[7][G]

G. REPEAL OF DISCRIMINATORY LEGISLATION

VOLUME TWO

G

G: REPEAL OF DISCRIMINATORY LEGISLATION

SUBMISSIONS RECEIVED BY THE TECHNICAL COMMITTEE: REPEAL OF DISCRIMINATORY LEGISLATION BY 10.00 A.M. ON FRIDAY 21 MAY (AND NOT INCLUDING SUBMISSIONS AND DOCUMENTATION DISTRIBUTED TO THE NEGOTIATING COUNCIL ON TUESDAY 18 MAY 1993)

4.	Gender Advisory Committee		Report to Codesa.
5.	ANC	19/05/93	Submission.
6.	National Peoples Party	19/05/93	Comments on the First Report.
7.	Transkei		Submission.
8.	UPF	19/05/93	Submission and Addendum.
9.	Inyandza National Movement	19/05/93	Submission.
10.	ANC	19/05/93	Submission.

GENDER ADVISORY COMMITTEE

C • O • D • E • S • A

REPORT OF THE GENDER ADVISORY COMMITTEE TO CODESA 2

Due to enormous public pressure about the lack of representation at CODESA of women, who form 53 % of the population, and subsequent suggestions and submissions by women's organisations, political parties and other organisations, the Management Committee of CODESA decided to form the Gender Advisory Committee. The GAC is a subcommittee of the Management Committee charged with the special task of looking into the Terms of Reference, minutes and decisions of each of the Working Groups, and those of the Management Committee, and advising on their gender implications. All CODESA participants have so far sent representatives to the GAC with the exception of the Bophuthatswana and Venda Governments.

The GAC met for the first time on 6 April and has diligently studied the Terms of Reference, minutes and most of the decisions already taken by the Working Groups as well as internal and external submissions from women's organisations and political parties, with an unusual spirit of unity. The GAC has reached consensus on many issues, but consensus was not reached on others.

CONVENTION FOR A DEMOCRATIC SOUTH AFRICA
PO Box [illegible] Telephone [illegible]

1. RECOMMENDATIONS AND ADVICE ON THE GENDER IMPLICATIONS OF ISSUES RAISED IN WORKING GROUP 01

1.1 The Free Political Participation of Women

Noting the Terms of Reference of Working Group 01, Items 1.1.4 (k), (p) and (o), the GAC recommends the following:

1.1.1 The rights of access of women to public facilities and meeting venues should be ensured, as should their right to meet with political organisations. This recommendation is necessary so that women can participate without fear and on an equal footing in the political process.

1.1.2 The right of access of political organisations to public facilities, and their right to meet with potential voters, is meaningless unless women may participate in the democratic process on an equal footing without fear of public or private harassment and intimidation.

1.1.3 That the roles mentioned here (Item 1.1.4 (o) of the Terms of Reference of Working Group 1) concerning educative and informative campaigns should be broadened to include specific educational campaigns informing women of, inter alia, their right to vote, particularly in areas where women are unlikely to be reached by usual media.

1.2 Agreements on Political Intimidation and Women

With regard to the agreement reached by sub group 2 of Working Group 1 on the Definition of Political Intimidation, the GAC recommends that the following additions be made to the activities which would, as per the aforesaid agreement, be considered, in particular, as forms of political intimidation (refer to Item 4.2 of the Minutes of the meeting of Sub-Group 2 of Working Group 1, 2 March):

1.2.1 To compel women, both within and outside the home, by virtue of the "power" vested in men with whom they may associate, to adopt a particular political position; or to similarly prevent women from engaging in free political activity.

1.2.2 To use political patronage in any form that threatens or denies an individuals political, social and economic rights, especially noting that women are frequently the victims of such practices.

1.2.3 To sexually harass any individual and thereby prevent him/her from the freedom of the right of expression/opinion, association and movement.

With regards to item 1.3.3 above the GAC defines sexual harassment, in general terms, as sexual advances without express consent, including innuendos or language of a defamatory or offensive nature, in all spheres, including political, social and economic life and in the media.

1.3 Agreements of the Interpretation of the National Peace Accord

With regards to agreements reached by Sub-Group 2 of Working Group 1 re the implementation and interpretation of the National Peace Accord, the GAC recommends that the following additions be made (refer to Item 6.1.6 and Item 6.4.1, respectively, of the minutes of Sub-Group 2 of Working Group 1, on 7 April):

1.3.1 That the reference to "Business representatives" in clause 7.4.4.3 of the NPA be interpreted to include representatives from professional and women's organisations.

1.3.2 The NPA make special efforts to include representatives of relevant local and tribal authorities as well as local women's structures into all RDRC and LDRC structures.

1.3.3 With regards to item 1.4.2 above (and with specific reference to items 6.1.6, 6.3.2, 6.4.2, 6.5.2, 6.6.2, 6.6.3 and 6.8 of the minutes of the meeting of WG1 SG2, 7 April) the GAC recommends that as part of its input on the interpretation and implementation of the NPA Working Group 1 recommend that women be included in all structures created by the NPA, RDRC's and LDRC's to ensure that gender implications of all decisions and functions of these structures, are considered.

1.4 On the Security Forces, Free Political Activity and Women

Noting that the many acts of violence committed against women allegedly by the security forces are a source of grave concern, the GAC recommends that:

1.4.1 any such crime be immediately investigated;

1.4.2 violent crime against women be treated with stricter and more stringent disciplinary action;

1.4.3 when searches of homes are conducted, women police must accompany male police;

1.4.4 the position of high ranking officers who are unable or unwilling to maintain adequate control over their forces be urgently reviewed;

1.4.5 any peace keeping force should include women within their structures at all levels;

1.4.6 the gender sensitivity of these forces (refer to item 1.5.5) be monitored;

1.4.7 all individuals be informed of their rights with regard to the role and functions of these forces (refer to item 1.5.5);

1.4.8 these forces (refer to item 1.5.5) be trained to be gender sensitive and to ensure that they do not violate the rights of women.

Noting the lack of agreement in Working Group 1 over the definition of political prisoners, no recommendations with regards to the gender implications of this issue could be agreed upon.

The GAC also recommends that any Security Force established in the country, including the TBVC states, must begin to immediately redress race and gender imbalances both in their composition and functioning at all levels and introduce a Code of Conduct and norms which will create confidence among all the people of South Africa.

1.5 Working Group 01 Terms of Reference

The GAC proposes that Item 1.1.4 (c) of the Terms of Reference of Working Group 01 should be amended to read as follows:

"The amendment and/or repeal of any remaining laws militating against free political

activity including the elimination of racial and gender discriminatory laws.'

