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**FAX COVER SHEET**

**DATE** : 17 JUNE 1993

**TO** : ANC NEGOTIATIONS COMMISSION  
FAX NO: 011-3307119

**ATTENTION** : MADUNA/ HASSEN EBRAHIM

**SUBJECT** : 5TH REPORT OF TECHNICAL COMMITTEE  
ON CONSTITUTIONAL ISSUES

**FROM** : ALBIE SACHS

**TOTAL NUMBER OF PAGES (INCLUDING THIS PAGE):** 2

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Dear Maduna/ Hassen

I have just received the fifth report of the Technical Committee on Constitutional Issues and make the following brief and general comments.

1. Re the Senate:  
We really must oppose having a second chamber at this stage. It will require separate voting and complicate everything at a time when we need simple structures functioning in a way that everybody can understand. There is no reason why separate votes cannot be taken in the National Assembly. On matters affecting the regions directly there could be a two-thirds majority of the regional reps required. This was agreed to long ago. If I remember correctly, the Government is bound by the Record of Understanding. This Record of Understanding did not finally exclude a Senate but it opted clearly for one round of voting for national and regional lists. It seems that the other side are renegeing on this. It also seems that they are trying to make a complete and permanent parliamentary structure which can only be amended with difficulty. One of the problems is that we have not thought the matter through. The whole question of regions, the Senate, the voting system and the role of the Constitutional Court will have to be seen as a whole. It would be a great mistake to tackle to question in an improvised, bits and pieces way.
2. With regard to the Executive, the report does not bring out sharply that the main problem is how decisions should be made. I personally feel we should explore the idea of a broad programme of reconstruction, transformation and reconciliation being agreed to in advance, and then perhaps revised on an annual basis, according to some agreed procedure (for example, a 60 percent majority in Parliament). The cabinet would then function on the basis of informed debate and discussion like any cabinet within the framework of the agreed programme. It would be disastrous if every decision about every detail of government became the basis for bitter disputes starting in the cabinet and leaking out to the general public.

3. We must insist on a proper Constitutional Court that comes into being with the new dispensation and that is seen as part of the new democratic South Africa. The Constitutional Court could form the apex of the existing court structure and could include members of the existing judiciary. It is vital that if such a court in future upholds the constitution whether for or against the government at that time, it be seen to reflect the judicial wisdom and life experiences of all South Africans and not just one group. It is also important to be able to draw on distinguished law professors, persons who have refused to go on to the Bench and distinguished judges with a human rights sensitivity, who are not in the Appellate Division. I feel we must be quite insistent on the special position of a special Constitutional Court, making it clear that the procedures for choosing its members must be consistent with international experience and designed to give the broad sense of confidence that the South African public as a whole would want.

Yours

Albie



# NEGOTIATIONS COMMISSION MEETING

23 - 24 October, 1993

## Draft Agenda

1. Welcome
2. Judiciary Zola Skweyiya
3. Local and Regional Government Powers and Functions (Sec. 118) D. Omar/ T. Botha  
Regional Finances (Sec. 121) D. Omar/ T. Botha/ N. Morrison
4. IGNU V. Moosa
5. Fundamental Rights P Maduna/ H Cheadle (1)
6. TBVC areas M Phosa
7. Freedom Alliance - Bilateral
8. Regions - Demarcation T. Botha
9. National Symbols W. Serote 2nd last
10. Electoral Act F. Ginwala 3rd last
11. Commission For Administration Z. Skweyiya
12. Structures of Transition - ANC structures and interaction H. Ebrahim Last

1) Newl govt - power.  
Law for good govt. devel  
in place.

2) Correct services / police  
special

3) Air? B of Rts.  
1) Hall Park - ~~Charter of Rts~~  
2) Jasing power

3) Correct - police  
A) Air

Balance:

Reconst - ground - Residual power  
Jud. Defence - police Excl  
Finance

~~stopped elite. Recovered ground.~~  
1) Easily catered for.  
2).



# **NEGOTIATIONS COMMISSION**

**20TH JUNE, 1993**

## **DRAFT AGENDA**

- 1. TEC**
  - 1.1 Sub Council on law and order**
  - 1.2 Sub Council on Defence**
  - 1.3 Sub Council on Finance**
  
- 2. Constitutional Matters**
  
- 3. Fundamental Rights**
  
- 4. IGNU**
  
- 5. PAC Resolution**
  
- 6. Multi-Party Process**

*7. Gender*

## 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.