

**SOUTH AFRICAN GOVERNMENT OFFICE
- WORLD TRADE CENTRE -**

29 July 1993

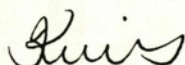
Head of the Administration
Multi-Party Negotiating Process
World Trade Centre

Dear Dr Eloff

**SUBMISSION BY THE SOUTH AFRICAN GOVERNMENT FOR THE ATTENTION OF
THE TECHNICAL COMMITTEE: TEC AND SUB-COUNCILS**

1. Attached is a submission by the South African Government entitled *SOUTH AFRICAN GOVERNMENT'S RESPONSE TO CERTAIN PROPOSALS MADE BY PARTICIPANTS IN THE NEGOTIATING COUNCIL'S DEBATE ON THE FOURTH WORKING DRAFT BILL ON THE TRANSITIONAL EXECUTIVE COUNCIL ON TUESDAY, 27 JULY 1993.*
2. Kindly transmit the document for immediate attention to the Technical Committee.

Yours sincerely



7 GOVERNMENT OFFICE: WORLD TRADE CENTRE

**SOUTH AFRICAN GOVERNMENT'S RESPONSE TO CERTAIN
PROPOSALS MADE BY PARTICIPANTS DURING THE NEGOTIATING
COUNCIL'S DEBATE ON THE FOURTH WORKING DRAFT BILL ON THE
TRANSITIONAL EXECUTIVE COUNCIL ON TUESDAY, 27 JULY 1993**

The South African Government hereby offers the following observations in respect of some of the proposals that have been made during the Negotiating Council's discussion of the Technical Committee's Fourth Working Draft Bill on the Transitional Executive Council:

1. **The proposal that the status of the Council in relation to the Cabinet should be clearly defined.**

It is considered that any attempt to describe a non-existent formal relationship between the TEC and the South African (and other) Cabinets would of necessity be artificial and serve no useful purpose. The extent to which the TEC would be able to take decisions which would have implications for the functioning of the Cabinet as well as the extent to which interaction between it and Ministers would be required, is sufficiently apparent from the provisions that deal with the powers of the TEC.

2. **The proposals that it should be explicitly stated in clause 2 that the TEC would have executive powers and that there should be explicit reference to its authority to require governments not to proceed with certain legislation.**

The precise content and ambit of the powers of the TEC are apparent from the terms of the bill itself. It would be inconsistent to specifically mention some but not all its executive powers and not mention its quasi-legislative and administrative powers at all. The fact that it is primarily an executive organ is made clear by its name. It is also not legislative practice or necessary to regulate the establishment of a statutory body with reference to some of its powers only.

3. **The proposal that the words "determine", "ensure" and "inter alia" should be inserted in the introductory paragraph to clause 3.**

It would not make any sense to give effect to the first proposal given the wording of the introductory paragraph as it stands.

The word "ensure" actually appears in the appropriate places in clause 3. See sub-clauses (a)(iii) and (iv).

The introduction of the words "inter alia" would introduce an unnecessary element of uncertainty. The same applies to a similar proposal in respect of other provisions. The rules of interpretation of statutes also adequately cover the need for ancillary powers.

4. **The proposal that it should be made abundantly clear that the State President would be legally obliged to appoint as members of the TEC the designated representatives of the various participants.**

This proposal is supported.

5. **The proposal that it should be made clear in clause 4 that the traditional leaders who currently participate in the Negotiating Process should be entitled to participate in the TEC.**

This proposal is supported.

6. **The proposal that "for good reason" should be substituted for "on good cause" in clause 4(4)(a).**

This proposal is supported and it is suggested that it also be inserted in clause 9(1)(c)

7. **The proposal that the terms of reference regarding law and order, stability and security should make provision for a single command structure.**

The draft bill already empowers the TEC to issue recommendations regarding effective and co-ordinated control of policing agencies of participants in the Council. The proposal, calling as it does for a single command structure, pre-empts the issue by denying the TEC itself the opportunity to determine the most effective manner in which to deal with this matter. In the light also of the fact that there is at present some uncertainty regarding the participation of major role players, it would be better to let the TEC deal with this matter in a way which at the right time would seem most appropriate.

Since the proposal itself clearly goes beyond the scope of the TEC's objects, it is also unacceptable for that reason.

There is a real danger that a proliferation of new structures will in fact hamper rather than enhance the transitional process.

8. **The proposal that the third member of the subcommittee referred to in section 12(b)(3) should be elected by the civilian component of the Police Board.**

This proposal is opposed since the entire membership of the subcommittee will come from the civilian component of the Police Board and it is the view that it would enhance the mutual trust and co-operation that will be required during the transitional period if all the members of the Board were to elect the third member.

9. **The proposal that a sub-clause 12B(8) be inserted which should read as follows: "Notwithstanding any other law the police forces shall be bound (by any regulation governing police conduct issued by the Independent Electoral Commission, by any directive, regulation or order issued by the appropriate authority governing the operation of the National Peace-keeping force and) in regard to the conduct or deployment of their members in any capacity relating to paragraph 1(c) (of the committee's first report) to any order or directives issued by the Subcouncil."**

This proposal is opposed in its entirety. The effect of regulations of the IEC will be dealt with elsewhere and has no place in the draft bill.

That there will be a need to liaise with the appropriate authority governing the operation of the National Peace-keeping force is accepted. The proposal is regarded as being without any merit whatsoever and not supported by any of the submissions that have been received by the Technical Committee. Coming, as it does, from the same source, it cannot even co-exist with the proposal regarding a single command structure.

It is also not apparent why a proposal of this nature is regarded as necessary for purposes of levelling the playing field and is tantamount to a vote of no-confidence in the Subcouncil.

10. **The proposal that the following should be added on to clause 12D(1)(c): "and to monitor and investigate any expenditure of public funds either itself or through appropriate forensic accountants".**

This proposal is opposed by reason of the fact that this is the statutory duty of the Auditor-General.

11. **The proposal that sub-clause 12D(5) should be amended to provide that the Subcouncil should approve international financial agreements.**

This proposal is opposed for reasons that relate to the mechanics involved in negotiating loans of this nature.

12. **The proposal that a new sub-clause 12D(6) which should read as follows, should be inserted: "The Subcouncil shall scrutinize and approve the transfers of public funds as between the South African Government, the self-governing territories, and the TBVC States, regardless of the department from which transfers are made" and that a new sub-clause 12D(7) which should read as follows, should be inserted: "The Subcouncils shall be**

provided with full details regarding domestic borrowing, including borrowing by para-statal organisations."

The first proposal is opposed since, couched as it is in general terms, it has nothing to do with levelling of the playing field. To the extent that appropriation of money may have an impact of the levelling on the playing field, the TEC would be entitled to such information in terms of the draft as proposed by the Technical Committee.

The same applies to the second proposal.

13. **The proposal that section 18(1)(b) should be amended to make provision for a two-thirds majority of members present instead of a 80% majority of all the members of the Council and its Subcouncils.**

This proposal is opposed *inter alia* on the basis that -

- (a) it represents a drastic departure from the recommendations of CODESA'S Working Group III in this regard;
- (b) it entirely negates the fact that the responsibilities of the Council and the climate in which it would be called upon to perform them, may or is likely to be such that the maximum degree of consensus would be required; and,
- (c) the duties of the Council would be similar to that of the Negotiating Council in the sense that it will concern itself with preparations for a democratic election and for that reason as well it should take its decisions on the basis of consensus or near consensus.

The fact that not all proposals have been dealt with should not be regarded as indicative of the fact that those that have not been dealt with are supported, simply that it is not considered necessary to submit proposals in respect thereof.