1.6 **The Media in the Transition** (Recommendation to Working Groups 01 & 03)

The GAC recommends that Working Group 1 and Working Group 3 agree upon a politically neutral Independent Communications Authority which shall:

- include gender conscious persons;
- facilitate media access for women;
- monitor and discourage sexist programmes, articles and advertising;
- encourage non-sexist, non-discriminatory publications;
- ensure the participation of women on all media bodies, at all levels;
- organise that radio and television programmes which educate women about the democratic process and their right to participate therein without fear of intimidation, are prepared as a matter of urgency

2. Recommendations and Advice on the Gender Implications of the Issues Raised in Working Group '02

2.1 Constitutional Principles

The GAC advises that:

2.1.1 It fully supports a Justiciable Bill of Fundamental Human Rights to be attached to the constitution.

2.1.2 It fully supports the concept of a qualified Equality Clause in the Bill of Rights and the Constitution.

2.1.3 It recommends that Working Group 2 address the problem of redressing and eliminating gender inequalities.

2.1.4 It recommends to WG 2 that they take note of the desirability of a document containing a set of ideals regarding gender issues, which should be accepted by a future Constitution Making Body as a document to be used by the courts to assist women in claiming and exercising their rights under the constitution and Bill of Rights to ensure gender equality.

2.1.5 The GAC further recommends to Working Group 02 that the Bill of Rights include some form of rights and protection for children.

2.2 Constitutional Language

The GAC recommends that the terms "men and women" and "men, women and children" be used wherever respectively appropriate, in the drafting of the Constitution, in place of the terms "people" or "persons".

2.3 On Agreements Reached Regarding Constitutional Principles

Regarding the "Provisional Areas of Commonality that Already Exist" in Working Group 02 as adopted by the Steering Committee of WG 02 on 27 April, the GAC recommends the following (refer to Document prepared by the Steering Committee of Working Group 2 on 27 April):

2.3.1 Item 1.1.3 should be amended to read "The diversity of languages, cultures and religions will be acknowledged, within the non-racial and non-sexist principles of the Constitution."

2.3.2 Item 1.1.7.1 should be amended to read "A judiciary that will be independent, non-racial, impartial, gender sensitive and inclusive of women."

2.3.3 Item 1.1.7.2 should be amended to read "An entrenched and justiciable Bill/Charter of Fundamental Rights, which will protect the rights of women and children."

2.3.4 Item 1.2.2 should read "At each level there shall be democratic representation, consistent with non-racial and gender sensitive principles."

2.3.5 Item 1.3.1 should read "A new constitution shall provide for effective

participation of minority political parties consistent with democracy, non-racialism and non-sexism"

2.4 Constitution Making Body/Process

2.4.1 The GAC recommends that when drawing up the electoral procedures, methods should be sought to encourage full participation of women. This should apply to both encouraging women to exercise their political rights to campaign and stand for election as well as to vote. These provisions would include, among others, education programmes, elimination of sexual harassment (refer to item 1.3), drawing up of electoral lists and giving women reasonable exposure in the media.

2.4.2 The GAC strongly recommends that all parties include a fair proportion of women in their electoral lists. It is essential that women are evenly distributed within the lists, to ensure their inclusion in the elected body.

2.4.3 The GAC recommends that any committees set up by the Constitution Making Body must contain an adequate number of women.

2.4.4 The GAC recommends that the Constitution Making Body should consider a sub-committee to monitor and raise gender issues in the drafting of the Constitution and the Bill of Rights.

2.4.5 The above 4 proposals should apply to future elections at a local, regional and national government level.

3. Recommendations and Advice on the Gender Implications of the Issues Raised in Working Group 03

3.1 The Funding of Programmes for Women

The GAC advises that Working Group 3 reach an agreement on the principle of funding and programmes to ensure the meaningful participation in, and education about the democratic electoral process.
In order that women be timeously informed about the franchise, and thus enabled to participate in interim elections without fear of pressure or intimidation, it is suggested that such agreement be expeditiously concluded.

3.2 The Technical Report to the Steering Committee of Working Group 3

The GAC advises the Technical Committee, Working Group 3 and its Steering Committee on the following points concerning the Technical Committee's recommendations made on 27 April:

3.2.1 In addition to Item 7.1 of the report:

"• Shall include women in its composition."

3.2.2 Item 10 of the report should state:

"The transitional executive structure will be constituted by legislation agreed to by Codesa, will have a multi-party character, including women and be . . ."

3.2.3 The reference to "persons" in line 14 of Item 10 of the report should be replaced by a reference to "men and women".

3.2.4 Line 5 of Item 14 of the report should read:

"Save for agreement that the TEC must have multi-party character, including women, the precise criteria . . ."

3.2.5 It is also recommended that the proposed TEC should include a Gender Structure, the exact nature of which is still to be determined.

3.3 Women and Local Government

The GAC advises that special mechanisms be created to promote the participation and representation of women in local government structures, so that these structures more closely reflect the gender composition of the populace.
Any projects undertaken during the life of CODESA and the Interim or Future Governments should be aimed at the interests of all groups in local communities including women.

3.4 The Media in the Transition (Recommendation to Working Groups 01 & 03)

The GAC recommends that Working Group 1 and Working Group 3 agree upon a politically neutral Independent Communications Authority which shall:

- include gender conscious persons;
- facilitate media access for women;
- monitor and discourage sexist programmes, articles and advertising;

- encourage non-sexist, non-discriminatory publications;
- ensure the participation of women on all media bodies, at all levels;
- organise that radio and television programmes which educate women about the democratic process and their right to participate therein without fear of intimidation, are prepared as a matter of urgency

3.5 Women and the Foreign Service

Noting that South Africa's foreign relations have mainly been conducted by men, as from the interim government women should be trained, employed, promoted and recognised on an equal basis with men within the diplomatic service. Any existing discriminatory regulations and practices with respect to gender and race in South Africa's foreign service need to be removed.

3.6 Land and Women

The GAC wishes to place on record that no consensus could be reached on the following proposals concerning land and women:

Proposal 1: That Working Group 3 suggest an urgent Commission of Enquiry into legislation which prevents women's access to land ownership in South Africa and the TBVC states, and that the results of such an enquiry be immediately embodied in legislation.

Proposal 2: That Working Group 3: (1) look into those laws which prevent/inhibit women's ownership of or access to land in South Africa and the TBVC states, with the intention of amending or repealing those laws and (2) that there should be an immediate moratorium on the sale and transferral of all state property to private or corporate individuals and organisations.

4. General Recommendations to Codesa (to all Working Groups)

4.1 Non-Sexist Language in CODESA documentation

The GAC recommends that CODESA documents should explicitly define the word "person" as referring to both men and women.

4.2 Gender Discriminatory Legislation

The GAC recommends the repeal of all legislation in South Africa and the TBVC states which discriminates on the basis of race, creed or gender which circumscribe and impede free political, economic or social activity. We suggest that this be attended to by a general law asserting certain basic civil and political rights, combined with an omnibus law repealing all legislation in accordance with a schedule of Acts to be provided by the GAC.
We advise Working Groups 1, 2 ,3, 4 and 5 to assist in the identification of such legislation.

