

NEGOTIATING COUNCIL 10 JUNE 1993

6.1.4 **Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation:**

It was noted that this report of the Technical Committee was distributed at this meeting but due to time constraints, it was agreed to defer the discussion on this report of the Technical Committee to the next meeting of the Negotiating Council on Thursday 3 June 1993.

NEGOTIATING COUNCIL 18 MAY 1993

5.7 **Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation:**

5.7.1 The members of the Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation were welcomed.

5.7.2 An overview and issues to be highlighted or requiring decision/guidance from the Negotiating Council in the report was presented by a spokesperson of the Technical Committee. Discussion followed.

5.7.3 The Technical Committee was requested to take into account the concerns and views of delegates in formulating its second report (including the role of Traditional Leaders).

5.7.4 It was agreed to mandate the Technical Committee to:

- * Within the next two weeks identify those laws which are discriminatory and that inhibit free political activity which should be repealed; and report back to the Negotiating Council;

- * In addition, a the "higher code" spoken of in the report and an implementation mechanism should be suggested by the Technical Committee.

5.7.5 It was requested that the various governments/administrations co-operate with the Technical Committee with regard to the identification process.

5.7.6 The members of the Technical Committee were thanked for the work so far completed.

NEGOTIATING COUNCIL 21 JULY 1993

5.2 Technical Committee on The Repeal or Amendment of Legislation Impeding Free Political Activity and Discriminatory Legislation:

- * The Technical Committee was welcomed. Present were ???. Apologies were noted from ??????. The Technical Committee presented an overview of its report and drew the attention of the meeting to matters that needed its consideration.

The following issues relating to the Technical Committee on the Repeal of Discriminatory Legislation were referred to the Planning Committee for consideration by the Negotiating Council:

1. To look into what mechanisms need to be employed or what suggestions can be made in respect of the date of implementation of the Bill of Rights and secondly, the issue of verticality and horizontality pending the report from that particular Technical Committee.
2. To consider the issue of the need for democratic/democracy and rule of law government from day one after the elections - concern and the concern of the IEC is what happens with the period before the elections - getting from point A to point B (the elections).
3. To look into the issue of the uniformity of application.
4. The Fundamental Rights Committee has suggested a set of enforcement mechanisms, the IEC is also considering enforcement mechanisms. Furthermore enforcement mechanisms are necessary for the enforcement of the Bill of Rights - the Planning Committee should apply its mind to this issue and bring various recommendations on how the overlaps could be avoided.
5. The Planning Committee should submit recommendations as to how to deal with this particular part of the second report of the Technical Committee in relation to specific pieces of legislation
present three of them. draw attention to matters that need to be considered:

tech comm gave presentation.

NP : joint report on this issue from both the tech comms

Pravins comments :

PC look into mechanisms need to be employed date of implementation of Bill of Rights, question of horizontality and then make a recommendation to the NC, pc give attention to the issue of what

happens to that period before, (what about uniformity of application - also nb)

Code for pol parts iec tech comm going todraft certain guarantees provided for
Relationship bill of fund rights and IEC

Tech comm comments

Enforcement mechanisms ? - pc also apply its mind to this

Also instruct how all the tribunals work - pc as well - apply as quickly as possible

Tech comm free to make recommendations - how solve problems of overlaps.

Draft code has been submitted in the latest report

proposals emanating decisions about leg that needs to be repealed imm and prior to bill of rights coming into effect - how deal with this. (tech comm - falls into uniformity of applic)

Refer to Planning Committee -

Also clarify this tech comms brief)

NEGOTIATING COUNCIL 29 JUNE 1993

5. Substantive Issues

5.1 Report from the Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation:

- 5.1.1 The members of the Technical Committee were unable to attend the meeting, due to the fact that they were not initially scheduled to attend this meeting. It was noted that the relevant points from the debate of the Negotiating Council would be forwarded by the Administration to the Technical Committee for their consideration.
- 5.1.2 The Technical Committee was mandated to liaise with the other Technical Committees where overlaps occur.
- 5.1.3 The Planning Committee was requested to set up mechanisms and procedures, for the approval of the Negotiating Council, which would allow greater co-ordination amongst the Technical Committees, including the drafting of legislation in a consistent way.
- 5.1.4 Discussion and debate then followed around the first part of the Final Report of the Technical Committee and the following was noted:

