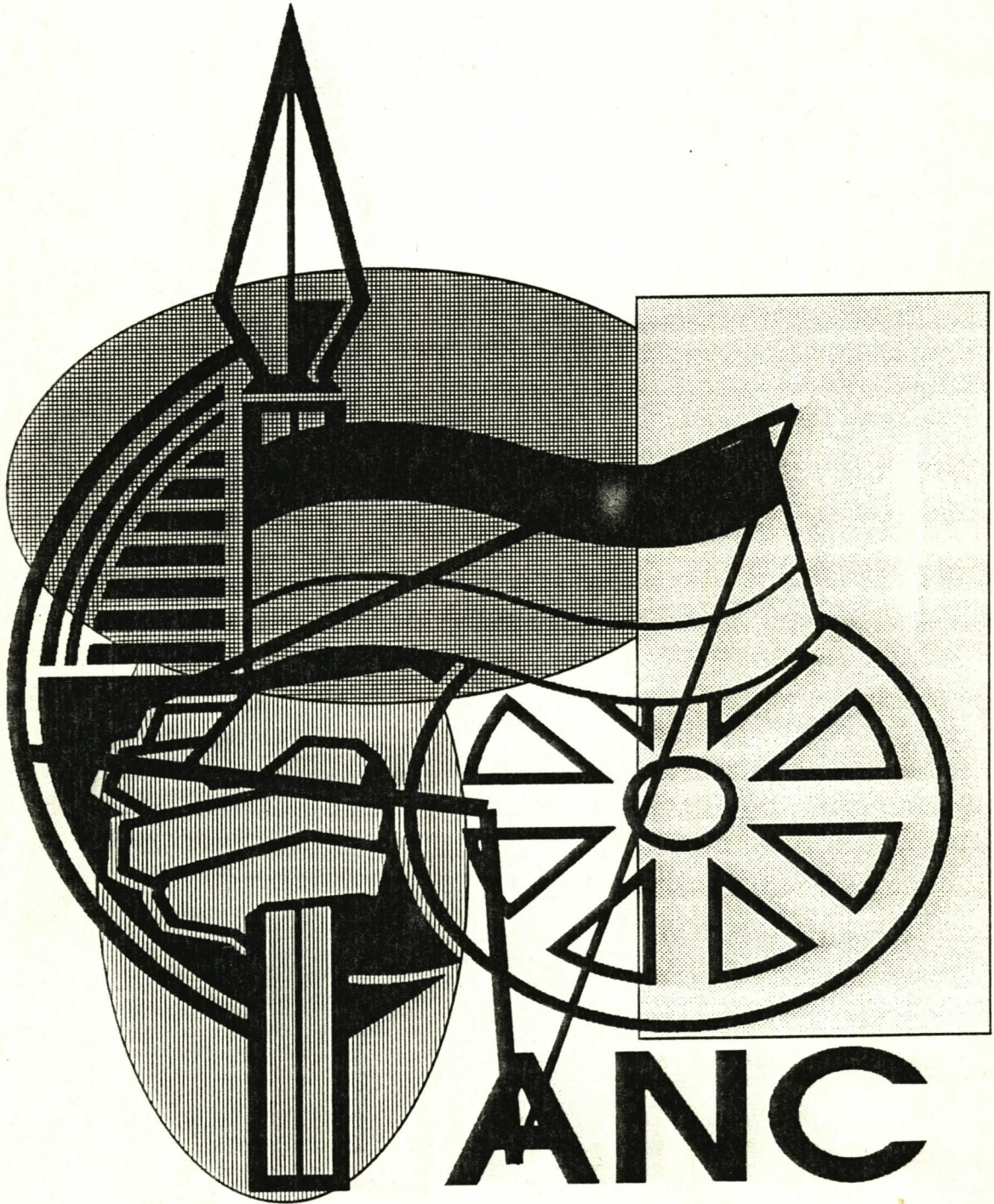


NEGOTIATIONS COMMISSION



Meeting - 16/01/93

DOCUMENTATION FOR NEGOTIATION COMMISSION MEETING
16.01.93

1. Draft Agenda
2. "Status of bilateral discussion" Page 1
3. "Transition to Democracy Act" Page 3
4. "legislative Framework for TEC" Page 23
5. "Bill" (on TEC drafted by the regime) Page 41
6. Proposals concerning the Transition Executive Authority on International Relations. Page 47
(There are 2 documents ANC's and regime's)
7. "Independent Media Commission" Page 53
8. "Independent Media Commission " (dated 15.12.92)
9. "Proposed Terms of Reference for the TEC Sub-Council on Defence" Page 57
10. "Proposal for the organisation and control of the security and intelligence establishment under the TEC" Page 63

NEGOTIATIONS COMMISSION MEETING 16.01.93

DRAFT AGENDA

1. Report of joint committee meeting held on 10.01.93
2. Multi-party Planning Conference.
3. T.E.C. legislation
4. T.E.C. Structures for Defence, Police and Intelligence.
5. Violence related issues.
6. Matters which need discussion at the NWC.

Status of Bilateral Agreements

(as amended on the 10/12/93)

The Government and the ANC agreed that bilateral discussions and interaction between them in the course of the constitutional negotiation process, will take place within the following framework:

- 1 Both recognise that peaceful development of South Africa to a democracy is urgent and imperative.
- 2 They have different and often contradictory policies and objectives. At the same time both have a shared desire to ensure that South Africa moves expeditiously and successfully from the present situation to a new democratic order and that the factors essential to a healthy growing economy should be put in place as soon as possible.
- 3 They are two parties among many a multilateral process in which all parties share equal responsibilities. The two parties must ensure that the manner in which they conduct themselves upholds the independence and integrity of all parties and organisations involved in the negotiation forum.
- 4 As they have done in the past, the ANC and the Government may again enter into agreements which shall be binding on them. Such agreements shall not be binding on other parties. The two parties shall seek to pursue common objectives set out in such agreements as recommendations to promote the multilateral forum and progress in the negotiations process as well as bilateral consultations with other parties. The two parties shall not seek to impose their ideas on others. Recommendations shall be in a spirit of honesty and openness and commitment to any multilateral agreements that emerge.
- 5 It is crucial that the Government and the ANC approach discussions and agreements with utmost seriousness. They should relate to each other in a spirit of openness and good faith.
- 6 On this basis the two parties committed themselves to the speedy resumption of Codesa (in a restructured form) and confirm that they hold themselves bound by all the agreements so far reached in Codesa, including the *Declaration of Intent*. The two parties agreed to allow for and work towards ensuring that participation in Codesa becomes more representative in keeping with the principle of making the negotiations forum as inclusive as possible.

TRANSITION TO DEMOCRACY ACT
ACT

To amend the Republic of South Africa Constitution Act (No.110 of 1983)

The Republic of South Africa Constitution Act No. 110 of 1983 is hereby amended as follows:

1. Preamble

Delete the Preamble and substitute with the following:

"Whereas it is necessary to establish mechanisms whereby a new non-racial, non-sexist constitution can be brought into being through the participation of all South Africans; and

Whereas there is a need to create a climate favourable to free and fair elections, and free political participation and for that purpose to guarantee certain rights and freedoms"

We hereby adopt this Transition to Democracy Act.

[Explanatory Note:

The substitution is clear. In view of the interim and transitional nature of the constitution it is not necessary to retain the existing preamble except in as much as it is desired to establish the purpose of the amendment - to provide for a legitimate constitution-making process. Further, the existing preamble is in many senses inappropriate in that it uses apartheid categories and excludes non-Christians from its embrace.]

2. Article 1

Article 1 is hereby deleted and substituted by the following:

"The Republic of South Africa shall consist of the territories as defined in the Union of South Africa Act of 1909 (excluding Walvis Bay)".

[Explanatory Note:

The current definition of the Republic of South Africa excludes the TBVC states. The amendment restores the integrity of the country by including those territories as part of South Africa.]

3. Insert the following new article 1 (a):

Article 1 (a) - Guaranteed Rights and Freedoms for Free Political Activity

- (1) Notwithstanding anything to the contrary contained in any other law all persons shall have the following rights, which shall be exercised subject to the provisions of subsection (2) hereof.
- (a) Freedom of speech and expression which shall include the freedom of the press and other media;
 - (b) Freedom of thought, conscience and belief;
 - (c) The right to personal freedom including the right not to be detained without trial;
 - (d) Freedom against arbitrary search and seizure;
 - (e) The right to assemble peaceably and without arms;
 - (f) The right to form and join associations or unions, including trade unions and political parties;

-
- (g) The right to move freely throughout the territory of the Republic of South Africa;
 - (h) The right to leave and to return to South Africa;
 - (i) The right to hold public meetings, gatherings and processions and to participate in peaceful political activity intended to influence the composition and policies of the state;

(2) Nothing in subsection 1 hereof shall affect the operation of any existing law in so far as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said subsection and which are necessary in a democratic society in the interest of the security of the state, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Save as aforesaid, any provision of any law that is inconsistent with this Act shall be deemed to have been repealed.

(3) Subject to subsection 2 hereof the Executive and agencies of the government, including institutions of local and regional government shall not exercise any powers that they have or otherwise act in or refrain from acting in any way which takes away or abridges the rights and freedoms specified in subsection 1 hereof.

4. Article 3 - National Flag

Substitute the words "the design of which is set out in the schedule hereto" (for Section 4).

