the power to bring an application in the Supreme Court for the confiscation of the monies of an affected organisation. The Act further provides for the appointment of an Authorised Officer. This officer is granted extensive powers in relation to the searching of premises and the seizure of documents and other information of an affected organisation. The Working Group is of the opinion that the extensive discretionary powers conferred on the State President, the Minister of Justice and the appointed officials in terms of this Act accords the State an unwarranted amount of control over political organisations. Taking into account that the Government is but one of the parties to take part in the upcoming general election, the possibility of such control resting in the hands of the Government casts doubt on the possibility of free political activity on an equal footing. The Working Group acknowledges that the issue of foreign funding of political parties taking part in an election is sensitive but feels that if this issue is to be regulated at all, it should be dealt with by the Transitional Executive Council or the Independent Electoral Commission. The Working Group consequently recommends that the Act be repealed in toto.

(3) **Publications Act 42 of 1974**

This Act has not been used to impede free political activity lately. It is recommended that the Act as a whole should be revised and repealed or amended in accordance with a Bill of Fundamental Rights. As far as the immediate future is concerned, the clauses dealing with the safety of the state, general welfare, good order, etc (47(2) (e)) should be repealed. Clauses dealing with racial "hate speech", such as 47 (2) (c) and (d) could arguably be retained, in the short term, until the act as a whole is repealed or amended.

(4) **Parliamentary Internal Security Commission Act 7 of 1976**

This Act, which has not been put into operation since its enactment, makes provision for a Parliamentary Internal Security Commission, with the function of investigating matters which, in the opinion of the State President, affect Internal Security, and of reporting thereon to the State President. Furthermore the Commission is also empowered to investigate legislation and contemplated legislation and to report

thereon to the State President. The President, in consultation with the leader of the opposition, is entitled to refrain from making the contents of these reports public. Furthermore, the Commission is accorded powers similar to those of a Provincial Division of the Supreme Court in relation to the summonsing of witnesses and the disclosure of documents, books and other objects. Failure to comply with a request to appear before the Commission or to furnish the Commission with information is declared a statutory offence, with specified punishment attached thereto. It is submitted that these wide ranging powers constitute an infringement by the executive on the functions of the legislature and furthermore confers judicial powers on the legislature and executive which are not their province. More importantly, the powers of the Commission pertaining to the disclosure of information, coupled with the element of secrecy and lack of accountability, constitute a threat to the free political process. The Task Group recommends that the Act be repealed in toto.

(5) **Internal Security Act 74 of 1982**

The need for security legislation is recognised, but the following provisions of the Act nevertheless place unnecessary and unjustified restrictions on free political activity.

* **Section 4**

The Minister may declare an organisation to be an unlawful organisation, if he has reason to believe that such organisation intends to overthrow the State Authority or achieve, bring about or promote any constitutional, political, industrial, social or economic aim or change, etc, by the use of violence, or the instigation of violence, disturbance, rioting or disorder, etc. Whereas the concern about violence and perhaps rioting is understandable, the mentioning of "disturbance" and "disorder" casts the net too wide. Legitimate protests and mass action could sometimes cause disturbance or disorder. It is recommended that the section be amended.

* **Section 50**

This section furnishes a police officer with the competence to arrest and detain a person without a warrant if, in the subjective opinion of that police officer, the actions of that person are likely to result in certain specified effects, and if, again in his subjective opinion, the detention of that person will have certain specified desired results. The Working Group is aware of the continuing unrest and occurrences of public violence in the country and recognises the consequent necessity for police officers to be able to take quick decisions and act promptly under difficult circumstances. Nevertheless, it is submitted that a decision of this nature and magnitude, a decision to deprive a person of his/her personal freedom without adhering to the usual procedural requirements, should not be left to the subjective judgement of an individual police officer. The Working Group proposes that such a decision should rather be subjected to an objective test, so that the element of arbitrariness inherent in any subjective decision can be avoided. Consequently it is

recommended that the provision be amended so as to subject the merits of the decision by an officer to an objective test. This would enable the courts to test the substantive validity of such a decision and would contribute to the equal treatment of all citizens in this regard. Ultimately it would also contribute towards the attainment of the ideal of an atmosphere of free political activity.

* **Sections 58, 59 and 60**

These three sections place an additional sanction on unlawful behaviour where the unlawful behaviour is specifically aimed at protesting against laws of the country. It would thus seem that the provisions have as their aim a prohibition on civil disobedience, that is on the willful contravention of the law with the express aim of protesting against the law. The Working Group regards civil disobedience within certain constraints as a legitimate part of the free political process and therefore regards any such prohibition as inhibiting that process. It is therefore recommended that the provisions be repealed.

* **Section 62**

This section contains a prohibition on the causing, fomenting or encouragement of feelings of hostility between different population groups. The Working Group recognises the pressing need for reconciliation between the different population groups in the country but maintains that the provision is too vague and wide and does not leave room for the degree of freedom of speech required to conduct free and fair elections. This provision can potentially inhibit free political activity. It should be repealed or amended.

(6) **Disclosure of Foreign Funding Act 26 of 1989**

This Act makes provision for the appointment by the Minister of Justice of a Registrar of Reporting Organisations. This official is accorded the discretionary power to declare an organisation a reporting organisation, whereupon such an organisation is required to disclose specified information pertaining to foreign funding received by it. The Registrar is also accorded certain powers in relation to the searching of premises and the seizure of documents of the reporting organisation. The Working Group is of the opinion that this Act has the potential of inhibiting free political activity. The Act places undue power in the hands of the State and places an unnecessary burden on political organisations regarding their receipt of funding. The Working Group recognises that the issue of foreign funding of political parties is potentially sensitive, but is of the opinion that any possible regulation of such funding be left to the Transitional Executive Council or the Independent Electoral Commission. It is consequently recommended that the Act be repealed in full.

(7)-(10) **See the tables above**

NB: TRANSKEI, BOPHUTHATSWANA, VENDA AND CISKEI TO FOLLOW

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The Committee relied on the definition of discrimination in Article 1 of the International Convention on the Elimination of All Forms of Race Discrimination of 1965, as well as in Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979.

Laws that may impede free and fair elections, according to the Committee, include any law that may:

(i) deny or interfere with the right to vote;
(ii) deny the equality of treatment of voters in the whole election process from the time of qualification as a voter to the casting of the ballot;
(iii) prevent the free exercise of freedom of speech, expression or access to information; and
(iv) deny political parties equal access to voters, to venues for meetings, to the media, to funding resources etc;
(v) interfere with the freedoms of association and assembly (including the right to demonstrate);
(vi) interfere with or deny freedom of the press or media;
(vii) prevent an election from being conducted in accordance with uniform rules for the whole country;
(viii) deny the right to stand for election;
(ix) deny the right to vote freely without fear of victimisation;
(x) deny the right of political parties to canvas voters.

The Committee furthermore identified discriminatory legislation and legislation impeding free political activity and provided a list of discriminatory laws constituting the foundations of apartheid, discriminatory laws which flow from the laws constituting the foundations of apartheid, laws which discriminate on grounds of sex and religion and laws which may impede free and fair elections in the TBVC territories and in South Africa.

The Committee furthermore made a draft "higher code" available.

After some liaison between the Committee on the Repeal of Discriminatory Legislation and the Technical Committees dealing with Elections, with the Transitional Executive Council and with Fundamental Rights, it became clear that there were areas of overlap or potential overlap, especially as far as the idea of a "higher code" was concerned. Some of the principles proposed in the higher code would have been included in the Electoral Bill, others in the Interim Bill of Fundamental Rights, etc. It now seems that the proposed aims and functions of a "higher code" have indeed been covered by other proposals and structures, and there is little time left to establish new structures, especially for the "higher code".

It is not clear to the Task group what the present status of the concept of the "higher code" is, and whether the idea ought to be investigated further as a possible "safety net mechanism", in as far as this may be necessary to deal with legislation which may be over-looked.

2.3 It would seem that the instructions of the Planning Committee to the Task Group emphasised the need to identify legislation impeding free political activity, for such legislation to be repealed, or amended, on an urgent basis. Therefore the Task Group decided, as a first step, to concentrate on the most crucial aspects of legislation possibly impeding free political activity and discriminating as far as free participation in elections is concerned, in the relevant territories. Lawyers working in the relevant areas, and the representatives of the different administrations, were asked to concentrate on those aspects of legislation which seem to have a very direct and immediate effect concerning free political activity.

In principle the Task Group agrees with the definitions and descriptions, as well as the findings and approach of the Technical Committee on Discrimination. The Task Group attempts to give more substance to the last mentioned leg of the Technical Committee's approach, namely to make concrete submissions as to legislation which has to be repealed or amended in South Africa and the TBVC territories, as a matter of urgency.

It is to be hoped that aspects of legislation identified by the Task Group as impeding free political activity, will indeed receive the urgent attention of the relevant legislatures, after decisions have been taken or sufficient consensus has been reached in the MPNP.

2.4 The Task Group was also guided by the rights and principles set out in several international and regional human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the African Charter on Human and Peoples Rights and the Council of Europe Convention for the Protection of Human Rights and Freedoms.

2.5 At this stage the Task Group has identified aspects of legislation and briefly recommends the substance of proposed amendments. The Task Group has not been mandated to draft legislation in this regard, but could possibly proceed to do so, if necessary.

