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TEC 1

19 May 1993

*Resent
 1st Fax incomplete*

FAX

TO: TECHNICAL COMMITTEE ON THE TRANSITIONAL EXECUTIVE COUNCIL, MULTI-PARTY NEGOTIATIONS
 FAX: 011/397-2211

FROM: DEMOCRATIC PARTY

COMMENTS ON FIRST REPORT OF TECHNICAL COMMITTEE

We are in general agreement with the tenor of the report but would like to make some submissions.

Page 3, paragraph 2(1)

The TEC should be composed of political organisations which plan to contest the first election and want to ensure that it is free and fair. The main task of the TEC is to monitor governments and administrations and it is inappropriate and illogical that they be part of the watchdog body and so end up monitoring themselves.

Page 5, paragraph 3(2)(a)

After "request" insert "and obtain".

Page 6, paragraph 3(2)(h)

After "person" insert "or persons".

Page 6, paragraph 4(1)(a)

The Codesa report's reference to "regional government" was intended to be a generic term which would include, inter alia, provincial administrations, TBVC and homelands' governments, regional service councils, etc. It is therefore required as part of this sub-council's brief.

Page 6, paragraph 4(1)(d)

There is a need for this sub-council to have its mandate broadened to include social, economic and developmental issues that impact on free and fair elections. The current disruptions arising from the education crisis are examples of the potential that exists for affecting free and fair elections - certainly far more so than foreign affairs.

Page 7, Note to paragraph 4(3)

No party should be permitted to have more than one person on any particular sub-council.

Pages 8, 9 and 12

Starting in paragraphs 5(3)(a) and (b) and (4), there are a number of references to "governments, administrations and participants". This is confusing. Either the terminology in paragraph 2(1), i.e. "governments, administrations and organisations" should be retained throughout, or "participants" should be used on its own as governments and administrations are also participants.

Pages 11 and 12, paragraphs 6(5) and 7(3)

The description "members" of the TEC appears for the first time. We suggest the terminology be standardised. Possibly using "representatives on" instead of "members of" would be better as it would tie in with paragraph 2(1).

We hope these comments will be useful to you in your deliberations.



K M ANDREW

MIN0203.MP (5)

WORKING GROUP 2\MINUTES\2 MARCH

"The South African Government considers the question of the autonomy of regional and local governments to be a matter of principle. Therefore, "appropriate and adequate legislative and executive powers, duties and functions" in the proposed paragraph 3 is understood to indicate autonomous powers, duties and functions, originally allocated to regional and local governments by the Constitution.

"The specific functions to be entrusted to the regional and local government levels must be determined according to the principle of subsidiarity, which means that a function must be situated at the level where it may be performed optimally.

"Since a function cannot be performed without the necessary financial capability, fiscal competency must accompany the allocation of powers to the highest practicable degree. Where full fiscal autonomy is not practicable, the financial capability of the regional and local governments must be supplemented by means of constitutionally regulated horizontal and vertical fiscal equalization."

- 4.2 The Working Group noted the ANC's disagreement with the South African Government's interpretation. The Working Group also noted the ANC's statement that the following concepts are neither implied nor rejected by clause three of the Steering Committee document:
- 4.2.1 Concurrent powers
 - 4.2.2 Overriding powers
 - 4.2.3 The creation of metropolitan governments with a special status.
- 4.3 The Working Group agreed on the following formulation with regard to clause 3 of the Steering Committee document:
- 4.3.1 "This meeting agrees that the draft document implies that all levels of government will have fiscal powers defined in the constitution. This agreement is unanimous. This agreement should be considered when the Working Group's report is drawn up for Codex 2.
- 4.4 The Working Group agreed on the five principles contained in the Steering Committee document. The principles are as follows:
- 4.4.1 Government shall be structured at national, regional and local levels.
 - 4.4.2 At each level there shall be democratic representation.
 - 4.4.3 Each level of government shall have appropriate and adequate legislative and executive powers, duties and functions that will enable each level to function effectively; such powers, duties and functions to be entrenched in the constitution.
 - 4.4.4 In addition to the powers, duties and functions entrenched in the constitution, each level of government may delegate powers, duties and functions to the lower level of government.
 - 4.4.5 The general principles of the constitution, including the terms of the Bill/Charter of Fundamental Rights shall apply to each level of government.

