

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

DRAFT MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 12h20 ON WEDNESDAY 17 NOVEMBER 1993 AT THE WORLD TRADE CENTRE

PRESENT: See Addendum A

1. Moment of Prayer/Meditation

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

2. Welcome and Attendance

2.1 The participants were welcomed.

2.2 It was noted that the meeting had not commenced timeously as a result of ongoing bilateral meetings, drafting by the Technical Committees and various other outstanding matters.

3. Draft Agenda and Report to the Plenary

3.1 The draft agenda and report to the Plenary were distributed by the Planning Committee and presented to the meeting by Z Titus on behalf of the Planning Committee. It was noted that the document would be discussed at a later stage during the course of the day.

3.2 It was agreed that PJ Gordhan present the overview of the process to the Plenary.

3.3 Questions of clarity were put to the Planning Committee members. Participants were requested to communicate any amendments or concerns with regard to the draft report to the Planning Committee.

The meeting adjourned for lunch at 12h40.

The meeting reconvened at 15h00.

4. **Ratification of Agenda**

4.1 The agenda was ratified with the following amendments:

- * Item 4.1 to read "Report of the Negotiating Council to the Plenary - Recommendations from the Planning Committee";
- * Item 4.2 to read "Draft Constitution for the Transition";
- * Item 4.3 to read "Draft Electoral Bill".

4.2 With regard to item 4.2, the Planning Committee recommended the following:

- * The draft Constitution would be put before the Negotiating Council and processed a section at a time;
- * The results of bilateral/multilateral discussions would be put before Council for debate and decision during the course of the discussions on the draft Constitution;
- * The Technical Committee would receive instructions from the Negotiating Council in respect of those issues.

4.3 It was noted that the start of the Plenary would be delayed until after 17h30.

5. **Substantive Issues**

5.1 **Report of the Negotiating Council to the Plenary - Recommendations from the Planning Committee:**

5.1.1 Proposed Agenda for the Plenary:

The proposed agenda was agreed to by consensus (see Addendum B).

5.1.2 Sessions of Chairpersons:

The Chairing sessions of Chairpersons was agreed to by consensus (see Addendum C).

5.1.3 Guidelines/Rules for Plenary:

The guidelines/rules for Plenary were agreed to by consensus (see Addendum D).

5.1.4 Overview of Process:

- * The diagram depicting the overview of the process was agreed to by consensus (see Addendum E).

5.1.5 Third Draft of the Report of the Negotiating Council to the Plenary - Proposal from the Planning Committee:

- * Z Titus proceeded to put each paragraph before the house for its approval.
- * It was noted that various technical improvements would be made to the document.
- * Paragraph 1 as amended was agreed to by consensus.
- * Paragraph 2 was agreed to by consensus.
- * Paragraph 3 as amended was agreed to by consensus.
- * Paragraph 4 was agreed to by consensus.
- * Paragraph 5 as amended was agreed to by consensus. The heading was amended to read "Electoral Bill". It was agreed to hold item 5.4 in abeyance pending the debate in the Negotiating Council and amended appropriately.
- * Paragraph 6 as amended was agreed to by consensus.
- * Paragraph 7 was agreed to by consensus.
- * It was agreed by consensus to mandate the Planning Committee to draft an appropriate paragraph 8. Later it was agreed that there was no need for this paragraph.
- * The proposed draft resolutions were approved of by consensus. It was noted that no participant had suggested any amendments (see Addendum F).
- * Addendum G as amended was agreed to by consensus (see Addendum G).
- * See Addendum H for the amended report agreed to by consensus.

5.2 Draft Constitution for the Transition:

5.2.1 The Technical Committee on Constitutional Issues was welcomed. Present were GE Devenish, E Moseneke, B Ngoepe, M Olivier, W Olivier, F Venter and M Wiechers. Apologies were noted from A Chaskalson. It was agreed to process the draft Constitution from the beginning, a section at a time. Furthermore, where a section had already been agreed upon by the Council, this would be clearly indicated. It was further agreed that where Council had not processed a section previously in a comprehensive way, a mandate will be sought from the Plenary to refer such issues to the Negotiating Council for further processing provided that the said provision in Constitution did not affect the package. But if the issue is of a substantive nature, an attempt should be made to resolve it in Council before the commencement of the Plenary.

5.2.2 The "Preamble" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.3 Clause 1 "The Republic of South Africa" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.4 Clause 2 "National symbols" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.5 Clause 3 "Languages" refers:

- * It was noted that "luVenda" should read "tshiVenda".
- * It was noted that clause 3 (12) may require possible technical redrafting.
- * As the above two points did not affect the principle of the clause, the clause was agreed to by consensus.

5.2.6 Clause 4 "The supremacy of the Constitution" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.7 Clause 5 "Citizenship" refers:

The clause as formulated was agreed to subject to the legal advice still to be sought with regard to clause 20, as read with this clause.

5.2.8 Clause 6 "The franchise" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.9 Clause 7 "Application" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.10 Clause 8 "Equality" refers:

* It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

* With regard to clause 8 (3) (b), it was noted that the reference to the chapter dealing with restoration was still to be inserted by the Technical Committee.

5.2.11 Clause 9 "Life" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.12 Clause 10 "Human dignity" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.13 Clause 11 "Freedom and security of the person" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.14 Clause 12 "Servitude and forced labour" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

- 5.2.15 Clause 13 "Privacy" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.16 Clause 14 "Religion, belief and opinion" refers:
- * It was noted that clause 14 (3) which had been agreed to at a previous meeting of the Council and which reads "Nothing in this section shall preclude legislation recognising a personal and family law under religion and the validity of marriages" was still to be included.
- * It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.17 Clause 15 "Freedom of expression" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.18 Clause 16 "Assembly, demonstration and petition" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.19 Clause 17 "Freedom of association" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.20 Clause 18 "Freedom of movement" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.21 Clause 19 "Residence" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.22 Clause 20 "Citizens' rights" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

- 5.2.23 Clause 21 "Political rights" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.24 Clause 22 "Access to court" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.25 Clause 23 "Access to information" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.26 Clause 24 "Administrative justice" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.27 Clause 25 "Detained, arrested and accused persons" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.28 Clause 26 "Economic activity" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.29 Clause 27 "Labour Relations" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.30 Clause 28 "Property rights" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.31 Clause 29 "Environment" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

- 5.2.32 Clause 30 "Children" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.33 Clause 31 "Language and culture" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.34 Clause 32 "Customary law" refers:
- It was noted that clause 32 was to be deleted as a deadlock existed. The number of all subsequent clauses should be amended accordingly.
- 5.2.35 Clause 33 "Education" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.36 Clause 34 "Limitation" refers:
- * With regard to clause 34 (5) (b), the section referred to should be amended to read "section 2 (a)".
 - * The clause as formulated was agreed to.
- 5.2.37 Clause 35 "State of emergency and suspension" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.38 Clause 36 "Interpretation" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.39 With regard to whole of Chapter 4 "Parliament", it was noted that the Plenary should be requested to mandate the Council to revisit elements of Chapter 4 as a result of redrafting or further submissions by participants.
- 5.2.40 Clause 37 "Constitution of Parliament" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

- 5.2.41 Clause 38 "Legislative authority of the Republic" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.42 Clause 39 "Duration of Parliament" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.43 Clause 40 "Composition of the National Assembly" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.44 Clause 41 "Speaker and Deputy Speaker of the National Assembly" refers:
- * It was noted that the DP would submit a proposed amendment to this clause after the Plenary session. The Plenary would be requested to mandate the Council to deal with the proposed amendment.
 - * It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.45 Clause 42 "Qualification of Members of the National Assembly" refers:
- * It was noted that the Technical Committee was still to insert the agreement by Council that a person should qualify as a voter in terms of clause 6 to become a member of Parliament.
 - * It was noted that the balance of the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.46 Clause 43 "Vacation of Seats" refers:
- * The DP noted that it would submit an amendment to clause 43 (1) (b) after the Plenary.
 - * The South African noted that it would submit a proposal for an additional clause 43 (1) (f) after the Plenary.
 - * It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

- 5.2.47 Clause 44 "Quorum" refers:
- * The National Party noted that it would submit a amendment to this clause after the Plenary.
 - * It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.48 Clause 45 "Oath or Affirmation by Members of the National Assembly" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.49 Clause 46 "Sessions of the National Assembly" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.50 Clause 47 "Composition of the Senate" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.51 Clause 48 "President and Deputy President of the Senate" refers:
- * The DP noted that it would submit an amendment to clause 48 (2) after the Plenary.
 - * It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.52 Clause 49:
- It was noted that this clause was still subject to further attention by the Technical Committee.
- 5.2.53 Clause 50 "Qualification of members of the Senate" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.54 Clause 51 "Quorum" refers:
- * The National Party noted that it would submit an amendment to this clause after the Plenary.

* It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.55 Clause 52 "Oath or affirmation by Senators" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.56 Clause 53 "Vacation of Seats by Senators" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.57 Clause 54 "Sessions of the Senate" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.58 Clause 55 "Privileges and immunities of members of Parliament" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.59 Clause 56 "Public access to Parliament" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.60 Clause 56A "Rights and duties of President, the Deputy President and Ministers in Parliament" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.61 At this point, the South African Government noted that it would be making a submission to the Technical Committee on "Remuneration of Members of Parliament". This submission would be of a technical nature.

5.2.62 Clause 57 "Rules and orders and committees" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

- 5.2.63 Clause 58 "Ordinary legislation" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.64 Clause 59 "Finance Bills" refers:
- The clause as formulated was agreed to by consensus.
- 5.2.65 Clause 60 "Bills concerning specified provincial matters" refers:
- * Clause 60 (1) as formulated was agreed to by consensus.
 - * The DP reserved the right to revisit clause 60 (2).
- 5.2.66 Clause 61 "Amendment of the Constitution" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.67 Clause 62 "Requisite Majorities" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.68 Clause 63 "Assent to Bills" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.69 Clause 64 "Signature and enrolment of Acts" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.70 Clause 65 "The Constitution-making Body" refers:
- It was noted that the clause as formulated had been agreed to by Council at a previous meeting.
- 5.2.71 Clause 66 "Constitutional Principles" refers:
- * It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

* At this point the Chairperson ruled that as far as previously approved clauses from Chapter 5 onwards were concerned, these would remain unchanged. It was noted that should any participant wish to revisit any clauses after the Plenary, the proposed revisitation would be subject to the decision of the Negotiating Council at that stage. This ruling of the Chairperson was agreed to by Council.

* With regard to clause 66 (2), it was suggested that "one-third" should be amended to read "one-tenth". Other participants did not agree with this viewpoint. It was agreed to revisit this clause after informal discussions had occurred in this regard. After informal discussions had occurred, it was agreed to amend the one third provision to one fifth.

5.2.72 Clause 67 "Appointment of commissions, committees and advisory bodies" refers:

* The DP noted that it would make a submission with regard to the number of seats referred to in clause 67 (3). It was agreed that the Plenary should mandate the Negotiating Council to deal with this issue.

* It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.73 Clause 68 "Adoption of a new constitutional test" refers:

It was noted that this clause was still under discussion in the bilateral/multilateral meetings. It was agreed to revisit this clause once the results of the said meetings had been received.

5.2.74 Clause 69 "Amendment of this Chapter" refers:

It was noted that this clause as formulated had been agreed to by Council at a previous meeting.

5.2.75 Clause 70 "Executive power" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.76 Clause 71 "Head of State" refers:

It was noted that the clause as formulated had been agreed to

by Council at a previous meeting.

5.2.77 Clause 72 "Election of the President" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.78 Clause 73 "Oath or affirmation" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.79 Clause 74 "Tenure of office" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.80 Clause 75 "Responsibility of the President" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.81 Clause 76 "Powers and functions of the President" refers:

* It was noted that clauses 76 (1) and (2) as formulated had been agreed to by Council at a previous meeting.

* With regard to clause 76 (3), it was agreed to add the following words to the end of the clause:

"unless where provided for to the contrary in this Constitution."