[Question:

Should the design of the national flag be altered in the Interim period or should the resolution of this matter await the consideration of the Constituent Assembly?]

5. Article 4 is deleted in whole.

Transition to Democracy Act

Page 4

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6. Article 5 - National Anthem - amend by substituting the words "anthems" for (anthem) and by inserting the words "Nkosi sikelel iAfrica and" before "The call of South Africa".

[Explanatory Note:

See comment in 4 above]

7. Article 6 - State President

Article 6 is hereby amended by substituting in subclause 6(3)(a) the words "the National Assembly" for the words (any House, or the Houses at a joint sitting).

8. Article 7 - Election of State President

Article 7(1) is hereby amended by the substitution of the words "of all members of the National Assembly" for subclauses 7(1)(b)(i), (ii) and (iii) and the deletion of the remainder of subclause (b) and the deletion of subclause (c).

[Explanatory Note:

The State President will be elected by simple majority by the National Assembly. Provision already exist for an acting State President who serves when the State President is unable to act, or dies. He/she will set in motion new elections. No provision is made for permanent Deputy or Vice President. The possible benefit of having such an office may be considered.

9. Article 9 - Tenure of office of State President Article 9 is amended by the substitution of the words "the National Assembly" for the words (each of these Houses) in 9(3)(a), (any Houses) in 9(3)(c), (a House) and (each House) in 9(3)(d) and (House in question) in 9(3)(e).

[Explanatory Note:

The amendments above simply replace references to tri-cameral chambers by reference to the National Assembly. The tenure of the State President is the same as that of the National Assembly as provided for below.]

Transition to Democracy Act

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10. Articles 14 to 18 are hereby deleted including the heading (PART IV - OWN AFFAIRS and GENERAL AFFAIRS)

[Explanatory Note:

The deletion is self-explanatory. The amending Act does away with the distinction between the own (ethnic) affairs categories which were the responsibility of the different "Houses" in the tri-cameral Parliament. Such abolition obviously does away with the tri-cameral Houses.]

11. The heading ("Part V") shall become "Part IV"

12. Article 19 (Executive Authority) is hereby amended by deleting the whole of the section and replacing it with the following:

"19 Executive Authority

- (1) The executive authority of the Republic shall vest in the State President acting in consultation with the Ministers who are members of the Cabinet.
- (2) Except in sections 20(c), 24, 25, 26, 33 and 37 or where otherwise expressly stated or necessarily implied, any reference in this Act to the State President is a reference to the State President acting as provided in subsection (1)."

[Explanatory Note:

The original clause allowed the State President to take certain decisions on his/her own and some only with the support of cabinet. The amendment simply brings these provisions into line with the other changes. Articles 19, 20 and 21 make it clear that the executive will operate in the transition on the basis of a 'government of national unity'. It will be composed in proportion to party support in the National Assembly.

13. Article 20 - Cabinet

Delete subclause 20(d)

14. Article 21 Substitute the following for the whole of clause 21:

"21(1) The cabinet shall be composed of nominees of political parties whose representation in the National Assembly exceeds 5% of the total membership of the Assembly.

(2) Cabinet appointments shall be in proportion to the representation of the parties concerned in the National Assembly; provided that a political party may decline to participate in the Cabinet, in which event, its membership in the National Assembly shall be excluded for the purposes of calculating the proportional representation of the parties in the Cabinet.

(3) All Cabinet appointments shall be made by the State President in consultation with the leader of the political party from which the Cabinet member will be appointed."

[Explanatory Note:

See note to Paragraph 16 (Article 19) above. The agreement of 5% is intended to limit the size of the cabinet to manageable proportion. The provision generally ensures the appointment of a multi-party cabinet during the transition period.]

15. Article 23 - delete from 23(2) the words (on the advice of a minister's council) and ('a member of the ministers council in question or, as the case may be.)

16. Article 24 - Appointment of Ministers

Delete the words (for general affairs) in article 24(1) and substitute article 24(2) with the following:

"24(2) Persons appointed under subsection (1) shall be a minister of the Republic of South Africa and any such persons shall only be removed from office by the State President acting in consultation with the leader of the political party which nominated such member.

Transition to Democracy Act

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[Explanatory Note:

In line with the principle of a 'government of national unity' the State President's powers to 'hire and fire' ministers will be subject to the agreement of other parties in respect of their nominees to the Cabinet.]

17. Article 26 - delete (population group or) in Article 26(1)(b) and delete Article 26(2).

18. Article 27 - Deputy Ministers

Delete (subject to subsection 2) in Article 27(1)(a) and whole of Article 27(2).

[Explanatory Note:

Deputy Ministers need not be members of National Assembly and are not members of the cabinet. The proportionality principle does not apply to Deputy Ministers. The effect of the above will be to allow wider choice from excluded groups, even from civil society.

19. Article 28 - Delete (population group) in 28(2)b.

20. Substitute "Part V Parliament" for (Part VI Legislature) and delete (Parliament) after heading article 36.

21. Article 30 - 69

Delete articles 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 62, 64, 66, 67, and insert the following new articles.

Article 30 Reconstitution of Parliament. - (1) Parliament shall be reconstituted as one House, the National Assembly, which shall have sovereign legislative authority in and over the Republic

(2) Parliament, reconstituted in terms of subsection (1) hereof, shall function both

as a Constituent Assembly, with power to draft and adopt a new constitution, and as legislature, with the power to make laws for the peace, order and good government of the Republic.

"Article 31 Sitting of Parliament. - (1) Parliament shall commence its first session seven days after the last polling day for the election remain in session until it has completed its primary task of adopting a new constitution, or until it is dissolved by effluxion of time in accordance with the provisions of this Act.

Article 32 Duration and dissolution of Parliament. - (1) Parliament shall continue until a new constitution has been adopted as contemplated in section 41 (1) of this Act, provided that if a new constitution has not been adopted within a period of 9 months from the date on which the first sitting of Parliament commenced, it shall be dissolved, and an election shall be held for a new Parliament in accordance with the provisions of this Act.

(2) If the National Assembly newly elected in terms of Article 32(1) above has not adopted a new constitution within a period of six months as contemplated in Section 41(1) from the date of the first sitting of such an Assembly, it may by resolution passed by a single majority within a further seven days, put a constitution which has the approval of such majority to a general referendum.

(3) The general referendum referred to in 32(2) shall be held on a date to be fixed by the State President by notice in the gazette, which shall not be later than one month after the passing of such resolution.

(4) The referendum shall be conducted in accordance with the

provisions set out in the Schedule to this Act.

(5) If at least 55% of the votes cast in the general referendum are in favour of the adoption of the proposed constitution, it shall be deemed to have been adopted in accordance with the provisions of this Act.

(6) If the proposed constitution is not adopted in terms of section 32(5), or if a resolution is not adopted in terms of article 32(2), fresh elections for a new National Assembly shall be held within one month of the publication of the result or within one month of the date by which the National Assembly was to have adopted a constitution in terms of article 32(2), and a constitution adopted by a simple majority of this National Assembly shall be deemed to have been properly adopted in accordance with the terms of this Act.

(7) The National Assembly referred to in article 32(6) shall remain in session until a new constitution is adopted in terms of article 32(6) save that if a new constitution is not adopted within two years fresh elections will take place for a new National Assembly which will function as if elected in terms of article 32(5).

Article 33. Effect of dissolution. - Notwithstanding the dissolution of Parliament by effluxion of time or otherwise, the State President shall have the power by proclamation in the gazette to summon Parliament for the dispatch of urgent business during the period following such dissolution up to and including the day immediately preceding the day on which polling for the election held in pursuance of such dissolution commences.

Article 34. Constitution of the National Assembly. - The

National Assembly shall consist of four hundred members to be elected by qualified voters by secret ballot. All persons who are South African citizens, or who are deemed to be South African citizens in accordance with the provisions of the schedule to this Act, shall be qualified and entitled to vote in the election for members of the National Assembly.

[Explanatory Note:

The schedule will specify that all citizens of the TBCV States will be regarded as South African citizens. The schedule will also make provision for exiles and those persons who have been resident in South Africa for many years such as migrants.]

Article 35. Elections for the National Assembly.- The members of the House of Assembly shall be elected by proportional representation in accordance with the principles and procedures set out in the schedule to this Act.

Article 36. Disqualifications for membership of the National Assembly -(1) No person shall be capable of being elected to or of sitting as a member of the National Assembly unless such person is qualified in accordance with the provisions set out in the schedule to this Act to hold such office.

[Explanatory Note:

The schedule would expressly cater for persons who currently could not stand for elections because they have criminal convictions arising out of political activities.]

(2) Any member of the National Assembly who, after having been elected to the House, ceases to be qualified for membership, shall vacate the seat.

Article 37. Assent to bills. - (1) A bill which has been passed by the National Assembly shall be presented to the State President for her/his assent.

(2) The State President shall assent to a Bill which has been passed in accordance with the provisions of this Act, and shall withhold his assent if the provisions of this Act have not been complied with.

Article 38. Validity of Acts of Parliament. - (1) A bill referred to in section 37 to which the State President has assented shall be an Act of Parliament.

(2) (a) Any division of the Supreme Court of South Africa, shall, subject to the provisions of sections 41(6) and 41(7), be competent to inquire into and pronounce upon the question as to whether the provisions of this Act relating to the procedure for the passing and enactment of legislation were complied with in connection with any law which is expressed to be enacted by the State President and Parliament.