5. Conclusion and The Way Forward

In conclusion, and in view of the short period of time which the GAC had had at its disposal, the GAC wishes to point out that, as of 7 May, proposals and recommendations on the proceedings of Working Group 4 and 5 have not yet been formulated, and that there are certain areas in other Working Groups on which consensus has not yet been reached. The GAC would also wish to look at present discriminatory legislation which needs to be repealed or amended. The GAC therefore recommends that it continues with its work after CODESA II both in terms of uncompleted work, feed-back on its submissions from the relevant Working Groups and forthcoming agreements emanating from the various Working Groups and committees.

Submission by the African National Congress

To the Tecnical Committee on the Repeal of Disciminatory Legislation

19 May, 1993

These representations are done in line with the call by the Multiparty Negotiating Process for various political parties to make submissions to be considered by the various technical committees in order to prepare for their discussion and negotiation by the Negotiation council. Our submissions are based on the ANC Women's League submissions to Codesa and those decisions of the Gender Advisory Committee.

A. CONSTITUTIONAL MATTERS

1. Constitutional Principles

1.1 South Africa will be a united, sovereign state in which all will enjoy a common South African citizenship.
1.2 South Africa will be a democratic, non-racial and non-sexist country.
1.3 The constitution shall be the supreme law.
1.4 There shall be a justiciable Bill/Charter of Fundamental Rights, which will spell out fundamental and socio-economic rights of all citizens and how state policies will ensure their implementation.
1.5 There shall be separation of powers between the legislature, the executive and the judiciary with appropriate checks and balances.
1.6 There will be a legal system that guarantees the equality of all before the law.
1.7 There will be representative and accountable government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters role and, in general, proportional representation.
1.8 The diversity of languages, cultures and religions will be acknowledged subject to principles of equality, democracy, non-sexism and non-racialism.
1.9 All will enjoy universally accepted human right, freedoms and civil liberties including freedom of religion, speech and assembly which will be guaranteed by an entrenchment of a justiciable bill of fundamental rights subject to the principle of equality, democracy, non-sexism and non,racialism.
1.10 The government shall be structured at national, regional and local level. At each level there shall be democratic representation.
1.11 The Bill of Rights shall guarantee just property rights (Provided that legislation shall in the public interest, authorise expropriation against payment of reasonable compensation which shall, in the event of a dispute, be determined by a court of law).
1.12 The constitution shall define a suitable role for traditional leaders consistent with the objectives of a united, non-racial, non-sexist and democratic South Africa.

Other issues to be looked at:

* Notion of the family
* regressing historical racial and gender imbalances
* charter for women's rights, to form part of the Bill of Fundamental Rights, which among other things will deal with abortion, privacy, the family, women and child protection, diverse cultural practices, etc.
* the rights of the disabled people

2. Constituent Assembly/Constitution making Body

2.1 This must be a democratically elected body.

2.2 When drawing up electoral procedures, methods should be sought to encourage full participation of women. This should apply to both encouraging women to exercise their political rights to campaign and stand for elections and to vote. These provisions would include, among others, education programmes, elimination of sexual harassment, drawing up of electoral lists and giving women exposure in the media.

2.3 All parties should include a proportion of women in their electoral lists. It is essential that women are evenly distributed within the lists, to ensure their inclusion in the elected body.

2.4 Among the subcommittees to be formed there should be a gender sub-committee to monitor and raise gender issues in the drafting of the constitution and bill of rights.

B. TRANSITIONAL EXECUTIVE COUNCIL AND ITS SUB-COUNCILS AND COMMISSIONS

1. Women should be included in the TEC and its sub-councils in addition there should be a gender commission. This will be in pursuant of the principles of a non-racial, democratic and non-sexist South Africa. We recognise that the noble ideal of a non-sexist state will not be realised if the TEC stage of the transition does not have women represented in all structures as an appropriate structure to level the playing fields with regard to gender. The establishment of a gender commission will enhance women's participation in all the transitional structures.

1.1 Status of the gender commission

* It should be an independent commission of a specialised nature, enjoying the same status as the other TEC Commission.

1.2 Composition of the commission

* It should be composed of 7(seven) to 11(eleven) gender specialists

1.3 Functions/Powers of the Gender Commission

* It should ensure gender sensitisation of the TEC and its Sub-councils.

* It should scrutinise all recommendations from the sub-councils and come up with gender perspective of these.

* It shall also make an input into legislation pertaining to the reform and repealing of law and administrative procedures that impinge on the rights of women.

1.3 Relations with other transitional structures

a. Independent Electoral Commission: One of the tasks of the IEC would be to set out rules that would enable maximum participation in the first non-racial elections. We believe that such rules should ensure that women participate effectively in elections. Special procedures will have to be drawn so as to realise this goal. The commission will be in the best position of defining enabling legislation for women's maximum participation.

The following are examples of these functions. There is the need to be sensitive to women's situations such as the double burden of women which is employment and family management. Accordingly, electoral procedures should conform to the times when women are most available. Another is that of general illiteracy amongst women. Voter education should be tailored to suit women too. There are current indications that women under tribal authorities, in the farms and those in domestic service are denied the right to organise meetings or to attend meetings. The probability is that intimidation would increase during elections. There is therefore the need for educational material to be produced informing the populace and women on rights to vote. There is also need to repeal by-laws which restrict access to farm workers. Educational material directed to chiefs and employees should be produced.

b. Media: currently there is a move towards setting up a media board. The drafting of guidelines for fair usage of the electronic media during the transitional period dominates the media discourse. The gender commission will make appropriate recommendations in this regard. The media personnel as relating to the board should include women. The commission will also define in terms of the gender perspective what fair coverage implies. These factors should apply to the print media as well.

REPEAL OF GENDER DICSCRIMINATORY LEGISLATION

In its report to CODESA 2 the Gender Advisory Committee called for the "repeal of all legislation in South Africa and the TBVC states which discriminates on the basis of race, creed, or gender which circumscribe and impede free political, economic and social activity." It suggested that "this be attended to by a generla law asserting certain basic civil and political rights, combined with an omnibus law repealing all legislation in accordance with a schedule of Acts to be provided."

The identification of such legilslation is obviously a very involved task which might take a long time. It also has a danger of leaving some laws and thus not being able to repeal them. It will seem a practical way of dealing with this will be to enact an omnibus law which will automatically outlaw all discriminartory legislation will will impede political activity and to set up an enforcement mechanoissm which will be accessible to all citizens without going through long court procedures.

C. LAW REFORM FOR THE FREE AND FAIR PARTICIPATION OF WOMEN

CITIZENSHIP:

1. The South African Citizenship Act of 1949 contains many clauses which are discriminatory to women. It also includes clauses which may prove problematic to returning exiles and their families. This memorandum will only focus on the gender implications of the act. Some of the discriminatory consequences of these clauses relate to the law of domicile and the fact that the wife has always followed the domicile of her husband. These will doubtless be removed once the 1992 Domicile Act is proclaimed.

   The following commentary on the act must be read with the act.