* Clauses 76 (4) (a) and (b) were agreed to by consensus.

5.2.82 Clause 77 "Executive Deputy Presidents" refers:

* It was noted that clauses 77 (1), (2), (3), (4) and (5) as formulated had been agreed to by Council at a previous meeting.

* With regard to clause 77 (6), it was agreed that the clause should read "In appointing an Executive Deputy President to act as president during his/her absence or temporary incapacity, the President shall take into consideration the exigencies of government and the spirit underlying the concept of a Government of

National Unity provided that if the President is unable to do so, the Cabinet shall make such appointment taking into consideration the exigencies of government and the spirit underlying the concept of a Government of National Unity". The Technical Committee was requested to refine the drafting.

5.2.83 Clause 78 "Salaries of the President and Executive Deputy Presidents" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.84 Clause 79 "Removal from office of the President and filling of the vacancy" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.85 Clause 80 "The Cabinet" refers:

* It was agreed that clauses 80 (3) and (4) be merged to form one clause to read as follows:

"The President shall allocate portfolios in the Cabinet to parties after consultation with the Executive Deputy President and leaders of parties entitled to Cabinet portfolios and appoint Ministers on the advice of leaders of such parties: Provided that such allocations and appointments shall preferably be made on a basis of consensus and in the spirit underlying the concept of a Government of National Unity: Provided further that if consensus cannot be reached, the President's decision on the allocation of portfolios and the advice of the leaders of parties concerned on the persons to be appointed to the Cabinet from their parties shall prevail."

* The balance of the clause was agreed to as formulated.

5.2.86 Clause 81 "Procedure in the Cabinet" refers:

* Clause 81 (1) was agreed to as formulated.

* It was agreed that clause 81 (2) stands over. When the meeting returned to this clause, it was noted that the provision adopted in the bilateral document was

applicable to this clause (see item 5.2.214 below and Addendum L).

- 5.2.87 Clause 82 "Accountability of Ministers and the Cabinet" refers:
It was noted that the clause as formulated had been agreed to by the Council at a previous meeting.
- 5.2.88 Clause 83 "Vote of no confidence" refers:
It was noted that the clause as formulated had been agreed to by the Council at a previous meeting.
- 5.2.89 Clause 84 "Appointment of Deputy Ministers" refers:
It was noted that the clause as formulated had been agreed to by the Council at a previous meeting.
- 5.2.90 Clause 85 "Composition and functioning of Cabinet in the event of non-participation by parties" refers:
It was noted that the clause as formulated had been agreed to by the Council at a previous meeting.
- 5.2.91 Clause 86 "Judicial authority" refers:
It was noted that the clause as formulated had been agreed to by the Council at a previous meeting.
- 5.2.92 Clause 87 "Appointment of Chief Justice and President of the Constitutional Court" refers:
It was noted that the clause as formulated had been agreed to by the Council at a previous meeting.
- 5.2.93 Clause 88 "The Constitutional Court and its jurisdiction" refers:
It was noted that the clause as formulated had been agreed to by the Council at a previous meeting.
- 5.2.94 Clause 89 "Composition of the Constitutional Court and appointment of judges of the Constitutional Court" refers:
It was agreed that this clause would be revisited during the course of the day. When the meeting returned to this clause it was agreed to by sufficient consensus as amended (see

Addendum I). The AVU objected to the amendment.

5.2.95 Clause 90 "Engaging the Constitutional Court" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.96 Clause 91 "The Supreme Court" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.97 Clause 92 "Procedural Matters" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.98 Clause 93 "Other Courts" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.99 Clause 94 "Appointment, removal, term of office and tenure of judges" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.100 Clause 95 "Judicial Service Commission" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.101 Clause 96 "Seats of the Constitutional Court and the Appellate Division" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.102 Clause 97 "Languages of the courts" refers:

* Clause 97 (1) was agreed to as formulated.

* It was suggested that clause 97 (2) should read as follows:

"The record of the proceedings of a court shall be kept

subject to the provisions of section 3 of this Constitution."

It was agreed that the Technical Committee should take into account the above suggestion and revisit clause 97 (2). The Negotiating Council would receive the redrafted clause for approval.

5.2.103 Clause 98:

It was noted that this clause had been moved to Chapter 14.

5.2.104 Clause 99 "Attorney-General" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.105 Clause 100 "Magistrates Commission" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.106 Clause 1 "The Public Protector - Establishment and appointment" refers:

It was noted that the clause as formulated had been agreed to by Council at a previous meeting.

5.2.107 Clause 2 "The Public Protector - Independence and Impartiality" refers:

* It was agreed that clause 2 (3) should read "No member of the Cabinet of the Legislature or of any organ of the state or any other person shall interfere with the Public Protector in the exercise of his or her powers, duties and functions".

* The balance of the clause as formulated was agreed to.

5.2.108 Clause 3 "The Public Protector - Powers, Functions and Duties" refers:

The clause as formulated was agreed to.

5.2.109 Clause 4 "The Public Protector - Staff and expenditure" refers:

It was noted that the clause as formulated was agreed to by

Council at a previous meeting.

- 5.2.110 Clause 5 "The Public Protector - Provincial Public Protector offices" refers:

The clause as formulated was agreed to.

- 5.2.111 Clause 6 "Human Rights Commission - Establishment and appointment" refers:

The clause as formulated was agreed to.

- 5.2.112 Clause 7 "Human Rights Commission - Staff and expenditure" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

- 5.2.113 Clause 8 "Human Rights Commission - Reports" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

- 5.2.114 Clause 100 "Establishment of provinces" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

- 5.2.115 Clause 101 "Provincial legislature" refers:

* It was noted that as clause 101 (4) was still the subject of bilateral meetings it would be dealt with before the Negotiating Council adjourned. When the meeting returned to this clause, it was agreed to leave this clause to the Technical Committee for resolution, taking into account the debate and discussion in the Negotiating Council

* The balance of the clause as formulated was agreed to.

- 5.2.116 Clause 102 "Sessions and Speakers of Provincial Legislatures" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.117 Clause 103 "Qualifications for Election to Provincial Legislatures" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting. The ANC requested an opportunity to revisit this clause. This was agreed to.

5.2.118 Clause 104 "Vacation of Seats by Members of Provincial Legislatures" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.119 Clause 105 "Quorum of meetings of provincial legislature" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.120 Clause 106 "Requisite Majorities" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.121 Clause 107 "Rules and orders and committees" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.122 Clause 108 "Privileges and immunities of provincial legislatures" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.123 Clause 109 "Assent to Bills passed by the provincial legislatures" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.124 Clause 110 "Signature and Enrolment of provincial legislation" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

- 5.2.125 Clause 111 "Public access to provincial legislature" refers:
- It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.126 Clause 112 "Duration of the provincial legislature" refers:
- It was agreed that this clause stands over as it contained unresolved issues. When the meeting returned to this clause, it was agreed to refer this clause back to the Technical Committee, taking into account agreements reached in the Negotiating Council during the course of the meeting.
- 5.2.127 Clause 113 "Executive power of the province" refers:
- It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.128 Clause 114 "The Premier" refers:
- It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.129 Clause 115 "The Executive Council" refers:
- It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.130 Clause 116 "Procedure in the Executive Council" refers:
- * It was noted that clause 116 (1) as formulated was agreed to by Council at a previous meeting.
 - * It was agreed that clause 116 (2) stands over. When the meeting returned to this clause, it was noted that the provision in the bilateral document was applicable to this clause (see item 5.2.214 below and Addendum L).
- 5.2.131 Clause 117 "Accountability of Members of the Executive Council" refers:
- It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.132 Clause 117A "Remuneration of Premiers, Members of the Executive Council and Members of Provincial Legislatures" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.133 Clause 118 "Legislative competences of provinces" refers:

* It was noted that the Council had agreed to the insertion of the words "the protection of the environment" after the words "maintenance of economic unity" in clause 118 (3) (d) at its meeting of 16 November 1993 but the Technical Committee had not had the opportunity to insert to words into the text.

* It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.134 Clauses 119 and 120:

It was noted that these clauses had been removed to Chapter 14.

5.2.135 Clause 121 "Provincial finance and fiscal affairs" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.136 Clause 122:

It was noted that this clause was still receiving attention from the Technical Committee and would form part of the chapter dealing with Transitional Arrangements.

5.2.137 Clause 123 "Recommendations to Parliament" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.138 Clause 124 "Provincial Constitutions" refers:

It was agreed that this clause stands over.

- 5.2.139 Clause 125 "Development of constitutional provisions regarding provincial government" refers:
It was agreed that this clause stands over.
- 5.2.140 Clause 126 "Election of new provincial Governments" refers:
It was agreed that this clause stands over.
- 5.2.141 Clause 127 "Establishment of Commission on Provincial Government" refers:
It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.142 Clause 128 "Objects and functions of the Commission" refers:
It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.143 Clause 129 "Constitution and impartiality of the Commission" refers:
It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.144 Clause 130 "Chairperson and deputy chairperson" refers:
It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.145 Clause 131 "Vacation of office and filling of vacancies" refers:
It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.146 Clause 132 "Meetings of the Commission" refers:
It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.147 Clause 133 "Committees" refers:
It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.148 Clause 134 "Co-option of persons to serve on or advise committees" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.149 Clause 135 "Remuneration and allowances of members of the Commission and other persons" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.150 Clause 136 "Appointment of staff" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.151 Clause 137 "Regulations" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.152 Chapter 10 "Local Government" refers:

It was noted that this chapter was in the process of being typed as per the agreement of the Council at its meeting of 16 November 1993. It was agreed to revisit this chapter once the updated clauses had been received. When the meeting reconvened after dinner, the reformulated chapter was distributed. The chapter as amended was agreed to by consensus (see Addendum J).

5.2.153 Chapter "Y" "Traditional Authorities" refers:

It was noted that this section had not yet been updated with regard to amendments agreed upon by Council and would stand over until the updated clauses had been received.

5.2.154 At this point it was noted that the submission put to the Negotiating Council and forwarded to the Technical Committee on Constitutional Issues dealing with the proposed establishment of a commission to deal with gender and other related issues was still to be dealt with and should be followed up after the Plenary (see Addendum K). It was suggested that the submission could be addressed under the section entitled "Transitional Arrangements". If the Technical Committee was of the view that the submission should not be incorporated

under the suggested section, it should advise the Negotiating Council accordingly and submit a recommendation as to where the proposed Commission could best be dealt with in the Constitution.

5.2.155 Clause 143 "Finance - Vesting of Property" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.156 Clause 144 "Transfer of property" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.157 Clause 145 "Debts and liabilities" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.158 Clause 145A "Audit of property, debts and liabilities" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.159 Clause 146 "National Revenue Fund" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.160 Clause 147 "Appropriation bills" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.161 Clause 148 "Appropriation to be initiated by a Minister" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.162 Clause 149 "Annual Budget" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

- 5.2.163 Clause 150 "Procurement administration" refers:
- It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.164 Clause 151 "Guarantees by the national government" refers:
- It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.165 Clause 152 "Special pensions" refers:
- It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.166 Clause 161 "Establishment and appointment" refers:
- It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.167 Clause 162 "Independence and Impartiality" refers:
- It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.168 Clause 163 "Powers, Functions and Duties" refers:
- It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.169 Clause 164 "Staff and expenditure" refers:
- It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.170 Clause 165 "South African Reserve Bank - Central Bank" refers:
- It was noted that the clause as formulated was agreed to by Council at a previous meeting.
- 5.2.171 Clause 166 "South African Reserve Bank - Primary objectives" refers:
- It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.172 Clause 167 "South African Reserve Bank - Powers and duties" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.173 Clause 170 "Financial and Fiscal Commission - Establishment" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.174 Clause 171 "Financial and Fiscal Commission - Objects and functions" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.175 Clause 172 "Financial and Fiscal Commission - Constitution, expertise and impartiality" refers:

* It was noted that the word "experience" in clause 172 (1) should be replaced by the word "expertise" as had been agreed to by Council at a previous meeting.