(3) Save as provided in this Act no court of law shall be competent to inquire into or pronounce upon the validity of an Act of Parliament.

Articles 39. Signature and enrolment of Act.- As soon as may be after any law has been assented to by the State President, the Secretary to Parliament shall cause two fair copies of such law, one being in English and the other in Afrikaans language (one of which copies shall have been signed by the State President), to be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme court of South Africa, and such copies shall be conclusive evidence as to the provisions of every such law,

and in case of conflict between the two copies so enrolled that signed by the State President shall prevail.

[Explanatory Note:

This article is the unamended article 35 of the existing Act. The whole question of language will have to be decided at the Constituent Assembly. See Note to Article 89.]

Article 40. **Seat of Legislature** - Cape Town shall be the seat of the National Assembly.

[Explanatory Note:

The seats of the Executive and Legislature have been left at Pretoria and Cape Town respectively.]

PARLIAMENT SITTING AS A CONSTITUENT ASSEMBLY

Article 41. (1) Save as set out in the Act when Parliament sits as a Constituent Assembly for the purposes of adopting a new constitution, all questions shall be determined by a majority of two thirds of the votes of members present provided that the Constitution to be adopted shall in all respects conform with, and shall not in any respect contradict the constitutional principles set out in the Schedule to this Act.

(2) The general constitutional principles set out in the Schedule to this Act shall limit the power of Parliament sitting as a Constituent Assembly, and no repeal or amendment of such principles shall be

permissible under this Constitution.

(3) Should any political party represented in the National Assembly contend that a proposed provision of the new Constitution which has been put to the National Assembly for adoption does not comply with the requirements of section 41(2) of this Act, the political party concerned shall inform the Speaker of its contention, and in that event debate upon such proposal shall be suspended, and the contention of the political party shall be referred by the Speaker to the Constitutional Panel referred to in section 41(5) of this Act for its determination.

(4) A Constitutional Panel consisting of a minimum of seven and a maximum of eleven suitably qualified persons shall be appointed en bloc by the National Assembly to determine all disputes arising out of the provision of section 41(3) hereof. The Constitutional Panel shall function and take decisions in accordance with the procedures set out in the Schedule hereto.

(5) A determination by the constitutional panel shall be final and binding and shall not be subject to appeal or review by a court of law.

(6) No court of law shall have jurisdiction to pronounce upon the validity of any constitution adopted by parliament sitting as a Constituent Assembly on the grounds that such constitution does not comply with the requirements of Section 41 (3) of this Act.

(7) Nothing in section 41 (6) of this Act shall be construed as depriving a court of law of its duty to uphold determinations made by the constitutional panel.

PARLIAMENT SITTING AS A LEGISLATURE

Article 42 **Voting in the National Assembly - (1)**
Save as set out in this section all questions in the National Assembly shall be determined by a simple majority of the votes of members present.

(2) When Parliament sits as a legislature the special majorities hereinafter set out shall be required for the following matters -

- (a) in order to repeal specific provisions of or otherwise amend this Act, 80 per cent of the votes of members present other than the Chairman or the Presiding member.
- (b) in order to repeal or amend any special legislation specially agreed upon, 80 per cent of the votes of members present other than the Chairman or the Presiding member.

Article 43. **Repeal of this Act.-** When Parliament sitting as a Constituent Assembly adopts a new constitution in accordance with the provisions of section 41(1) hereof, or when a new constitution is deemed to have been adopted in accordance with the provisions of section 32 hereof, this Act shall be deemed to be repealed thereby. Save as aforesaid, and save as set out in section 42(2) hereof, the National Assembly shall have no power to repeal this Act or any of its provisions.

Article 44. **Committees of the National Assembly -** The National Assembly may appoint committees consisting of its members in order to perform functions assigned to them by the assembly provided that no party represented in the Assembly shall be excluded from any such committee, and provided further that

the committees shall as far as possible be composed in a way which gives parties representation in proportion to their representation in the Assembly.

Article 45. Rules of Procedure.- (1) The National assembly may make rules and orders in connection with the order and conduct of its business and proceedings as a Constituent Assembly and as a Legislature.

(2) the rules and orders may provide for the manner in which committees appointed by it in terms of section 44 shall conduct their affairs and take their decisions, and may authorise any such committee to meet and exercise or perform its powers duties and functions at a place beyond the seat of Parliament.

Article 46. Public Access to Sittings.- All sittings of the National Assembly shall be held in public and members of the public and the media shall have access to such sittings; provided that reasonable safeguards may be instituted to search or refuse entry to persons in order to protect the safety of members or other persons present in the National Assembly.

[Explanatory Notes:

The original deletions in paragraph 21 abolishes the tri-cameral Parliament, and the new provisions provide for a National Assembly acting as legislature and as a Constituent Assembly, and provide for the deadlock breaking mechanisms, time frames, the binding general constitutional principles, the role of the courts and the constitutional panel, amendments to this Act. Some of the provisions simply re-insert the necessary formal provisions relating to procedure.]

22. Articles 56 - 69 The following article numbers are amended as follows: articles (56 - 61) are amended to numbers "47 - 52" (63) to "53", (65) to "54" and

(68) to "55" and (69) to "56".

23. Article 56 (new Article 47) Penalties

Substitute "the National Assembly" for (a House) and (the House in question) respectively.

24. Article 57 (new Article 48) Oath

Substitute the "National Assembly" for (a House) and (House of Assembly/Representatives/ Delegates) respectively.

25. Article 58 (new Article 49) Speaker of Parliament

Substitute a "National Assembly" for (a House) throughout and for (House of which he was a member at the time of his election as a speaker) and substitute "the chairperson of the National Assembly" for (every chairman of a House)

26. Article 59 (new Article 50) Function of Speaker

Delete article 59 and replace with new article 50.

(1) The Speaker of Parliament shall preside at meeting of the National Assembly.

(2) The Speaker shall when presiding at a meeting be vested with all the process duties and functions of the Chairperson of the House.

27. Article 60 (new Article 51) Chairman

Substitute "the National Assembly" for the words (the House) (Every House) (House in questions) (that House).

[Explanatory Note:

The original Act is incurably sexist in its terminology. But, like other features this aspect might best be tackled in the Constituent Assembly. In this proposal we use non-sexist terminology but the principal Act will continue to contain "Chairman", "his" etc.]

28. Article 61 (new Article 52) Quorum

Substitute the whole of article 61 with the following:

"Quorum To constitute a meeting the National Assembly either as the Constituent Assembly or the legislature shall require the presence of at least 100 members for the determination of a question"

29. Article 65 - Substitute the National Assembly for (any House) and delete 65(2), (3) and all the words after word 'vote' in 65(1).

30. PART VIII PRESIDENT'S COUNCIL

Delete the whole of Part VIII, from articles 70 to 78 inclusive.

[Explanatory Note:

This amendment abolishes the President's Council. That Council was a special mechanism designed to facilitate the operation of the tri-cameral legislature.]

31. PART IX FINANCE amend to read PART VIII FINANCE
Amend the numbering of articles 79 to 86 to read Articles 57 to 64.

32. Article 82 (new article 60) Accounts of State Revenue Fund
Delete 82(1)(b) and 82(2)

[Explanatory Note:

The provisions deleted refer to the financing of 'own affairs' matters]

33. PART X - GENERAL amend to read Part VIII General.
Renumber Articles 87 - 91 to read Articles 65 - 69.
Renumber Articles 94 - 97 to read Articles 70 - 73
Renumber Articles 100 - 103 to read Articles 74 - 77

34. Article 89 (new article 67) Equality of Official Languages

Substitute whole of Article 89(3) with the following:

"(3) Notwithstanding the provisions of subsection (1) an Act of Parliament or a proclamation of the State President, issued under an Act of Parliament may provide for the recognition of one or more languages as an additional official language or as additional official languages for use in a designated region for official purposes prescribed by or under that Act or by any such proclamation.

[Explanatory Note:

The provision allows for the official use of several languages in designated areas, rather than English and Afrikaans only].

35. Article 92 - Offences in respect of National Flag

Delete whole of article 92.

[Explanatory Note:

Original provision is inappropriate in a transitional phase]

36. Article 93 - Administration of Black Affairs

Delete whole Article 93.

[Explanatory Note:

This provision which inter alia grants the President the many powers derived from colonial and apartheid legislation is inappropriate.]

37. Article 97 (new article 73) Construction of certain references

Substitute the National Assembly for (House of Assembly) and ('Parliament or the House or a member of the House, as the case may be or the circumstances may require') in 97(c), and delete all the words after 'Cabinet' in 97(d) and delete 97(e).

38. Article 98 Administration of existing laws

Delete whole of article 98

[Explanatory Note:

This article refers to tri-cameral or provincial structures.]

Transition to Democracy Act

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39. Article 99 Amendment of Act (Constitution)

Delete whole of Article 99

[Explanatory Note:

This has been dealt with in Part V above.]

40. Article 100 Definitions

Delete the following definitions in whole

"coloured persons"

"general affairs"

"general law"

"House"

"Indian"

"Own affairs"

"population group"

"the Coloured Persons" "Indians" or "the white persons"

"white persons"

Delete the words after "other act of" in line 6 and replace with the National Assembly.[Explanatory Note:

These amendments do away with certain apartheid categories]

41. Article 102 (new article 76) Transitional Provisions

Delete article 102

[Explanatory Note:

The whole of article 102 will be replaced by the appropriate transitional provisions which may be necessary, and which should be addressed once the terms of any political agreements have been finalised.]