2.6 On the longer term, the Task Group could proceed with the identification of legislation which is inherently or otherwise discriminatory, and to make recommendations in this regard. Obviously future structures such as the Transitional Executive Council, Electoral Commission, Electoral Court and Constitutional Court and the provisions of the Interim Bill of Fundamental Rights will have to be taken into account.

2.7 As was the case with the Technical Committee on Discrimination, the Task Group does not regard it as falling within its present mandate to pronounce on the statehood or constitutional position of the TBVC territories. Therefore the constitutional position of the territories is addressed only insofar as it is directly related to specific laws impeding free political activity. In some cases the possible unconstitutionality of legislation, judged by the present constitution, is pointed out, rather than expressing an opinion on the constitution as such.

2.8 In previous submissions aspects of citizenship in South Africa and the TBVC states were mentioned. The Task Group considered this facet, but decided not to go into the issue of citizenship and franchise, in view of the work of the Technical Committees on the Electoral Bill and on Constitutional Principles, as well as ad hoc committees. Inherently discriminatory aspects of citizenship legislation may be considered in future reports.

2.9 In the reports of the different sub-groups and the overall Task Group, certain differences in emphasis and viewpoints occurred. This is due to, amongst other things, the different experiences of people and atmospheres prevailing in the various territories. An aspect which may be experienced as a significant problem in one area, may be much less relevant in another, even though the legislation in force may technically be the same, or similar. An attempt was made to formulate a standardized approach as far as possible, but differences may still occur. In some cases legislation in one territory may have been amended in others, which could make a difference as to its meaning and impact.

2.10 In terms of the Task Group's mandate and above mentioned approach, the focus in this report is on relatively urgent matters related to free political activity. These recommendations do not represent an attempt at "cleansing" the statute books in order to get rid of all legislation which violate basic human rights or other principles. Various aspects are not addressed - including other provisions in Acts which need to be revised and reformed or

repealed to conform with a Bill of Fundamental Rights, as well as with principles of democracy and common law.

2.11 In the following tables, the contents of certain provisions are stated very briefly. Thereafter more comprehensive motivations follow.

3. LIST OF LEGISLATION, WITH MOTIVATIONS

A SOUTH AFRICA

In identifying the relevant objectionable legislation in the Republic of South Africa the Working Group has taken into account the provisions of the proposed Regulation of Gatherings Act (popularly known as the Goldstone Bill), the Transitional Executive Council Act, the Draft Electoral Bill and the proposed functions of the Independent Electoral Commission and the Electoral Court. The following Acts or provisions in Acts are then those regarded as potentially dangerous or inhibiting towards the free political process, which are not dealt with in the aforementioned documents and which the working group consequently thinks should be repealed or amended. In some cases, eg the Internal Security Act 74 of 1982, it may be advisable or necessary to revise, repeal, or amend the Act as a whole, in order fully to comply with a Bill of Fundamental Rights, other legislation and common law principles. Some sections clearly deserve immediate attention, even though other sections may also be debatable.

Title, No and Year of Law	Particular Sections Summary of Contents	Recommendations and Reasons
Repeal or Amend		
(1) Prohibition of Foreign Financing of Political Parties Act 51 of 1968	Prohibits the receipt of foreign funding by political parties	Repeal in toto - impedes free political activity and related rights

(2)	Affected Organisations Act 31 of 1974	Discretion to State President to declare political organisations receiving foreign funding to be affected organisations	Repeal <u>in toto</u> - same
(3)	Publications Act 42 of 1974	Section 47(2) permits the banning of publications or films deemed to be "undesirable" because it ... (c) brings any section of the inhabitants into ridicule or contempt (d) is harmful to the relations between sections of the inhabitants (e) is prejudicial to the safety of the state, general welfare, peace and good order	Repeal 47 (2)(e)- it could be used to impede free political activity; sections 47 (2)(c) and (d) are arguable. As to the Act as a whole, see below
(4)	Parliamentary Internal Security Commission Act 7 of 1976	Wide ranging powers to Parliamentary Internal Security Commission	Repeal <u>in toto</u> - violates several fundamental rights, including access to court, access to information, etc

(5)	Internal Security Act 74 of 1982	Section 4: The Minister has the power to declare certain organisations unlawful	Amend to narrow the scope - free political activity may be impeded
		Section 50: Power of police officer to arrest without warrant	Amend to subject decision of police to objective instead of subjective test - violates freedom of the person
		Section 58, 59, 60: Additional sanctions for unlawful behaviour, aimed at prohibiting civil disobedience	Repeal - freedoms essential to legitimate civil disobedience violated
		Section 62: Prohibition on causing hostility between population groups	Repeal, or amend to lessen vagueness and wide scope - violates freedom of expression
(6)	Disclosure of Foreign Funding Act 26 of 1989	Powers to Registrar to declare an organisation a reporting organisation, which has to disclose information regarding funding; also, powers of search and seizure	Repeal <u>in toto</u> - see (1)

	Other Matters		
(7)	Public Safety Act 3 of 1953	Grants unfettered power to State President, Minister of Law and Order to declare a state of emergency or an unrest area respectively and to promulgate emergency regulations or regulations in an unrest area. Jurisdiction of the courts ousted to a great extent.	Could violate several rights and freedoms; dealt with in TEC Bill; not an immediate problem
(8)	Gathering and Demonstrations in the Vicinity of Parliament Act 67 of 1976	Prohibits demonstrations in the vicinity of Parliament	Could violate freedom of assembly and expression; to be repealed by "Goldstone Bill"
(9)	Demonstrations in or near Court Buildings Prohibition Act 71 of 1982	Prohibits demonstrations in the vicinity of Court Buildings	As above
(10)	Gathering or Demonstrations in or near the Union Buildings Act 103 of 1992	Prohibits demonstrations at the Union Buildings	As above

MOTIVATION

(1) **Prohibition of Foreign Financing of Political Parties Act 51 of 1968**

This act prohibits the receipt by any political organisation of foreign funding for political purposes. The Act clearly does not take account of the present political situation, where many political parties or movements do in fact receive extensive funding for political purposes from abroad. Furthermore, if the Act were indeed to be applied, such application would result in an impediment to the free political

process. Any regulation of foreign funding by political parties should be left to the Transitional Executive Council or the Independent Electoral Commission. The Working Group consequently recommends that the Act be repealed in toto.

(2) **Affected Organisations Act 31 of 1974**

This Act grants the discretion to the State President to declare any political organisation that receives foreign aid or monies for political purposes to be an affected organisation. An affected organisation is prohibited from receiving any aid or money from abroad. Such money already in possession of an affected organisation may furthermore not be used for any purpose other than to donate it to a welfare organisation specified by the Minister of Justice. The Act also provides for a Registrar of Affected Organisations, with wide ranging powers, to be appointed by the State President. The powers of the Registrar include the power to bring an application in the Supreme Court for the confiscation of the monies of an affected organisation. The Act further provides for the appointment of an Authorised Officer. This officer is granted extensive powers in relation to the searching of premises and the seizure of documents and other information of an affected organisation. The Working Group is of the opinion that the extensive discretionary powers conferred on the State President, the Minister of Justice and the appointed officials in terms of this Act accords the State an unwarranted amount of control over political organisations. Taking into account that the Government is but one of the parties to take part in the upcoming general election, the possibility of such control resting in the hands of the Government casts doubt on the possibility of free political activity on an equal footing. The Working Group acknowledges that the issue of foreign funding of political parties taking part in an election is sensitive but feels that if this issue is to be regulated at all, it should be dealt with by the Transitional Executive Council or the Independent Electoral Commission. The Working Group consequently recommends that the Act be repealed in toto.

(3) **Publications Act 42 of 1974**

This Act has not been used to impede free political activity lately. It is recommended that the Act as a whole should be revised and repealed or amended in accordance with a Bill of Fundamental Rights. As far as the immediate future is concerned, the clauses dealing with the safety of the state, general welfare, good order, etc (47(2)(e)) should be repealed. Clauses dealing with racial "hate speech", such as 47 (2) (c) and (d) could arguably be retained, in the short term, until the Act as a whole is repealed or amended.

(4) **Parliamentary Internal Security Commission Act 7 of 1976**

This Act, which has not been put into operation since its enactment, makes provision for a Parliamentary Internal Security Commission, with the function of investigating matters which, in the opinion of the State President, affect Internal Security, and of reporting thereon to the State President. Furthermore the Commission is also empowered to investigate legislation and contemplated legislation and to report

thereon to the State President. The President, in consultation with the leader of the opposition, is entitled to refrain from making the contents of these reports public. Furthermore, the Commission is accorded powers similar to those of a Provincial Division of the Supreme Court in relation to the summonsing of witnesses and the disclosure of documents, books and other objects. Failure to comply with a request to appear before the Commission or to furnish the Commission with information is declared a statutory offence, with specified punishment attached thereto. It is submitted that these wide ranging powers constitute an infringement by the executive on the functions of the legislature and furthermore confers judicial powers on the legislature and executive which are not their province. More importantly, the powers of the Commission pertaining to the disclosure of information, coupled with the element of secrecy and lack of accountability, constitute a threat to the free political process. The Task Group recommends that the Act be repealed in toto.

(5) **Internal Security Act 74 of 1982**

The need for security legislation is recognised, but the following provisions of the Act nevertheless place unnecessary and unjustified restrictions on free political activity.