* The balance of the clause as formulated had been agreed to by Council at a previous meeting.

5.2.176 Clause 173 "Financial and Fiscal Commission - Meetings of the Commission " refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.177 Clause 174 "Financial and Fiscal Commission - Committees" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.178 Clause 175 "Financial and Fiscal Commission - Co-option of persons to serve on or advise committees" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.179 Clause 176 "Financial and Fiscal Commission - Remuneration and allowances of members of the Commission and other persons" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.180 Clause 177 "Financial and Fiscal Commission - Appointment of Staff" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.181 Clause 178 "Financial and Fiscal Commission - Regulations" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.182 Clause 180 "Public Service Commission - Establishment" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.183 Clause 181 "Public Service Commission - Powers and functions" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.184 Clause 182 "Public Service Commission - Composition" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.185 Clause 183 "The Public Service" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.186 Clause 184 "Provincial Service Commissions" refers:

It was noted that the clause as formulated was agreed to by Council at a previous meeting.

5.2.187 Clause 185 refers:

It was noted that this clause had been removed to Chapter 14.

5.2.188 The meeting proceeded to deal with Chapter 13, "Police and Defence". It was noted that the PAC reserved its position on this chapter.

5.2.189 Clause 186 "South African Police Service - Establishment" refers:

* The South African Government requested that the Technical Committee should revisit the structure of this clause as provided for in the original submission to the Technical Committee. It was noted that this request did not amend the substance of the clause. During the course of the meeting it was noted that the South African Government agreed with the clause as formulated.

* The clause as formulated was agreed to.

5.2.190 Clause 187 "South African Police Service - Powers and functions" refers:

* The clause as formulated was agreed to.

5.2.191 Clause 188 "South African Police Service - Minister and Commissioner" refers:

* Clause 188 (1) as formulated was agreed to.

* It was agreed that clause 188 (2) stands over and that further informal discussion should occur. After informal discussions had occurred it was agreed that the clause reads as follows:

"The President shall appoint a Commissioner of the South African Police Service, who shall exercise executive command of the Service subject to the directions of the Minister referred to in subsection (1) and subject to section 191 (1)."

* Clause 188 (3) as formulated was agreed to.

5.2.192 Clause 189 "South African Police Service - Powers of Province" refers:

The clause as formulated was agreed to.

5.2.193 Clause 190 "South African Police Service - National Commissioner" refers:

* Clause 190 (1) as formulated was agreed to.

* It was noted that clause 190 (2) was the subject of further discussion and therefore stands over. After informal discussions had occurred it was agreed that the clause reads as follows:

"The National Commissioner may, after consultation with the relevant provincial executive, delegate responsibility for any function set out in this section to a Provincial Commissioner, provided that the National Commissioner shall ensure that sufficient resources are made available to the Provincial Commissioner."

5.2.194 Clause 191 "South African Police Service - Provincial Commissioners" refers:

The clause as formulated was agreed to.

5.2.195 Clause 192 "South African Police Service - Co-ordination and co-operation" refers:

The clause as formulated was agreed to.

5.2.196 Clause 193 "South African Police Service - Local Policing" refers:

* It was noted that the word "consent" should read "agreement" in clause 193 (3) (a).

* The balance of the clause as formulated was agreed to.

5.2.197 Clause 194 "South African Police Service - Independent complaints mechanism" refers:

The clause as formulated was agreed to.

- 5.2.198 Clause 195 "South African Police Service - Acts of members outside their territorial jurisdiction" refers:
- The clause as formulated was agreed to.
- 5.2.199 Clause 196 "South African Police Service - Transitional Provisions" refers:
- The clause as formulated was agreed to.
- 5.2.200 Clause 1 "National Defence Force - Establishment of a National Defence Force" refers:
- * Clause 1 (1) was agreed to as formulated.
 - * Clause 1 (2) was agreed to as formulated by sufficient consensus. The AVU noted its disagreement with this clause.
 - * Clause 1 (3) was agreed to as formulated.
- 5.2.201 Clause 2 "National Defence Force - Chief of the National Defence Force" refers:
- It was noted that this clause was still the subject of further discussion and therefore stands over. After informal discussions had occurred it was agreed that the words "Without derogating from the provisions of section 185 (2)" be deleted.
- 5.2.202 Clause 3 "National Defence Force - Members of the National Defence Force" refers:
- * The clause as formulated was agreed to.
 - * It was noted that the AVU objected to clause 3 (7).
- 5.2.203 Clause 4 "National Defence Force - Functions of the National Defence Force" refers:
- The clause as formulated was agreed to.
- 5.2.204 Clause 5 "National Defence Force - Accountability" refers:
- * It was agreed that the words "the employment of" be deleted from clause 5 (1). It was agreed that the provision of general accountability, inclusive of the accountability for employment was the preferred option

of the Council.

- * Clause 5 (2) was agreed to as formulated.
- * It was noted that the reference to the seats in clause 5 (3) (a) should read 10 and not 20 as had been agreed by the Council in a previous meeting. The balance of the clause was agreed to as formulated.
- * Clause 5 (3) (b) was agreed to as formulated.
- * Clause 5 (3) (c) was agreed to as formulated.
- * Clause 5 (4) was agreed to as formulated.
- * Clause 5 (5) was agreed to as formulated.

5.2.205 Clause 6 "National Defence Force - Transitional Provisions" refers:

- * It was suggested that this clause should form part of the chapter on "General and Transitional Provisions".
- * The clause as formulated was agreed to.

5.2.206 The meeting proceeded to deal with Chapter 14, "General and Transitional Provisions". The Technical Committee was requested to indicate the essential clauses for the adoption of the Draft Constitution for the Transition (see Negotiating Council minutes of 16 November 1993, item 5.7.29). It was noted that, due to time constraints, the Technical Committee had not finished the chapter. It was agreed to request the Plenary to refer this chapter back to the Negotiating Council for its further attention.

5.2.207 Schedule 1 "The National Territory and Boundaries and Designation of provinces" refers:

- * It was noted that the Technical Committee had received the resolution adopted by the Negotiating Council on 4 November 1993 on the report of the Co-ordinating Committee of the Ad-Hoc Committees on the Demarcation/Delimitation of SPR's and would draft accordingly with all the necessary technical details.
- * It was agreed to accept Schedule 1 in principle, as it would be drafted along the lines of the said resolution.

It was further agreed that Schedule 1 should come before the Negotiating Council after the Plenary in terms of its completion.

- * It was suggested that provision should be made within the Constitution for the changing of boundaries as soon as referendums had been held after the elections.

5.2.208 At this point the ANC and the South African Government presented a report resulting from bilateral meetings between themselves on outstanding constitutional issues. It was agreed to revisit the proposals after the meeting returned from tea (see Addendum L).

5.2.209 Schedule 3 "Oaths and Affirmations of Office" refers:

The Schedule was agreed to as formulated.

5.2.210 Schedule 4 "Constitutional Principles" refers:

- * The Schedule was agreed to as formulated with the proviso that Constitutional Principle No. 32 may require an amendment resulting from the bilateral understanding on outstanding constitutional issues (see item 5.2.208 above). Furthermore, there may also be a need for an additional constitutional principle also arising from the said bilateral understanding.

- * It was noted that the Technical Committee still had to incorporate the agreements reached in the Negotiating Council during the course of the week with regard to Constitutional Principle No. 28 and Constitutional Principle No. 30.

5.2.211 Schedule 5 "Procedure for the Election of the President" refers:

The Schedule was agreed to as formulated.

5.2.212 Schedule 6 refers:

The Schedule was agreed to as formulated.

5.2.213 Schedule 7 refers:

The Schedule was agreed to as formulated.

● meeting adjourned for tea at 17h30.

The meeting reconvened at 18h30.

5.2.214 Bilateral Understanding on Outstanding Constitutional Issues between the South African Government and the African National Congress (see Addendum L):

* The AVU, the DP and the PAC noted their objection to the package.

* Decision-making in Cabinet:

It was agreed by sufficient consensus that the Cabinet shall function in a manner which gives consideration to the consensus seeking spirit underlying the concept of a Government of National Unity as well as the need for effective government. It was noted that the PAC objected to this agreement.

* Government of National Unity:

It was agreed by sufficient consensus that national elections will not be held under a New Constitution adopted by the Constitutional Assembly until 1999, unless the Cabinet loses the confidence of Parliament. It was noted that the AVU and the PAC objected to this agreement.

* Boundaries, Powers and Functions of Provinces:

It was agreed by sufficient consensus that the provisions of the New Constitution to be adopted by the Constitutional Assembly regarding the boundaries, powers and functions of provinces, and any amendment thereto, will require the approval of the Senate with a two-thirds majority. If the deadlock-breaking mechanism comes into operation, a sixty percent majority in the Senate will be required. It was noted that the AVU and the PAC objected to the agreement.

* Provincial Constitutions:

It was agreed by sufficient consensus that immediately after the first elections, a provincial legislature shall be entitled to adopt a constitution for the province. The

provincial constitution must be consistent with the constitutional principles and the national constitution, and, after the final constitution had been adopted, consistent with that constitution. The Constitutional Court shall certify that the provincial constitution complies with the constitutional principles and the relevant national constitution. The AVU and the PAC objected to the agreement.

* Clause 32 of the Electoral Bill:

The bilateral document proposed the following with regard to clause 32 of the Electoral Bill:

- In the first elections for National and Provincial legislatures a single ballot paper will be used.
- A proposed formulation for Schedule 5 of the Constitution was submitted (see Addendum M).

Lengthy debate and discussion followed. It was noted that at this stage the following participants objected to the proposal:

- AVU
- The Cape Traditional Leaders
- Dikwankwetla
- DP
- NPP
- PAC
- Ximoko Progressive Party

Before a ruling was made on this issue, the Chairperson, in consultation with other members of the panel of Chairpersons, noted the following:

- That an Ad-Hoc Committee on the Electoral Bill had been sitting for some time on this issue and others;
- Many of the participants who had raised objections had been part of the Ad-Hoc Committee and had canvassed views for up to five weeks;
- That there was significant objection to the proposal at this stage but some flexibility was visible if time was allowed.

The Chairperson therefore ruled that this item stands down to allow time for participants to consult principals or to consult amongst themselves to facilitate the way forward. The item would be returned to during the course of the meeting. It was noted that the PAC objected to this ruling.

When the meeting reconvened after dinner, the proposal was again put before the meeting. It was noted only that the AVU and the PAC now objected to the proposal. Dikwankwetla and the DP noted that it reserved its position on the proposal. The proposal, was therefore, agreed to by sufficient consensus.

* **Deadlock-breaking Mechanisms:**

It was agreed by sufficient consensus that should the employment of a deadlock-breaking mechanism in the making of a new constitution become necessary, the deadlock-breaking procedures provided for in clause 68 (9) will culminate in the adoption of the new constitution by a majority of 60%. It was noted that the AVU and the PAC objected to the agreement. It was further noted that the DP objected to the 60% majority.

- * It was agreed to instruct the Technical Committee to incorporate the above agreements into the relevant sections of the Draft Constitution.

5.2.215 **Schedule 5 (see Addendum M):**

- * The DP reserved its position on the entire Schedule 5 and specifically objected against the one ballot provision.

- * The PAC reserved its position on the entire Schedule 5.

- * The AVU reserved its position on the entire Schedule 5.

- * **Paragraph 1 refers:**

The paragraph as formulated was agreed to by consensus.

- * **Paragraph 2a refers:**

It was suggested that the word "eligible" should be

inserted after the words "in respect of". It was noted that the Technical Committee would consider this suggestion in its drafting of this schedule. The Technical Committee was requested to take account of the decisions taken by the Negotiating Council in respect of the Eastern Cape and various other areas where separate counting was going to occur and there were separate lists. The paragraph as formulated was agreed to.

* Paragraph 2b refers:

The paragraph as formulated was agreed to.

* Paragraph 3 refers:

The paragraph as formulated was agreed to.

