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**TECHNICAL COMMITTEE ON THE AMENDMENT OR REPEAL OF LEGISLATION  
IMPEDING FREE POLITICAL ACTIVITY AND DISCRIMINATORY LEGISLATION**

1. Without detracting from the work done by the abovementioned Committee, the Government of the Republic of South Africa is of the view that the proposed "Higher Code" has clearly become superfluous, especially as a result of the proposals by the Technical Committee on Fundamental Rights during the Transition and the Technical Committee on the Independent Electoral Commission. The Negotiating Council has already accepted in principle a list of fundamental rights (albeit not conclusive yet) for the transition which includes all the "criteria" proposed by the Committee on Discriminatory Legislation as the basis of its "Higher Code" e.g. these fundamental rights will be justiciable. Furthermore, the other proposed legislation pertaining to the election and the setting up of an independent Electoral Commission (IEC) makes it clear that the IEC will set up a code of conduct which will be administered, monitored and adjudicated by the IEC. Consequently there appears to be no need whatsoever for further mechanisms to ensure the objective of a free and fair election, and the Government, therefore, does not support the idea of a "Higher Code".

2. Regarding the repeal or amendment of discriminatory legisla-

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tion a distinction must be drawn between -

- (a) discriminatory legislation of a constitutional nature and
- (b) discriminatory legislation not of a constitutional nature.

Discriminatory legislation of a constitutional nature (a) should be dealt with in the constitutional reform process which is the subject of the present negotiations.

As far as discriminatory legislation not of a constitutional nature (b) is concerned, a distinction must once again be made between -

- (b1) discriminatory legislation impeding upon free political activity; and
- (b2) discriminatory legislation of a general nature that does not specifically affect political activity.

Discriminatory legislation of a nature infringing upon fundamental rights could be dealt with as follows:

- 2.1 A Bill of Rights to be in place as soon as possible fully justiciable by a Constitutional Court.

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2.2 In the phase preceding a Bill of Rights, by all participants listing such legislation and submitting it to the MPNP, which could request the Government to amend or repeal such legislation. The Government makes it clear that it will actively participate in and support such a process.

2.3 In the TEC phase, by listing and submitting such legislation to the TEC.

2.4 In the transitional phase, by submitting such legislation to the transitional Government/Parliament.

The Government thus views the repeal of discriminatory legislation of a nature contrary to a Bill of Rights as a process that may well extend into the transitional phase.

Other legislation of a discriminatory nature may be dealt with as set out in paragraphs 2.2, 2.3 and 2.4 above.

3. Regarding discriminatory legislation which impedes upon political activity (b1), two situations can once again be identified:

B2(a) instances where the legislation itself is discriminatory; and

B2(b) instances where the legislation allows for discriminatory decisions.

The IEC could be utilised as an instrument to deal with both B2(a) and B2(b).

In cases where the legislation itself is discriminatory a party could lodge a complaint with the IEC and the IEC may thereupon request the State President to repeal the legislation or to grant an exemption from the legislation. The State President will of course need to be empowered to do so.