42. Schedule 1 is replaced

Transition to Democracy Act

Explanatory Note:

This schedule identifies which matters are "own" or "general" affairs

MEMORANDUM ON THE LEGISLATIVE FRAMEWORK FOR A TRANSITIONAL EXECUTIVE COUNCIL

1. The attached legislative framework addresses the agreement reached in Working Group 3 of Codesa concerning the purpose, structure and powers of the Transitional Executive Council.
2. The legislative framework should be incorporated into the Transition to Democracy Act as a transitional provision which will fall away when the constitution making body/legislature has been elected.
3. Separate Chapters of the Act should deal with the Independent Election Commission and the Media Commission which are crucial structures of the preparatory phase agreed to in Working Group 3.
4. The legislative framework deals with the powers of and the decision making process in the Transitional Executive Council and its sub-councils. There may be a need for additional detail, such as criteria for appointments to the Councils, the remuneration of Council members, the appointment of staff, the provision of the administrative infrastructure, etc. Once the language of the empowering sections has been settled, these matters of detail can be attended to. There should also be a definition section to avoid any uncertainty as to the terminology used.
5. The question of the powers of the sub-committees on law order stability and security, defence and foreign affairs are the subject of current discussions, and these provisions can be formulated when the discussions have been concluded.
6. To prevent the provisions dealing with the supply of information from being abused, section 12 of the framework requires all requests for information to be supported by at least one third of the members of the Transitional Executive Council.
7. Sections 14 and 15 deal with procedures for convening the Transitional Executive Council, and putting it on a business footing. These matters were not discussed at Codesa, but some provision for the "start up" and functioning of the Council is necessary.

8. Section 16 makes provision for the appointment of conciliation committees to help achieve a consensus. This was not discussed at Codesa but is consistent with the underlying principle of "consensus where possible" and may facilitate the practical working of the Council.
9. Section 19 makes provision for the amendment of or changes to the Act if that becomes necessary for any reason.
10. Section 21 deals with budgetary matters which were not specifically discussed at Codesa. Clearly there must be some provision in the legislation regulating this matter.
11. Section 22 empowers the Transitional Executive council to function in Transkei, Bophuthatswana, Venda and Ciskei. Corresponding legislation will probably be necessary in the TBVC States to empower the Council to carry out its functions there.

13 January 1993

**LEGISLATIVE FRAMEWORK FOR A
TRANSITIONAL EXECUTIVE COUNCIL**

1. A Transitional Executive Council shall be constituted with executive powers for the following purposes:
 - (i) to prepare for and to facilitate the transition to a democratic order in South Africa;
 - (ii) to endeavour to create a climate favourable to free political participation in which there will be no intimidation, and political parties and organisations will as far as practicable be placed on an equal footing with each other;
 - (iii) to promote conditions conducive to the holding of free and fair elections in accordance with the provisions of (the Transition to Democracy Act).

2. (a) Notwithstanding the provisions of any other law, including the Republic of South Africa Act, 1983, executive authority, including the making of Proclamations, Ordinances and regulations, and any other discretions vested in the State President, Ministers or any other person by any law, which may have an impact on any of the purposes referred to in section 1, and which relate to -
 - (i) regional and local government;

- (ii) law, order, stability and security;
- (iii) defence;
- (iv) any aspect of finance referred to in section 5(d);
- (v) any aspect of foreign affairs referred to in section 5(e);
- (vi) any other matter assigned to the Transitional Executive Council by the State President;

shall be exercised by the State President, Minister or person vested with such authority or discretion, jointly with the Transitional Executive Council, or if such function has been delegated by the Transitional Executive Council to a sub-council, jointly with such sub-council.

- (b) All Proclamations, regulations and government notices dealing with matters referred to in sub-section (a) shall be signed by the State President, Minister or other person concerned, and countersigned by a member of the Transitional Executive Council duly authorised thereto.

3. In addition to the executive power referred to in section 2, and the other powers referred to in this Act, the Transitional Executive Council will have the following powers:

- (a) to request information from, and to have access to all records of, any government, administration or organisation participating in the Transitional Executive Council, insofar as such information or access to such record, is reasonably required by it for the purpose of exercising its functions;
 - (b) to delegate the exercise of any of its powers and functions to its sub-councils;
 - (c) to receive reports from and to confirm or amend decisions made by any of its sub-councils;
 - (d) to initiate or participate in negotiations with any government, administration, persons or bodies of persons in relation to any matter which in its opinion may be relevant to any of the purposes referred to in section 1;
 - (e) any other power reasonably needed by it to enable it to achieve its purposes and to carry out its functions.
4. (a) The Transitional Executive Council will be kept informed of, and will be provided with copies of all proposed legislation, including proclamations, bills and regulations of governments or administrations that may be relevant to the purposes referred to in section 1.
- (b) If the Transitional Executive Council has reason to believe that any proposed legislation, including bills, ordinances, proclamations, or regulations, other than those dealt with in section 2(a), will have an

adverse impact upon any of the purposes referred to in section 1, it may, after taking into account the necessity for such legislation, require the government or administration concerned not to proceed therewith.

5. (a) The Transitional Executive Council will be kept informed of, and will be entitled to ask for and to receive, information in regard to proposed executive actions by any government or administration, or contemplated actions on the part of any other participant in the Transitional Executive Council, that may have an impact on any of the matters referred to in section 1.
 - (b) If the Transitional Executive Council has reason to believe that the implementation of such executive or other action will have an adverse impact upon the purposes referred to in section 1 it may, after taking into account the necessity for such action as far as such government, administration or participant is concerned, require the government, administration or participant not to proceed therewith.
6. Without limiting in any way the powers vested in it by section 2, the Transitional Executive Council will have the following sub-councils which will report to it in such manner and at such times as it may determine:
 - (a) A sub-council on regional and local government which will have the following purposes -

- (i) to acquaint itself with developments in regional and local government;
 - (ii) to identify and, in accordance with powers delegated to it, to take action in respect of aspects of regional and local government that may have an impact on the purposes referred to in section 1;
 - (iii) to attend to matters delegated to it by the Transitional Executive Council.
- (b) A sub-council on law and order, stability and security which will have the following purposes:
(These purposes are still under discussion)
- (c) A sub-council on defence which shall have the following purposes:
(These purposes are still under discussion).
- (d) A sub-council on finance which shall have the following purposes:
- (i) to acquaint itself with developments in government finance at all levels of government, including all existing governmental authorities, be they on the central, regional or local government level;
 - (ii) to identify and, in accordance with powers delegated to it, to take action in respect of aspects of governmental finance at all levels which may have an impact on any of the purposes referred to in section 1;

- (iii) to acquaint itself with any matter relevant to intergovernmental financing, and to make recommendations to the Transitional Executive Council in regard thereto;
 - (iv) to monitor and, in accordance with powers delegated to it, to prevent any attempt by any governmental body to favour directly or indirectly any political party or organisation above others;
 - (v) to monitor and, in accordance with powers delegated to it, to prevent any attempt by any government body, directly or indirectly, to prejudice any political party or organisation.
 - (vi) to deal with any other matter delegated to it by the Transitional Executive Council.
- (e) A sub-council on foreign affairs, which shall have the following purposes:
- (these purposes are still the subject of discussion).
- (f) Save where the terms of the delegation of powers to a sub-council by the Transitional Executive Council otherwise provide, all decisions of sub-councils will be subject to confirmation by the Transitional Executive Council, which if it decides to confirm a decision, may do so unconditionally or subject to amendments required by it.

7. For the purposes of carrying out their functions in terms of this Act, the sub-councils shall have the same powers, including the right to request and be furnished with information, and to have access to records, as the Transitional Executive Council would have had, if such functions had been carried out by it.

8. All participants in the Transitional Executive Council, and all governments and administrations will be required to comply with requests made to them in terms of the provisions of this Act, by the Transitional Executive Council, and all decisions made in terms of this Act by the Transitional Executive Council, or a sub-council having delegated authority to do so, will be binding on and will be implemented by such governments, administrations and participants: Provided that-
 - (a) If in relation to a requirement of the Transitional Election Council made in terms of section 4(b), the government or administration concerned contends that the necessity for the proposed legislation outweighs its adverse impact, it may refer such issue to the Independent Election Commission for a decision thereon, and may only proceed with such legislation if the Independent Election Commission upholds its contention.

 - (b) If in relation to a requirement of the Transitional Executive Council made in terms of section 5(b), the government, administration or participant concerned contends that the necessity for the proposed action outweighs its adverse impact, it may refer such issue to the Independent Election Commission for a decision thereon, and may

only proceed with such action if the Independent Election Commission upholds its contention.

9. Any differences as to whether or not in any particular instance a matter falls within the scope of the powers of the Transitional Executive Council, or one of its sub-councils, as provided for in sections 4(a), 5(a) or 6(a) to (e) or whether any proposed action or legislation including Proclamations, Ordinances or regulations will have an adverse impact on any of the purposes referred to in section 1, such difference may be referred by any government, administration or participant to the Independent Election Commission for its decision.
10. If any issue is referred by any government administration or participant to the Independent Election Commission for a decision, in accordance with the provisions of this Act, the Independent Election Commission shall as soon as possible, and after consideration of:
- (i) the disputed issue;
 - (ii) the views expressed thereon by the members of the Transitional Executive Council; and
 - (iii) any other matter considered by the Independent Election Commission to be relevant to its decision

determine the difference and give its decision thereon.