   1.1 Section one deals with definitions. This requires amendment in the following manner:

      1.1.1 the definition of "father" should be rendered redundant; and
      1.1.2 the definition of "responmsible parent" must apply equally to the mother or father of a minor.

   1.2 Citizenship by Birth: persons born in SA before 1949 (section 2) Section 13 appears to protect the position of married women in this section.

   1.3 Citizenship by Birth: Persons born outside of SA who qualify for citizenship by birth (section 4(1)(b)) This section only confers the status of citizenship by birth on children of SA fathers working outside SA. This must be amended to include the children of SA mothers working outside SA.

   1.4 Citizenship by descent - Persons born outside SA before 1949 (section 5) This generally only allows for citizenship through the male line and must be amended.

   1.5 Citizenship by descent - persons born outside SA after 1949 (section 6) Section 6 (1)(a) has different requirements according to whether the mother or father is a SA citizen. This distinction should be removed.

   1.6 Citizenship by Naturalisation (section 10)

1.6.1 Section 10(2) makes allowances for the wives to qualify for permanent residence outside of the country in certain circumstances, but not for husbands. In other words the spouse of a man receives benefits that are denied the spouse of a woman.

1.6.2 Section 10(4) requires application by a "responsible parent" or "guardian". These are overwhelmingly fathers and not mothers. Thus women will generally not be able to apply on behalf of their children.

1.6.3 Section 10(4) bis only applies to the male line.

1.6.4 Section 10(6) provides special dispensations for wives and widows of SA citizens, but not for husbands and widowers.

1.7 Permanent residence and ordinary residence
These are important requirements for the acquisition of citizenship by naturalisation. One has to be lawfully admitted for the purpose of permanent residence, and to be ordinarily resident and physically resident for certain periods before qualifying for citizenship by naturalisation. This means that any discrimination in that acquisition of permanent and ordinary residence has to be considered. These are discussed in respect of the Aliens Act no 1 of 1937 below.

1.8 Problems of Proof Insofar as many people do not have papers of any kind, proof of birth, marriage and residence will be difficult.

2. The Aliens Act no 1 of 1937

2.1 Section 4 sets out the requirements for permanent residence. The following provision discriminates against women:

2.1.1 Section 4(3)(e) allows the wife, children and dependants of a qualified man to qualify for permanent residence; but does not extend the same benefits to the husband, children and dependents of a qualified woman.

2.2 Section 12 sets out the exceptions to the section 2 requirement of permanent residence permits. Insofar as section 12 (1)(a) bases an exception on the acquisition of a lawful domicile prior to 1937, this may discriminate against married women who follow the domicile of their husband.

3. The Restoration of South African Citizenship Act no 73 of 1986 provides for the restoration of SA citizenship to TBVC citizens. Insofar as this depends on actual

application and residence qualifications, amny people may be discriminated against. Careful attention should be paid to the posiution of all TBVC residents.

4. SECURITY OF EMPLOYMENT FOR PUBLIC SERVANTS

A. TEACHERS:

1. Women teachers are subjected to gender discrimination in the law and in the practices of the teaching profession. Legal discrimination against women (organised on a racial basis) means that they receive few or no maternity rights, and different pension, medical aid and housing subsidy benefits. The forms of indirect discrimination include unequal pay, unequal division of labour, gendered teacher training, sexual harassment and the allocation of "feminine" tasks within schools such as "pouring the tea".

2. Teachers are presently excluded from the Labour Relations Act and from the current initiative to draw up a Public Service Labour Relations Act. Teachers accordingly have no rights of freedom of association, collective bargaining and dispute resolution. Teachers in state schools have no recourse to the courts (civil or labour) in respect of "unfair labour practices".

3. In relation to job security, the rights of a women to retain her permanent status as a teacher after marriage is not always guaranteed. If an unmarried woman falls pregnant, this is regarded as "misconduct" and she is dismissed. Teachers generally are also restricted in their political participation:

3.1 The Indians Education Act and Coloured Persons Education Act describes the following as "misconduct" which can lead to a disciplinary hearing: If a teacher "makes use of his position in the

department to promote or to prejudice the interests of any political party, or presides or speaks at any public or political meeting, or draws up or publishes or causes to be published, any writing or delivers a public speech to promote or to prejudice the interests of any political party" (S16(ga) in both acts).

3.2 The Education Affairs Act (House of Assembly) sets out the position on civil and political rights of teachers in section 96 of the act. It allows a teacher to be a member of and in the management of a political party but states that he or she may not act politically in a manner which "may embarrass the department", act as a chairperson of a public meeting, publish in his or her name a document to further or prejudice apolitical party or use his or her position as a teacher to promote a political party.

3.3 Regulation 15 of the 1981 regulations in terms of the Education and Training Act provide that a teacher cannot use his or her position to promote the interests of a political party/organisation; publish a paper or

express him or herself in the press or in a public meeting on political matters. A teacher also not circulate documents relating to elections or work in respect of an election in a school, on school premises or at a school function.

B. POLICE:

The Police Act does not appear to contain any discrimination in respect of job security. If there is such discrimination, it is likely to be found in the regulations made in terms of the act. I was unable to track these down due to time restraints.

There are restrictions on the political involvement of the police but they are appropriate to the role of the police.

C. PUBLIC SERVICE:

There is no overt discrimination in the Public Service Act in respect of political freedom and job security. It may well be present in the regulations and practices of the public service.

The restrictions on political involvement appear to be appropriate to the role and position of public servants.

D. NURSES:

The situation of male and female nurses has also to be looked at. The Nurses Act restrict them from political participation and are not covered by the Labour Relations Act.

E. DOMESTIC AND FARMWORKERS: There is need to focus on these two groups - whose political participation is restricted by by-laws and other measures.

CITIZENSHIP:

5. TBVC citizenship: do women have lesser rights of citizenship than men?

In each case citizenship of the particular "independent state" is governed by the "constitution" act and a citizenship act.

5.1 Bophuthatswana: The Bophuthatswana Constitution act provides for citizenship as follows (sec. 80):

2.1.1 All Batswana defined by an act of parliament

2.1.2 All persons legally domiciled for at least 5 years (this was automatic until 1978 when application had to be made). This is a problem in so

far as women follow the domicile of their husband

2.1.3 Anyone else who applies and is accepted as a citizen

The Bop Citizenship Act is discriminatory. Persons born outside of Bop can only qualify for citizenship through the male line. This affects citizenship by birth and descent. The provisions regulating the acquisition of citizenship by registration or naturalisation grant greater rights and privileges to men and the dependants of men.

5.2 **Ciskei:** The Ciskei Constitution act states that citizenship shall be obtained by birth, descent and naturalisation on such conditions as may be determined by an act of parliament.

The Ciskei Citizenship Act grants citizenship to persons born outside of the Ciskei only through the male line. the provisions regulating the acquisition of citizenship by registration or naturalisation grant greater rights and privileges to men and thne dependants of men.