* Paragraph 4 refers:

The paragraph as formulated was agreed to.

* Paragraph 5 refers:

It was suggested that the words "plus one" should be inserted after the words "disregarding fractions". It was noted that the Technical Committee would consider this. With this proviso the paragraph as formulated was agree to.

* Paragraph 6 refers:

The paragraph as formulated was agreed to.

* Paragraph 7 refers:

The paragraph as formulated was agreed to.

* Paragraph 8 refers:

The paragraph as formulated was agreed to.

* Paragraph 9 refers:

The paragraph as formulated was agreed to.

* Paragraph 10 refers:
The paragraph as formulated was agreed to.

* Paragraph 11 refers:
The paragraph as formulated was agreed to.

* Paragraph 12 refers:
The paragraph as formulated was agreed to.

* Paragraph 13 refers:
The paragraph as formulated was agreed to.

* Paragraph 14 refers:
The paragraph as formulated was agreed to.

* Paragraph 15 refers:
The paragraph as formulated was agreed to.

* Paragraph 16 refers:
The paragraph as formulated was agreed to.

* Paragraph 17 refers:
It was suggested that a minimum (30) and a maximum (100) number of seats per province should be determined before the election. Furthermore, the same criteria should be utilised when allocating seats to the provincial lists. The Technical Committee was requested to consider this suggestion and its impact on this paragraph. The issue would then be revisited by the Negotiating Council. With this proviso, the paragraph as formulated was agreed to.

* Paragraph 18 refers:
The paragraph as formulated was agreed to.

* Paragraph 19 refers:
The paragraph as formulated was agreed to.

* Paragraph 20 refers:

The paragraph as formulated was agreed to.

* Paragraph 21 refers:

It was agreed that this paragraph stands over until the question of the ballot paper had been dealt with by the Council. Once the issue of the ballot paper had been dealt with, the paragraph as formulated was agreed to.

* Paragraph 22 refers:

The paragraph as formulated was agreed to.

* Paragraph 23 refers:

The paragraph as formulated was agreed to.

* Paragraph 24 refers:

The paragraph as formulated was agreed to.

* Paragraph 25 refers:

The paragraph as formulated was agreed to.

* Paragraph 26 refers:

The paragraph as formulated was agreed to.

* Paragraph 27 refers:

The paragraph as formulated was agreed to.

* Paragraph 28 refers:

The paragraph as formulated was agreed to.

5.2.216 Draft Resolution on Transitional Arrangements:

A proposed draft resolution was adopted by sufficient consensus by the Council (see Addendum N). It was noted that the AVU objected to this resolution.

5.2.217 Chapter "Y", "Restitution of Land Rights" refers:

It was noted that this report had been received from the Technical Committee on Fundamental Rights during the Transition and had been agreed upon by the Negotiating Council at its meeting of 16 November. The Technical Committee on Constitutional Issues was instructed to take this agreement of the Negotiating Council into account and place it in an appropriate section of the Draft Constitution.

5.2.218 It was suggested that the principle of proportional representation should be provided for and defined in the Draft Constitution and not in the Electoral Act. Clause 47 (2) "Composition of the Senate" refers. The Technical Committee noted that this concern would be provided for.

5.2.219 It was suggested that a mechanism should be provided for in the Draft Constitution in the event of the elections being declared not free and fair in one or more provinces. It was agreed to defer this issue back to the Negotiating Council for its attention. Participants were requested to make submissions to the Technical Committee in this regard. The deadline for the submissions was 17h00 on 19 November 1993.

The meeting adjourned for dinner at 20h15.

The meeting reconvened at 21h00.

5.2.220 Once all the outstanding issues had been dealt with, the Technical Committee on Constitutional Issues was thanked for the outstanding piece of work done on behalf of the Negotiating Council.

5.3 **Seventh Version of the Draft Electoral Bill by the Technical Committee on the Electoral Bill:**

5.3.1 The Technical Committee on the Draft Electoral Bill was welcomed. Present were J Bruwer (state law advisor), D Davis, F Ginwala and SK Ndlovu. Apologies were noted from HR Laubscher and RB Rosenthal. It was agreed to only process the outstanding clauses. All other clauses would be deemed to have been agreed upon by the Negotiating Council.

5.3.2 Definition "Republic" refers:

It was noted that the South African Government reserved its position on this clause.

5.3.3 Definition "District Electoral Officer" refers:

The definition was agreed to as formulated.

5.3.4 Definition "Provincial Electoral Officer" refers:

The definition was agreed to as formulated.

5.3.5 Definition "Party Election National Agent" refers:

The definition was agreed to as formulated.

5.3.6 Definition "Ordinary Resident" refers:

The definition was agreed to as formulated.

5.3.7 Definition "Identity Document" refers:

The definition was agreed to as formulated.

5.3.8 Clause 15 "Persons entitled to vote" refers:

- * Clause 15 (1) was agreed to as formulated.
- * Clause 15 (2) was agreed to as formulated.
- * Clause 15 (3) was agreed to as formulated.
- * It was agreed to amend clause 15 (4) to read as follows:

"Any person who satisfied the criteria referred to in paragraph (a), (b), (c) or (d) of subsection (3) shall be deemed to fulfil the requirement of section 4 of the Identification Act, 1986 (Act No. 72 of 1986), for the purposes of obtaining an identification document in terms of section 8 or a temporary identity certificate in terms of section 9 of the said Act or a temporary voter's card."

5.3.9 Clause 24 (5) "Voting stations" refers:

The clause as formulated was agreed to by sufficient consensus. It was noted that the NPP objected to this clause.

- 5.3.10 Clause 25 (2) "Foreign voting stations" refers:
The clause was agreed to as formulated.
- 5.3.11 Clause 29 "Ballot paper" refers:
The clause was agreed to as formulated.
- 5.3.12 Clause 44 "Counting of votes" refers:
The clause as formulated was agreed to by sufficient consensus.
The DP noted that it objected to this clause.
- 5.3.13 Clause 47 "Powers of Commission in event of serious voting irregularity" refers:
The principle of the clause was agreed to with the proviso that the Technical Committee could make some technical adjustments.
- 5.3.14 Clause 63 "Electoral Code of Conduct" refers:
- * It was noted that sub-clause (7) would be headed "Clause 64 Penalties and Sanctions in respect of infringement of the Electoral Code" and would commence with the words "Subject to sub-section 4". The proposed clause as formulated was agreed to.
 - * It was agreed that the words "or the non-acceptance of the results certified by the Commission" in clause 63 (1) (b) be deleted.
 - * It was noted that the DP expressed a reservation in terms of clause 63 (1) (b).
 - * It was noted that the phrase "non-acceptance of the results certified by the Commission" was contained in the definition of "party" in the IEC Act. It was suggested that this should be amended accordingly in line with the amendment on clause 63 (1) (b).
 - * The balance of clause 63 was agreed to as formulated.
- 5.3.15 Clause 64 "Application of Electoral Code of Conduct" refers:
It was noted that this clause should be deleted and had been included as a result of a typographical error and would be

replaced by the clause 64 as indicated in the first asterisk of item 5.3.14 above.

5.3.16 Clause 67 "Prohibition on certain political activities during certain periods prior to and during voting period" refers:

The clause as formulated was agreed to with the insertion of the words "or rally" after the words "public meeting" in sub-clause (b).

5.3.17 Clause 68 "Special State or foreign funding for registered parties in respect of elections" refers (see Addendum O):

- * It was agreed that the percentage in clause 68 (3) (a) (ii) should be amended to read "2%".
- * With regard to clause 68 (3) (b) it was agreed that as an alternative the Commission itself should conduct or cause the necessary polls to be conducted. The principle was agreed to. The Technical Committee was instructed to draft accordingly.
- * The Technical Committee was requested to technically reconsider clause 68 (4) (ii).
- * The balance of the clause as formulated was agreed to (see Addendum O).

5.3.18 Schedule 1 refers:

- * It was agreed to allow the choice of a vertical or a horizontal ballot paper to the IEC for its decision.
- * The Negotiating Council approved of option two and option four.
- * It was suggested that the words "in the square" should be inserted in the paragraph at the top of the ballot paper.
- * It was noted that the headings at the top of the ballot paper would be deleted.

5.3.19 Schedule 2 refers:

The Schedule as formulated was agreed to.

5.3.20 Clause 32 "Number of votes per voter" refers:

* It was agreed that, in terms of the Negotiating Council agreement, this clause should read as follows:

"A voter shall for the purposes of the first election for the National Assembly and other legislatures to be held after the commencement of this Act be issued with one ballot paper only."

* It was agreed that there would be one national ballot paper.

5.3.21 The Draft Electoral Bill was agreed to by general consensus subject to technical redrafting. The Technical Committee was thanked for its work so far completed. It was noted that the Administration would advise the Technical Committee on time frames for the completion of its work.

6. Procedure for Plenary

6.1 It was agreed that the leaders of delegations at the close of their speeches would sign the resolution itself of the Plenary of the Multi-Party Negotiating Process.

6.2 Negotiating Council participants were requested to immediately take up their seats for the commencement of the Plenary session.

7. Draft Programme and Meetings Schedule

The draft programme and meetings schedule were noted by participants (see Addendum P).

8. Closure

The meeting adjourned at 22h40

The minutes were ratified at the meeting of the Negotiating Council of 1993 and the amended version signed by the Chairperson of the original meeting on

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CHAIRPERSON

Addendum A

The following delegates and advisers were present at the meeting of the Negotiating Council on Wednesday 17 November 1993:

PJ Gordhan : Chairperson

Organisation	Delegates	Advisers
ANC	C Ramaphosa B Kgosisile	M Manzini T Botha
AVU	C Kruger S Burger	
Bophuthatswana		
Cape Trad. Leaders	M Nonkonyana SN Sigcau	GD Gwadiso DM Jongilanga
Ciskei		
DP	CW Eglin D Smuts	K Andrew T Leon
Dikwankwetla	SOM Moji JSS Phatang	K Ngwenya TJ Mohapi
IFP		
IYP	NJ Mahlangu NS Mtsweni	Q Vilankulu AP Laka
KP		
INM	SS Ripinga ND Mokoena	BJ Mogiba
Kwazulu		
Labour Party	L Landers C August	T Abrahams PAC Hendrickse
NIC/TIC	C Saloojee F Chochan	K Mayet PS Govender
NP	DJ de Villiers TJ King	L Wessels
NPP	A Rajbansi S Naidoo	G Chetty S Mudalay
OFS Trad. Leaders	MB Mota RH Mopeli	MA Molefe

●
PAC

B Desai
P de Lille

ER Sibeko

Solidarity

DS Rajah
K Moodley

T Palan

SACP

J Slovo
L Jacobus

SA Government

DPA Schutte
LR Brink

AF Tredoux
NW du Plessis

Transkei

Z Titus
N Jajula

R Nogumla

TVL Trad. Leaders

LM Mokoena
MA Netshimbupfe

NE Ngomane

UPF

A Chabalala
MJ Mahlangu

J Maake

Venda

SE Moeti

S Makhuvha
GM Ligege

XPP

GNK Hetisani

PT Shilubana

T Eloff : Administration
G Hutchings : Minutes
P Lelaka : Administration
M Radebe : Administration

EMBARGOED UNTIL THE START OF THE PLENARY

**PLENARY SESSION
OF THE MULTI-PARTY NEGOTIATING PROCESS
HELD ON WEDNESDAY 17 NOVEMBER 1993
AT THE WORLD TRADE CENTRE**

DRAFT AGENDA

Section 1 - Opening:

1. **Moment of Prayer/Meditation**
2. **Welcome**
3. **Rules for Plenary (see Addendum A, p4)**

Section 2 - Substantive Issues:

4. **Overview of Process (see Addendum B, p6)**
5. **Report of the Negotiating Council to the Plenary (see Addendum C, p7)**
 - 5.1 **Transitional Structures: (see Addendum D, p14)**
 - 5.1.1 **Transitional Executive Council**
 - 5.1.2 **Independent Electoral Commission**
 - 5.1.3 **Independent Media Commission**
 - 5.1.4 **Independent Broadcasting Authority**
 - 5.2 **Constitution for the Transitional Period (see Addendum E, p15)**
 - 5.3 **Electoral Bill**
 - 5.4 **Other proposed Bills or matters being considered**