11. Any decision of the Independent Election Commission made in respect of any matter referred to it in terms of this Act shall be final and binding and not subject to appeal or review in any court.

12. A request to the Transitional Executive Council or to a sub-council thereof to procure information or to inspect records, pursuant to the powers which it has in terms of this Act, which is supported by at least one-third of the members of the Transitional Executive Council, shall be given effect to by the Transitional Executive Council or the sub-council, as the case may be, and the information gathered in consequence of such request or inspection, shall be made available to all members of the Transitional Executive Council.

13.
 - (a) The Transitional Executive Council shall consist of a representative of each of the governments, administrations and organisations which constitute Codesa, which commit themselves to the achievement of the purposes set out in section 1 and which undertake to co-operate with and implement the decisions of the Transitional Executive Council.

 - (b) Appointments to the Transitional Executive Council shall be made by the State President by proclamation in the Gazette: provided that in making such appointments, the State President shall act on the recommendations of the government, administration or organisation concerned.

 - (c) If a member of the Transitional Executive Council loses the confidence of the government, administration or organisation which

recommended his or her appointment, the State President, on being advised thereof by such government, administration or organisation shall, by proclamation in the Gazette, remove such person from the Transitional Executive Council.

- (d) If a member of the Transitional Executive Council dies, resigns from office, or is removed from office in terms of sub-section (c) hereof, the government, administration or organisation previously represented by such member shall be entitled to a new representative on the Transitional Executive Council, and such appointment shall be made by the State President in accordance with the provisions of sub-section (b) hereof.
 - (e) Members of the Transitional Executive Council will be fulltime executives. (It will be necessary here to specify the procedures for determining the salaries and benefits of such executives, by whom their salaries will be paid, and what the terms and conditions of their service will be).
14. (a) The first meeting of the Transitional Executive Council shall be held at a date and a place to be determined by the Chairpersons of Codesa, which shall be a date not later than seven days after the Transitional Executive Council has been appointed in accordance with the provisions of this Act.
- (b) The notice in the Gazette announcing the appointment of the first members of the Transitional Executive Council, shall also specify the date and place of its first meeting.

- (c) The Transitional Executive Council shall thereafter meet at least once in every week, and on such other occasions as it may from time to time determine.
- (d) The Chairpersons of Codesa shall preside at the first meeting the Transitional Executive Council. At this meeting the Transitional Executive Council shall appoint a secretary, who shall be a fulltime official of the Council, and shall decide upon the procedures to be followed in convening and conducting its meetings until rules governing such procedures have been made in terms of section 15.
- (e) The secretary shall -
 - (i) carry out all duties assigned to him or her by the Transitional Executive Council;
 - (ii) convene special meetings of the Transitional Executive Council if required to do so in writing by not less than one third of its members;
 - (iii) fix a time, date and venue for any meeting called in terms of sub-paragraph (ii) hereof which, save in the case of urgency, shall be convened on not less than three days notice to the members of the Transitional Executive Council: provided that an urgent meeting may be called on short notice if the calling of the meeting on short notice is ratified by the Transitional Executive Council at such meeting.

- (f) One-third of the members of the Transitional Executive Council shall constitute a quorum for any meeting.
15. The Transitional Executive Council shall be entitled to make rules not inconsistent with this Act, governing the convening and conduct of its meetings and those of its sub-councils, and the manner in which its business and affairs will be conducted.
16. (a) The Transitional Executive Council and its sub-councils will endeavour to take decisions on a consensus basis.
- (b) If consensus cannot be achieved in relation to any matter the Transitional Executive Council may appoint a conciliation committee which will endeavour to promote the consensus between the members of the Council that is contemplated by sub-section (a).
- (c) If, notwithstanding attempts which may have been made by a conciliation committee to promote consensus, such consensus has not been achieved or if the Transitional Executive Council fails to appoint a conciliation committee to promote such consensus, a decision which has the support of at least 80% of the members of the Transitional Executive Council shall be deemed to be a decision of the Council.
- (d) If any government, administration or participant in the Transitional Executive Council wishes to refer a decision made in terms of sub-section (c) to the Independent Election Commission to be dealt with

in accordance with the provisions of this Act, it shall refer such matter in writing to the such Commission not later than three days after such decision has been made.

- (e) If a decision taken in terms of sub-section (c) hereof, is not referred to the Independent Election Commission in terms of sub-section (d) hereof, it shall, after the expiry of the period of three days, become final and binding, and shall not be subject to appeal or review in any court.
17. (a) Meetings of the Transitional Executive Council may be attended by all members of sub-councils.
- (b) The Transitional Executive Council may invite any other person to attend its meetings, and at its discretion allow any person present at its meetings to speak.
- (c) Decisions of the Transitional Executive Council shall be taken only by the members thereof, and persons who are present at meetings, but are not members of the Transitional Executive Council, shall have no right to vote on any decision.
18. (a) Sub-councils will have a multi-party character, and unless the Transitional Executive Council considers that good cause exists therefor, shall consist of not more than six members.

- (b) Appointments to sub-councils, the removal and replacement of members of sub-councils, and the temporary appointment of a person as a substitute for a member who is absent or unable to perform his or her duties, will be made by the State President by proclamation in the Gazette: provided that such appointment, removal, replacement, or temporary appointment will be made by the State President in accordance with the recommendations of the Transitional Executive Council.
- (c) Members of sub-councils will be fulltime executives. (Provision will have to be made for salaries, by whom the salaries will be paid, and the conditions of service.)
19. (a) The State President, in consultation with the Transitional Executive Council, shall be entitled by way of Proclamation in the Gazette, and for the purposes referred to in section 1, to repeal or amend any of the provisions of this Act, or notwithstanding the provisions of any other law, to introduce new provisions into this Act, which shall take precedence over any other law that may conflict with such provisions.
- (b) Such Proclamation shall have the same force and effect as an Act of Parliament, and shall not be subject to appeal or review in any court.
20. This Act and any Proclamation made under section 19, shall, notwithstanding the Self-governing Territories Constitution Act, 1977 (Act

No 21 of 1977), apply mutatis mutandis in every Self-governing Territory as defined in section 38(1) of that Act.

21. (a) The Transitional Executive Council shall from time to time determine a budget to meet the reasonable costs of carrying out its powers and functions in accordance with the provisions of this Act.
- (b) If there is a dispute between the members of the Transitional Executive Council concerning the budgetary requirements of the Council, then pursuant to a request supported by at least one third of the members of the Council, such dispute shall be referred to the Independent Election Commission for a decision.
- (c) Any decision made by the Independent Election Commission in terms of sub-section (b) shall be final and binding and not subject to appeal or review in any court.
- (d) The South African Government shall provide the funds necessary to cover the budget of the Transitional Executive Council determined in accordance with sub-section (b) or (c).
- (e) A Revenue Account shall be established by the Transitional Executive Council, and all funds made over to it shall be paid into such account, and all expenses and disbursements incurred by it shall be paid out of such account.
- (f) The books and accounts of the Transitional Executive Council shall be subject to audit by the Auditor-General.

22. The Transitional Executive Council and its sub-councils shall be entitled to exercise the powers and functions conferred on them by this Act in Transkei, Bophuthatswana, Venda and Ciskei.

BILL

To provide for a certain council or councils in preparation for the implementation of a transitional constitution and for the institution of a body entrusted with the formulation and enactment of a new constitution for South Africa; and to provide for matters connected therewith.

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows: -

Provision for the establishment of a multi-party council or councils

1. (1) The State President may, with a view to the preparation for the institution of a transitional government and a constitution-making body and for the holding of free and fair elections in that respect, by proclamation in the *Gazette* -

- (a) either on his own initiative or on the recommendation of the body referred to in section 2(a), provide for the establishment of a multi-party preparatory council or councils;
- (b) amend or withdraw any such proclamation.

(2) The object of such a council or councils shall be -

- (a) to facilitate the transition to and prepare for the implementation of a democratic transitional constitution for South Africa;
- (b) to prepare for the institution of a body entrusted with the formulation and enactment of a new democratic constitution for South Africa;
- (c) to ensure that a climate conducive to free political participation and the conducting of free and fair elections prevail in the country during the period preceding and during the elections for a parliament under an interim constitution and for the constitution-making body;
- (d) to ensure that all political parties or organisations partaking in such elections will be able to participate freely and peacefully in those elections, free from

intimidation and as far as practicable on an equal footing with other political parties and organisations.

(3) Before promulgating a proclamation under subsection (1), the State President shall attempt to consult with and to get the co-operation and concurrence of and to accommodate the wishes of all known political parties and organisations with substantial support that are prepared to consider participation: Provided that the fact that the State President has not consulted with or obtained the concurrence or accommodated the wishes of a particular political party or organisation shall not affect the validity of the proclamation.

Membership of council or councils

2. At least eighty percent of the members of a council or councils shall be appointed by the State President -

- (a) on the recommendation of a body or bodies which at the time of the appointment in the opinion of the State President broadly represents the political parties or organisations at that time engaged in the political negotiating process in the country; or
- (b) if no such body exists or such a body does exist but fails to make such a recommendation after having been requested by the State President to do so, from a list of persons nominated for that purpose at the request of the State President by political parties or organisations which in his opinion has a relevant role to play in respect of the functions of the council or councils concerned.