5.3 **Venda**: The Venda Constitution Act regulates citizenship and appears to allow citizenship to follwon either parent. The only discriminatory rule appears to apply to citizenship by registration / naturalisation which is dependent on 5 years domicile.

5.4 **Transkei**: I have been unable to track down the Transkei Constitution and Citizenship Act. It is probable that gender discrimination occurs in a similar maner to the other independent states.

"Democracy means freedom to choose"

INKATHA

Inkatha Freedom Party

IQembu leNkatha Yenkululeko

MULTIPARTY NEGOTIATION PROCESS
TECHNICAL SUBCOMMITTEE #6
ON THE AMENDMENT OR REPEAL OF
LEGISLATION IMPENDING FREE POLITICAL ACTIVITY
AND DISCRIMINATORY LEGISLATION

FIRST POSITION PAPER
OF THE INKATHA FREEDOM PARTY

WORLD TRADE CENTRE : 18 MAY 1993

All legislation impeding free political activity and discriminatory legislation should be amended or repealed immediately. This exercise needs to be preceded by the determination of applicable reference concepts. In fact this exercise amounts to a comparison between existing legislation and given concepts of political freedom and lack of discrimination. The preliminary threshold issue of what is discrimination and what is political freedom needs to be resolved. The IFP proposes that the Technical Sub-Committee reviews the existing legislation against the parameters of the Bill of Rights set forth in the Constitution of the State of KwaZulu/Natal and recommends the repeal of all the legislation which would not allow the free exercise of any of the rights set forth in such a Constitution.

Special attention should be given to those rights and considerations which are immediately related to the political presence of segments of society in the political process leading to elections and therefore special attention should be given to the rights of the victims of apartheid, women, the disabled and other groups which require special protection.

The IFP fear that any possible listing of legislation which carries with itself the potential for discrimination any impairment of free political activity would not be either exhaustive nor comprehensive. Therefore, rather than listing specific segments of legislation which ought to be repelled, the IFP finds it more appropriate to suggest the modus operandi of this technical sub-committee so as to ensure that this technical sub-committee will be able to identify any relevant piece of legislation to be amended or repelled.

Once this technical sub-committee has agreed on the reference parameter to be used to determine what needs to be amended or repelled --which we suggest to the Constitution of the State

of KwaZulu/Natal-- it would be advisable that this technical sub-committee opens its door to receive the grievances of social and cultural formations throughout South Africa.

In fact, the type of work that the committee is going to undertake is substantially no different to a process of constitutional adjudication. In this respect it might be useful that the sub-committee forward a request letter to the judicial authorities of South Africa, requesting them to indicate what legislation would appear to be discriminatory or otherwise not in compliance with the preagreed parameter with relation to cases of controversy before them. The sub-committee should also open itself to the direct access of social and cultural formations in the country.

This exercise would be valuable to set the initial parameters for a future constitutional jurisprudence of a new South Africa. In this respect it would be advisable that this committee motivates all its recommendations on the basis of explicit constitutional principles rooted in acceptable and recognised principles of modern constitutionalism and human right protection.

^5418

Arena Park
Chatsworth
4030

G6

19 May 1993

Dr.T. Eloff
Administration
Multi Party Negotiation Process
World Trade Centre

Dear Dr. Eloff

Technical Committee on the repeal or amendment of legislation impeding free political activity and discriminatory legislation.

The N.P.P.'s comments on the First Report of the Committee

In addition to the repeal or the amendment of such legislation a process should commence in order to restore the rights of those who have suffered as a result of such legislation.

The Acts that repealed the Group Areas Act and The Population Registration Act should be examined.

In respect of those who have lost their properties because of Racially-Based Legislation the Government should arrange for the affected persons to either get their properties back or be provided with suitable alternative premises not at market value.

The Technical Committee also dealt with the Freedom of the Press and the question of Free access to information.

In this respect the Committee also referred (paragpaph 5.4) to the actions of Government bodies and also provate individuals or groups.

The Code should also deal with the rights of journalists reporting on any movement without hindrance from his/her superiors and also such rights must not be interfered with by any individual or organisation that may want to coerce journalist how to think and what to write .

With Kind Regards

A.Rajbansi

SUBMISSION: TRANSKEI

G7

(C) AMENDMENT OR REPEAL OF LEGISLATION IMPEDING FREE POLITICAL ACTIVITY AS WELL AS DISCRIMINATORY LEGISLATION:

TKEi GOVT.

1. We undertake to offer the Technical Subcommittee our fullest support and co-operation.

2. You will be notified of the name of the officer from our Department of Justice who will work with you, in due course. Please notify us of the day and date on which the Technical Subcommittee will confer with him/her on this matter. Refer all enquiries to Z. Titus who can be contacted through Dr Eloff's office. In the meantime copies of the appropriate legislation as well as a list thereof will be made. We have an updated index covering subordinate and primary legislation introduced in Transkei after 1963. There are also a number of pre-1976 South African laws applicable in Transkei. Reference will also be made thereto. We are also compiling a list of the laws falling within the purview of the laws under consideration but which have otherwise been repealed or amended. We would welcome a comprehensive list of the laws the subcommittee has already identified in respect of the other States and homelands.

3. A practising attorney will work with the officer from the Department of Justice on this matter. We feel that someone from outside of Government will provide the team with the fair balance required in tackling a matter of this nature.

4. Finally, a circular letter will be sent to all organisations in Transkei requesting them to contribute to this exercise. This is being done in order to ensure that there will be no queries with regard to our handling of this matter.

oooooooooOOOOOOOOooooooooo

G8

UPF'S SUBMISSION TO THE TECHNICAL COMMITTEE ON THE AMENDMENT OR REPEAL OF DISCRIMINATORY LEGISLATION

1. LOCAL GOVERNMENT BODIES FRANCHISE ACT 117 OF 1984

There is no shred of doubt that this Act is cast in the same racial mould as the Constitution Act itself is. It is actually crrystallization at local level of that which is envisaged by the constitution. For as long as this law remains on the statute book, it would not be possible for other races to participate in the local elections in such areas except those that are specifically mentioned in the Act. On the other hand the Black Local Authorities Act is designed to deal exclusively with Blacks within their own areas. This sound very much like the American pipe-dream of "separate but equal" philosophy.

In the kind of a situation created by this Act, it would not be possible to speak of a climate where free political activity can take place. This Act puts shackles on people on racial lines. It has to go before one could create an ideal climate for free political activity. The same point still holds good in respect of the Black Local Authorities Act.

2. ELECTORAL ACT 45 OF 1979

This Act extends the rights to vote to persons who are either White, Coloured or Indian in term of section 52 of the Constitution Act (Act 110 of 1983). Free political activity presupposes that a person should have the right to vote for an candidate of his choice. With this Act firmly in place, the Black people would not have such a right. How does one then exercise his democratic right to elect the government of his own choice if the very fundamental right to vote for such

a right. How does one then exercise his democratic right to elect the government of his own choice if the very fundamental right to vote for such government is denied him by legislation.

