FIRST REPORT OF THE TECHNICAL COMMITTEE ON THE REPEAL OR AMENDMENT OF LEGISLATION IMPEDING FREE POLITICAL ACTIVITY AND DISCRIMINATORY LEGISLATION, 13TH MAY 1993

This technical committee has been mandated with the task of investigating legislation and administrative acts impeding free political activity and discriminatory legislation. It is clear from the Codesa Consolidated Document that the emphasis is on discrimination in the area of free political activity and free and fair elections. The committee has been asked to prepare a report which would include a schedule dealing with laws to be repealed and laws to be amended. The committee has considered its mandate and, in order to compile a report and table a submission, has decided first to obtain clarity on the most effective method to approach the assignment.

1. The committee has identified the following two ways of proceeding to accomplish its task

1.1 To study all the laws and subordinate legislation pertaining to all forms of political activity normally associated with democratic elections. In doing so, not only South African legislation, but also laws and regulations of the TBVC states and the self-governing territories will have to be identified, analyzed, interpreted and put into an integrated report.
After identifying such laws, regulations etc a second comprehensive study would be required to propose amendments to or the repeal of all sections and provisions identified to be inimical to the conduct of free and fair elections. Only then can the actual amendment or repeal process be undertaken in the various legislative bodies.

1.2 To prepare a "higher code" by which to judge the validity of laws, administrative actions and the acts of private individuals that impede free political activity, as well as discriminatory legislation. Such a code would establish the necessary judicial, administrative and political structures to pronounce on the validity of objectionable laws and to provide effective remedies for violations of such a higher. This code will enjoy supreme legal sums.

2. Advantages and disadvantages of each option

2.1 Advantages of option 1.1

2.1.1 A comprehensive list of all discriminatory and repressive laws in South Africa, the self-governing territories and the TBVC states would constitute a useful compilation of statutory enactments for scholars and historians to study. (Such a study would also involve an examination of the laws of local authorities, statutory bodies and functionaries.)

2.2 Disadvantages of option 1.1

2.2.1 Such a study would take enormous time and is completely beyond the resources of the technical committee. It has been suggested that technical sub-committees might be established to investigate such legislation in the TBVC states. This would however be insufficient as all self governing territories have their own electoral laws and several have their own security legislation. To identify all the relevant laws could certainly not be done properly and accurately in less than six months. This conclusion is borne out by the experience of other groups that have considered compiling a list of such legislation.

Whether these laws are in fact discriminatory or impede free political activity will then have to be considered in the negotiating process. If it is agreed there that these laws are indeed objectionable, it will then be necessary for each legislative body to repeal or amend the legislation in question. To this committee it seems that, in view of the present political climate, there is not sufficient time available for this process.

2.2.2 There is a real possibility that such a list of legislation would not be perfectly accurate and complete. Legislation could be overlooked for a number of reasons, such as:

a) lack of time for research
b) suppression of information by regional sub-committees acting negligently or in bad faith.

An inaccurate compilation could have serious consequences, because it would in effect give the stamp of approval to any discriminatory or repressive legislation not included.

2.2.3 The compilation of such a list will obstruct the negotiating process and the search for consensus because some of the parties present in the negotiating process will feel constrained to defend their laws.

2.2.4 The identification of objectionable legislation will result in demands from the negotiating process to the legislative body in question to repeal or amend the law in question. This is likely to lead to tremendous delay and could strain the negotiating process.

2.2.5 Repealing or amending of legislation will have to be implemented by eleven different legislative bodies, numerous local authorities and other lawmaking persons and bodies. The likelihood of obtaining uniformity on non-discrimination and free political activity from eleven different legislative bodies is small. If no uniformity in legislation is obtained, this will inevitably result in discrimination because one cannot justify a doctrine of "separate but equal" in different regions of South Africa in matters relating to free elections and equality,

2.2.6 A further problem is the absence of any single structure for the enforcement of laws and regulations pertaining to free political activity and equality. This would inevitably lead to unequal and unfair application of laws.

2.3 Advantages and disadvantages of option 1.2

With respect to the second option, which entails the adoption of one single "higher code", the following observations could be made. The higher code contemplated by the committee is not an interim Bill of Rights although it will certainly include many of the fundamental rights contained in a Bill of Rights. What we propose is a uniform code prescribing principles for free political activity, free and fair elections and non-discrimination in this process. It will also contain provision for effective and expeditious judicial, administrative and political remedies.
The advantages of such as code are the following:

2.3.1 Consensus. To us it seems there is general agreement on the part of all political parties that the election should be free and fair and preceded by a period of free political activity, without discrimination on the grounds of race, sex, religion, ethnic origin or political opinion etc.

2.3.2 The likely delays pointed out above could be avoided.

2.3.3 Such a higher code could be used to measure and to set aside any law, administrative act or private activity in violation of the code.