Chancellor, dissolve the Bundestag within twenty-one days. The right to dissolve shall lapse as soon as the Bundestag with the majority of its members elects another Federal Chancellor.

(2) Forty-eight hours must elapse between the motion and the vote thereon.

Article 69 (Deputy of the Federal Chancellor)

(1) The Federal Chancellor shall appoint a Federal Minister as his deputy.

(2) The tenure of office of the Federal Chancellor or a Federal Minister shall end in any event on the first meeting of a new Bundestag; the tenure of office of a Federal Minister shall also end on any other termination of the tenure of office of the Federal Chancellor.

(3) At the request of the Federal President the Federal Chancellor, or at the request of the Federal Chancellor or of the Federal President a Federal Minister, shall be bound to continue to transact the affairs of his office until the appointment of a successor.

VII. LEGISLATIVE POWERS OF THE FEDERATION

Article 70 (Legislation of the Federation and the Laender)

(1) The Laender shall have the right to legislate in so far as this Basic Law does not confer legislative power on the Federation.

(2) The division of competence between the Federation and the Laender shall be determined by the provisions of this Basic Law concerning exclusive and concurrent legislative powers.

Article 71 (Exclusive legislation of the Federation, definition)

In matters within the exclusive legislative power of the Federation the Laender shall have power to legislate only if, and to the extent that, a federal law explicitly so authorizes them.

Article 72 (Concurrent legislation of the Federation, definition)

(1) In matters within concurrent legislative powers the Laender shall have power to legislate as long as, and to the extent that, the Federation does not exercise its right to legislate.

(2) The Federation shall have the right to legislate in these matters to the extent that a need for regulation by federal legislation exists because:

1. a matter cannot be effectively regulated by the legislation of individual Laender, or
2. the regulation of a matter by a Land law might prejudice the interests of other Laender or of the people as a whole, or
3. the maintenance of legal or economic unity, especially the maintenance of uniformity of living conditions beyond the territory of any one Land, necessitates such regulation.

Article 73 (Exclusive legislation, catalogue)

The Federation shall have exclusive power to legislate in the following matters:

- 1.* foreign affairs as well as defence including the protection of the civilian population;
2. citizenship in the Federation;
3. freedom of movement, passport matters, immigration, emigration, and extradition;
4. currency, money and coinage, weights and measures, as well as the determination of standards of time;
5. the unity of the customs and commercial territory, treaties on commerce and on navigation, the freedom of movement of goods, and the exchanges of goods and payments with foreign countries, including customs and other frontier protection;
6. federal railroads and air transport;

* As amended by federal laws of 26 March 1954 (Federal Law Gazette I p. 45) and 24 June 1968 (Federal Law Gazette I p. 711).

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7. postal and telecommunication services;
8. the legal status of persons employed by the Federation and by federal corporate bodies under public law;
9. industrial property rights, copyrights and publishers' rights;
10. * co-operation of the Federation and the Laender in matters of
 - (a) criminal police,
 - (b) protection of the free democratic basic order, of the existence and the security of the Federation or of a Land (protection of the constitution) and
 - (c) protection against efforts in the federal territory which, by the use of force or actions in preparation for the use of force endanger the foreign interests of the Federal Republic of Germany,
 as well as the establishment of a Federal Criminal Police Office and the international control of crime.
11. statistics for federal purposes.