* **Section 4**

The Minister may declare an organisation to be an unlawful organisation, if he has reason to believe that such organisation intends to overthrow the State Authority or achieve, bring about or promote any constitutional, political, industrial, social or economic aim or change, etc, by the use of violence, or the instigation of violence, disturbance, rioting or disorder, etc. Whereas the concern about violence and perhaps rioting is understandable, the mentioning of "disturbance" and "disorder" casts the net too wide. Legitimate protests and mass action could sometimes cause disturbance or disorder. It is recommended that the section be amended.

* **Section 50**

This section furnishes a police officer with the competence to arrest and detain a person without a warrant if, in the subjective opinion of that police officer, the actions of that person are likely to result in certain specified effects, and if, again in his subjective opinion, the detention of that person will have certain specified desired results. The Working Group is aware of the continuing unrest and occurrences of public violence in the country and recognises the consequent necessity for police officers to be able to take quick decisions and act promptly under difficult circumstances. Nevertheless, it is submitted that a decision of this nature and magnitude, a decision to deprive a person of his/her personal freedom without adhering to the usual procedural requirements, should not be left to the subjective judgement of an individual police officer. The Working Group proposes that such a decision should rather be subjected to an objective test, so that the element of arbitrariness inherent in any subjective decision can be avoided. Consequently it is

recommended that the provision be amended so as to subject the merits of the decision by an officer to an objective test. This would enable the courts to test the substantive validity of such a decision and would contribute to the equal treatment of all citizens in this regard. Ultimately it would also contribute towards the attainment of the ideal of an atmosphere of free political activity.

* **Sections 58, 59 and 60**

These three sections place an additional sanction on unlawful behaviour where the unlawful behaviour is specifically aimed at protesting against laws of the country. It would thus seem that the provisions have as their aim a prohibition on civil disobedience, that is on the wilful contravention of the law with the express aim of protesting against the law. The Working Group regards civil disobedience within certain constraints as a legitimate part of the free political process and therefore regards any such prohibition as inhibiting that process. It is therefore recommended that the provisions be repealed.

* **Section 62**

This section contains a prohibition on the causing, fomenting or encouragement of feelings of hostility between different population groups. The Working Group recognises the pressing need for reconciliation between the different population groups in the country but maintains that the provision is too vague and wide and does not leave room for the degree of freedom of speech required to conduct free and fair elections. This provision can potentially inhibit free political activity. It should be repealed or amended.

(6) **Disclosure of Foreign Funding Act 26 of 1989**

This Act makes provision for the appointment by the Minister of Justice of a Registrar of Reporting Organisations. This official is accorded the discretionary power to declare an organisation a reporting organisation, whereupon such an organisation is required to disclose specified information pertaining to foreign funding received by it. The Registrar is also accorded certain powers in relation to the searching of premises and the seizure of documents of the reporting organisation. The Working Group is of the opinion that this Act has the potential of inhibiting free political activity. The Act places undue power in the hands of the State and places an unnecessary burden on political organisations regarding their receipt of funding. The Working Group recognises that the issue of foreign funding of political parties is potentially sensitive, but is of the opinion that any possible regulation of such funding be left to the Transitional Executive Council or the Independent Electoral Commission. It is consequently recommended that the Act be repealed in full.

(7)-(10) **See the tables above**

B TRANSKEI

The sub-group for Transkei reported that the present Government of Transkei had set itself a policy to review on a periodic basis all laws which might stand in the way of free political discussion. Since its inception it has been the stated policy to promote dialogue aimed at reshaping the constitutional structures in Southern Africa. This policy is reflected in a statement by the chairman of the Military Council, dated 10 May 1990, in which the democratic right to engage in free political activity was recognised and the government's intention to allow everyone to make an input into the shaping of the future and to withdraw all previous pronouncements, the object of which was to discourage political activity was emphasised.

The sub-group furthermore pointed out that Transkei had dispensed with several measures of which the discriminatory provisions may impede free political activity and free and fair elections and has repealed several laws. (These were listed in a minute to the MPNP, dated 3 and 16 July 1993, which are to be found in MPNP documentation.)

There are still laws on the statute book which may be used to impede or inhibit free political activity, although these have not been used recently to achieve that purpose. Appropriate recommendations are thus made.

The Public Security Act 30 of 1977, which was based on several Acts of the Republic of South Africa that have since been repealed (such as the suppression of Communism Act of 1950, the Unlawful Organisations Act of 1960, the Terrorism Act of 1967 and certain provisions of the Riotous Assemblies Act of 1956) deserves the most urgent attention and is therefore dealt with first, in the list below. This Act has undergone a series of amendments (especially brought about by Decree No. 10 of 20 June 1990) and in some cases the repeal of whole sections or definitions. Those unamended sections of the Public Security Act which may still impede free political activity, receive a somewhat detailed attention. Other sections do not seem to belong in this Act, but rather in a Public Service or Labour Relations Act.

It may well be advisable to revise and repeal or drastically amend the Act as a whole, in accordance with other legislation, such as a Bill of Fundamental Rights, also taking existing legislation and common law principles into account. For the immediate future, the following sections deserve attention.

No, Title and Year of Law	Particular Sections Summary of Contents	Recommendation and Reasons
(1) Public Security Act 30 of 1977	Section 7: Defines the crime of terrorism	Repeal - wide definition is open to abuse by state officials and thus violates basic rights and freedoms.
	Section 12: Prohibits statements and acts subverting the authority of chiefs and headman	Repeal - open to abuse by chiefs and headman violating rights of assembly, freedom of expression, etc
	Section 13: Punishment of protest against laws or campaigns for legal change	Repeal or amend - could be used to silence legitimate expression of grievances or criticism
	Section 14: Prohibits the acceptance of financial or other assistance for resistance	Repeal - inhibits free political campaigns and could discriminate against parties
	Section 22: The prohibition of publications and unlawful organisations	Amend - open to abuse, violating freedom of expression and free political activity
	Section 24: Provides for increased penalties for offenses related to initiatives aimed at the repeal or modification of laws	Repeal - could impede freedom of expression etc in campaigns for legal change

		Sections 33-37: Deal with the prohibition of gatherings and demonstrations	Repeal - could be used to violate freedom of assembly, expression, etc
		Section 40-42, Chapter 6, deal with the removal of subjects by their chiefs or tribes	Repeal - impedes freedom of movement and political expression
		Section 46: Provides for investigation concerning suspected organisations or publications	Repeal - could violate freedom of association, expression, etc
(2)	Transkei Authorities Act 4 of 1965	Section 42 confers powers on chiefs or headmen to regulate meetings, publications and movement	Repeal - freedom of assembly, expression, movement, etc could be violated
(3)	Transkei Prisons Act 6 of 1974	Section 25: Membership of a political organisation constitutes misconduct	Amend - unnecessary restrictions of political rights
(4)	Publications Act 18 of 1977	Provides for the banning of "undesirable" publications and films, as in the South African Publications Act of 1974	Repeal some sections which may violate freedom of expression and information and impede free political captivity. See the South African situation above - A(3)

(5)	Newspaper and Imprint Registration Act 19 of 1977	Sections 2, 8, 9 and 10 restrict the printing and publishing of newspapers etc and impose financial burdens	Repeal - freedom of expression and information may be violated
(6)	Aliens and Travellers Control Act 29 of 1977	Defines the rights of "aliens" and "Transkei Citizens" and restricts the movement and political activities of people	Repeal sections or amend the relevant definitions - otherwise certain South Africans are theoretically unable to participate freely in politics in Transkei
(7)	Undesirable Organisations Act 9 of 1978	Empowers President to declare organisations undesirable or unlawful	Repeal in toto - freedom of association etc violated
(8)	Public Service Act 43 of 1978	Section 18(g) restricts the political activities of officials; Section 18 (h) prohibits attempts by an official to secure intervention from political sources in relation to his position and conditions of employment	Repeal or amend - reasonable political activities should not be limited

(9)	Penal Code Act 9 of 1983	Sections 57 to 60 define and regulate unlawful assemblies and demonstration and penalties applicable for transgression	Sections could violate freedom of assembly, etc, and ought to be amended in accordance with the Bill of Fundamental Rights, or "Goldstone Bill". See A(8) - (10) above.
(10)	Education Act 26 of 1983	Section 24 restricts the political activities of officials	Repeal or amend - reasonable political activities should not be restricted
(11)	Electoral Laws Provisions Act 8 of 1987	Regulates elections in Transkei	Replace by new South African Electoral Act

MOTIVATION

(1) **Public Security Act 30 of 1977**

* **Section 7**

The definition of the crime of terrorism is very widely cast and can be open to abuse by state officials and might thus be used to impede free political activity. It is recommended that the entire section be repealed, or as a first step, that it should be amended in accordance with the present South African situation. Ordinary common law offences concerning public violence, sedition, insurrection and treason, should be sufficient.

* **Section 12**

Statements and acts subverting the authority of chiefs and headmen are prohibited. This section has been used in one community in the Transkei to charge a whole location. It transpired during the course of the trial that the headman had invoked this section when members of a political movement met to discuss, amongst other things, who was going to represent them at a meeting that was to elect the head of the organisation's Women's League. The headmen took the attitude that the community had disobeyed his lawful order that no such meetings should be held. It is therefore conceivable that

in an election campaign a headman might invoke this section to frustrate meetings and other free political activity by parties that he does not agree with ideologically. It should be repealed in toto.