Section 3 - Way Forward:

6. **Final Resolution (see Addendum F, p16)**
7. **Addresses by Leaders of Delegations (see Addendum G, p17)**

**Signing of Solemn Convention/Declaration of Commitment to Democracy
(available in meeting)**

8. **Closure**

Sessions of Chairpersons

Chairpersons : Judges P Schabort and I Mohamed:

Section 1 - Opening:

1. **Moment of Prayer/Meditation**
2. **Welcome**

Chairperson : L Landers

3. **Rules for Plenary**
 - 3.1 **Steering Committee**

Section 2 - Substantive Issues:

4. **Overview of Process**

Chairperson : B Kgositsile

5. **Report of the Negotiating Council to the Plenary**
 - 5.1 **Transitional Structures:**
 - 5.1.1 **Transitional Executive Council**
 - 5.1.2 **Independent Electoral Commission**
 - 5.1.3 **Independent Media Commission**
 - 5.1.4 **Independent Broadcasting Authority**

Chairperson : PJ Gordhan:

- 5.2 **Constitution for the Transitional Period**

Chairperson : DJ de Villiers:

- 5.3 **Electoral Bill**

Chairperson : MJ Mahlangu:

- 5.4 **Other proposed Bills or matters being considered**

Chairperson : M Finnemore:

Section 3 - Way Forward:

6. **Final Resolution**

Chairpersons : Judges P Schabert and I Mohamed:

7. **Solemn Convention/Declaration of Commitment to Democracy**
Signing and speeches by leaders

8. **Closure**

GUIDELINES/RULES FOR PLENARY

The following guidelines and rules are recommended to the plenary in order to facilitate the business of the Plenary.

1. **Role of the Plenary:**

The role of the Plenary is to formally adopt agreements. (As per the decision taken by general consensus at the Negotiating Forum Meeting of 1 April 1993.)

2. **Steering Committee:**

2.1 A Steering Committee consisting of the following persons shall be established by the Negotiating Council subject to approval by the Plenary:

- * B Alexander
- * C Eglin
- * PJ Gordhan
- * C Kruger
- * RP Meyer
- * MC Ramaphosa
- * S Sigcau
- * J Slovo
- * Z Titus
- * M Maharaj
- * SS van der Merwe

2.2 The Steering Committee will:

- * Assist the Chairpersons
- * Consider resolutions placed before Plenary
- * Help to manage the program
- * receive technical amendments if necessary

3. **Procedure on Substantive Issues:**

3.1 The TEC Act, the IEC Act, the IMC Act and the IBA Act will be put to the plenary for adoption as a package.

3.2 Participants should note that all Acts will have an addendum which will indicate the decision on each clause. A participant which reserved its position or objected will observe that its position has been recorded as such in the

addendum. There would be, therefore, no need for any participant to verbalise such reservation and objection in the plenary.

3.3 There will, therefore, be no debate on substantive issues, participants will be permitted to have their reservations/objections recorded if necessary.

3.4 Constitution for Transition:

Each Chapter/Schedule of the draft Constitution will be put to the Plenary for adoption. Clause 3.3 above will apply in this instance as well.

4. **Time:**

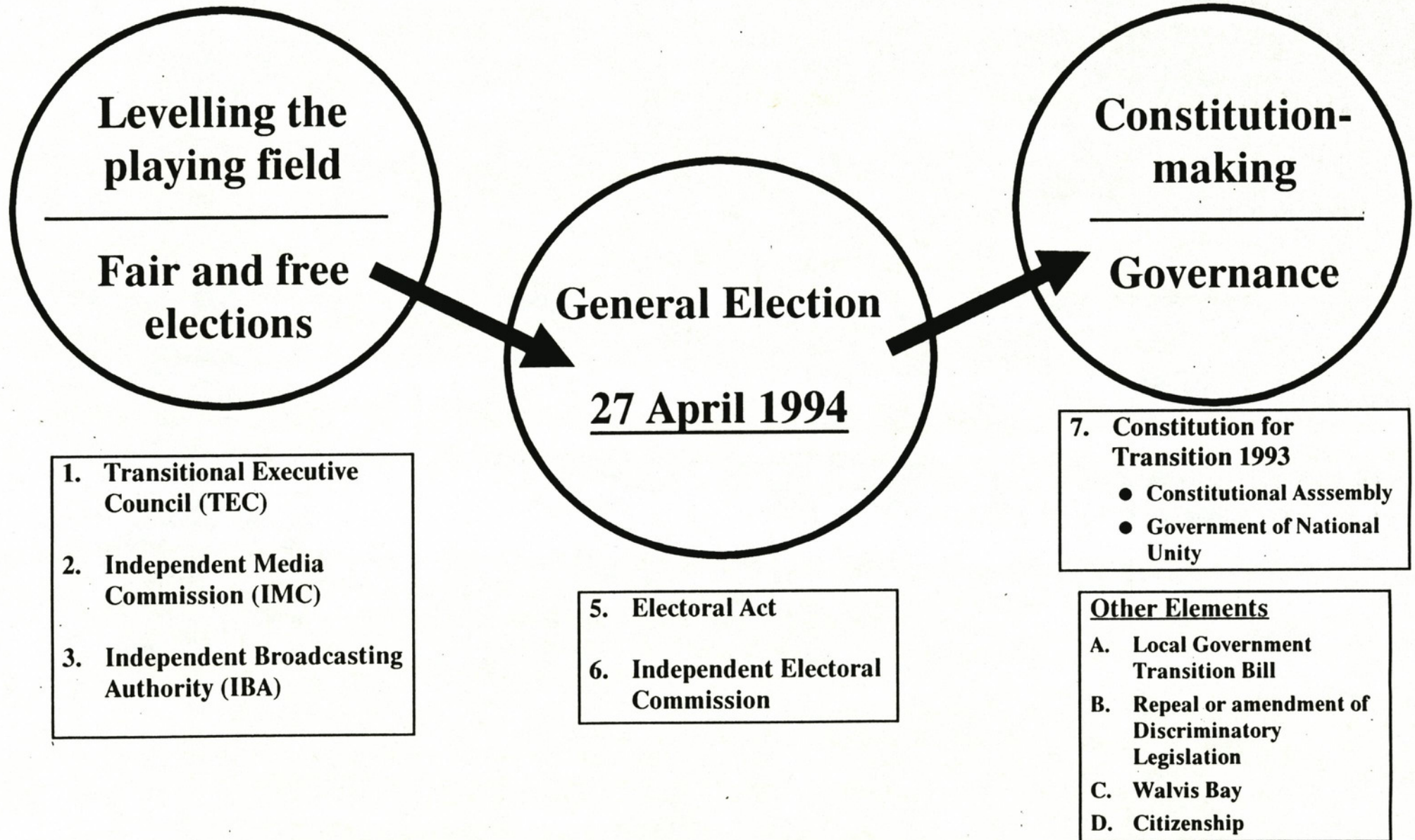
4.1 The interventions indicated in 3.3 above should be brief and should not exceed 2/3 minutes for each organisation for each item of the agenda.

4.2 Leaders will be permitted 6 minutes to address the Plenary under item 7 of the agenda.

5. **Technical Amendments:**

Any technical amendments proposed during the plenary will be referred to the Negotiating Council for consideration.

OVERVIEW OF TRANSITIONAL PROCESS



SECOND DRAFT PLENARY RESOLUTION 1

**DRAFT RESOLUTION OF PLENARY
OF MULTI-PARTY NEGOTIATING PROCESS
ON ENDORSEMENT OF LEGISLATION
ADOPTED BY NEGOTIATING COUNCIL**

This Plenary of the Multi-Party Negotiating Process held on Wednesday, 17 November 1993 at the World Trade Centre:

1. Noting the:

- 1.1 Adoption of the Transitional Executive Council Bill, the Independent Electoral Commission Bill, the Independent Media Commission Bill and the Independent Broadcasting Authority Bill by the Negotiating Council; and
- 1.2 Enactment of these Bills by Parliament and their subsequent publication in the Government Gazette.

2. Hereby resolves to:

- 2.1 Endorse the Transitional Executive Council Act, the Independent Electoral Commission Act, the Independent Media Commission Act, the Independent Broadcasting Authority Act;
- 2.2 Mandate the Negotiating Council to take the necessary steps to implement these Acts; and
- 2.3 Mandate the Negotiating Council to process any technical amendments to these Acts should this be necessary.

SECOND DRAFT PLENARY RESOLUTION 2

DRAFT RESOLUTION OF PLENARY OF MULTI-PARTY NEGOTIATING PROCESS ON THE CONSTITUTION FOR THE TRANSITIONAL PERIOD

This Plenary of the Multi-Party Negotiating Process held on Wednesday, 17 November 1993 at the World Trade Centre:

1. **Noting:**

The report of the Negotiating Council on the Constitution for the Transitional Period;
and

2. **Therefore Resolves to:**

2.1 Agree on the draft of the Constitution for the Transition; and

2.2 Mandate the Negotiating Council to agree on outstanding issues in this regard, to agree on necessary technical amendments and to monitor the legislative process.

SECOND DRAFT PLENARY RESOLUTION 3

DRAFT RESOLUTION OF PLENARY OF THE MULTI-PARTY NEGOTIATING PROCESS ON A MANDATE TO THE NEGOTIATING COUNCIL

This Plenary of the Multi-Party Negotiating Process held on Wednesday, 17 November 1993 at the World Trade Centre:

1. **Salutes:**

The commendable progress made by the Negotiating Council in concluding negotiations on constitutional issues;

2. **Humbly Aware:**

Of the momentous agreements reached in the negotiating process which provide a constructive foundation for a transition to democracy;

3. **Recognising:**

That the Negotiating Council still has matters before it which require further attention;

4. **Therefore Resolves:**

To adopt with acclaim the package of agreements presented by the Negotiating Council to this PLENARY, including the election date of 27 April 1993;

5. **And Further Resolves to Mandate the Negotiating Council:**

5.1 To continue with the negotiating process in order to complete the work before it/to complete the work of the Multi-Party Negotiating Process;

5.2 To establish the Transitional Executive Council which shall be the successor to the Negotiating Council;

5.3 To undertake such technical amendments in order to finalise the Acts endorsed by the plenary as might be necessary;

5.4 To supervise the legislative process in respect of the Acts.

ORDER OF SPEAKING

1. African National Congress
2. Afrikaner Volksunie
3. Cape Traditional Leaders
4. Democratic Party
5. Dikwankwetla Party
6. Intando Yesizwe Party
7. Inyandza National Movement
8. Labour Party
9. Natal/Transvaal Indian Congress
10. National Party
11. National People's Party
12. Orange Free State Traditional Leaders
13. Pan Africanist Congress of Azania
14. Solidarity Party
15. South African Communist Party
16. Transkei Government
17. Transvaal Traditional Leaders
18. United People's Front
19. Venda Government
20. Ximoko Progressive Party
21. South African Government

**REPORT OF THE NEGOTIATING COUNCIL
TO PLENARY OF THE MULTI-PARTY NEGOTIATING PROCESS
HELD ON WEDNESDAY, 17 NOVEMBER 1993
AT THE WORLD TRADE CENTRE**

1. Introduction:

- 1.1 The Planning Conference which met on 5 and 6 March, 1993 adopted a "Resolution on the Need for the Resumption/Commencement of Multi-Party Negotiations" (RESOLUTION NO. 2) in terms of which it resolved to:
 - 1.1.1 "commit ourselves, individually and collectively, to the resumption/commencement of multi-party negotiations within next month, in order to move as speedily as possible towards the attainment of our primary objective, which is the drafting and adoption of a new Constitution for South Africa";
 - 1.1.2 direct the multi-party negotiating forum established pursuant to the above to consider and implement various matters.
- 1.2 The Negotiating Forum meeting on 1 April, 1993, resolved (RESOLUTION NO. 4) to refer a number of constitutional issues to the Negotiating Council for its consideration. The Forum also adopted a resolution on violence (RESOLUTION NO. 5).
- 1.3 On 30 April, 1993 the Negotiating Council adopted an "Explanatory Memorandum" which, inter alia, stated:
 - "6. It is expressly understood by all participants that each of the above proposals and the documentation emanating from such technical committees shall be discussed in the Negotiating Council with the view to arriving at an agreement on these matters. Furthermore that as and when agreement is reached on each of these matters the Council shall expressly determine when and how the specific agreement shall be implemented. This provision is made so as to ensure participants have a clear understanding of the package of agreements which would constitute the key elements of the transition process".
- 1.4 This report of the Negotiating Council presents the progress made by the Negotiating Council on:
 - 1.4.1 "the package of agreements which would constitute the key elements of the transition process";

- 1.4.2 the work of the Negotiating Council generally;
- 1.4.3 the "levelling" mechanisms, viz., the Transitional Executive Council, the Independent Media Commission and the Independent Broadcasting Authority;
- 1.4.4 the holding of elections, in particular the election date; the Independent Electoral Commission and the Electoral Act;
- 1.4.5 the Constitution for the Transitional Period;
- 1.4.6 certain outstanding matters which have a bearing on the above; and
- 1.4.7 other matters, such as the role of the International Community.