- 5.1.4.1 That an enquiry was made as to when the proposed discriminatory laws, as listed, would be repealed and the effect of such laws on structures such as the self-governing territories, etc. was raised.
- 5.1.4.2 That there seemed to be an overlapping between the work of this Technical Committee, that of the Technical Committee on Fundamental Human Rights during the Transition and that of the Technical Committee on the TEC and its Sub-Councils. This overlap should be attended to by the Technical Committee.
- 5.1.5 Discussion and debate then followed around "The Higher Code" and the following was noted:
- 5.1.5.1 It was suggested that a Code of Conduct for an election should be dealt with by the Technical Committee on the IEC.
- 5.1.5.2 Item 5.3.2 refers; A concern was expressed with regard to the powers of a political nature given to the tribunal. The Technical Committee should therefore re-examine the mechanism.
- 5.1.5.3 Item 5.3.2 refers; The Technical Committee should give details of how the tribunal would function. This should be done in conjunction with the other relevant Technical Committees.
- 5.1.5.4 It was suggested that all the criteria that may have a material effect on the work of the Technical Committee on the IEC, should be taken note of by the Technical Committee on the IEC.
- 5.1.5.5 Item 5.5.3 refers; The political nature of a tribunal was questioned and the Negotiating Council agreed to refer the matter back to the Technical Committee in order to reconsider the powers of a tribunal.
- 5.1.5.6 Item 5.5.3 refers; More detail was needed on the functioning of an ombud and a tribunal. The Technical Committee was requested to deal with this in consultation with the other relevant Technical Committees.

- 5.1.5.7 Item 5.5.5 refers; This clause should refer to the same tribunal.
- 5.1.5.8 Item 5.7 refers; It was noted that when CODESA dealt with the TEC, it also dealt with a Sub-Council which could in its opinion deal with any matter that has an impact on the levelling of the playing field. It was therefore suggested that the question of political matters should be separated and be dealt with by a Sub-Council of the TEC.
- 5.1.5.9 Item 5.10.3.2.1 refers; It was suggested that the assumption that there would be a voters role should not necessarily be made. It was further suggested that voting could be done by way of registration or by a decision that everybody who has an ID document would be entitled to vote.
- 5.1.5.10 Item 5.10.10 refers; It was suggested that the words "on the advice of the TEC" be deleted and replaced by the words "after consultation with the TEC".
- 5.1.5.11 The agreement on formulation, as per the Negotiating Council meeting of 28 June, should also be applicable throughout this Report, i.e. that the State President shall act only upon the advice of the Negotiating Council.
- 5.1.5.12 Item 5.10.12.1 refers; Reference is made to ten regions. Clarity was needed on whether it was referring to the establishment of regions, or if it was bound up with the number of regions or whether it refers to something different.
- 5.1.6 It was noted that the Negotiating Council had already agreed in principle to adult suffrage.

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

1. The Negotiating Council agrees on the following steps to be taken for the purposes of establishing a new constitutional order:

- 1.1 The MPNP shall adopt the Constitutional Principles, including principles of regional government, providing for both strong regional government and strong national government;
 - 1.2 The Constitutional Principles shall be binding on the Constitution-Making Body and shall be justiciable by a Constitutional Court/Tribunal;
 - 1.3 The Commission on Delimitation/Demarcation appointed by the MPNP will make recommendations to the MPNP on regional boundaries for the purposes of elections and regional government for the transitional phase;
 - 1.4 The MPNP shall agree on legislation to make provision for the following structures for the purpose of levelling the playing field and promoting conditions conducive to the holding of free and fair elections:
 - 1.4.1 A Transitional Executive Council;
 - 1.4.2 An Independent Electoral Commission;
 - 1.4.3 An Independent Media Commission and an Independent Broadcasting Authority;
 - 1.5 The MPNP shall agree on details of discriminatory legislation to be repealed;
 - 1.6 The MPNP shall agree on a Constitution for the transitional period;
2. The Negotiating Council accordingly requests the Technical Committee on Constitutional Issues to draft a Constitution for the transition which shall make provision for:
- 2.1 The election according to a system of proportional representation of a Constitution-Making Body, legislature and national government for the transitional phase which will include a national and regional component. With regard to constitution making, this Constitution shall provide for dead-lock breaking and special majorities by which decisions will be taken;
 - 2.2 The election of regional legislatures and the establishment of regional governments in the transition;
 - 2.3 The powers, functions and structures of regions for the transitional period;
 - 2.4 Fundamental human rights on a justiciable basis during the transitional period;
 - 2.5 A Constitutional Court/Tribunal to ensure the justiciability of the Constitutional Principles, of

the fundamental rights and of the Constitution itself;

3. Participants are given until the 12th of July 1993, to make further inputs to the Technical Committee with regard to the above draft Constitution for the transition.
4. This is agreed against the background of paragraph 6 of the Explanatory Memorandum adopted by the Negotiating Council on 30 April 1993.