* **Section 13**

This section punishes anyone who advises, encourages, incites, commands, aids or procures any other person in general or uses any language or does any act or thing calculated to cause any person or persons in general, to commit an offence by way of protest against any law or in support of any campaign for repeal or modification of any law or variation or limitation of the application or administration of any law. It could be used to silence legitimate political expression challenging any repressive law in the run up to elections. This section should be repealed or amended.

* **Section 14**

The acceptance of financial or other assistance for resistance against the law of Transkei is prohibited. This section may be invoked to hamper certain parties from accessing financial resources necessary for the conduct of political campaigns. The section should be repealed. (See also Sections 58, 59 and 60 of the South African Internal Security Act A under (5) above.)

* **Section 22**

This section deals with the prohibition of publications and immediately vests the repository of such power with a discretion to determine which publications ought to be in circulation. The definition of an unlawful organisation may well be interpreted to cover political organisations. The section needs to be amended appropriately as it might be open to abuse.

* **Section 24**

This section provides for increased penalties for offenses committed by people who are involved in protests or campaigns for the repeal or modification of any law. In an election campaign laws ought to be attacked for their deficiencies. Those involved in such campaigns risk heavy fines and in some cases imprisonment or whipping or a combination of the above. The section consequently constitutes a prohibition of civil disobedience and should be repealed. (See sections 58, 59 and 60 of the South African Internal Security Act A under (5) above.)

* **Sections 33 to 37**

These sections deal with the prohibition of gatherings and demonstrations including the need to seek the permission of a magistrate to hold a peaceful gathering or demonstration. In view of what has been taking place regarding demonstrations and gatherings, these sections have virtually fallen into disuse. However, they could still be used to limit free political activity. The South African situation regarding gatherings and demonstrations could be taken note of. (See A (8), (9), (10) above.)

* **Chapter 6, Sections 40 to 42**

These sections deal with the removal of subjects by their chiefs or tribes, communities and persons by the President and of certain persons from Transkei. Section 43 provides for the exclusion of the Supreme Court from reviewing or testing the validity of such powers. It is conceivable that in the run up to the elections communities can be moved from one area to another to influence the outcome in favour of one political party over others. This would obviously hamper a free and fair election. These sections must be repealed.

* **Section 46**

It provides for an investigation concerning suspected organisations or publications. Certain organisations or publications may be subject to such close scrutiny for the simple reason that they are oppositional and may in that way be seriously disrupted in their election campaigns. This section ought to be repealed.

(2) **Transkei Authorities Act 4 of 1965**

Section 42 confers on the paramount chief, chief or headmen powers to disperse or order the dispersal of any unlawful meeting or gathering and to prohibit the distribution of undesirable literature or unauthorised entry of any person into his area. If in his opinion a state of lawlessness exists in his area which cannot otherwise be prevented, he can order that all or any of the following be prohibited, eg the gathering of men in groups, the brewing of beer, the shouting of war cries or blowing of bugles or whistles. Any person who at any meeting obstructs, disobeys or insults an official, may be removed from such meeting and detained. Penalties - including fines and imprisonment - could be imposed. The Act should be amended in such a way that the powers of the traditional leaders are in accordance with notions of fundamental rights and freedoms, especially assembly, free expression, movement, etc. The relevant section should be repealed. See also C(2) and E(7) for the position in Bophuthatswana and Ciskei.

(3) **Transkei Prison Act 6 of 1974**

Section 25 of Schedule 5 states that a member of the Service is guilty of misconduct if he becomes a member of a political organisation or takes an active part in party-political matters. Membership and political activity as such should not be prohibited; restrictions on high profile active involvement may be reasonable.

(4) **Publications Act 18 of 1977**

The motivation supplied with regard to the South African Publications Act of 1974 is applicable - see A(3) above.

(5) **Newspaper and Imprint Registration Act 19 of 1977**

Section 2 requires the registration of newspapers to be published in Transkei. Section 4 8 requires the editor to be resident in Transkei. Section 9 gives the Minister the power to prohibit certain newspapers, including those promoting "communism" or associated with an "unlawful organisation". Section 10 places a financial burden on newspapers. The Act ought to be repealed.

(6) **Aliens and Travellers Control Act 29 of 1977**

The definition of "alien" and "Transkei citizen" makes certain South African, who are relevant political actors, theoretically unable to participate freely in politics in Transkei. The definition of "citizenship" should be amended, perhaps to be in line with the pre-1976 definition of a South African citizen.

(7) **Undesirable Organisations Act 9 of 1978**

This Act empowers the President to declare certain organisations to be undesirable and certain undesirable organisations to be unlawful organisations. It furthermore confers certain powers on the Minister in respect of such organisations. Such wide sweeping powers could be used to impede freedom of association and several other rights related to free political activity. The Act should be repealed, or amended drastically.

(8) **Public Security Act 43 of 1978**

Section 18(g) defines it as misconduct on the part of any officer to become a member of any party political organisation or any organisation which the President may by proclamation declare to be an organisation of which an officer may not be a member, or to take an active part in party political matters.

Section 18(h) defines as misconduct an attempt by an officer to secure intervention from political sources in relation to this position and conditions of employment. Whereas restrictions on certain high profile and active political activities of officers in the Public Service are not unreasonable ruling, the attendance of meetings and mere membership ought not to be prohibited. These sections should be revised and repealed or amended.

(9) Penal Code Act 9 of 1983

See the tables above.

(10) Education Act 26 of 1983

Section 24 defines as misconduct the membership of any party political organisation, by a departmental official, and also the taking of any active part in party political matters. Restrictions on high profile active involvement in political activities could be reasonable. Mere membership and attendance of meetings, eg, should not be prohibited.

(12) Electoral Laws Provisions Act 8 of 1987

Transkei residents should vote as South Africans in upcoming elections and developments in South Africa, as far as the Electoral Commission Act and Electoral Bill are concerned, should be taken note of.

C BOPHUTHATSWANA

The Republic of Bophuthatswana Constitution Act 18 of 1977 contains a Declaration of Fundamental Rights which include freedom of expression and freedom of assembly. However, it is submitted that various legal provisions are in force in Bophuthatswana which impede or could impede free political activity. A number of these provision are arguably unconstitutional in terms of the Declaration of Fundamental Rights.

The Internal Security Act 32 of 1979, provides the most comprehensive and the widest framework for measures which could impede free political activity and is dealt with first. Those provisions that pose the clearest threat to free political activity are mentioned below. It is submitted, however, that consideration be given to the suspension, repeal or drastic amendment of the Act as a whole, in accordance with the Bophuthatswana Declaration of Fundamental Rights, or a future South African Bill of Fundamental Rights, or other legislation and common law principles.

Title, No and Year of Law	Particular Sections Summary of Contents	Recommendations and Reasons
(1) The Internal Security Act 32 of 1979	Sections 2, 3, 4, 7 and 8 provides for the banning of organizations by the Minister	Repeal, or amend to limit the discretion of the Minister. Freedom of assembly and association and the exercise of political rights are violated
	Sections 5, 7, 8, 10, 12, 13, 14 provide for the curtailment of the freedom of persons to participate in political activity.	Repeal - several rights associated with political activity are violated
	Section 6: Provides for the banning of publications	Repeal - freedom of expression, information etc. are violated
	Section 9: Provides for the banning of meetings	Repeal - freedom of assembly, expression etc violated
	Section 15: Criminalizes contravention of the above, as well as advocacy of a "doctrine hostile to the State"	Repeal for the above reason
	Section 19: Provides for the deportation of non-citizens	Repeal - free political activity impeded
	Section 22: Defines and criminalizes "terrorism"	Amend - it could be used to stifle legitimate political activity

		Section 25: Provides for preventative detention	Repeal - violates the right to a fair trial and due process and could be used to silence political opponents
		Section 26: Provides for the detention of witnesses	Amend to bring in line with Section 185 of the South African Criminal Procedure Act of 1977.
		Section 27: Provides for declaration of a state of emergency	Amend - several rights could be violated by subjective test and wide powers of President. See the TEC Act in South Africa
		Sections 30 - 36 and 43 A impose far-reaching impediments on gatherings	Amend - in accordance with "Goldstone Bill" and freedom of assembly
(2)	Bophuthatswana Traditional Authorities Act 23 of 1978	Section 38 compels, empowers and authorizes chiefs and headmen to report, prohibit and dispense meetings	Repeal - freedom of assembly and expression violated
(3)	Bophuthatswana Electoral Act 13 of 1979	Sections 16, 16A, 16C and 16D control the registration of political parties and cancellations thereof and contain disqualifications and prescribe payments	Amend - political parties are unnecessarily restricted

(4)	Newspaper and Imprint Registration Act 18 of 1979	Sections 2, 9 and 10 regulate the registration and prohibition of newspapers and impose financial burdens	Repeal - the Act restricts freedom of expression, information, etc
(5)	Bophuthatswana Aliens and Travellers Control Act 22 of 1979	Sections 17(d) and (f), 48A, 64 and 65 define "prohibited persons" who are denied access to the country and gives the Minister the power to deport aliens and impose conditions on their political activities. Section 2(1) of Government Notice 209 of 1992 prohibits aliens from political participation	Repeal - the provisions are aimed at the exclusion of people from political participation related to the elections, or to remove political opponents from Bophuthatswana
(6)	Publications Act 36 of 1979	Section 41 (2): Provides for the banning of publications, including newspapers, as "undesirable"	Freedom of expression and information violated - Repeal or amend - as recommended above regarding the SA Publications Act of 1974 (see A (3) above)

