Report on Preparatory Steps for the Implementation of the TEC and other Institutions agreed upon at the Negotiating Council

1. Introduction

The main focus of this report is preparations necessary for the establishment of the TEC once authorised by the Negotiating Council. It should be noted that the IMC, IEC and the IBA only come into existence when they are established by the TEC. Accordingly, some attention is given in this report to steps which also have to be taken for the establishment of these institutions.

2. External Interactions of the TEC

Graphic 1 (Page 8) provides an overview of the critical interactions between the TEC and other and external institutions in order to give effect to the objectives for which the TEC has been created.

The implications are clear: the TEC and its sub-councils will be engaged in innumerable interactions all of which will require speedy engagement. This must impact upon the way in which the TEC as a whole is internally organised. This in turn will influence the way in which its administration is structured and staffed.

2.1. The Transition Phase Structures

It is desirable that these structures which are refereed to in *Graphic 1* should be set up by the TEC at its first meeting. In a later part of this report we shall look at each of these structures/institutions. At this stage, it is clear that the Planning Committee needs to take steps inviting participants to submit nominations so that these can be processed before the TEC meets. If this is done, the TEC will be able to decide on the composition of the IEC, IMC, IBA as soon as the it is established.

It also means that preliminary steps need to be taken now to ensure that when each of the above four structures are composed by the TEC, each of them can rapidly come into effective existence. That is to say, for each of these structures more detailed preliminary planning has to be effected now under the supervision of the Planning Committee, just as it is being done in the case of the TEC.

In this regard, we suggest that a minimum of three to four core personnel be earmarked for these structures, subject to the approval of the IEC, IMC, IBA, etc., as the case may be. We

could then immediately draw them in to prepare the plans for effective establishment of these structures.

3.   Internal Structuring of the TEC

3.1   *Graphic 2* (page 9) provides an overview of the TEC and its sub councils located in the context of the external interactions which are set out in *Graphic 1.*

However, it should be noted that the relationship between the TEC and the Sub Councils which are depicted in *Graphic 2* do not adequately show how these different structures of the TEC will individually relate to the external structures.

3.2   The TEC Act sets out the powers of each of the Sub Councils and provides each Sub Council with the capacity to act on its own accord. At the same time, Sections 7 (2) and 7 (3) *Entitled General Powers of the Council* locates the specific powers of each Council in the overall context of delegation and entrusts the TEC in Section 7 (3) (d) with the power to review, amend or withdraw any decision or recommendation of a Sub Council.

The implication of this from a practical point of view, and if we are to avoid a bureaucratic logjam, is this:

firstly, there will be decisions taken by a Sub Council and acted upon by it without awaiting prior TEC approval;

secondly, there could be decisions taken by a Sub Council which could be acted on only after approval by the Management Committee which would meet more often than the TEC;

thirdly, recommendations to the TEC which can only be acted upon after a decision by the TEC.

3.3   Section 24 (4) provides for the creation of a Management Committee which we have referred to in *3.2* above. This Section of the Act requires the TEC to appoint a Management Committee from within itself at its first meeting. It also leaves it to the TEC to assign functions to the Management Committee.

Structurally, either the TEC meets almost daily, or it establishes a Management Committee which would function on a daily basis and thereby allows for the TEC to meet periodically, say once a week or every ten days. The creation of a Management Committee would facilitate continuous interface between the Sub Councils and the TEC. This would enhance co-ordination between the Sub Councils and the TEC for purposes of both the internal

interaction of the TEC as a whole and external interactions. Either this course is taken, or these tasks will have to be entrusted to the Chief Executive Officer.

4. Overview of certain Sub Councils

4.1   It is preferable that planning with regard to steps to be taken for the effective functioning of each of the Sub Councils should be looked at in a systematic way by persons already being earmarked for each of these Sub Councils by participants, subject to appointment by the TEC at its first meeting. Alternatively, such preliminary planning could be entrusted at this stage to a 2-3 person ad hoc group based on personnel who would serve at the core of the administration of a particular Sub Council.