Provision of proclamation

3. Without derogating from the generality of section 1, a proclamation made under that section -

- (a) shall, subject to section 2, prescribe the composition of the council or councils concerned;
- (b) shall determine the areas of governmental activity in which the council or councils shall be involved;
- (c) may provide for an overarching council to co-ordinate the functions of other councils;

- (d) shall, having due regard to the objects specified in section 1(2), determine the powers and duties of the council or councils;
- (e) may provide that the council or councils shall, notwithstanding any other law or the common law, in the performance of its functions have access to such records and information relating to the performance of its functions as may be specified in the proclamation;
- (f) may authorize a council to delegate its powers to sub-councils and to confirm, amend or withdraw any decision of a sub-council;
- (g) may prescribe the procedure at meetings of the council or councils, the nature of the resolutions that may be passed at such a meeting, and the manner in which such resolutions shall be passed;
- (h) shall specify -
 - (i) to whom such a resolution shall be conveyed;
 - (ii) the extent to which the State and its organs and parties represented on a council shall be bound by a resolution of that council; and
 - (iii) if applicable, how such a resolution shall or may be executed;
- (i) shall provide for the remuneration and allowances of the members of a council who are not in the full-time service of the State;
- (j) shall prohibit the removal of a member of a council except with the concurrence of the other members of that council;
- (k) shall provide for the appointment of staff to assist the councils in the performance of their functions and for the defraying of expenses incidental to such functions from moneys appropriated by Parliament for that purpose; and
- (l) may provide for any other matter which the State President considers necessary or expedient so as to achieve the objects of this act.

Tabling of proclamation in Parliament

4. (1) A proclamation made under section 1 shall be Tabled in Parliament within 14 days after promulgation thereof, if Parliament is then in session or, if Parliament is not in session, within 14 days after the commencement of its next session.

(2) (a) If Parliament by resolution disapproves of such a proclamation or of any provision in such a proclamation, that proclamation or that provision, as the case may be, shall lapse to the extent to which it is so disapproved.

(b) The lapsing of such a proclamation or provision shall not affect -

- (i) the validity of anything done under the proclamation or provision up to the date on which it so lapsed; or
- (ii) any right, privilege, obligation or liability acquired, accrued or incurred as at that date under or by virtue of that proclamation or provision.

Application of Act in self-governing territories

5. This Act and any proclamation made under section 1 shall, notwithstanding the Self-governing Territories Constitution Act, 1977 (Act No 21 of 1997), apply *mutatis mutandis* in every self-governing territory as defined in section 38(1) of that Act.

Short title

6. This Act shall be called the Preparatory Structures Act, 1992, and shall come into operation on a date determined by the State President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE PREPARATORY STRUCTURES BILL, 1992

1. It is generally recognized that a new and democratic constitution should as soon as possible be implemented in South Africa.
2. In Codesa Working Group 3, which considered the issue of transitional government during the period preceding the introduction of a new constitution, it was agreed that during the first stage of the transitional process there is a need for the levelling of the playing field for political parties and a climate favourable to free and fair elections and free political participation. From this flows the requirement for statutory structures to prepare for the institution of an elected parliament under an interim constitution and of a constitution-making body, and for those structures to focus on meeting those needs.
3. The main object of this Bill is to make possible the implementation of the agreements reached in the Working Group in respect of the first transitional stage.
4. The State President is being empowered to provide by proclamation in the *Gazette* for multi-party preparatory councils, the object of which councils shall be -
 - (a) to facilitate the transition to and prepare for the implementation of a democratic interim constitution and to prepare for the institution of a constitution-making body;
 - (b) to ensure a climate conducive to free political participation and the conducting of free and fair elections prevails in the country; and
 - (c) to ensure that all political parties and organisations will be able to participate freely and peacefully in the political process, free from intimidation and as far as practical on an equal footing with other parties and organisations.

5. Provision is being made for such a proclamation to be Tabled in Parliament and for the lapsing of the proclamation should Parliament disapprove of it.
6. As far as the membership of the said councils is concerned, the opportunity is being created for Codesa or a similar body to nominate at least eighty percent of the members of every council.
7. The Act in question and any proclamation made thereunder shall apply also in all the self-governing territories.

PROPOSALS CONCERNING THE TRANSITIONAL EXECUTIVE AUTHORITY
ON INTERNATIONAL RELATIONS.

January 4, 1993.

1.0. In the Report of Working Group 3 to CODESA, the following "basic point of departure" is included:

" The terms of reference of the overarching body should be the facilitation of the transition to democracy, including the leveling of the playing field and the ensuring of a climate for free political participation and for the conducting of free and fair elections, while the individual councils should have the same terms of reference but in specific fields. "

2.0. The Working Group agreed that there should be a sub-council on "Foreign Affairs". It went on to agree that " due to the unique character of this sub-council there is a need for broader discussion concerning it. "

3.0. Concerning the composition of the sub-councils, the Working Group agreed, inter alia:

3.1. " A sub-council will have a multi-party character and will ordinarily consist of up to six members who will be formally appointed by the State President on the recommendation of the TEC. "

3.2. " Members of the TEC and its sub-councils will be full-time executives, will be provided with the necessary infrastructure necessary to enable them to carry out their duties, and their conditions of service will be prescribed in the legislation under which they are constituted. "

4.0. MOTIVATION:

4.1. The area of "foreign affairs" does not impact as directly on the questions of leveling the playing field and ensuring a climate for free political activity and free and fair elections as other areas that will be delegated to sub-councils do.

4.2. Obviously, the sub-council on international relations cannot control the policies of other countries and therefore cannot oblige them to act in ways that are consistent with or in furtherance of these objectives.

4.3. However, it could pursue three main objectives, viz:

4.3.1. engaging the international community in the process of the facilitation of the transition of South Africa to

democracy;

4.3.2. entering into such agreements with the international community as may be appropriate to a multi-party executive authority; and,

4.3.3. implementing those decisions of the TEC that may have a foreign relations content.

5.0. Under item 4.3.1. would fall such issues as:

5.1. The tasks, deployment and functioning of the international peace observers;

5.2. The tasks, deployment and functioning of the international elections observers;

5.3. Negotiating any other agreements that may impact on the transition process during the period up to the installation of the Interim Government of National Unity.

6.0. Under item 4.3.2. would fall such issues as:

6.1. Current matters concerning relations with inter-governmental organisations;

6.2. Specified bilateral agreements with governments, such as those relating to aid agreements;

6.3. Negotiations relating to long-term agreements between the country and the rest of the world; and,

6.4. Any other relevant negotiations and agreements outside of governments and inter-governmental organisations.

7.0. Under item 4.3.3., the TEA on International Relations would deal with matters as they are referred to it by the TEC.

8.0. In keeping with the " basic points of departure ", the TEA would also have the possibility " to propose legislation " consistent with its terms of reference.

9.0. In keeping with the " basic points of departure ", the TEA would also obtain and process " all information which may be required by it for the purpose of exercising its functions."

10.0. As agreed at CODESA, the TEA-IR would " report to the TEC and its decisions would be subject to confirmation and or amendment by the TEC.

11.0. The TEA-IR would cooperate with existing governments

and administrations, as well as other parties participating in the TEC, in the manner visualised in the CCDESA agreement.

12.0. The TEA-IR could be composed of the following:

12.1. The National Party/South African Government;

12.2. The ANC;

12.3. The IFP;

12.4. The DP;

12.5. The Ximoko People's Party; and.

12.6. The Venda Administration.

ENDS

PROPOSALS CONCERNING THE TRANSITIONAL EXECUTIVE AUTHORITY ON INTERNATIONAL RELATIONS

1. Report by Working Group 3 of CODESA

The terms of reference of WG3 do not include foreign relations. WG3 recognised that "due to the unique character" of foreign affairs, "there is a need for broader discussion concerning it".

2. Points of departure

- 2.1 Generally speaking, the Government of a country is the recognised entity for conducting its foreign relations.
 - 2.2 In South Africa (being a sovereign state and not a state coming into being) the Government is thus recognised as the structure representing the state and as such the structure which binds the state internationally.
 - 2.3 Until a new government comes into being, the present Government remains responsible towards the outside world for the country's international relations, including the country's international obligations and responsibilities.
 - 2.4 These obligations and responsibilities cover a wide area and a variety of matters which are to a large extent unconnected with internal political events. It would thus be detrimental to the country and to individual political parties who may participate in a future government to cast doubt on the capacity of any future government to fulfil its international obligations and responsibilities.
 - 2.5 Similarly, it would be harmful to the country's interests if structures not recognised in international law and practice are established to conduct foreign relations.
 - 2.6 Such action will lead not only to confusion and disruption in the conduct of relations with other countries but to a hesitancy, if not refusal, on the part of other countries to conduct business of whatever nature with South Africa. The current changeover of administration in the USA to some extent illustrates the practice where President Bush's administration remains responsible for conducting international relations even after the election of a new President.
3. Proposal
- 3.1 The above does not mean that the Government and the parties in South Africa are precluded from establishing

for internal purposes, a consultative structure in an attempt to achieve the broadest possible consensus on matters affecting the country's international interests, particularly its long term interests.