(7)	Bophuthatswana Broadcasting Control Act 28 of 1989.	The Act places broadcasting activities in Bophuthatswana under control of the Postmaster General (Section 2) and provides for a system of licensing of the right to engage in broadcasting activities in the country (Sections 4 and 5)	The Act ought to be amended to place the control of broadcasting activities and the issuing of licences, certificates or permits under the control of a non-partisan body
(8)	Bophuthatswana Broadcasting Corporation Act 30 of 1989	In terms of Section 3, the Bophuthatswana Broadcasting Corporation is under the control of a Board of Directors, appointed by the Minister of Post and Telecommunications and Broadcasting. A Broadcasting Advisory Committee (Section 18) is likewise appointed by the Ministry	The Act should be amended so as to place the Corporation under non-partisan control
(9)	Prevention and Control of Mass Action Act 59 of 1992	Section 2 prohibits "mass action"; Section 4(g) regulates and limits gatherings of political parties	Repeal - freedom of assembly and other rights related to free political activity are security violated

MOTIVATION

(1) **The Internal Security Act 32 of 1979**

* **Sections 2,3,4,7,8**

These sections provide for the banning of organizations "if the Minister is satisfied" that they engage in certain activities included in the definition of a "doctrine hostile to the State"; inter alia the advocacy of the reincorporation of Bophuthatswana into South Africa. These sections violate freedom of association, assembly, and the exercise of political rights. The definition of a "doctrine hostile to the State" is unacceptably wide. The Minister's discretion is non-justiciable. These Sections should be repealed or at least amended to limit the right to ban an organisation to those instances where violence is pursued. The Minister's discretion should be justiciable.

* **Section 5,7,8,10,12,13,14**

These sections provide for the listing, restriction and banning of persons, resulting in the drastic curtailment of their freedom to participate in political activity. People not formally listed, banned or restricted are also affected.

These provisions should be repealed. They constitute a serious violation of political rights.

* **Section 6**

Publications could be banned, inter alia when they propagate doctrines regarded as "hostile to the State". This section clearly violates several fundamental rights and could impede free political activity and should be repealed.

* **Section 9**

This section makes provision for the banning of gatherings, when the Minister is satisfied that a doctrine hostile to the State is being furthered.

It gives the Minister arbitrary powers to violate freedom of assembly, demonstration, and petition and should be repealed.

* **Sections 15, 16, 18, 20**

See the above table.

* **Section 19**

Section 19 provides for the deportation of non-citizens of Bophuthatswana, who, inter alia, promote a "doctrine hostile to the State".

Free political activity and elections necessarily imply the involvement of "aliens" - including South Africans who may qualify for citizenship of Bophuthatswana but have declined to apply for it - in meetings and other activities in Bophuthatswana.

* **Section 22**

This section defines, criminalises and provides for the penalties that could be imposed for terrorism. Terrorism is defined in exceedingly wide terms.

Section 22 should at least be amended to be brought into line with Section 54 of the South African Internal Security Act 74 of 1982.

* **Sections 25,26**

See the above table.

* **Section 27**

This section provides for the declaration of a State of Emergency if the President, in his subjective opinion, deems it necessary. Under the State of Emergency the President obtains virtually unlimited powers to do what he considers to be necessary to restore public order.

The section should be amended to provide for the declaration of a State of Emergency when the objective test whether the life of the nation is threatened, is met. Or limitations on the power to derogate certain rights should be posed.

* **Section 30-36, 43 A**

See the above table.

(2) **The Bophuthatswana Traditional Authorities Act 23 of 1978**

Section 38(1)(f)(vi) compels chiefs and headmen to report to a competent authority the holding of any "unauthorised meeting, gathering or assembly or the distribution

of undesirable literature in, or the unauthorised entry of any person into, his area".

Section 38(1)(g) entrusts the chief or headman with power to disperse or order the dispersal of an "unlawful meeting or gathering".

Section 38(1)(h) authorises the chief or headmen to prohibit a gathering "if a state of lawlessness exists in his area or, in his opinion, cannot otherwise be prevented.

Tribal authorities thus have a virtual monopoly to restrict political activity in areas under their control. It is recommended that these sections be repealed. See also B(2) and E(7) for the position in Transkei and Ciskei.

(3) The Bophuthatswana Electoral Act 13 of 1979

Section 16 of the Act compels political parties wishing to take part in Bophuthatswana elections to register. Certain disqualifications for registration are recorded in section 16 A, some of which are linked to the provisions in the Internal Security Act 32 of 1979, described above as unacceptable.

Section 16 C requires payment of R500 to accompany an application for registration and 16 D provides for the cancellation of the registration of a political party, on the basis of unacceptable criteria posed in the Internal Security Act.

Section 16 A should be amended since it unfairly prevents political parties wishing to do so from registering. As a result those parties are not only prevented from participating in Bophuthatswana elections, but, more relevant for the upcoming South African elections, the political activities of unregistered parties are severely curtailed in terms of the Prevention and Control of Mass Action Act 59 of 1992, discussed below.

(4) The Newspaper and Imprint Registration Act 18 of 1979

Section 2 renders mandatory the registration of newspapers to be printed or published in Bophuthatswana. Section 9 prohibits certain newspapers, including those promoting "communism" or associated with an "unlawful organisation". Section 10 places a financial burden on newspapers desiring registration in an amount to be fixed by the Minister but not exceeding R20 000. It is submitted that the entire Act ought to be repealed.

(5) The Bophuthatswana Aliens and Travellers Control Act 22 of 1979

In terms of this Act a large number of people are defined as "prohibited persons" and could inter alia be denied access to Bophuthatswana (Section 17(d), 17(f) and see also Section 64). The Minister also has a non-justiciable discretion to deport aliens

(Section 65). Section 48 A sanctions regulations by the Minister imposing conditions on political activities of aliens. In accordance with this provision, Government Notice No 209 of 1992 prohibits any alien from participating in any gathering aimed at bringing about any constitutional or political change in Bophuthatswana (Section 2 (1)).

These provisions should be repealed. They could be abused to deny a political adversary of the regime entry to or to remove such person from, Bophuthatswana. The regulations issued in terms of Section 48 A are directly aimed at excluding aliens from political participation related to the forthcoming general elections in South Africa.

(6) **The Publications Act 36 of 1979**

The same political criteria "for publications control that are applicable in South Africa, as explained under A(8) above are in force, and the same motivation is applicable.

(7)(8) **Bophuthatswana Broadcasting Control Act 28 of 1989; Broadcasting Act 30 of 1989.**

See the above table.

(9) **The Prevention and Control of Mass Action Act 59 of 1992**

Section 2 prohibits "mass action", defined largely as protest action entailing violation of the law, by any political party in terms of Section 3 and 4(g) a political party not registered in terms of the Electoral Act (see point 3 above) to obtain ministerial authorization for marches and gatherings involving more than certain specified numbers of people. These provisions seriously inhibit free political activity and should be repealed.

D VENDA

The Venda sub-group pointed out some aspects of the Republic of Venda Constitution Act 9 of 1979. Furthermore, the Maintenance of Law and Order Act 13 of 1985 seems to be of paramount importance. These two are firstly dealt with, whereafter several other aspects are mentioned.

Title, No and Year of Law	Particular Sections; Summary of Contents	Recommendations and Reasons
Legislation passed by the Venda National Assembly and Council for National Unity		
(1) Republic of Venda Constitution Act 9 of 1979	Section 6A provides for a one party state.	Repeal - this section has been suspended.
(2) Maintenance of Law and Order Act 13 of 1985 (as amended by Proclamation 38 of 1990)	Section 4: Gives the Minister the power to declare an organisation to be unlawful; Section 1 defines communism	Repeal or amend - freedom of association and political rights are violated
	Sections 5 - 9 deal with the powers of the Minister to prohibit publications and investigate organisations	Repeal - in accordance with South African Internal Security Act - freedom of expression and information violated
	Sections 10 and 12(2) deal with the Minister's power to declare an organisation unlawful	Amend - freedom of association and political rights violated

	Section 14(10): Deals with the listing of persons	Repeal in accordance with South African position
	Sections 15 - 17 provide for restrictions on registration of newspapers	Repeal - freedom of expression and information violated
	Sections 18 - 28 provide for several restrictions on persons, related to membership of organisations, movement, reporting to police stations etc	Repeal - these provisions impose harsh restrictions on several fundamental freedoms
	Section 46: Deals with prohibition of gatherings, etc by Magistrates	Amend or repeal in accordance with "Goldstone Bill" in South Africa
	Section 50: Gives powers of arrest and detention to police officers	Amend as recommended for the South African situation (see A(5) above)
	Section 54: Deals with terrorism	Repeal, or amend in accordance with the South African situation, to do away with wide and vague definitions.
	Section 55: Deals with offenses regarding communism.	Repeal

		Section 56: Deals with, inter alia, the publication of speeches of restricted persons, or persons prohibited to attend gatherings Sections 58 - 60: Deal with additional sanctions aimed at prohibiting civil disobedience	Amend - in accordance with South African situation Repeal - see South African situation (A (1) above)
(3)	Population Registration Act 6 of 1980	Regulating population registration	Repeal in toto - discriminatory and redundant
(4)	Newspaper and Imprint Registration Act 22 of 1982, as amended by the Newspaper and Imprint Registration Proclamation 18 of 1992	Section 8: States that no one is allowed to be an editor of a publication in Venda unless he/she is a resident of Venda	Amend to include South Africa and TBC - could restrict freedom of expression and information
(5)	Publications Act 15 of 1983	Provides for the banning of publications	See A(3) above as to the South African situation - also see motivation below
(6)	Radio Act 15 of 1984	Regulates broadcasting and provides for government control	Amend or repeal to allow transparency for in accordance with South African media developments.