3. **REFERENDUMS ACT 108 OF 1983**

There is presently much talk about a referendum being held with a view to testing the views of the people of South Africa before a transition into the new South Africa. In terms of this Act only the views of Whites, Coloureds and Indians may be tested and known. Blacks cannot lawfully participate in this kind of a referendum becuase for purposes of this Act they do not qualify as 'voters'.

4. **SOCIAL PENSIONS**

The tenets of justice would dictate that there be one act dealing with the aspect of social pensions without referring to a particular class of persons or a specified population group. However our Act empowers the Minister to issue a proclamation relating to a particular population. This would obviously tempt the Minister to issue proclamations designed to treat people unequally. This is the position as regards the benefits to which people belonging to different race are entitled differ and the yardstick is the colour of their skin.

These acts should be repealed.

5. **PREVENTION OF ILLEGAL SQUATTING ACT 52 OF 1951**

It is a notorious fact that the policy of the Government in the past has been that Blacks were so journers in the urban areas and therefore the policy was that they would remain

there for as long as they were working. As a result there was no clear and permanent arrangement for the provision of housing for blacks. Hence the problems of squatting are mostly confined to Black communities.

If the policy has now changed and it is accepted that Blacks are in cities to stay, then this Act will fall into desuetude and there is no reason for its continued existence. Besides the harsh manner in which the "squatters" were treated cannot be countenanced by any society claiming to be civilized.

6. EDUCATIONAL POLICY

A pleathora of laws are in place to regulate education issues of the numerous departments of education. The problem with these laws is that they were purposely made to disadvantage other races educationally.

It has now become urgent and imperative that these dicriminatory laws be removed so that all the people in this country should have the right to the same eductional opportunities. There should be only one system of education. This will ensure that the same quality and the standard of education will be maintained.

7. BLACK ADMINISTRATION ACT 38 OF 1927

This ACT was an ideal instrument in the hands of the Government to control the Black people in this country and their traditional institutions such as bogosi. SInce the new policy is that all poeple should be equal in the eyes of the law, then there is no reason why there should still be acts controlling only lives of certain races. Such laws have no place in the new South Africa because they would go against the of equality.

8. **SELF-GOVERNING TERRITORIES CONSTITUTION ACT (ACT 21 OF 1971**

This is undoubtedly the foundation upon which separate development is built. It is the instrument by which the Government would extent the 'vote' to the voteless and voiceless Blacks. They were to be developed into independent nations. There was no hope for most of these enclaves because they could never be economically viable - they had to be sustained financially by the Central Government in order to survive.

Reality has now dawned and it has been realised that this system cannot be sustained forerver because it was prohibitively expensive to maintain.

Reality would dictate that as this law was founded on apartheid, it should go when apartheid goes.

At this stage the self-governing territories have original powers to legislate on certain scheduled matters. In those instances where the legislative Assemblies have such powers, not even RSA parliament legislation can apply in these self-governing territories. Therefore, this piece of legislation should go so that there could be uniformity and certainty in our law.

9. **CONSTITUTION ACT 110 OF 1983**

This is the basis of the tricameral parliament which despite all opposition from Black communities, was bullduzed into existence in 1983. There were hundreds of casualities as a result of the introduction of this Act. Even to this day the effect hereof are still felt. One can hardly speak of a climate conductive to free political activity for as long as this Act remains on the statute book.

10. **CONCLUSION**

In a nutshell we are on all fours with the view expressed that all the acts referred to are discriminating on the basis of race. Some of these laws are so cruel that they dehumanised people and made them lose their self-esteem and self-esteem and self-respect. One need only think of the notorious migratory labour system that was designed to tear families asunder. The clear manifestations of the psychological effect that this system has had on our people is still with us.

There is no room for discriminatory laws in a new South Africa.

UNITED PEOPLE'S FRONT SUBMISSION TO THE TECHNICAL COMMITEE ON THE AMENDMENT OR REPEAL OF DISCRIMINATORY LEGISLATION

ADDENDUM:

The UPF is of the opinion that in view of the possibility that other administrations might be reluctant to disclose all discriminatory legislation operative within their jurisdictions, it would be wise if the technical committee were to invite members of the public to make representations on the legislation that in their respective opinions, inhabit free political activity within their respective areas.

This will, in the UPF's view, act to counter the possibility referred to above.

G9

INYANDZA NATIONAL MOVEMENT'S SUBMISSION TO THE TECHNICAL COMMITTEE ON THE REPEAL OR AMENDMENT OF LEGISLATION IMPEDING FREE POLITICAL ACTIVITY AND DISCRIMINATORY LEGISLATION

Two routes are proposed to approach this issue, being:

1. To identify relevant laws applicable in the Republic of South, TBVC states and self-governing territories;

2. The "higher code" approach.

Both routes possess shortcomings. The very distinct character of the first route is that it will be time consuming whilst adopting the second route will take more time than the first one as it will involve the establishment of a Constitutional Court.

As Inyandza National Movement, we believe that a product after comparing submissions by participants combined with the Technical Committee's input, will give birth to perfectly accurate and complete list.

Ultimately an omnibus Bill will have to be drafted to repeal and amend relevant laws.

G 10

Submission by the African National Congress

To the Tecnical Committee on The Repeal of Disciminatory Legislation

19 May, 1993

The South African statute book is replete with repressive and discriminatory legislation which cannot help us in the process of transformation we have now embarked upon. It is the view of the African National Congress that in the process of levelling the political playing field and creating a climate within which all South Africans can enjoy the freedom of political activity and in which we can hold non-racial, democratic, free and fair elections, all South African legislation, including the laws of the TBVC territories, which negatively affect basic civil and political rights, should be repealed or, as the case may be, amended.

For the purpose of the transitional period, and pending the adoption by an elected Constitution-making Body of a new Constitution for our country, the ANC has proposed that the following rights, *inter alia*, should be entrenched and guaranteed in a transitional constitutional instrument, a Transition to Democracy Act:

(a) Freedom from racial discrimination and the right of both men and women to enjoy equal rights in all areas of public and private life;

(b) Freedom of speech and expression which shall include the freedom of the press and other media;

(c) Freedom of thought, conscience and belief;

(d) The right to personal freedom including the right not to be detained without trial;

(e) The right to personal privacy, including freedom from arbitrary search and seizure, integrity of the home and the inviolability of personal communication;

(f) The right to assemble and demonstrate peaceably without arms, including the right to hold public meetings, gatherings and processions and to participate in peaceful political activity intended to influence the composition of and policies of government;

(g) The right to form and join trade unions, employers' organisations and to engage in collective bargaining;

(h) The right to form and join associations and political parties;

(i) The right to freedom of movement, including the right to leave and return to South Africa;

(j) Respect for human dignity; and

(k) The right of a person to use the language and to participate in the cultural life of his/her own choice.