2. Work of The Negotiating Council:

- 2.1 The Negotiating Council has had seventy-four meetings between 1 April and 17 November, 1993 (Addendum O).
- 2.2 The Negotiating Council established seven Technical Committees, two Commissions, two Task Groups and various ad hoc and sub-committees which assisted the Negotiating Council in its work.
- 2.3 The Planning Committee of the Negotiating Council, established to facilitate the work of the Negotiating Council, had sixty-three meetings from 1 April to 17 November, 1993.

3. Four Bills Already Approved and Enacted by Parliament:

- 3.1 The following were the first bills to be adopted by the Negotiating Council and submitted to Parliament for enactment, viz.:
 - (a) the Transitional Executive Council Bill;
 - (b) the Independent Media Commission Bill;
 - (c) the Independent Broadcasting Authority Bill; and
 - (d) the Independent Electoral Commission Bill.

These were enacted during the September session of Parliament.

- 3.2 The Transitional Executive Council (TEC) Bill:

- 3.2.1 This Bill established the TEC. The TEC was established with a view to promoting the preparation for and transition to a democratic order in South Africa. It will be assisted in the execution of its functions by a number of Subcouncils.
- 3.2.2 Addendum F provides details of the decisions taken by the Negotiating Council on each clause of the Bill.
- 3.2.3 The TEC Bill was adopted by sufficient consensus in the Negotiating Council with:
- (a) The Afrikaner Volksonie reserving their position;
 - (b) The Governments of Bophuthatswana and Ciskei opposing the acceptance of the draft Bill, and the Pan Africanist Congress of Azania abstained from being party to the decision of adopting the draft Bill until further consultation with its principals.
- 3.3 Independent Media Commission (IMC) Bill:
- 3.3.1 This Bill established the IMC. The IMC is a body established for purposes of ensuring, during the period of the first national election for the National Assembly and other legislatures under the Constitution to be held after the commencement of this Act, the equitable treatment of political parties by broadcasting licensees and that State-financed publications and State information services do not advance the interests of any political party.
- 3.3.2 Addendum J provides details of the decisions taken by the Negotiating Council on each clause of the Bill.
- 3.3.3 The IMC Bill was adopted by general consensus in the Negotiating Council.
- 3.4 Independent Broadcasting Authority (IBA) Bill:
- 3.4.1 This Bill establishes the IBA. The IBA was established to provide for the regulation of broadcasting activities in the public interest and functions wholly independently of State, governmental and party political influences and free from political or other bias or interference.
- 3.4.2 Addendum L provides details of the decisions taken by the Negotiating Council on each clause of the Bill.
- 3.4.3 The IBA Bill was adopted by general consensus in the Negotiating Council.

3.5 Independent Electoral Commission (IEC) Bill:

3.5.1 This Bill establishes the IEC. The IEC has been established for purposes of ensuring the conduct of free and fair elections for the National Assembly and any other elected legislature contemplated in the Constitution of the Republic of South Africa Act, 1993.

3.5.2 Addendum H provides details of the decisions taken by the Negotiating Council on each clause of the Bill.

3.5.3 The IEC Bill was adopted by general consensus in the Negotiating Council. The AVU reserved its position.

3.6 Recommendation:

The Negotiating Council recommends that the Plenary:

- (a) Endorses these four Bills which are now Acts of Parliament;
- (b) Instructs the Negotiating Council to implement these Acts when appropriate and also to undertake the necessary preparatory work in respect of the implementation of these Bills.

4. **Constitution for the Transitional Period:**

4.1 On 30 June, 1993 the Negotiating Council as per Resolution No. 21 resolved:

- (a) that "the Multi-Party Negotiating Process shall adopt the Constitutional Principles, including principles of regional government, providing for both strong regional government and strong national government"; and
- (b) instructed 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 government 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".
- 4.2 The Draft of the Constitution for the Transitional Period which is being presented for consideration of the Plenary appears in Addendum Q.
- 4.3 This draft contains all the chapters and schedules of the said Constitution but still requires technical revision.
- 4.4 Recommendation:
- 4.4.1 The Negotiating Council recommends that the Plenary endorses this draft of the Constitution for the Transitional Period.
 - 4.4.2 The Negotiating Council recommends that it be mandated to complete further technical processing of this draft Constitution for the Transitional Period and submit it to Parliament.

5. Electoral Bill:

- 5.1 On 22 June 1993, the Negotiating Council agreed that an Electoral Bill shall be drafted for the purposes of the election to be held on 27 April 1994.
- 5.2 The Negotiating Council submits a draft of the Electoral Bill for consideration by the Plenary of the Multi-Party Negotiating Process (Addendum R).
- 5.3 Addendum S is a schedule of decisions in respect of the Electoral Bill which indicates the status of the various clauses of the Bill.
- 5.4 Recommendation:
 - 5.4.1 The Negotiating Council recommends that the Plenary endorses the Electoral Bill.
 - 5.4.2 The Negotiating Council recommends that it be mandated to complete further technical processing of this draft Electoral Bill and submit it to Parliament.

● **Role of The International Community:**

6.1 The Negotiating Council has given consideration to the role of the International Community in respect of various elements of the transition process. Provision has been made for their participation in the IEC and in various other aspects relating to the electoral process.

6.2 The Negotiating Council acknowledges that the International Community has a vital and indispensable role in the transition process in South Africa and looks forward to their involvement in the process leading up to the elections.

6.3 Recommendation:

The Plenary directs the Negotiating Council to inform the respective international organisations of their role in the transition process.

7. **Other Matters Receiving Attention:**

7.1 The following bills or matters which may result in legislation are in various stages of discussion or processing in the Multi-Party Negotiating Process:

7.1.1 Local Government Transition Bill;

7.1.2 Repeal or Amendment of Discriminatory Legislation and Legislation impeding Free Political Activity;

7.1.3 Reintegration of Walvis Bay into Namibia;

7.1.4 Citizenship;

7.1.5 Bill dealing with the future of TBVC States;

7.1.6 Establishment of an Independent Telecommunications Authority.

7.2 These matters are not vital to the principal package of key elements but might be necessary to give effect to the resolutions already adopted by the Negotiating Council. The decisions taken on repeals appear in Addendum M3.

7.3 Recommendation:

The Negotiating Council, therefore, recommends to Plenary that it:

7.3.1 Endorses the need for these matters to be dealt with and finalised by the Negotiating Council; and

7.3.2 Mandates the Negotiating Council to continue to finalise these matters and thereafter submit to Parliament any required legislation and, where appropriate, take the necessary steps to implement the resultant legislation.

PROPOSED AMENDMENTS TO CLAUSE 89

1. Insert the following new subclause (5):

- "(5) (a) Subject to the provisions of subclause (6), appointments in terms of sections 87(2) and 89(4) and (5) shall only be made on the recommendations of the Judicial Service Commission together with its motivation for such recommendations of not more than three nominees more than the number of persons required to be appointed: Provided that in the event of the appointment of the first six judges referred to in section 89(4), the Judicial Service Commission shall submit a list of ten nominees.
- (b) If the appointing authorities decide not to accept all or some of such recommendations, the Judicial Service Commission shall be informed thereof and be furnished with the reasons therefor.
- (c) After having been informed in terms of paragraph (b), the Judicial Service Commission shall, in accordance with the provisions of paragraph (a), submit further recommendations whereafter the appointing authorities shall fill the vacancies from the names submitted in the latter recommendations.
- (d) In submitting its recommendations to the appointing authorities in terms of paragraphs (a) and (c) the Judicial Service Commission shall have regard for the need to constitute a court which is independent, competent and representative in respect of race and gender.

2. Insert the following new subclause (6):

- (6) "Recommendations referred to in section 89(5) shall not be required in respect of the appointment of the first President of the Constitutional Court referred to in section 87(2)."

3. Renumber the existing subclause (5) as subclause (7).

**Chapter 10
Local Government**

Establishment and status of local government

140. (1) Local government shall be established for residents of areas demarcated by law.
- (2) Any law passed by a competent legislature providing for or relating to local government may make provision for categories of metropolitan, urban and rural governments with the differentiated powers, functions and structures according to considerations of demography, economy, physical and environmental conditions and other factors which justify or necessitate such categories.
- (3) A local government shall be autonomous and within the limits prescribed by law, shall be entitled to regulate its affairs.
- (4) A competent legislature shall not encroach on the powers, functions and structure of a local government to such an extent as to compromise the fundamental status, purpose and character of local government.
- (5) A bill of a competent legislature which materially affects the status, boundaries, powers and functions of local government shall be published for comment in the Government Gazette or the Provincial Gazette as the case may be, and a local government, interested persons or groups of persons affected thereby, including organised local government shall be given a reasonable opportunity to make written representations in regard thereto to the legislature concerned.

Powers and functions of local government

141. (1) The powers, functions and structures of local government shall be determined by law.
- (2) A local government shall have powers and functions to provide such services as may be necessary to maintain and promote the wellbeing of all persons within the area of the local government.

- (3) A local government shall to the extent determined in any applicable law make provision for access by all persons residing within its area of jurisdiction to water, sanitation, transportation facilities, electricity, primary health, education, housing and security, within a safe and healthy environment: provided that such services and amenities are rendered in a sustainable manner and are financially and physically practicable.
- (4) A local government shall have the power to make by laws not inconsistent with an Act of Parliament or a provincial law.
- (5) A local government shall have executive powers which shall allow it to function effectively.
- (6) A local government may, in its discretion by means of a council resolution, provide for the delegation of specified functions to local bodies or submunicipal entities within its area of jurisdiction as prescribed and regulated in law where, in the opinion of the council, such delegation shall facilitate or enhance the provision or administration of services, the adherence to municipal by laws or, more generally, further good governance in the public interest: Provided that:-
 - (a) such delegation shall not be inconsistent with provincial and or national legislation; and
 - (b) such delegation shall not constitute the abrogation by the local authority of its primary political responsibilities.

142. **Council resolutions**

A resolution of a council of a local government pertaining to the budget shall be taken by a two-thirds majority, and a resolution of such council pertaining to town planning shall be taken by an absolute majority of all councillors.

143. **Executive Committee**

A council of a local government shall elect according to a system of proportional representation from amongst its members an executive committee to exercise such powers and perform such duties and functions determined by such council: Provided that -

- (a) the council shall determine the number of members of and the quorum for the executive committee;
- (b) the executive committee shall exercise its powers and perform its functions and duties on the basis of consensus: Provided that where consensus cannot be achieved, any resolution of the executive committee shall be taken by a two-thirds majority; and
- (c) the executive committee may, instead of exercising such power or performing such duty or function, submit its report and recommendation to the council concerned for its decision in the matter.