(7)	Venda Public Service Act 8 of 1986	Section 29: Limits political activities of public servants	Amendment arguable
	Pre - 1979 Legislation		
(8) eg.	Internal Security Act 44 of 1953	Section 17 (6is): No action for damages and no criminal action against any person who describes as a communist a person who appears on the list	Repeal
	Public Safety Act 3 of 1953	Declaration of State of Emergency	See TEC Act of 1993 in South Africa and incorporate
	Gathering and Demonstrations Act 52 of 1973	Deals with gatherings and demonstrations	See the "Goldstone Bill" and incorporate
(9)	Proclamation R293/1962 - Regulations governing Townships	The administration and control of townships	Repeal or amend substantially - officials could impede free political activity

MOTIVATION

(1) Republic of Venda Constitution Act 9 of 1979

Section 6A determines that The Venda National Party shall be the only party in the Republic of Venda. This section was suspended by Proclamation 61 of 1990. It is recommended that the section be repealed.

(2) **Maintenance of Law and Order Act 13 of 1985**

This Act is a replica of the South African Internal Security Act, before its amendment in 1991. (Several other problematic sections have not been mentioned here) It is recommended that the entire Act be amended according to the South African situation, as a first step. Thereafter the Act should be revised and repealed or amended, depending on Venda's future statehood, and in accordance with the Bill of Fundamental Rights and the legislation.

(3) **Population Registration Act 6 of 1980**

See the tables above. More information will be provided if required.

(4) **Newspaper and Imprint Registration Act 22 of 1982**
(as amended by the Newspaper and Imprint Registration Proclamation 18 of 1992)

The amendment Proclamation repealed sections 9, 10 and 11. Section 9 provided for the prohibition of the printing, publication or dissemination of certain newspapers promoting the spread of communism, or which were published under the guidance of an unlawful organisation. Section 10 restricted the registration of certain newspapers and section 11 provided for the lapse of the registration of certain newspapers.

Section 8 provides that the editor of a newspaper in Venda should be a resident in Venda. It is recommended to amend section 8 to include: South Africa, Transkei, Ciskei and Bophuthatswana.

(5) **Publications Act of 15 of 1983**

No copy of this Act seems to be available in Venda, Department of Justice or Venda University. It is presumed to resemble The South African Publications Act 42 of 1974. If so, the South African recommendations and motivation would apply. (See A(3) above.)

(6) **Radio Act 15 of 1984**

The Act provides for the establishment of a Radio Advisory Board., consisting of 6 members, including a member of the Department of Defence and the Venda National Force. It is recommended with regard to the two abovementioned Acts that independent mechanisms be established to ensure equal access to the media for all political parties, as well as transparency

(7) **Venda Public Service Act 8 of 1986**

Section 29 provides that an officer or employee may be a member of a lawful political party or attend a political meeting, but such officer or employee may not preside or speak at such a meeting.

As is the case with similar provisions in other areas, the political involvement and activities of public servants are limited. In this case membership as such and attendance of meetings are not prohibited, but more active conduct, such as speaking or presiding at meetings. It is arguable whether this constitute an unreasonable limitation.

(8) **Pre-1979 Legislation**

See the Above table.

(9) **Proclamation R293/1962**

The administration and control of townships are regulated. Sole discretionary powers for the hire of a hall are vested in the Superintendent and the control and prohibition of meetings and assemblies are in the hands of the Commissioner.

It is recommended that substantial amendments are made to prevent that these regulations are used to restrict free political activities, or that it be repealed. Also the situation in Ciskei in E(2) below.

E CISKEI

As is the case with Bophuthatswana, Ciskei has a constitutionally entrenched Bill of Rights. In the Republic of Ciskei Constitution Decree 45 of 1990, Schedule 6 contains a statement of Fundamental Rights and Responsibilities, inter alia recognising freedom of movement, expression, association and assembly. Some or all of the decrees, acts and proclamations mentioned hereafter as legislation that may have the effect of impeding free political activity, may therefore well be unconstitutional, in view of the fact that the Constitution is the supreme law of Ciskei

The National Security Decree 19 of 1993 seems to present the most crucial obstacle, and is dealt with first. The Decree replaced the National Security Act(Ciskei) 13 of 1982, sections of which was declared unconstitutional by the Supreme Court.

This decree, like its South African counterpart the Internal Security Act, created the crimes of terrorism, subversion and sabotage and imposes certain harsh maximum penalties for the contravention of the provisions thereof. The primary purpose of the legislation is to protect state security. The said crimes are defined widely, as has been the case with the South African "security legislation" and the decree is therefore open to serious criticism. The entire Decree may well have to be revised, repealed or amended, in accordance with a Bill of Fundamental Rights, other legislation and common law principles.

Title, No and Year of Law	Particular Sections, Summary of Contents	Recommendations and Reasons
(1) National Security Decree 19 of 1990		The Decree should be repealed <u>in toto</u> - several fundamental rights are violated and free political activity impeded. See the motivations below Alternatively the following sections should be deleted
	Section 2: Defines the crime of terrorism	Repeal or at least amend to bring into accord with South African situation
	Section 5 prohibits the rendering of assistance to persons suspected of having committed terrorism, subversion or sabotage, and Section 6 provides for competent verdicts	Repeal
	Sections 8 and 12 of Chapter 2 provide for the prohibition of organisations and publications	Delete Chapter 2 in its entirety - violation of freedom of association, expression, information, etc or amend drastically

		Section 13: Provides for detention without trial	Delete or amend drastically - open to abuse by being used against political opponents
		Section 14 provides for the declaration of state of emergency by the Head of State.	Delete, or amend to require objective test or to provide for safeguards, otherwise serious violations of fundamental rights could take place. The South African situation, where this aspect if regulated in the TEC Act, should be noted
		Chapter 5 regulates unlawful gatherings.	Repeal - see the "Goldstone Bill" in South Africa
(2)	Proclamation R293 1962 - Regulations governing Black Townships	Chapters 5 and 6 deal with control of black people in townships	Repeal - Government officials could interfere with political activity; to control "blacks" is inherently discriminatory
(3)	Defence Act 1 of 1981	Section 75: Deals with the improper disclosure of information	Amend - freedom of information could be violated
(4)	Public Service Act 2 of 1981	Section 16(g): Restricts the political activities of civil servants	Amend - political rights of individuals unnecessarily limited

(5)	Police Act 32 of 1983	Section 22, Schedule 3 restricts political activities of public officers	Amend - political rights of individuals unnecessarily limited
		Section 43(B): Renders punishable the publication of untrue statements about the police	Amend, to accord with common law principles; freedom of information potentially violated
(6)	Prisons Act 36 of 1983	Section 22: Restricts political activities of officers	Amend - political rights of individuals unnecessarily limited
(7)	Administrative Authorities Act 37 of 1984	Sections 26 (ix), 26(n), 26(o) and 65 give wide powers to chiefs and headmen to control political activities	Repeal - freedom of movement and association and several related political rights are violated
		Sections 52 and 53 provide for the removal of persons and tribes by the Head of State	Repeal, for the same reasons as mentioned above
(8)	Broadcasting Act 8 of 1985	Regulates broadcasting and provides Government control of broadcasting	Amend - to achieve objectivity and transparency
(9)	Immigration, Emigration and Aliens Act 9 of 1988	Sections 7, 8, 56, 58, 60, 63, 64, 68, 69, the entry into and movement of people controlled	Amend to allow freedom of movement and political activity

(10)	Education Decree 22 of 1992	Sections 20(f) and 20(w)(iii) restricts the activities of teachers; Section 38 controls entry into school premises	Repeal or amend - free political activity may be impeded

MOTIVATION

(1) **National Security Decree 19 of 1990**

* **Section 2**

It is proposed that the crime of terrorism created by Section 2 be deleted in its entirety, from the decree and any prosecutions envisaged thereunder should be prosecuted under the ordinary criminal law. It appears that most forms of normally accepted political dissent would fall within the ambit of the intention requirement in Section 2 of the said decree. The conduct that is encapsulated in the said Section is also wide and ill-defined. All the arguments often presented with regard to the wide definition of "terrorism" and the intention to overthrow or endangering of state authority, to bring about political, constitutional, industrial, social or economic change, to induce the government or the public to do to abstain from doing any act etc., and the forms of conduct having to accompany such intention, are applicable. The Section should be deleted and the common law position as to crimes of violence should be restored. Alternatively, the present formulation of Section 54 of the South African Internal Security Act 74 of 1982 could be noted.