2.3.4 The parties taking part in the negotiating process should all be given an opportunity to endorse such a higher code. This will give it a uniform legitimacy. The adoption of such a higher code by all the parties in the negotiating process will send out a positive signal to all the people of South Africa that consensus has been achieved on certain principles and that real progress has been made.

2.3.5 An independent judicial or administrative body charged with enforcing such a code is more likely to be acceptable to parties than the procedure outlined in option 1. 1.

2.3.6 The same standards will apply in all parts and sectors of the country and would lead to uniformity, predictability and certainty.

2.3.7 The higher code will only cancel out the objectionable provisions in a statute whilst the rest will remain intact.

2.3.8 An additional advantage of this approach is that unwritten common law powers vested in the executive (e.g. prerogative powers) will also be subject to testing.

3. Reasons for adopting option 1.2

The ultimate aim of the electoral process must be to provide results which will be accepted by all participants as free and fair. All political parties participating in the preceding campaigns and the election itself must be prepared to live with the outcome of the process. The "Angolan Spectre" must be avoided at all costs. It

should not be possible for any participant to cast doubt on the fairness of the whole electoral process and jeopardise the establishment of a democracy. In order to achieve this objective all practices that could subsequently be cited as having impeded free political activity must be addressed and remedied timeously in terms of the higher code.

4. Mechanism for implementing the code

4.1 The implementation of the higher code approach will require a structure providing for judicial, administrative and political control.

4.2 Other technical committees also address matters relating to this particular aspect. This could perhaps be an area for cooperation between more than one technical committee. We would however like to suggest a number of general principles and powers to be contained in such a higher code.

5. General principles and powers to be contained in a "higher code".

5.1 If the objective of free and fair elections is to be achieved, the bodies responsible for deciding disputes in the period immediately preceding the election itself will have to enjoy legitimacy.

5.2 In order to be able to decide particular disputes the typical characteristics of free political activity in a democratic society will have to be incorporated into the code. This will include principles such as:

freedom of expression

freedom of the press

freedom of association

freedom of movement

freedom of assembly

free access to information

All public and private activities which impair these freedoms, such as intimidation, denial of access etc should therefore be prohibited.

5.3 Effective and expeditious remedies are required and this structure should therefore be adequately empowered. In particular all affected and interested parties should enjoy standing before the structures established.

5.4 The type of behaviour that interferes with free political activity could result not only from actions by government bodies and officials but also originates in the behaviour of private individuals and groups.

5.5 The full participation of women in the political and electoral process is open to suppression at the instance of governmental bodies and/or private individuals and groups. The structures envisaged in terms of the proposal would have authority to address and remedy discriminatory and repressive acts of this kind.

6. Conclusion

6.1 The committee has noted that the Goldstone Commission has proposed a draft bill on ensuring freedom of assembly which has a bearing on free political activity. This Bill should be studied by political parties and should be analyzed for purposes of a final proposal on free political activity.

6.2 All parties in the negotiating process have been invited to submit reports to the technical committee. We attach the only submissions received.

FINAL REPORT TO THE NEGOTIATING COUNCIL OF TECHNICAL COMMITTEE NO. 7, THE COMMITTEE DEALING WITH THE REPEAL OR AMENDMENT OF DISCRIMINATORY LEGISLATION OR LEGISLATION IMPEDING FREE POLITICAL ACTIVITY

The Negotiating Council, at its meeting on Tuesday 18 May, mandated the above Technical Committee to identify, within two weeks, those laws which are discriminatory and inhibit free political activity and which should, accordingly, be repealed. In addition the Technical Committee was mandated to draft a "higher code" along the lines suggested in its First Report, together with suggestions for the appropriate implementation mechanisms.

In this Report the following issues will be considered.

1. Discriminatory laws which constitute the foundations of political apartheid.

2. Discriminatory laws which flow from the above laws.

3. Laws which are inherently discriminatory.

4. Laws which may impede free and fair elections.

5. A proposed "higher code" designed to ensure free and fair elections. This section will deal with the code, mechanisms for its enforcement, remedies and sanctions for violation of the code.

Before embarking upon this study it is necessary first to provide a framework indicating what the Committee understands by discriminatory laws and laws that may impede free and fair elections. The term "South Africa" is also one that requires clarification.

(a) Discriminatory Laws

Racial discrimination is defined by the International Convention on the Elimination of All Forms of Race Discrimination of 1965 as:

'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life (article 1).'

The Convention on the Elimination of All Forms of Discrimination against Women of 1979 contains a similar definition. It defines discrimination against women, as:

‘any distinction, exclusion, or restriction made on the basis of sex which has the effect of or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field’ (article 1).

In this Report discrimination will therefore be viewed as the unequal allocation of rights and freedoms on the basis of race, ethnic origin, colour, gender, age, disability, religion, creed, conscience, political opinion, or sexual orientation. For historical reasons the emphasis will fall on discrimination on grounds of race and gender.