NEGOTIATING COUNCIL 22 JUNE 1993

4.6 Presentation of the Report of the Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation:

- 4.6.1 The members of the Technical Committee were welcomed. Present were J de Bruyn, MG Erasmus and P Motlana-Moraka. Apologies were noted from J Dugard and P Langa.
- 4.6.2 The report was tabled and presented. Questions of clarity were directed to the Technical Committee members.
- 4.6.3 It was agreed that discussion on the Report would not take place in this meeting.
- 4.6.4 The Technical Committee was mandated to have discussions with the other Technical Committees on issues where overlapping in their work occurs.
- 4.6.5 The Technical Committee was thanked for their work so far completed.

PLANNING COMMITTEE 14 MAY 1993

- 5.1.5 Technical Committee on the Amendment or Repeal of Legislation impeding free political activity and Discriminatory Legislation:

It was agreed to recommend to this Technical Committee (via the Sub-Committee) to use the direct route as recommended in the first report (Option 1.1 of the first report). The Technical Committee would be assisted in this regard by the seconded members from the relevant justice departments, i.e. from the South African and TBVC States Department of Justice.

PLANNING COMMITTEE 25 MAY 1993

5.6 Technical Committee on the Amendment or Repeal of Legislation impeding Free Political Activity and Discriminatory Legislation:

It was noted that a report will only be received for the meeting of the Negotiating Council on 1 June 1993 as per the instructions of the Negotiating Council at its last meeting.

PLANNING COMMITTEE 3 JUNE 1993

5.3.6 Repeal of Discriminatory Legislation:

5.3.6.1 It was agreed that the Report be formally tabled.

5.3.6.2 It was noted that the Report should be tabled by the current Planning Committee Chairperson, Z Titus. It was, therefore, not necessary for the Technical Committee to be present at the meeting of the Negotiating Council.

PLANNING COMMITTEE 24 MAY 1993

5.1.7 Technical Committee on the Amendment or Repeal of Legislation impeding Free Political Activity and Discriminatory Legislation:

It was noted that a report will only be received for the meeting of the Negotiating Council on 1 June 1993 as per the instructions of the Negotiating Council at its last meeting.

PLANNING COMMITTEE 26 JULY 1993

Repeal discrim : not identified the issues - clear brief needed to be given to this tech comm to identify the laws
Higher code overlaps with the bill of rights

6.1.4 **Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation: 10/6/nc**

It was noted that this report of the Technical Committee was distributed at this meeting but due to time constraints, it was agreed to defer the discussion on this report of the Technical Committee to the next meeting of the Negotiating Council on Thursday 3 June 1993.

6.1.4 **Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation:**

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5.7 **Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation: 18/5/nc**

5.7.1 The members of the Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation were welcomed.

5.7.2 An overview and issues to be highlighted or requiring decision/guidance from the Negotiating Council in the report was presented by a spokesperson of the Technical Committee. Discussion followed.

5.7.3 The Technical Committee was requested to take into account the concerns and views of delegates in formulating its second report (including the role of Traditional Leaders).

5.7.4 It was agreed to mandate the Technical Committee to:

* Within the next two weeks identify those laws which are discriminatory and that

inhibit free political activity which should be repealed; and report back to the Negotiating Council;

- * In addition, a the "higher code" spoken of in the report and an implementation mechanism should be suggested by the Technical Committee.

5.7.5 It was requested that the various governments/administrations co-operate with the Technical Committee with regard to the identification process.

5.7.6 The members of the Technical Committee were thanked for the work so far completed.

5.2 Technical Committee on The Repeal or Amendment of Legislation Impeding Free Political Activity and Discriminatory Legislation:2107/nc

- * The Technical Committee was welcomed. Present were ???. Apologies were noted from ??????. The Technical Committee presented an overview of its report and drew the attention of the meeting to matters that needed its consideration.

The following issues relating to the Technical Committee on the Repeal of Discriminatory Legislation were referred to the Planning Committee for consideration by the Negotiating Council:

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5. Substantive Issues

5.1 Report from the Technical Committee on the Amendment or Repeal of Legislation Impeding Free Political Activity and Discriminatory Legislation:29/6/nc

5.1.1 The members of the Technical Committee were unable to attend the meeting, due to the fact that they were not initially scheduled to attend this meeting. It was noted that the relevant points from the debate of the Negotiating Council would be forwarded by the Administration to the Technical Committee for their consideration.

5.1.2 The Technical Committee was mandated to liaise with the other Technical Committees

where overlaps occur.

- 5.1.3 The Planning Committee was requested to set up mechanisms and procedures, for the approval of the Negotiating Council, which would allow greater co-ordination amongst the Technical Committees, including the drafting of legislation in a consistent way.
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