* **Section 5**

Section 5 prohibits the rendering of assistance directly or indirectly to persons who are suspected of having committed crimes of terrorism, subversion or sabotage. An accused person, in order to contravene the provisions of the said Section must:

(i) have reason to suspect that some other person intends to commit or he has committed terrorism, subversion or sabotage;

(ii) must be aware of the presence at any place of some other person who is so suspected of intending to commit or having committed the said offenses. Further decree provides that a person shall be guilty of an offence if he:

(a) harbours or conceal the person suspected, or
(b) directly or indirectly renders any assistance to that other person, or
(c) fails to report to a member of the police in the presence of that other

person at such place. Section 6 of the decree provides for competent verdicts to the said offenses.

These wide-sweeping clauses may be abused to restrict political opponents.

* **Sections 8 and 12, Chapter 2**

Section 8 gives power to the Minister of Police and Prisons to declare an organisation to be an unlawful organisation. This the Minister may do by notice in the Government Gazette without giving notice to the organisation concerned, if he has reason to believe that the said organisation attempts or intends in a violent manner or by the use of violent means or by the instigation or promotion of violence, disturbance, rioting or disorder to overthrow the authority of the State, to bring about constitutional, political, industrial, social or economic aim or change or to induce the Government to do or to abstain from doing any act or to adopt or abandon a particular standpoint. Certain consequences follow after the said declaration of an organisation as an unlawful organisation, eg. a person shall cease to become or continue or perform any act of an office bearer, officer or member thereof.

It is recommended that the provision of Chapter 2 be deleted in their entirety as they give a wide discretion to interfere with political activity to a Minister of State and may encourage the said functionary to abuse the discretion vesting in him. Alternatively, drastic amendments should be made. (Note: The motivation regarding Section 4 of the Internal Security Act in A(5) above.)

Section 12 of the Decree prohibits the possession of any publications published or disseminated by the direction or guidance of an unlawful organisation. This provision should be repealed in its entirety for the same reasons.

* **Section 13**

Section 13 of the Decree provides for detention of persons for the purpose of interrogation if a policeman of or above the rank of Lieutenant-Colonel has reason to believe that such persons have committed the offenses of terrorism, subversion or sabotage or are withholding from the police any information relating to the commission of the said offenses or intention to commit such offenses. The Commissioner is given a discretion to notify a relative or person indicated by the detainee of his arrest and the place where he is being detained.

The discretion given to the police official in this Section is open to abuse. Past experience has shown that these provisions are used to clamp down on legitimate political dissent and activity, in the circumstances it is proposed that this provision should be repealed as well, or at least drastically amended to provide for safeguards, legal assistance, etc.

* **Section 14**

Section 14 deals with the declaration of the existence of a state of emergency. In this regard the Head of State has a discretion to declare a state of emergency if in his opinion any action or threatened action by any person or body of persons in the Republic is of such a nature and such an extent that the safety of the public or the maintenance of public order is seriously threatened thereby and that the ordinary law of the land is inadequate to enable the Government to ensure the safety of the public or to maintain public order.

The discretion given to the Head of State in this regard is very wide and is open to abuse. Further it is noted that the power to declare the said emergency is subjectively formulated. It is possible for such an emergency to be declared even if it does not objectively exist. Furthermore, the jurisdictional facts necessary for the declaration of an emergency may consist of any action or threatened action by a single person. It is recommended that the state of emergency should only be declared if objectively circumstances exist which threaten the life of the state or its existence and a mechanism for the review of the declaration of a state of emergency should be put in place to avoid abuse of the provision to interfere with free political activity.

* **Chapter 5**

Chapter 5, dealing with unlawful gatherings, provides that any person who convenes or proposes to convene any gathering in any public place in any district in the Ciskei shall give prior notice of not less that 48 hours to a local authority whose permission is required for such gathering in terms of any law and the Commanding Officer of the police in the district. If it is the intention that such gathering be a procession or protest march or like event, it shall assemble outside the Ciskei and thereafter enter the Ciskei across the international border. Notice has to be given to the Minister of Police and Prisons. Whenever the Commissioner of Police or the Minister has reason to believe that the persons expected to participate in such a gathering will not do so peaceably and without carrying arms or that it is necessary in the interest of national security, integrity, public safety or the prevention of disorder or crime or the protection of fundamental rights of non participants to restrict the right of assembly of the persons about to take place, he may prohibit the gathering for a period not exceeding 48 hours or every gathering in the district in question or any gathering of a particular nature, class or kind at a particular place in the particular area or everywhere in such district, except in such cases as he may expressly authorise when imposing the prohibition or at any time thereafter. <u>The Minister is also given the power to prohibit the gathering if the persons who are convening or who propose to convene the gathering are aliens as defined in Section 1 of the Immigration, Emigration and Aliens Act 1988</u>.

Thus prominent South African leaders and politicians, who legitimately ought to be able to participate in political activities in the area, could be prevented from doing so.

As for the power to prohibit gatherings being given to the Police or the Minister, it is suggested that the right to free political activity and freedom of assembly and association should not be interfered with at the discretion of a police official or a political functionary such as the Minister. In the circumstances it is recommended that these provisions should be repealed in their entirety. Section 20 prohibiting the demonstrations near court buildings, Section 21 empowering police officials of or above the rank of Warrant Officer to close places if they have reason to believe that unlawful gatherings will take place therein as well as the power to disperse gatherings that have been prohibited should also be repealed in their entirety. So should Sections 23, 26, 27, and 28 be repealed for the same reasons. Note should be taken of the provisions of the "Goldstone Bill" in South Africa.

(2) **Proclamation R293/1962**

The proclamation deals with the control of Blacks in townships. In terms of the Ciskei Constitution there is no discrimination on the basis of colour. The Regulations which were proclaimed under the Bantu Administration Act in respect of townships like Mdantsane, Zwelitsha, Sada and Ilitha are still in force. Provisions thereof which may be used to avail free and fair elections are to be found in Chapter 5 and 6 dealing with the holding of meetings and the use of public halls.

They provide that the Superintendent shall grant or refuse the use of such facilities at his"absolute and sole discretion". The Manager of a township must be given an application setting out the purpose of the meeting and he may in turn apply to the Magistrate to prohibit the holding of a meeting. Meetings cannot be held beyond 11.00pm.

It is undesirable that these officials who are invariably civil servants should have such powers. They are subject to Ministerial directives and other governmental influence. These may lead to unnecessary interference with free political activity especially that officials authorised by the Superintendent or the Police are authorised to be present at any meeting in the township and to direct that it should close at any moment at their discretion and should at all times be obeyed.

(3) **Defence Act 1 OF 1981**

Section 75 of the Defence Act deals with the improper disclosure of information relating to the composition, movements or dispositions of the Ciskei Defence Force, any auxiliary or voluntary nursing service established under the Defence Act or any force of a foreign country aligned to the Ciskei, or any statement, comment or rumour calculated directly or indirectly to convey such information except where the information has been furnished or the publication thereof has been authorised by the Chief of the Ciskei Defence Force or under his authority. The Defence Force has been extensively used by the Government even in areas of law enforcement traditionally dealt with by the Police. The fact that the Ciskei has a military

government raises the profile of the Defence Force even more. To require the authority of the Chief of the Ciskei Defence Force may unduly interfere with the rights of the public to receive information about allegations of improper involvement by its members in the electioneering process.

(4) **Public Service Act 2 of 1981**

Section 16(g) of the Public Service Act provides that an officer or an employee of the Public Service shall be guilty of misconduct if he on or after a date fixed by the Head of State by Proclamation in the Gazette is or becomes a member, or takes part in the activities, or in any manner promotes the objects of any organisation specified in such notice or encourages disobedience to, resistance against or defiance of any law. To place some restrictions on the political activities of civil servants is not necessarily unreasonable. This provision gives unfettered discretion to the Head of State to prescribe political activities of civil servants. There is nothing to suggest that such activities must be unlawful to attract sanction. The provision may be used selectively to interfere with activities of those organisations which the Head of State disagrees with and allow those with which he agrees. In the circumstances it is recommended that it be or amended so that it could not be used to prohibit political involvement such as mere membership, but perhaps only certain activities, such as assuming high profile leadership roles in political parties or at political events.

(5) **Police Act 32 of 1983**

* **Section 22, Schedule 3**

This section makes it an offence for any member of the Police Force to become or to take an active part in the activities of any political party or movement, organisation, body or association having political objectives or in manner whatsoever beyond recording his vote of the following official duty at any election, for such member to promote the candidature for public office of any person. This provision is couched in wide terms and may for instance interfere with the right to participate in a civic structure. Narrower restrictions may be more reasonable, as explained above.

* **Section 43(B)**

This Section provides that any person who publishes any untrue matter in relation to any action by the Police Force or any part of the Police Force or any member of the Police Force in relation to the performance of his functions as such member, without having reasonable grounds for believing that the statement is true shall be guilty of an offence and liable on conviction to a fine not exceeding R5 000.00 or imprisonment for a period of not exceeding 5 years for such imprisonment without

option of a fine or both such fine and such imprisonment. Police are used in many instances of prescribing free political activity eg. meetings etc. It is in the public interest that their actions be subject to constant scrutiny by a fearless media. This provision may curtail the reporting of matters of public interest in which they are involved. The common law requirement of mens area, or subjective intent on the part of the accused, should not be abandoned, as in this case, when the absence of (objective) grounds for believing in the truth of the statement is sufficient for criminal liability.