Article 74 (Concurrent legislation, catalogue)

Concurrent legislative powers shall extend to the following matters:

1. civil law, criminal law and execution of sentences, the organization and procedure of courts, the legal profession, notaries, and legal advice (Rechtsberatung);
2. registration of births, deaths, and marriages;
3. the law of association and assembly;
4. the law relating to residence and establishment of aliens;
- 4a. ** the law relating to weapons and explosives;
5. the protection of German cultural treasures against removal abroad;
6. refugee and expelled matters;
7. public welfare;
8. citizenship in the Laender;

* As amended by federal law of 28 July 1972 (Federal Law Gazette I p. 1305).

** Inserted by federal law of 28 July 1972 (Federal Law Gazette I p. 1305) and amended by federal law of 23 August 1976 (Federal Law Gazette I p. 2383).

9. war damage and reparations;
- 10.* benefits to war-disabled persons and to dependants of those killed in the war as well as assistance to former prisoners of war;
- 10a.** war graves of soldiers, graves of other victims of war and of victims of despotism;
11. the law relating to economic matters (mining, industry, supply of power, crafts, trades, commerce, banking, stock exchanges, and private insurance);
- 11a.*** the production and utilization of nuclear energy for peaceful purposes, the construction and operation of installations serving such purposes, protection against hazards arising from the release of nuclear energy or from ionizing radiation, and the disposal of radioactive substances;
12. labour law, including the legal organization of enterprises, protection of workers, employment exchanges and agencies, as well as social insurance, including unemployment insurance;
- 13.**** the regulation of educational and training grants and the promotion of scientific research;
14. the law regarding expropriation, to the extent that matters enumerated in Articles 73 and 74 are concerned;
15. transfer of land, natural resources and means of production to public ownership or other forms of publicly controlled economy;
16. prevention of the abuse of economic power;
17. promotion of agricultural and forest production, safeguarding of the supply of food, the importation and exportation of agricultural and forest products, deep sea and coastal fishing, and preservation of the coasts;
18. real estate transactions, land law and matters concerning

* As amended by federal law of 16 June 1965 (Federal Law Gazette I p. 513).

** Inserted by federal law of 16 June 1965 (Federal Law Gazette I p. 513).

*** Inserted by federal law of 23 December 1959 (Federal Law Gazette I p. 813).

**** As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 363).

agricultural leases, as well as housing, settlement and home-
stead matters;

19. measures against human and animal diseases that are com-
municable or otherwise endanger public health, admission to
the medical profession and to other health occupations or
practices, as well as trade in medicines, curatives, narcotics,
and poisons;

19a.* the economic viability of hospitals and the regulation
of hospitalization fees;

20.** protection regarding the marketing of food, drink and
tobacco, of necessities of life, fodder, agricultural and forest
seeds and seedlings, and protection of plants against diseases
and pests, as well as the protection of animals;

21. ocean and coastal shipping as well as aids to navigation,
inland navigation, meteorological services, sea routes, and
inland waterways used for general traffic;

22.*** road traffic, motor transport, construction and mainte-
nance of long-distance highways as well as the collection of
charges for the use of public highways by vehicles and the
allocation of revenue therefrom;

23. non-federal railroads, except mountain railroads;

24.**** disposal of waste, keeping the air pure and combatting
noise.

Article 74a* (Wider competence of Federation for pay scales)

(1) Concurrent legislation shall further extend to the pay scales
and pensions of members of the public service whose service and
loyalty are governed by public law, in so far as the Federation
does not have exclusive power to legislate pursuant to item 8
of Article 73.

(2) Federal laws enacted pursuant to paragraph (1) of this Article
shall require the consent of the Bundesrat.

(3) Federal laws enacted pursuant to item 8 of Article 73 shall

* Inserted by federal law of 12 May 1969 (Federal Law Gazette I p. 363).