144. Administration and finance

- (1) The local government shall ensure that its administration is based on the sound principles of public administration, good government and public accountability so as to render efficient services to the persons within its area of jurisdiction and effective administration of its affairs.
- (2) A local government shall, subject to conditions prescribed by law passed by a competent legislature after taking into consideration recommendations of the Financial and Fiscal Commission, be competent to levy and recover such property rates, levies, fees, taxes and tariffs as may be necessary to exercise its powers and perform its duties and functions : provided that within each local government such rates, levies, fees, taxes and tariffs shall be based on a uniform structure for its area of jurisdiction.
- (3) A local government shall be entitled to an equitable allocation by the provincial government of funds and the Financial and Fiscal Commission shall make recommendations regarding criteria for such allocations taking into account the different categories of local government referred to in section 140 (2).

145. Elections

- (1) A local government shall be elected democratically and such elections shall take place in terms of provincial legislation and at intervals of not less than 3 and not more than 5 years: Provided that the first local government elections after the coming into force of this Constitution shall take place on the same day.

- (2)(a) The electoral system for a local government shall include both proportional and ward representation and shall be regulated by a competent legislature.
- (2)(b) For the purposes of the first election for members of a local government, the area of jurisdiction of such local government shall be divided into wards in accordance with the applicable law.
- (2)(c) Forty percent of the members of local government shall be elected according to the system of proportional representation applying at the national level and sixty percent of the members shall be elected on the basis that each such member shall represent a ward as contemplated in paragraph (b): Provided that where the area of jurisdiction of the local government includes -
 - (i) the area of jurisdiction of any institution or body contemplated in section 84 (1) (f) of the Provincial Government Act, 1961 (Act No 32 of 1961); and
 - (ii) any other area not falling within the area of jurisdiction of the institution or body referred to in subparagraph (i),

no area referred to in subparagraphs (i) and (ii) shall be allocated less than half of the total number of wards of the local government concerned
- (3) A voter for the election of a local government shall be -
 - (a) a natural person who -
 - (i) is eligible to vote in terms of section 6 of this Constitution ;
 - (ii) is ordinarily resident within the area of jurisdiction of the local government for which such election is held, or under law is liable for the payment of assessment rates, rent, service charges or levies to the local government concerned;
 - (iii) is registered on the voter's role of the local government.
- (4) A voter shall not have more than one vote per local government.
- (5) No person shall be elected a member of a local government if he or she -
 - (a) is not eligible to vote in terms of subsection (3); and
 - (b) is an elected member of the National Assembly or the Senate; or

- (c) does not qualify to be elected as a member of the National Assembly under this Constitution; or
- (d) is an employee of a local government unless, with due regard to the public interest, exemption of disqualification is given by the executive council of the province and proof of such exemption accompanies the nomination of such person; and
- (e) is disqualified in terms of any other law.

146. **Code of conduct**

An enforceable code of conduct for members and officials of local government shall be provided for by law.

147. **Transitional arrangement**

- (1) Until elections have been held in terms of the Local Government Transition Act, 1993, restructuring of local government shall not take place otherwise than in accordance with the provisions of that Act.
- (2) Restructuring of local government which takes place as a result of legislation enacted by a competent authority after the election referred to in subsection (1) have been held, shall be effected in accordance with the principles embodied in this chapter and the Constitution as a whole.

**PROPOSALS TO TECHNICAL COMMITTEE ON
CONSTITUTIONAL ISSUES ON THE ESTABLISHMENT
OF A COMMISSION TO DEAL WITH GENDER
AND OTHER RELATED ISSUES**

1. In accordance with the directive given by the Negotiating Council on 16 November instant we present herewith our suggested addition to the Constitution. We wish to state that our recommendations have the support of the Women's Caucus.
2. The motivation and necessity for establishing a commission has already been set out in the proposal currently serving before you.
3. The importance of obtaining advice by legislative authorities from those who are not in parliament has been recognised in the draft Constitution (see clause 67).
4. We propose that provision be made in the draft constitution for the establishment of a commission on the status of women and other related issues and that the detailed functioning thereof be provided for in a future law.
5. We therefore recommend that the relevant clause should read thus:

"Development of law in so far as it relates to women.

- A. For purposes of the development of the law (including customary law and or indigenous law) relating specifically to women, and in order to give effect to the provisions of chapter three of this Constitution and the other provisions thereof, there shall be established by Act of Parliament a commission which shall make recommendations to a provincial legislature, the National Assembly or the Senate on any law (including the common law and indigenous law), proposed legislation or any other matter relating to women."

OR

"Establishment of a commission on status of women.

- B(1) There is hereby established a commission which shall have power to make recommendations to a provincial legislature, the National Assembly or the Senate on any law (including the common law and indigenous law) or proposed legislation or on any other matter relating to the status of women.
- (2) The Commission shall also have power to make recommendations to the bodies specified in subsection (1) on the provisions of any law (including the common law and indigenous law) so as to bring it into conformity with Chapter 3 and the other provisions of this Constitution.

- (3) The composition, terms of office, functions, procedures and all other matters relating to, or to the functioning of, such commission shall be prescribed by law."
6. These are the two options we are offering to you. It appears to us that any one of them could easily be accommodated under chapter 13 of the draft Constitution.

TRANSKEI GOVERNMENT DELEGATION
16 NOVEMBER 1993

17 November 1993

The SA Government and the African National Congress hereby submit to the Negotiating Council a package of proposed solutions relating to certain outstanding constitutional and electoral issues.

BILATERAL UNDERSTANDING ON OUTSTANDING CONSTITUTIONAL ISSUES BETWEEN THE SOUTH AFRICAN GOVERNMENT AND THE AFRICAN NATIONAL CONGRESS

1. Decision-making in Cabinet:

The Cabinet shall function in a manner which gives consideration to the consensus seeking spirit underlying the concept of a Government of National Unity as well as the need for effective government.

2. Government of National Unity:

National elections will not be held under a New Constitution adopted by the Constitutional Assembly until 1999, unless the Cabinet loses the confidence of Parliament.

3. Boundaries, Powers and Functions of SPR's:

The provisions of the New Constitution to be adopted by the Constitutional Assembly, regarding the boundaries, powers and functions of provinces, and any amendment thereto, will require the approval of the Senate with a two-thirds majority. If the deadlock-breaking mechanism comes into operation, a sixty percent majority in the Senate will be required.

4. SPR Constitutions:

Immediately after the first elections, a provincial legislature shall be entitled to adopt a constitution for their province. The provincial constitution must be consistent with the constitutional principles and the national constitution, and, when the final constitution is adopted, consistent with that constitution. The constitutional court shall certify that the provincial constitution complies with the constitutional principles and the relevant national constitution.

5. Clause 32 of the Electoral Bill:

- (a) In the first elections for national and SPR legislatures a single ballot paper will be used.
- (b) A proposed formulation for Schedule 5 of the Constitution is submitted herewith.

6. Deadlock-breaking Mechanisms:

Should the employment of a deadlock-breaking mechanism in the making of a new constitution become necessary, the deadlock-breaking procedures provided for in clause 68(9) will culminate in the adoption of the new constitution by a majority of 60%.

Assessment M

SCHEDULE 5

System for the Election of the National Assembly and SPR Legislatures

Nomination of candidates and compilation of party lists

1. Parties registered in terms of the Electoral Act, 1993, shall nominate candidates for election to the National Assembly and SPR legislatures on lists of candidates in accordance with the provisions of the Electoral Act, 1993, and compile such lists in accordance with the provisions of this Schedule.
2. The 400 seats in the National Assembly shall be filled in the following way:
 - (a) 200 seats from regional lists, with a fixed number being allocated to each region by the Independent Electoral Commission taking into account available scientifically based data in respect of voters and representations by interested parties and with due regard to the following distribution:

Western Cape	-	21 seats
Eastern Cape	-	26 seats
Northern Cape	-	4 seats
Natal	-	40 seats
Orange Free State	-	15 seats
North West	-	17 seats
Northern Transvaal	-	20 seats
Eastern Transvaal	-	14 seats
PWV	-	43 seats
 - (b) 200 seats from the national list in order to restore proportionality in accordance with the total number of votes cast for each party in the national election.
3. A list of candidates submitted by a party for election to the National Assembly shall contain the names of not more than 400 candidates in such fixed order of preference as that party may determine.
4. A list of candidates may consist of -
 - (i) both a national and regional lists; or
 - (ii) regional lists,

and in such proportions as that party may determine in the case of a list referred to in paragraphs (i) and (ii).
5. For the purpose of filling the two hundred seats in the National Assembly contemplated in item 2(a), the total number of votes cast in a region shall be divided by the number of seats plus one in that region and the result, disregarding fractions, shall be the quota of votes per seat.
6. The total number of votes cast in favour of a registered party, shall be divided by the quota of votes per seat and the result shall, subject to item 7, determine the number of seats allocated to that party.

7. Where the formula set out in item 6 yields a surplus not absorbed by the number of seats allocated to the party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any undistributed seat or seats (in terms of the formula set out in item 6) shall be awarded to the party or parties concerned in sequence of the highest surplus.
8. For the purpose of filling the 200 seats contemplated in item 2(b), the total number of votes cast in a general election shall be divided by 400 plus one and the result, disregarding fractions, shall be the quota of votes per seat.
9. The total number of votes cast in favour of a registered party, shall be divided by the quota of votes per seat and the result shall, subject to items 10 and 11, determine the number of seats allocated to that party.
10. Where the formula set out in item 9 yields a surplus fraction not absorbed by the number of seats allocated to the party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any undistributed seat or seats (in terms of the formula set out in item 9) shall be awarded to the party or parties concerned in sequence of the highest surplus to be a maximum of 5 seats so allocated: Provided that subsequent allocations shall be made in sequence to those parties having the highest average number or votes per seat already gained.
11. The number of seats allocated to a party in accordance with the provisions of items 8, 9 and 10 shall be reduced by the number of seats a party gained in accordance with the provisions of items 5, 6 and 7 and the result shall be the seats allocated in terms of item 2(b).
12. Where a party -
 - (i) submitted lists of candidates as contemplated in section 3(i) its representatives in the National Assembly shall be allocated from regional lists in accordance with the provisions of items 5, 6 and 7 and from the national lists in accordance with the provisions of items 8, 9, 10 and 11.
 - (ii) submitted lists of candidates as contemplated in item 3(ii) its representatives in the National Assembly shall be allocated in accordance with the provisions of items 5, 6 and 7, with the remainder of its seats in terms of items 8, 9, 10 and 11 being allocated from regional lists in the same proportion as those allocated in terms of items 5, 6 and 7; Provided that surplus fractions shall be disregarded save that unallocated seats shall be allocated to regions in sequence of the highest surplus fractions.
13. In the case of a list of candidates containing less candidates than a party is entitled to, that party -

- (i) shall only be allocated the number of representatives on its list; and
 - (ii) shall forfeit its entitlement to any further representation in excess of the representation so allocated.
14. The provisions of item 13 shall mutatis mutandis apply to each regional list referred to in item 4(i) and (ii) in respect of which a list of candidates was submitted by that party.
15. In the event of a party forfeiting its entitlement to representation in terms of items 13 and 14 -
- (i) a new quota shall be determined on the following basis:
 - (a) the total number of votes cast, minus those votes cast for all parties referred to in the said items, shall be divided by the seats plus one, still to be allocated to the other parties; and
 - (b) the quotient of such division shall be the new quota; and
 - (ii) a new determination of the allocation of representatives in respect of such other parties shall then mutatis mutandis be made as provided for in items 5, 6, 7 and 8, 9, 10 and 11 respectively.
16. In the event of a party being entitled to an additional number of representatives in terms of the provisions of item 15, and its lists of candidates then does not contain a sufficient number of candidates, the process as provided for in items 13, 14 and 15 shall repeat itself until all representatives have been allocated.