3.2 Such a structure should:

- a. be of a manageable size - six or at most seven members;
- b. not involve itself with internal political differences and become a debating forum for carrying forward these differences;
- c. have recommendatory functions in respect of identified subjects;
- d. function in such a manner that it would not delay or frustrate decisions which must be taken immediately as events may demand, as is often the case in the field of foreign relations;
- e. not be endowed with powers or perceived to be endowed with powers which in international law and practice fall within the purview of the Minister of Foreign Affairs.

3.3 The principle purpose of such a structure effectively a Liaison Committee on Foreign Affairs should be:

- a. to facilitate South Africa's access to international sources of finance;
- b. participation in international structures;
- c. to advance the country's export promotion needs; and
- d. the normalisation of South Africa's international relations.

INDEPENDENT MEDIA COMMISSION

The principle of setting up an Independent Media Commission (IMC) was adopted by Working Group III of Codesa. What then should be the powers and functions of such a body?

1. Establishment:

The Independent Media Commission will be a neutral body dealing with media-related matters - especially state-controlled media - in the period leading up to elections. It will see to the levelling of the media playing field. Its structure, functions and powers will be set out in an Act of Parliament.

2. Functions:

- 2.1. Appoint an Independent Telecommunications Authority.
- 2.2. Oversee the transformation of broadcasting and resolve any disputes that might arise, for instance, between the ITA and Board(s) of public broadcasters.
- 2.3. Oversee government departments and institutions dealing with media.
- 2.4. Monitor media operations - through its own monitoring structures and independent monitoring initiatives - to ensure that the following principles, among others, are complied with:
 - right of all citizens of unrestricted access to information and opinion, and to freely disseminate information and opinion;
 - public media should serve society as a whole and should be independent of political parties;
 - media workers should be afforded the environment conducive for their work and they should be protected from intimidation and harassment
 - all media should subscribe to standards of practice agreed upon among various media role players;
 - all parties should be afforded fair and reasonable access to air their views, including such aspects as the right to reply, prime time access, public withdrawals by offending parties, etc;
 - public media resources, including government departments and institutions, should not be used to prejudice or advance the interests of any single party or group of parties.

3. Powers:

- 3.1. Put forward names for the ITA for formal endorsement by the State President.

- 3.2. IMC decisions will, where applicable, be binding on the ITA and Board(s) of public broadcasters. These bodies will ensure the implementation of IMC decisions.
- 3.3. The IMC will exercise its powers in consultation with the Electoral Commission and, in appropriate cases, the Transitional Executive Council (TEC).

4. Constitution:

In order to ensure non-partisanship and fairness, the following criteria will apply in the appointment of IMC members:

- 4.1. Appointees should be South Africans of high standing and merit, representative of the widest possible spectrum of society.
- 4.2. They should not be office-bearers of any political organisation or have a vested interest in the media industry.

5. Appointment procedure:

A transparent process in which organs of civil society shall be invited, inter alia, by advertisement in the media, to nominate names to the multi-party forum, for purposes of preparing a short list from which the IMC will be appointed. The IMC will be made up of ± 7 executive members who will establish an infrastructure necessary to carry out their functions. Members of the panel set up to appoint a new SABC Board will be eligible for appointment.

6. Accountability and Finance:

- 6.1. The IMC shall be accountable to the Electoral Commission and, on matters relating to the functioning of government departments and institutions, also to the TEC.
- 6.2. The IMC will be afforded the necessary finance to carry out its tasks.

7. Relations with other media institutions:

- 7.1. ITA: IMC should see to it that the ITA ensures the observance of agreed standards of practice by all broadcasters.
- 7.2. Media Council: IMC should see to it that the Media Council ensures the observance by all media of standards of practice agreed upon by all media role players.

The ITA and the Media Council should have relevant ombuds offices to receive and timeously act on complaints.

AGREEMENT AND PROGRAMME OF WORK:

INDEPENDENT MEDIA COMMISSION AND STATUTORY MEDIA (INCL. TBVC AREAS)

1. The ANC and the NP Government reiterate their acceptance of decisions taken in Codesa Working Groups 1 and 3 on:
 - 1.1. Independent Media Commission;
 - 1.2. Independent Telecommunications Authority.
2. In order to ensure free and fair broadcasting in the transition, the Board(s) of statutory/public broadcasters should be representative of society as a whole and independent of political parties. The ANC and the NP Government agree that a transparent and representative process should be set in motion for the appointment of a new SABC Board to replace the current Board whose term of office expires in March 1993. This process should be in place by the end of January 1993. The new Board will include the TBVC broadcasters within its ambit: mechanisms for this need to be further examined.
3. The two parties agree that unilateral restructuring of the SABC and TBVC broadcasters should be terminated. Mechanisms to realise this, with regard to the TBVC broadcasters, should be further examined.
4. A Joint Group made up of ANC and NP Government representatives has been set up to flesh out this broad agreement and draft relevant provisional legislation for presentation at the next bilateral meeting. To facilitate this, a technical committee will work out draft legislation, amendments to current legislation and other relevant details. Its terms of reference include:
 - 4.1. process of appointment of a new SABC Board;
 - 4.2. composition, powers and functions of the Independent Media Commission; and
 - 4.3. composition, powers and functions of the Independent Telecommunications Authority.

The Technical Committee will report to the Joint Group during the second week of January.

15 December 1992

CONFIDENTIAL

PROPOSED TERMS OF REFERENCE FOR TEC SUB-COUNCIL ON DEFENCE

MANDATE

Working Group 3 of Codesa proposed the following broad mandate for the sub-council on defence:

This sub-council will acquaint itself with developments concerning defence and military formations at all levels of government (central, regional or local) and concerning all other participants in the TEC; it will take steps to identify and promote all developments in this field which in its opinion may impact favourably upon the levelling of the playing fields and free political participation, and the creation as far as possible of a climate of peace and stability; it will take steps to identify and to prevent within its powers all developments in this field which in its opinion will impact adversely upon peace and stability, the levelling of the playing fields, free political participation or the transition to democracy.

SPECIFIC POWERS

The TEC shall delegate to the sub-council the following powers to enable it to fulfill its mandate. Decisions of the sub-council shall be subject to confirmation or amendment by the TEC.

1. Executive authority

The sub-council shall require government and other participants in the TEC to submit all decisions related to military developments for its consideration and approval.

The sub-council shall have the further power to require government or other participants in the TEC not to proceed with any military development which, in its opinion, will undermine or prejudice the objectives outlined in its mandate.

Such developments shall be construed as including proposed legislation on defence; the restructuring of military formations; the formulation of budgets; the appointment of officers to the General Staff; the manufacture and procurement of weaponry; strategic planning; training; and any other matter related to the mandate of the sub-council.

The above provisions shall apply to state security structures, including the State Security Council, the Cabinet Committee for Security Affairs, the National Co-ordinating Mechanism and related structures, insofar as their activities and decisions relate to defence and military formations.

2. Review of legislation

The sub-council shall have the power to review and suspend existing legislation related to defence and military formations.

3. Deployment of military formations

The sub-council shall be responsible for advising the TEC on the circumstances under which a military formation of government or any participant in the TEC may be deployed in an operational capacity.

The government and other participants in the TEC shall be required to submit to the sub-council for its consideration any proposal to deploy a military formation in an operational capacity, and shall not undertake such deployment without the approval of the TEC.

4. Control of military formations

The sub-council shall have the power to order any military formation of government or any participant in the TEC to take any action which in its opinion will contribute to peace and stability, the levelling of the playing fields, the creation of a climate conducive to free and fair elections or free political activity.

The sub-council shall have the further power to order any military formation of government or any participant in the TEC to refrain from taking any action which in its opinion will impact adversely on peace and stability, the levelling of the playing fields, the creation of a climate conducive to free and fair elections or free political activity.

5. Code of Conduct

The sub-council shall have the power to formulate a Code of Conduct which shall be binding on all members of military formations of government and other participants in the TEC.

6. Access to information

The sub-council shall have unrestricted access to all information which concerns defence and military formations of government and other participants in the TEC.

7. Complaints

The sub-council shall have the power to hear complaints concerning military formations of government and other participants in the TEC from the Independent Electoral Commission, the

Goldstone Commission, National Peace Accord structures, the TEC and any participant in the TEC.

8. Investigation

The sub-council shall have the power to investigate or order the investigation of any matter which relates to its mandate. This power shall include the power to search premises, to seize documents and to subpoena persons to give evidence before it under oath.

9. Disciplinary Powers

If, after thorough investigation, the sub-council is of the opinion that any member of a military formation of the government or any participant in the TEC is guilty of serious misconduct, it shall have the power to take appropriate disciplinary measures.

Serious misconduct by a member of a military formation shall be construed as the instigation or commission of unlawful violence; the obstruction of the operation of the sub-council or the TEC; a violation of the Code of Conduct; or any other activity intended to undermine free political participation or the transition to democracy.

Appropriate disciplinary measures shall include the censure or the suspension or dismissal of the member concerned from the military formation concerned.

The sub-council shall also have the power to recommend that criminal proceedings be instituted against the member concerned.

The sub-council shall have the further power to investigate the military unit of a member found guilty of serious misconduct.

10. Planning for the new Defence Force

The sub-council shall have the power to begin the process of planning and formulating policy for the integration of armed forces and the establishment of a new Defence Force, and to take such steps as it deems necessary to begin this process.