** As amended by federal law of 18 March 1971 (Federal Law Gazette I p. 207).

*** As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 363).

**** As amended by federal law of 14 April 1972 (Federal Law Gazette I
p. 593).

+ As inserted by federal law of 18 March 1971 (Federal Law Gazette I p. 206).

likewise require the consent of the Bundesrat, in so far as they
prescribe for the structure and computation of pay scales and
pensions, including the appraisal of posts, criteria or minimum
or maximum rates other than those provided for in federal laws
enacted pursuant to paragraph (1) of this Article.

(4) Paragraphs (1) and (2) of this Article shall apply mutatis
mutandis to the pay scales and pensions for judges in the Laender.
Paragraph (3) of this Article shall apply mutatis mutandis to laws
enacted pursuant to paragraph (1) of Article 98.

Article 75* (General provisions of the Federation, catalogue)

Subject to the conditions laid down in Article 72 the Federa-
tion shall have the right to enact skeleton provisions concerning:

1.** the legal status of persons in the public service of the Laender,
communes, or other corporate bodies under public law, in so
far as Article 74a does not provide otherwise;

1a.*** the general principles governing higher education;

2. the general legal status of the press and the film industry;

3. hunting, protection of nature, and care of the countryside;

4. land distribution, regional planning, and water management;

5. matters relating to the registration of changes of residence or
domicile (Meldewesen) and to identity cards.

Article 76 (Bills)

(1) Bills shall be introduced in the Bundestag by the Federal
Government or by members of the Bundestag or by the Bundesrat.

(2)+ Bills of the Federal Government shall be submitted first to
the Bundesrat. The Bundesrat shall be entitled to state its position
on such bills within six weeks. A bill exceptionally submitted to
the Bundesrat as being particularly urgent by the Federal Govern-
ment may be submitted by the latter to the Bundestag three weeks
later, even though the Federal Government may not yet have
received the statement of the Bundesrat's position; such state-
ment shall be transmitted to the Bundestag by the Federal
Government without delay upon its receipt.

* As amended by federal law of 12 May 1969 (Federal Law Gazette I p. 363).

** As amended by federal law of 18 March 1971 (Federal Law Gazette I p. 206).

*** Inserted by federal law of 12 May 1969 (Federal Law Gazette I p. 363).

+ As amended by federal law of 15 November 1969 (Federal Law Gazette I
p. 1177).

VIIIa. JOINT TASKS*

Article 91a* (Definition of joint tasks)

(1) The Federation shall participate in the discharge of the following responsibilities of the Laender, provided that such responsibilities are important to society as a whole and that federal participation is necessary for the improvement of living conditions (joint tasks):

1. expansion and construction of institutions of higher education including university clinics;
2. improvement of regional economic structures;
3. improvement of the agrarian structure and of coast preservation.

(2) Joint tasks shall be defined in detail by federal legislation requiring the consent of the Bundesrat. Such legislation should include general principles governing the discharge of joint tasks.

(3) Such legislation shall provide for the procedure and the institutions required for joint overall planning. The inclusion of a project in the overall planning shall require the consent of the Land in which it is to be carried out.

(4) In cases to which items 1 and 2 of paragraph (1) of this Article apply, the Federation shall meet one half of the expenditure in each Land. In cases to which item 3 of paragraph (1) of this Article applies, the Federation shall meet at least one half of the expenditure, and such proportion shall be the same for all the Laender. Details shall be regulated by legislation. Provision of funds shall be subject to appropriation in the budgets of the Federation and the Laender.

(5) The Federal Government and the Bundesrat shall be informed about the execution of joint tasks, should they so demand.

* Inserted by federal law of 12 May 1969 (Federal Law Gazette I p. 359).

Article 91b* (Co-operation of Federation and Laender in educational planning and in research)

The Federation and the Laender may pursuant to agreements co-operate in educational planning and in the promotion of institutions and projects of scientific research of supraregional importance. The apportionment of costs shall be regulated in the pertinent agreements.

* Inserted by federal law of 12 May 1969 (Federal Law Gazette I p. 359).