It is our submission that all South African and TBVC legislation, or any provisions thereof, which is/are in conflict with, or contrary to, these and other internationally recognised civil and political rights, should be unconstitutional and null and void.

SPECIFIC LEGISLATION WARRANTING URGENT ATTENTION

While our submission in this regard will concentrate on the draconian legislation passed by the South African Parliament and administered by the South African government, our remarks should be taken to encompass similar legislation to be found in the TBVC territories.

For this purpose, we have identified certain South African laws and/or certain provisions thereof, that negatively affect fundamental civil and political rights and that have annihilated the rule of law.(NB **our list of such legislation is not a comprehensive one, however)**. These follow hereunder:

A. **Restrictions on Freedom of Assembly**

While the common law of South Africa recognises and protects the freedom of assembly, successive South African governments have seriously encroached upon, and interfered with it by means of various laws. Though there is a whole range of statutory provisions which have grossly undermined the freedom of assembly, the **Internal Security Act**[1] is the main legislative encroachment that the National Party governments have indulged in. This Act has made this freedom dependent on the whims of executive and judicial authorities.[2] It allows police officers of or above the rank of warrant officer to close places to prevent prohibited gatherings,[3] and to disperse prohibited gatherings[4] by methods which

[1]. Act 74 of 1982.

[2]. Section 46 (1) of the Act grants awesome powers to magistrates to prohibit meetings for periods not exceeding 48 hours and to impose numerous restrictions on persons involved in meetings if they have reason to apprehend that such meetings may seriously endanger public peace.

The provisions of Section 46 (3) of the Act have conferred far-reaching and sweeping powers upon the Minister of Law and Order in this regard.

The provisions of Section 46 (1) and (3) should be read with those of Section 57 of the Act.

[3]. See Section 47 (1) of the Act.

include the use of force.[5] The Act further allows magistrates to grant or refuse permissions for the holding of processions.[6] Furthermore, most (if not all) local authorities have promulgated bye-laws that require their consent for the holding of meetings, gatherings and processions. The **Trespass Act**[7] allows tremendous powers to employers, owners, lawful occupiers or persons in charge of premises to prohibit gatherings and meetings thereon. These extensive powers may be used or even abused as we prepare and campaign for the first non-racial, democratic, free and fair elections.

B. **Restrictions on the Freedom of Expression and Opinion**

Of the laws which provide for the proscription, seizure and closure of publications, the most important are the **Internal Security Act**[8] and the **Publications Act**.[9] The latter Act is the principal statute of censorship in terms of which thousands of publications are banned each year on the basis that they are undesirable.[10] Once a publication has been declared undesirable, its possession and distribution are prohibited and censorship committees can even declare every edition of a publication undesirable.[11] The Act provides extensive criminal sanctions for the breach of its provisions. The final arbiter on matters governed by the **Publications Act** is the Publications Appeal Board; there is no right of appeal to the Supreme Court of South Africa.

The **Internal Security Act** creates statutory crimes of subversion[12] and sabotage[13] the language of which is so open-ended that they can be committed by mere statements expressing opinions. Those who have advocated strikes and promoted rent boycotts, for instance, have fallen foul of these provisions on numerous occasions. Furthermore, the amended version of Section 56 has not

---

4. See Section 48 (1) of the Act.

5. See Section 48 (2) read with Section 49 of the Act.

6. See Section 53 (1) and (2) of the Act.

7. Act 6 of 1959.

8. See note 1 above.

9. Act 42 of 1974.

10. "Undesirability" is defined in Section 47 (2) of the Act.

11. See Section 9 of the Act.

12. See Section 54 (2) of the Act.

13. See Section 54 (3) of the Act.

been an improvement at all on the provisions of the previous Section 56 of the Act; possession of publications published by or disseminated by or on behalf of, or under the auspices, direction or guidance of an unlawful organisation is still an offence[14] which carries a sentence of imprisonment not exceeding three years.

The other notorious Act is the **Public Safety Act**.[15] This Act allows the State President the extreme power to proclaim a state of emergency in the Government Gazette[16] and to make regulations[17] which have in the past had dire consequences for the victims of the apartheid State. The power to declare a state of emergency, and to withdraw a proclamation establishing it, is entirely in the discretion of the State President, and can be legally challenged only on the basis of bad faith. Under state of emergency regulations, the National Party has coined a phrase called "subversive statements" which encompasses all forms of expression. In addition to the prohibition of "subversive statements", publications and television, film or sound recordings containing any "news, comment or advertisement on or in connection with" a variety of topics were prohibited unless authorised by a government official or they appeared in the debates of Parliament or in judicial proceedings in which a final judgment had been given.

These regulations have also tended to sanction the use of force, including lethal force which has been freed from virtually all controls or restraints. Section 5A of the Act[18] allows the Minister of Law and Order to declare mini states of emergency in what is euphemistically called unrest areas. This too has dire consequences for human rights generally.

Provisions of the **Police Act**[19] and the **Prisons Act**[20] make it a punishable offence to publish any "untrue matter" with regard to any action by the police force or members thereof or with regard to the behaviour or experience in prison of any prisoner or ex-prisoner. The Acts impose heavy fines for any transgression thereof.

---

[14]. See Section 56 (1) (b) of the Act.

[15]. Act 3 of 1953.

[16]. Section 2 (1) of the Act.

[17]. Section 3 of the Act.

[18]. This was introduced by the **Public Safety Amendement Act**, Number 67 of 1986.

[19]. Section 27B (1) of the **Police Act**, Number 7 of 1958.

[20]. Section 44 (1) (f) of the Prisons Act, Number 8 of 1959.

The **Defence Act**[21] makes it a criminal offence to publish, without the requisite permission, "any information relating to the composition, movement or disposition" of the Defence Force or "any statement, comment or rumour calculated directly or indirectly to convey such information". In addition, it is an offence to publish "any statement, comment or rumour relating to any member of the SADF or any activity of the SADF ... calculated to prejudice or embarrass the Government in its foreign relations or to alarm or depress members of the public, except where publication thereof has been authorised by the Minister or under his authority".

The provisions of the **Radio Act**[22] and the **Broadcasting Act**[23] have served to ensure the National Party Government's control over broadcasting and have excluded, limited and restricted oppositional broadcasting activities in the process. Thus, these two Acts in particular have severely limited the freedom of expression and opinion.

C. **The Right to Personal Freedom**

The 1991 amendment of Section 29 of the **Internal Security Act**[24] has not helped to improve the provisions thereof at all as far as the ANC is concerned. Detention without trial remains unacceptable to us, no matter who the victim may be. Moreover, the provisions of Section 31 (1) and (4) of the **Internal Security Act** which allow for the incommunicado detention of State witnesses have virtually been left intact. Section 31 (7) of the Act, which excludes the jurisdiction of the courts of law from cases of persons detained under Section 31 (1) thereof, is a further intolerable aspect of this law.