Election of members of SPR legislatures

17. A list of candidates submitted by a party for election to a SPR shall contain the names of not more than the number of seats being contested.
18. A list of candidates of a party shall consist of a single list in such fixed order of preference as that party may determine.
19. The provisions of items 5, 6 and 7 shall apply mutatis mutandis to the election of the members of an SPR legislature contemplated in section 101 of this Constitution. The quota of votes per seat shall be determined by dividing the total number of votes in each region by the number of seats plus one for each SPR.

Manner of casting and counting votes

20. The manner of casting and counting of votes in the election of the National Assembly and the election of each SPR shall be in accordance with the provisions of the Electoral Act, 1993.

Declaration of support by one party of another party

21. (1) If a party wishes to contest the election of one or more SPR legislatures, but does not wish to contest the election in the National Assembly, it may, within the time and in the manner prescribed by the Electoral Act, 1993, declare that it supports a party which has entered the election of the National Assembly, and if it makes such declaration, all votes cast in its favour shall, for the purpose of the election of the National Assembly, be deemed to be a vote in favour of such other party.
- (2) If a party wishes to contest the election of the National Assembly, but does not wish to contest the election of one or more of the SPR legislatures, it may, within the time and in the manner prescribed by the Electoral Act, 1993, declare that it supports a party which has entered the election of a SPR legislature, and if it makes such declaration, all votes cast in its favour shall, for the purpose of the election of the relevant SPR legislature, be deemed to be a vote in favour of such other party.
- (3) If a party wishes to contest the election of one or more SPR legislatures but does not wish to contest the election of all SPR legislatures, it may, within the time and in the manner prescribed by the Electoral Act, 1993, declare that it supports a party which has entered the election of the SPR legislatures that it is not contesting, and if it makes such a declaration, all votes cast in its favour shall, for the purposes of the elections of the SPR legislatures that it is not contesting, be deemed to be a vote in favour of such other party.
- (4) For the purposes of subitems (2) and (3), a party may support different parties in the different SPR's.

Designation of representatives

22. After the counting of votes has been concluded, the number of representatives of each party have been determined and the election had been certified by the Independent Electoral Commission as having been free and fair,

- (i) the Independent Electoral Commission shall within two days thereafter designate from each list of candidates published in terms of section 24 of the Electoral Act, 1993, the representatives of each party in each legislature; and
- (ii) following the designation in paragraph (i), if a candidate's name appear on more than one list for the National Assembly or on a list of both the National Assembly and a SPR legislature and he is due for designation as a representative in more than one case, the political party concerned shall within two days thereafter indicate to the Independent Electoral Commission in which legislature the candidate shall serve or which component he or she will represent, as the case may be, in which event his or her name is deleted from the other components or lists.
- (iii) The Independent Electoral Commission shall forthwith publish the list of names of representatives in all legislatures.

Supplementation of lists of candidates

- 23. No lists of candidates of a party for any legislature shall be supplemented prior to the designation of representatives as contemplated in item 21.
- 24. Lists of candidates may after the designation of representatives in terms of item 21 had been finalized, be supplemented by the addition of an equal number of names at the end of the applicable list, when:
 - (i) a representative is elected as President or other executive office which requires him to resign as a representative from a legislature;
 - (ii) a representative is elected as member of the Senate;
 - (iii) a candidate is eligible for representation in both the National Assembly and a SPR legislature and his name is deleted from a list in terms of item 16(ii); or
 - (iv) a vacancy has occurred and the appropriate list of candidates of the party concerned is depleted.
- 25. Lists of candidates of a party published in terms of section 24 of the Electoral Act, 1993, may be supplemented on one occasion only at any time during the first 12 months following the date on which the designation of representatives in terms of item 21 had been finalized, in order to fill vacancies which may subsequently occur: Provided that any such supplementation shall be made at the end of the list.
- 26. The number of names on lists of candidates as supplemented in terms of item 24 shall not exceed the difference between the number of seats in the National Assembly or a SPR legislature and the number of representatives of a party in any such legislature.

Reviewal of lists of candidates by a party

27. A party may review its undepleted lists as supplemented as provided for in items 23, 24 and 25, within 7 days after the period referred to in item 24, and annually thereafter, until the date on which a party has to submit lists of candidates for an ensuing election.

Vacancies

28. In the event of a vacancy having occurred in the representation of a party in any legislature -
- (i) such vacancy shall forthwith be filled by the Secretary of that Legislature, by the designation of the candidate at the top of the appropriate list of candidates of the party concerned, as representative of that legislature; or
 - (ii) if the party concerned no longer exist at the time the vacancy has to be filled, the vacancy shall be filled in the manner mutatis mutandis as provided for in items 5, 6 and 7 as well as items 8, 9, 10 and 11 in respect of the remaining parties represented in a legislature.

DRAFT RESOLUTION ON TRANSITIONAL ARRANGEMENTS

It is resolved that -

- (a) a chapter dealing with general and transitional provisions be included in the Constitution;
- (b) such chapter shall contain provisions dealing inter alia with the repeal of laws, continuation of existing laws and conventions, considerations of international law, definitions and transitional arrangements regarding legislatures, executive government, public administration, public assets and liabilities, the judiciary and education;
- (c) the Negotiating Council be empowered to negotiate and finalise this chapter.

Special State funding for elections

68. (1) There shall be established a fund to be known as "The State Electoral Fund" which shall be under the administration of the Commission and which shall comply with the following requirements:
- (a) The capital of the fund shall be constituted by -
 - (i) money appropriated by Parliament for this purpose, the amount to be determined by the Transitional Executive Council in consultation with the Minister of State Expenditure; and
 - (ii) such further amounts, if any, as may be contributed by donors, including foreign governments, inter-governmental and non-governmental organizations .
 - (b) The object of the fund shall be to provide registered political parties with financial assistance for purposes of conducting their electoral campaigns: Provided that no such assistance shall be utilized for the purposes of entertainment or for the purchasing of any immovable property.
 - (c) The Chief Executive Officer of the Commission shall be the accounting officer charged with the responsibility of accounting for all money received and the utilization thereof.
 - (d) The accounting officer shall cause such records of account to be kept as are necessary to present fairly the state of affairs of the said Fund and to explain the transactions and financial position thereof.
 - (e) The Auditor-General shall audit the books of account, accounting statements and annual financial statements of the said Fund.
 - (f) The Commission may invest any unexpended portion of money of the said Fund.
 - (g) The Commission may utilize the interest on investments referred to in subsection (7) in pursuance of the object mentioned in subsection (3).
 - (h) If a person who is or was in the employment of the Commission caused the said Fund any loss or damage the accounting officer shall determine the amount of such loss or damage and order the recovery thereof in accordance with section 34 of the Exchequer Act, 1975 (Act No. 66 of 1975).

- (i) In the event of the Commission or the said Fund being dissolved all assets of the Fund shall be utilized on the recommendation of the Commission for the purposes of the encouragement and promotion of democratic values.
- (j) There shall be the following two categories of financial assistance, namely:
 - (i) an initial grant payable to all registered parties on an equal basis and without discrimination on the basis set out in subsection (3); and
 - (ii) a grant payable to such registered parties after the results of the election had been determined, on the basis as set out in subsection (4).
- (2) The Commission shall at regular intervals report to the Transitional Executive Council on all income and expenditure in respect of the State Electoral Fund.
- (3) (a) The initial grant referred to in subsection (1)(j)(i) shall only be payable to a registered party, if an independent opinion poll or polls recognised and accepted by the Commission for that purpose shows that such a party has -
 - (i) in respect of an application for financial assistance to contest the election for the National Assembly, the potential support of at least 2% of the voters for that legislature; or
 - (ii) in respect of an application for financial assistance to contest an election for a regional legislature or legislatures, the potential support of at least 5% of the voters for the legislature or legislatures.
- (b) The requirements for the acceptance of such a poll or polls, shall be prescribed by the Commission: Provided that no such poll or polls should have been conducted earlier than six months before the final date on which parties have to submit their lists of candidates in terms of section 23;
- (c) A party may, when applying for registration as a party in terms of section 19, furnish the prescribed information in respect of the poll or polls on which that party intends to base its application for a grant, if any; and the Commission shall not later than 7 days after the date of the application notify the party concerned whether the poll or polls is accepted by the Commission or not;

- (d) If the opinion poll or polls referred to in paragraph (c) is rejected by the Commission, or if a registered party so decides on its own accord, such a party may prove its potential support by voters by submitting a list containing -
- (i) 10 000 signatures of eligible voters, of which at least 1 000 signatures shall be by voters from each of at least 5 regions, if that party applies for a grant to contest the election for the National Assembly; or
 - (ii) 3 000 signatures by voters from each such region in respect of which such party applies for a grant with the view of contesting the election in such region or regions.
- (e) (i) Subject to the provisions of subparagraph (ii), the procedure for the collection of signatures referred to in paragraph (d) and the circumstances under which a party can be disqualified from receiving such a grant, shall be prescribed by the Commission;
- (ii) an eligible voter -
- (aa) may only sign the support list of one party;
 - (bb) may sign both the lists referred to in paragraphs (d)(i) and (d)(ii) of a party;
 - (cc) shall state his full names, home address and identity number on the list or lists; and
 - (dd) shall, if he or she cannot sign or write his or her name, place his or her mark on the said list or lists, which mark shall be witnessed by an eligible voter by placing his or her signature next to that mark;
- (f) (i) The initial grant shall be payable from the money referred to in subsection (1)(a)(i): Provided that 50% of that money shall be utilized for this purpose; and provided further that a party making use of the method provided for in paragraph (d) shall only be entitled to 50% of the grant payable to a party referred to in paragraph (a) of this subsection;
- (ii) a party who is only contesting an election for a regional legislature shall, notwithstanding the provisions of subparagraph (i), be entitled to only one quarter of the grant payable to a party contesting the election for the National Assembly.

- (g) No party shall be allowed to apply for assistance under this subsection unless it has submitted the list of candidates referred to in section 23, and no party shall be eligible for a grant after the expiry of the period of 30 days referred to in section 23(1).
- (4) The grant referred to in subsection (1)(j)(ii) shall be payable from the remainder of the fund referred to in subsection (1)(a) in the following manner:
- (i) 50% shall be distributed equally amongst those parties who in terms of the total number of votes cast, are entitled to at least one seat in the National Assembly or a regional legislature: Provided that a party who only contested the election for a regional legislature shall be entitled to only one quarter of the grant payable to a party who contested the election for the National Assembly; and
 - (ii) the other 50% shall be payable to each such party proportional to the number of votes cast Nationally and regionally in favour of a party.
- (5) With the view to ensuring that the object as set out in subsection (1)(b) is being pursued by parties, it shall be a precondition for the payment of the grants that -
- (a) parties who are recipients of the grants shall be obliged to deposit such funds in an account specially opened for that purpose, and to keep separate books, accounts, or financial statements and vouchers of all assistance received and so deposited and expenditure incurred from that account;
 - (b) the Commission shall prescribe a requirement for audit in respect of the said account, and may further require that the books, accounts, financial statements and vouchers relating to that account be submitted for scrutiny and audit by the Auditor-General who shall have full and unrestricted access to such documentation as may be considered relevant.

PROPOSED SCHEDULE OF MEETINGS

17 NOVEMBER 1993

Negotiating Council PLENARY	Wednesday 17 November 1993 Wednesday 17 November 1993	11h30-15h00 16h00-20h00
Planning Committee	Tuesday 23 November 1993	10h00-16h00
Negotiating Council	Thursday 25 November 1993	15h00-20h00
Negotiating Council	Friday 26 November 1993	08h30-14h00

DRAFT PROGRAMME FOR MEETINGS

17 NOVEMBER 1993

Wednesday 17 November 1993

- Ratification: 1. Draft Electoral Bill
2. Draft Constitution for the Transition

PLENARY SESSION

Thursday 25 November 1993

- Ratification: 1. Minutes
2. Technically refined Draft Constitution
- Discussion: 3. Citizenship Bill
4. Local Government Transition Bill