(6) **Prisons Act 36 of 1983**

Section 22 of Schedule 4 makes it an offence for a member of the Prisons Service to become a member or take an active part in the activities of any political party or any movement, organisation, body or association having political objectives. Further such member is prohibited from whatever manner promoting the candidature for public office of any person, other than by recording his vote or performing official duty at any election. The arguments already raised are applicable. Whereas high profile political roles and activities may have to be restricted, membership, attendance of meetings, etc, could reasonably be allowed.

(7) **Administrative Authorities Act no 37 of 1984**

* **Section 26, 65**

Section 26(ix) provides that a Paramount Chief, Chief or Headman shall have, inter alia, the duty to report promptly to the Magistrate the holding of unauthorised meetings or the distribution of publications or pamphlets in his administrative area. It is submitted that this provision interferes with the freedom of assembly and expression of inhabitants of any area under a Chief or Headman. It may also cause the said Chief or Headman to be in conflict with members of his community.

Section 26(n) authorises him to disperse or order the dispersal of persons any unauthorised assembly of armed persons or any rioters or unlawful meeting taking place in his area.

Section 26(o) provides that where a state of lawlessness or unrest exist in his area the Chief or Headman shall have authority to prohibit any or all of the following for a period of 7 days or such longer period as the Magistrate may fix:

(i) the gathering of men in groups or the brewing of beer, throughout the whole of the area under his control or within such area or at such place as he may specify;

(ii) the carrying by any person of a firearm or other dangerous weapons or more than one ordinary stick;

(iii) the shouting of war cries or the blowing of bugles or whistles.

Section 65 provides that any persons who obstruct the Minister, Chief or other civil servant in the lawful execution of his duty or disobeys a lawful order of such Minister, Chief or civil servant whilst he is acting within the course of his duty or who wilfully insults such official or obstructs the proceedings of any meeting convened by any Minister, Chief or other authority in connection with his duty shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or to imprisonment for period not exceeding one year or to both such fine and such imprisonment. Further any person who at any meeting obstructs, disobeys or insults the said official may be removed from such meeting and be detained in custody by order of the person presiding at such meeting until the conclusion with the meeting.

It is proposed that the above provisions be repealed in their entirety as they interfere with the freedom of association, freedom of movement and freedom of expression of persons living under tribal authorities and may also be used to prevent electioneering within the said areas. See also B(2) and C(2) for the position in Transkei and Bophuthatswana.

* **Section 52, 53**

Section 52 deals with the removal by the Head of State whenever he deems it expedient in the general public interest and without prior notice to the person concerned from any place to any other place or to any other district in Ciskei during the period specified in the order. A person who is removed under the said Section is compelled to move to the district indicated in the order unless he receives permission in writing of the Director-General of the Department of Justice. If a person disobeys fails to comply with any order issued or refuses or neglects to comply therewith or any condition thereof he shall be guilty of a punishable offence. the Head of State may when issuing the order or any time thereafter further order that the person who is required to withdraw from a certain area should be summarily arrested and detained and as soon as possible be removed in terms of the order. Section 53 provides for the removal of the whole tribe or community for administrative or other good and sufficient reasons on the order of the Head of State within a period specified in the said order to any other place or district within the Ciskei. Such tribe or community may not return to the place from which it has been ordered to remove itself without the prior approval in writing of the Head of State. Any person who is a member of the tribe or the said community who refuses or neglects to act in accordance with the said order will be guilty of a punishable offence.

The said provisions allow wide discretionary powers on the part of the Head of State to control the movement of individuals and whole communities. It may be used to interfere with free political activity of individuals or groups within administrative areas.

(8) **Broadcasting Act 8 of 1985**

In terms of this Act the Board of Directors which is in charge of the Ciskei Broadcasting Corporation is controlled by persons who are appointed by the Head of State. In practise persons who serve thereon are either Ministers of State or public servants or other supporters of the government. It is suggested that a more transparent mechanism, such as was employed in the appointment of the SABC Board in South Africa should be adopted in the Ciskei, and that there should be established an independent mechanism to see that all political organisations obtain airspace on the Ciskei Broadcasting Corporation, along the lines of recent developments in South African media law.

(9) **Immigration, Emigration And Aliens Act of 1988**

This law deals with entry into, departure from and transit into the Ciskei of persons, the residence or temporary sojourn of aliens in the Ciskei, the registration of aliens and the removal from Ciskei of undesirable and certain other persons. An alien is defined as a person who is not a Ciskei citizen as set out in the Ciskei Citizen's Act. This legislation can be used to effectively block the entry into Ciskei and the free political activity of several persons from the Republic of South Africa, including leaders of political organisations and parties who may wish to campaign for votes within the Ciskei. It is submitted that the provisions of this legislation should be amended is such a way as to allow free movement of persons residing within the borders of South Africa as at 1910.

(10) **Education Decree 22 of 1992**

Section 20(f) provides that if any teacher, public or otherwise than at a meeting in committee in any association of teachers recognised in terms of Section 28 criticises derogatively any aspect of the administration of the department, he would be guilty of an act of misconduct.

Section 20(w)(iii) makes it misconduct for a teacher to incite, instigate or cause a pupil or student to take part in any meeting, gathering or assembly, concourse or riotous behaviour for party political ends or any subversive purpose.

Section 38 deals with the control of entry into schools or school grounds. It provides certain categories or persons may enter the school or school grounds eg. pupils, teachers, employees or the school, committee members etc. A member of the community may only enter at the invitation of the principal only to attend a particular school function.Any person not falling under the above categories may only enter with the authority of the Minister of Education in writing. To enter such premises without the written permission, constitutes a punishable offence.

The abovementioned unreasonably restricts teachers' freedom of expression, and their

duty to encourage critical thinking or to encourage political participation by pupils. It furthermore makes it possible for the Minister to effectively ban all political opponents from speaking on school grounds. Whereas some restrictions on the political activities of teachers may be reasonable, the abovementioned go too far.

F KWA ZULU

A thorough study was done by Mr Varney of numerous Acts, Proclamations and Regulations which may discriminate or impede free political activity in Kwa Zulu and a detailed report was submitted and discussed at the meeting of the Task Group on 20 October 1993. A large measure of consensus on the contents of the report was reached amongst members of the Overall Task Group and the sub-groups.

Some general aspects could be highlighted:

Several features regarding the situation in Kwa Zulu are of course also applicable to other self-governing territories, although the Kwa Zulu Legislative Assembly may have exercised its legislative powers in terms of Section 3 and Schedule 1 of the Self-Governing Territories Constitution Act 21 of 1971 more actively than those of other territories.

In order for the South African Parliament to amend or repeal legislation made by a self-governing Territory, the said Self-Governing Territories Constitution Act will have to be amended accordingly.

Especially as far as regulations are concerned, some of the aspects addressed in the Kwa Zulu report, or similar ones, may also be applicable to the TBVC territories, without having received much attention yet, due to a lack of time on the part of the Task Group.

Therefore it seems inappropriate to incorporate a detailed report on Kwa Zulu in this First Substantial Report. As explained in the INTRODUCTION, the Task Group's initial mandate dealt only with South Africa and the TBVC territories and was then extended to include Kwa Zulu. The Task Group would in principle be willing to investigate the situation in other self-governing territories on the same basis as in Kwa Zulu - if mandated to do so - and to proceed with research regarding the TBVC states accordingly. A detailed report on Kwa Zulu could then be presented in context.

In the meantime a short summary of aspects mentioned in the Kwa Zulu report is herewith included, the full report being available on request:

* Kwa Zulu Act on the Code of Zulu Law 16 of 1985 - powers of Chiefs and Headmen, prohibition of meetings;

* Kwa Zulu Act on the Powers and Privileges of the Legislative Assembly 25 of 1988 - holding of enquiries;

* Regulations for the Administration and Control of townships in black areas - Proc R293 - communal halls, meetings, offenses, etc.;

* Black Areas Land Regulations - Proc R188 of 1969 - presence of unauthorised persons in black areas;

* Kwa Zulu Civil Defence Act 11 of 1984 - declaration of a state of disaster, entering of premises, search and seizure, etc.;

* Kwa Zulu Act on the Tracing and Detention of Offenders 19 of 1987 -arrest and detention;

* Kwa Zulu Education Act 7 of 1978 - discharge of teachers, criticism of the administration of the Department, etc.;

* Regulations Governing Government Black Schools and Black Community Schools R1755 - restrictions on activities of teachers;

* Public Service Act 5 of 1980 - misconduct, membership of trade unions, loyalty to the Government;

* Proclamation R268 of 1968 - control of meetings etc. in black areas.

4. OTHER SUBMISSIONS; CONCLUDING REMARKS

Numerous submissions on discriminatory legislation and legislation impeding free political activity have been made, since CODESA and to the Multi-Party Negotiating Process. Furthermore, substantial submissions concerning discriminatory local government legislation have recently been received from the United Municipal Executive of South Africa. Members of the Task Group are aware of the possible existence of legislation on various levels which is inherently discriminatory, on the basis of race or gender or otherwise, or which may impede free political activity.

As explained earlier, not all of these aspects are addressed in the First Substantial Report of the Task Group, inter alia because of the time constraints, different experiences in the different territories and different degrees of co-operation from the relevant administrations. Some of these, as well as new aspects which may be brought to the attention of the Task Group could be investigated in future reports, if required.

It is submitted, however, that many of the statutory provisions dealt with in this report, could and should receive the immediate attention of the relevant legislatures, in order to ensure free political activity in the run up to the elections.

30 OCTOBER 1993