D. **The Right to Assemble and Demonstrate Peacefully**

In addition to the provisions of the **Internal Security Act** already referred to above, this right is undermined by **The Demonstrations in or near Court Buildings Prohibition Act**,[25] and **The Gatherings and Demonstrations Act**.[26]

---

[21]. Act 44 of 19957.

[22]. Act 3 of 1952.

[23]. Act 73 of 1976.

[24]. As amended/substituted by Section 13 of Act 138 of 1991.

[25]. Act 71 of 1982, Section 2 (1) of which prohibits all demosntrations and gatherings relating thereto or arising therefrom, in any building in which a courtroom is situated or at any place in the open air within a radius of 500 metres from such building, on every day of the week except Saturdays, Sundays and public holidays, unless the magistrate of the district has granted his written

E. **Restrictions on the Accessibility of Public Information**

It is the view of the ANC that in order for the masses of our people to make correct and informed choices on any public matter, and, particulalry in relation to the forthcoming elections, public information has to be freely available. Acts such as the **Protection of Information Act**,[27] the **Secret Services Account Act**,[28] the **National Key Points Act**,[29] the **National Supplies Procurement Act**,[30] and many others, all of which have severely restricted the right of the public to know, will not be a good contribution to the creation of a climate conducive to free political activity, in which we can conduct free and fair elections. The **Public Safety Act** (and regulations made thereunder, the cumulative effect of which has been to impose a news and information black-out on matters pertaining to the state of emergency or with measures adopted to counter it) has been referred to above.

F. **The Right to Personal Privacy**

There are many South African Acts which impinge upon this right. The **Post Office Act**[31] authorises the detention of postal articles or telegrams reasonably

---

permission under Section 2 (2) thereof. In terms of Section 3 of this Act, various acts connected with demonstrations, including organising, encouraging or promoting such demonstrations; printing, publishing or advertising a notice convening or organising them or in any way advertising or making them known; attending or taking part in them, or demonstrating in a manner prohibited by the Act, are made criminally punishable.

[26]. Act 52 of 1973, the purpose of which is to prohibit both gatherings and demonstrations in the precincts of Parliament which are not authorised by the Chief Magistrate of Cape Town. A whole range of acts connected with such gatherings and demonstrations are made criminally punishable by the Act.

[27]. Act 84 of 1982, the effect of which is to make criminally punishable the unauthorised disclosure of virtually the whole range of official government information.

[28]. Act 56 of 1978, which created a fund, out of moneys appropriated by Parliament, to support secret government schemes and activities. The provisions of Section 2 (2) and (3) of the Act, which in particular create a secret fund in any and every government department, are to be noted.

[29]. Act 102 of 1980.

[30]. Act 899 of 1970.

[31]. Act 44 of 1958.

suspected of being linked to the commission of an offence.[32] The Act further authorises the interception of any particular article or communication which has been or is being transmitted by telephone or in any other manner over a telecommunications line to or from any person, body or organisation.[33] Of particular note is that the interception may, with the concurrence of the Minister of Posts and Telecommunications, be authorised by the Minister who is in charge of the National Intelligence Service, the Minister of Law and Order and the Minister of Defence if a request to that effect has been made by a state official designated for this purpose by the State Security Council and holding a rank not lower than that of a Deputy-Director General in the public service. Such an officer must believe that the interception is necessary for the maintenance of the Security of the Republic. All this is done without external and independent supervision and control of any kind.

It is the view of the ANC that such laws and any other statutory provisions that permit bugging of individuals, organisations and meetings, as well as those that grant extensive powers of entry, search and seizure without warrant, should be reviewed. The practice of undercover surveillance too has to be scrutinised; it has hitherto tended to be used against perfectly legitimate political activity and produced inaccurate and unrealiable information and encouraged the criminal activities of *agents provocateur*.

G. **The Right to Form and/or Join An organisation**

This right would be greatly jeopardised by the provisions of Section 4 of the **Internal Security Act**, despite the 1991 amendment thereof.[34] The fact of the matter is that the National Party government still has in its hands the awesome power to ban any organisation in terms of this Act.

In addition to this, there is a host of statutory provisions that affect the capacity of organisations to raise funding from inside and outside South Africa. These include the **Prohibition of Foreign Financing of Political Parties Act**,[35] the **Affected Organisations Act**,[36] the **Fund-raising Act**,[37] and the **Disclosure of**

---

[32]. See Section 118 of the Act.

[33]. See Section 118A of the Act.

[34]. See the provisions of Section 4, read with Section 13 (1) of Act 74 of 1982, in this regard.

[35]. Act 51 of 1968.

[36]. Act 31 of 1974.

[37]. Act 107 of 1978.

Foreign Funding Act.[38] The ruling party cannot be allowed to retain all the powers it has under these laws if we are to have the semblance of a level political playing field.

H. **Discriminatory Legislation and the Right not to be Discriminated Against**

Numerous South African laws would exclude millions of South Africans from the forthcoming elections purely on the race and colour if they are not repealed or amended, as the case may be. The first is, naturally, the **Republic of South Africa Constitution Act**,[39] which the ANC advocates should be replaced by a Transition to Democracy Act pending the adoption by an elected Constituent Assembly of a new and democratic Constitution for South Africa.

The second is the **Electoral Act**[40] which confines the franchise to whites, Indians and Coloureds, thus excluding from public affairs the indigenous African majority.[41] The ANC has proposed that this entire Act must be replaced with an appropriate **Electoral Act** which will end the colonial status of the indigenous African majority and grant the right to vote to all South Africans, including those currently entrapped into the TBVC territories, without regard to race and colour. It should be mentioned in passing that the provisions of Section 4 (1) (a) (i) and (iii) of the current **Electoral Act** would exclude most of the leaders of the ANC, including its President, Nelson Mandela, as they have, at one time or another, been convicted of treason and offences under the Internal Security Act.

To the extent that there are provisions in Acts such as the Aliens and Citizenship Acts which discriminate against women, the ANC submits that they too must be scrutinised and cleansed of such provisions.

CONCLUSION

The African National Congress submits that all these, and similar laws and statutory provisions, must, as a matter of extreme urgency, be expunged from the statute book. All these laws were predicated upon the need felt by various minority regimes to suppress the majority of our people and sustain minority rule. They grossly undermined every imaginable human right, violated all civilised standards and norms of official behaviour and virtually sanctioned crime. They are certainly not consonant with the national attempts at building a democratic constitutional order in South Africa.

---

[38]. Act 26 of 1989.

[39]. Act 110 of 1983.

[40] Act 45 of 1979.

[41]. See Section 3 of Act 45 of 1979 read with Section 52 of Act 110 of 1983.

The ANC is not unmindful of the security needs of the country, especially during the period of transition. We therefore request the Technical Committee to, in addition to its arduous task, consider making recommendations on a new security system that will be informed by the need to protect and advance the interests of all South Africans. Such a system will have to be predicated upon new values and have the objectives of fostering a free society, promoting responsible and responsive government, protecting basic rights and the rule of law and preserving such institutions from subversive or violent assaults.