4.2   At this stage, the starting point of such planning should be a careful look at the TEC Act in order to derive a global picture of each specific Sub Council and the structures it would need to give effect tot he task assigned to it.

   4.2.1 *Graphic 3* (Page 10) is an attempt to conceptualise key substructures which the Sub Council on Regional and Local Government and Traditional Authorities will require as well as interactions with other existing institutions. A number of these institutions must be understood not as sub structures of the Sub Council but as independent bodies with whom the Sub Council will have to liaise. This is only an initial step aimed at facilitating those who would have to look in greater detail with planning for the effective functioning of this Sub Council. It also facilitates planning for the structuring of the administration that it would have to require.

   It should also be noted that since voter education for the April 27 elections is specifically entrusted to the IEC, the particular function of voter education assigned to this specific Sub Council will have to be clarified by the TEC when it establishes the Sub Council.

   4.2.2 *Graphic 4* (page 11) is a first attempt to conceptualise the task of the Sub Council on Defence for the same purposes.

   4.2.3 A similar exercise with regard to the Sub Council: Law, Order and Stability and Security is depicted in *Graphic 5* (page 12).

   4.2.4 We have not prepared graphics for the remaining Sub Councils.

4.2.5 These graphics underline certain aspects. Firstly, each Sub Council differs from the other as to the way in which it has to be structured to effect its tasks. Secondly, to some extent this will impact on the size of the administrative personnel required. Thirdly, these overviews facilitate consultation to begin about the composition of each of the Sub Councils so that at its first meeting the TEC can appoint them.

5. Revisiting certain aspects of the TEC as a whole

Against the backdrop of the above it is necessary to revisit certain aspects of the TEC.

5.1 The Planning Committee should now formally invite participants to submit nominations within a stipulated period for the TEC. The Act provides for a delegate and an alternate.

5.2 At the very least those from the TEC who serve on the Management Committee will have to function on a full time capacity. If they do not serve on a full time capacity then some formula has to be found to ensure their effective continuous service.

5.3 The next question that arises is how the Management Committee which is drawn from the TEC can serve as a continuous interface between the TEC and each of the Sub Councils. One possible solution is that the Management Committee should be composed of at least seven (7) and not more than nine (9) members of the TEC. This will enable one member of the Management Committee to be assigned the direct responsibility for a specific Sub Council. Such a person could be the convenor of the Sub Council and need not be given any voting status. this approach would ensure that the Management Committee is interacting directly with the Sub Councils, etc. At the same time, by having nine members in the Management Committee, two members would be free to give specific attention to the overall functioning of the Management Committee and the interface with the TEC. The above is one possible solution and the purpose of putting it in the report is to draw attention and solicit other views from the Planning Committee.

5.4 Problems relating to levelling and ensuring free political activity as well as free and fair elections manifest themselves through experiences on the ground. Clearly, some of the Sub Councils and possibly the TEC will have to have, at the very least, administrative offices and facilities in the regions so that issues as

they arise can be tackled with effective feedback impacting on the situation on the ground.

6. **Administrative Structure for the TEC and its Sub Councils**
    Attach hereto is a *Graphic 6* (page 13) entitled *Suggested Staff Structure for a TEC*. It was made as a submission to the Technical Committee at an early stage and should therefore be understood in that context. Given the earlier outline in this paper, it would need re-examination to ensure that the administration is structured and staffed to meet the overall needs. However, we attach this graphic to this report to give the Planning Committee a reasonable overview of what is involved.

    With this initial overview of administrative needs, it would be timeous if the Planning Committee called on Governments and Administrations to look at making available suitably trained and experienced administrative staff for secondment to the TEC. It would also be necessary to consider appointing a core group who should begin looking intensively at the administrative needs, ensuring that other personnel available from outside of existing administrations are considered for employment and seeing how the administration as a whole can be properly structured. Accordingly, participants other than Administrations should also be approached to suggest personnel for the different levels of the administration.