11. Support for non-government military formations

The sub-council shall allocate resources to support the welfare of members of military formations of non-government participants in the TEC.

The sub-council shall also have the power to allocate resources to non-government military formations to support such steps as are, in its opinion, necessary for the integration of armed forces.

12. Sub-structures

The sub-council shall have the power to consult experts, or establish committees of experts, to assist it in administration, research, investigation, implementation or any other activity necessary for its effective functioning.

13. Joint Military Co-ordinating Committee

The sub-council shall have the power to establish a Joint Military Co-ordinating Committee, comprised of senior representatives of military formations of government and other participants in the TEC, to oversee and monitor the implementation of its decisions and instructions.

GUIDING PRINCIPLES

The sub-council shall be guided by the following principles:

- * South Africa shall be committed to resolving internal and external conflict primarily through non-violent means.
- * National security and personal security shall be sought primarily through efforts to meet the social, political, economic and cultural needs of the people.
- * South Africa shall pursue peaceful and co-operative relations with neighboring states.
- * The security institutions shall be bound by the principle of civil supremacy and shall be subject to public scrutiny and open debate.
- * The security institutions shall reflect the national and gender composition of South African society and shall implement affirmative action programmes to this effect.
- * The security institutions shall be accountable and answerable to the public through a democratically elected parliament.
- * The security institutions shall respect human rights, non-racialism and democracy, and shall act in a non-discriminatory manner towards the citizenry.
- * The security institutions shall be politically non-partisan.

CONTINUING RESPONSIBILITY FOR CONDUCT OF MILITARY FORMATIONS

Nothing in these terms of reference or the operation of the sub-council shall be construed as detracting in any way from the responsibility of government and other participants in the

TEC to ensure that their respective military formations, and the members thereof, comply with the Code of Conduct and otherwise conduct themselves in a manner conducive to the fulfillment of the mandate of the TEC.

PROPOSAL FOR THE ORGANISATION AND CONTROL OF THE SECURITY
AND INTELLIGENCE ESTABLISHMENT UNDER THE TRANSITIONAL
EXECUTIVE COUNCIL

SUB-COUNCIL ON SECURITY AND INTELLIGENCE

1. Objectives of the sub-council:

- a. To coordinate the intelligence activities of all governmental agencies whose functions pertain to the security of the state and its citizenry;
- b. To coordinate the activities of the relevant structures of political parties and organisations under the Transitional Executive Council which are deemed to play an intelligence function.

Hereinafter the structures referred to in 1(a) and 1(b) shall be referred to as security and intelligence services/institutions.

- c. In particular, the sub-council shall direct all such security and intelligence services/institutions to identify all threats that:

- i) adversely affect the levelling of the political playing field;

- ii) limit free political participation;
- iii) undermine the transition to democracy and the holding of free and fair elections;
- iv) promote a climate of violence inside the country.

Excluded from such attention shall be lawful advocacy, protest or dissent, unless carried out in conjunction with any of the activities that are referred to in paragraphs 1c(i) to 1c(iv).

d. The sub-council shall also coordinate security and intelligence activities directed towards the following threats:

- i) foreign influenced activities within or relating to South Africa that are detrimental to the interests alluded to in 1c;
- ii) activities within or relating to South Africa directed towards or in support of the threat of or use of acts of serious violence against persons or property for the purpose of achieving a political objective within South Africa or a foreign state.

2. Guiding principles of the security and intelligence

services/institutions under the jurisdiction of the subcouncil.

The sub-council will be guided by and support the following principles:

- a. South Africa shall be committed to resolving internal and external conflict, primarily through non-violent means.
- b. National security and personal security shall be sought primarily through efforts to meet the social, political, economic and cultural needs of the people.
- c. South Africa shall pursue peaceful and cooperative relations with neighbouring states.
- d. The security and intelligence institutions shall be bound by the principle of civil supremacy and subject to public scrutiny and open debate.
- e. The security and intelligence institutions shall respect human rights, non-racialism and democracy and act in a non-discriminatory manner towards the citizenry;
- f. The security and intelligence institutions shall be politically non-partisan.
- g. The security and intelligence institutions shall be accountable and answerable to the public through the Transitional Executive Council or through the relevant subcouncil.

h. The composition of the security and intelligence institutions shall reflect the racial and gender composition of South Africa and affirmative action programmes shall be implemented to this end.

3. Duties, Function and Powers of the Subcouncil.

a. On the basis of the threats as defined in sections 1(c) and 1(d) above the sub-council shall:

i) have the power to direct any of the security and intelligence services/institutions under its jurisdiction to collect by investigation and otherwise, analyse, correlate and interpret national security intelligence regarding activities that the sub-council may suspect as constituting a threat to the security of the country.

ii) have the power to direct any of the security and intelligence services/institutions under its jurisdiction to take steps which in its opinion may impact favourably upon the levelling of the playing fields, free political activity, the creation of a climate of peace and stability and the transition to democracy.

iii) have the power to direct any of the security and

intelligence services/institutions under its jurisdiction to take steps to identify and prevent all developments and threats which in its opinion may impact adversely upon peace and stability, levelling of the playing fields, free political activity and the transition to democracy.

- b. report to and advise the Transitional Executive Council of all threats to the security of the country.
- c. formulate and regularly evaluate a national security estimate, in consultation with the bodies charged with intelligence gathering, and provide to the Transitional Executive Council all such security estimates.
- d. review and monitor the operational policies and activities of all security and intelligence services/institutions under its jurisdiction to ensure compliance with the guiding principles as outlined in section 2.
- e. review the performance and methods of all security and intelligence services/institutions under its jurisdiction in the execution of their duties and functions.

f. ensure that all activities of security and intelligence institutions intended to influence the political, economic or security situation within the country shall cease, where it is intended that the role of the security and intelligence institution will not be apparent or acknowledged publicly, subject to the proviso that, if in the opinion of the subcouncil such activities are deemed necessary, these activities shall be subjected to satisfactory oversight.

g. ensure that no state funds shall be used to promote the interest of any political party or political organisation and that no political party or organisation shall accept any state funds to promote its interest in a manner which may impact adversely on the levelling of the political playing fields.

h. ensure that the security and intelligence services/institutions under its jurisdiction do not carry out any operations or activities that are intended to undermine, promote or influence any political party or organisation at the expense of another by means of any acts, or by means of disinformation.

i. Access to information:

i) Notwithstanding any Act of Parliament the subcouncil shall be entitled to have access to any information under the control of the security intelligence services/institutions under its jurisdiction and shall also be entitled to receive from the employees of such services/institutions such information, reports and explanations as the subcouncil deems necessary for the performance of its duties and functions.

ii) No information described in subsection i(i) may be withheld from the subcouncil on any grounds.

j. Periodic reports by security and intelligence services/institutions to the subcouncil:

i) The subcouncil shall receive in relation to a period specified by the subcouncil, at such times specified by the subcouncil, reports from the Directors/Heads of all security intelligence services/institutions under its jurisdiction with respect to the operational activities of such services during that period.

ii) As soon as practicable after receiving such reports referred to in subsection j(i) the subcouncil shall submit to the Transitional Executive Council an

assessment stating the extent to which the subcouncil is satisfied with the report and whether any act or thing done by such services/agencies in the course of its operational activities during the period to which the report relates is, in the opinion of the subcouncil not authorised by the subcouncil or contravenes any directions issued by the subcouncil or involves an unreasonable or unnecessary exercise by such services of any of its powers.

k. For the purpose of ensuring that the activities of the security and intelligence services/institutions are carried out in accordance with the guidelines outlined in section 2 and the directives issued by the subcouncil, and to ensure that these activities do not involve any unreasonable or unnecessary exercise by such services/institutions of any of their powers, the subcouncil may:

i) direct such service/agency or relevant Minister to conduct a review of specific activities of such service/agency and provide the subcouncil with a report of the review; or

ii) where it considers that a review by such service or Minister would be inappropriate, conduct such a

review itself.

- l. The subcouncil is entitled to receive and shall investigate a complaint from any individual or political party or organisation with respect to any act or thing done by any of the security intelligence services/agencies under its jurisdiction.

- m. The subcouncil before commencing an investigation of a complaint shall notify the Director/Head of the relevant service/agency of its intention to carry out the investigation and shall inform the Director/Head of such service/agency of the substance of the complaint.

- n. Every investigation of a complaint by the subcouncil shall be conducted in private.

- o. In the course of an investigation by the subcouncil, the complainant and the Director/Head of the relevant security intelligence service/institution shall be given an opportunity to make representations to the subcouncil, to present evidence, and to be heard personally or by counsel, but no one is entitled as of right to be present during, to have access to, or to comment on representations made to the subcouncil by any other person.

p. The subcouncil has, in relation to the investigation of any complaint power:

i) to summon and enforce the appearance of persons before the subcouncil and to compel them to give oral or written evidence on oath and to produce such documents as the subcouncil deems requisite for the full investigation of the complaint.

ii) to administer oaths and

iii) to receive and accept evidence and other information, whether on oath or by affidavit or otherwise, as the subcouncil sees fit, whether or not that evidence or information is or would be admissible in a court of law.

q. The subcouncil shall on completion of an investigation in relation to a complaint:

i) provide to the Transitional Executive Council, the relevant Minister concerned and the Director/Head of the relevant service/agency a report of the investigation and any recommendations that the subcouncil considers appropriate; and

ii) report the findings of the investigation to the