    At the same time, more urgent consideration should be given to looking at suitable candidates to be considered for the post of Executive Director and the other Deputy Executive Directors, i.e. the top level of the administration.

7. **Budgetary Preparations for the TEC**
    Nonetheless, the suggested staff structure referred to in paragraph 6 above has been used as a basis for initial budgeting by Constitutional Development Services. Attached hereto is a *Memorandum on the Estimated Expenditure and Suggested Staff Structure for a Transitional Executive Council* (pages 14-16). This was part of a South African Government submission to the Technical Committee. It is attached hereto as a useful starting point for preparation for budgeting by the TEC.

8. **Accommodation for the TEC and other Structures**
    The Department of Constitutional and Development Services is looking at possible buildings which can be leased by these structures. The possibilities exist in Pretoria and possibly in the

Midrand area and the World Trade Centre. Before any recommendations can be made to the Planning Committee we are awaiting more concrete suggestions from CDS.

In the meantime, we recommend that the TEC on the one hand and the IEC and the IMC on the other hand should be accommodated in separate buildings as far as it possible.

9. Time Frames

If the negotiating process has to meet the requirements of the November Parliamentary session, the following steps have to be completed: the Electoral Act has to be discussed and adopted by the Negotiating Council; the Constitution for the transition has to be adopted by the Negotiating Council.

Only if we have completed these two aspects will the negotiating process be able to look at the key aspects of the total package. Without fixing hard and fast dates for events, it would appear that to meet the Parliamentary time scales the package as a whole should be looked at in terms of holding a Plenary on the 25/26 October. This raises the question whether the Constitution for the transition can be completed at the Negotiating Council level before this date. In this regard, the follow up work on demarcation of regions has presently been given until 15 October for their report. If this date can be realised then the Council can devote the 18, 19 and 20 October to resolving the boundaries question.

The Commission on Symbols is expected to have its report ready by 20 October. If this date can be achieved, then the report on the Commission on Symbols can be tabled at the Negotiating Council on the afternoon of 20 October with a view to Council resolving this question on the 21/ 22 October.

This implies that the Council may have to meet on all five days from the 18 to 22 October in order that the Plenary can take place on the 25/26 October.

From the above it follows that the process has between now and the 15 October to arrive at agreement on all the other aspects of the Constitution for the transition.

If these projections are realised, and allowing for any tidying up that may need to be done on aspects of the Constitution relating to symbols, finalisation of the schedule outlining the regions and boundary demarcations and the preamble which could be tidied up even after the Plenary of the 25/26 October. The Plenary of

the 25/26 could decide on the package. Once agreement on this has been reached, the Plenary and/or Council could then set the date for the implementation of the TEC and other Transitional structures. The setting of these dates are also subject to the requirements of the TEC Act. The formal requirements are set out in Section 4 of this Act. Effectively, this means that if the Plenary is complete by 26 October, the TEC could formally come into operation around 6 November and that the IEC, IMC and IBA could formally come into operation shortly thereafter.

These projections enable Planning Committee to address the schedule of Council for resolving the Constitution for the transition and the Electoral Act, Planning for the possible Plenary as well as looking at the current report with regard to steps to be taken in preparation for the implementation of the TEC and other structures.

10. **IEC**

Attached hereto is *Graphic 7* (page 17) which depicts the IEC and the different structures provided for in the IEC Act. Bearing in mind that the IEC Act structures will be organised through all the regions, both the structures and their administrative needs have huge ramifications. It is therefore urgent that preparations are taken in hand not only for the composition of some of these central structures but also the setting up of the regional structures.

11. We are unable at this stage to give an overview of what is involved in preparation for the establishment of an effective IMC and IBA.