Both the above International Conventions recognize the need for affirmative action and do not regard such action as discriminatory.

The Committee also takes the view that the provision of separate facilities or opportunities, in accordance with the "separate but equal" doctrine, constitutes discrimination. The Committee agrees with the decision of the US Supreme Court in **Brown v Board of Education 347 US 483 (1954)** that separate facilities etc are inherently unequal.

(b) Laws that may impede free and fair elections

Laws that may impede free and fair elections include any law that may

* deny or interfere with the right to vote

* deny the equality of treatment of voters in the whole election process from the time of qualification as a voter to the casting of the ballot

* prevent the free exercise of freedom of speech, expression or access to information

* deny political parties equal access to voters, to venues for meetings, to the media, to funding resources etc

* interfere with the freedoms of association and assembly (including the right to demonstrate)

* interfere with or deny freedom of the press or media

* prevent an election from being conducted in accordance with uniform rules for the whole country

deny the right to stand for election deny the right to vote freely without fear of victimization deny the right of political parties to canvass voters.

(c) South Africa

It is not the function of this committee to pronounce on the statehood of the TBVC states. The fact that the TBVC states are all represented in the Negotiating Council does, however, indicate that this body seeks to find a solution for South Africa within its boundaries of 1910. For this reason South Africa is understood to mean the territory of South Africa within its boundaries of 1910.

DISCRIMINATORY LAWS CONSTITUTING THE FOUNDATIONS OF APARTHEID

	ACT/ORDINANCE NUMBER	SHORT TITLE
1.	110 of 1983	Republic of South Africa Constitution Act
2.	100 of 1976	Status of Transkei Act
3.	89 of 1977	Status of Bophuthatswana Act
4.	107 of 1979	Status of Venda Act
5.	110 of 1981	Status of Ciskei Act
6.	8 of 1978	Bophuthatstwana Border Extension Act
7.	8 of 1978	Borders of Particular States Extension Act
8.	38 of 1927	Black Administration Act
9.	68 of 1951	Black Authorities Act
10.	26 of 1970	National States Citizenship Act
11.	21 of 1977	Self-governing Territories Constitution Act
12.	102 of 1982	Black Local Authorities Act
13.	45 of 1979	Electoral Act
14.	117 of 1979	Local Government Bodies Franchise Act
15.	8 of 1962	Local Government Ordinance (Orange Free State)
16.	20 of 1974	Municipal Ordinance (Cape)

17.	18 of 1976	Divisional Councils Ordinance (Cape)
18.	25 of 1974	Local Authorities Ordinance (Natal)
19.	18 of 1976	Durban Extended Powers Consolidated Ordinance (Natal)
20.	17 of 1939	Local Government Ordinance (Transvaal)
21.	16 of 1970	Municipal Election Ordinance (Transvaal)
22.	4 of 1984	Coloured and Indian management Committees Ordinance (Transvaal)
23.	22 of 1962	Local Government (Extension of Powers) Ordinance (Transvaal)
24.	46 of 1959	Representation between the Republic of South Africa and Self-Governing Territories Act
25.	86 of 1988	Promotion of Constitutional Development Act
26.	73 of 1986	Restoration of South African Citizenship Act
27.	80 of 1986	Joint Executive Authority for Kwazulu and Natal Act

REASON FOR REPEAL OR AMENDMENT [of above laws]

1. Provides for the present racially based three Houses of Parliament with exclusion of blacks.
2. Grants independence to Transkei and thus creates a separate territory/state for an ethnic group.
3. Grants independence to Bophuthatswana and thus creates a separate territory/state for an ethnic group.
4. Grants independence to Venda and thus creates a separate territory/state for an ethnic group.
5. Grants independence to Ciskei mid thus creates a separate territory/state for an ethnic group.
6. Expansion of Borders of Bophuthatswana.
7. Expansion of borders of TBVC states.
8. Provides for the Administration of Black affairs and designates the State President as Supreme Chief of all blacks in the RSA.
9. Provides for the establishment of certain black authorities and defines their functions.
10. Provides for citizenship of self- governing black territories.
11. Provides for the establishment of legislative assemblies and executive councils in the self-governing territories. The self governing territories were created by way of proclamations, which provide for ethnic-based citizenship. See attached list (Annexure A), for relevant proclamations.

12. Provides for the establishment of local committees, village councils and town councils for black persons. Qualification of voters racially based.
13. Blacks excluded from electoral process.
14. Voting rights limited to persons registered as voters in respect of a House of Parliament
15. Racial disqualifications regarding the right to vote or to become a councillor.
16. Racial disqualifications in respect of voters, representatives of voters and councillors.
17. Racial disqualifications in respect of voters, representatives and councillors.
18. Racially Based
19. Racially based (group areas mentioned).
20. Racially based
21. Racially based
22. Racially based
23. Racially based
24. Although repealed in part, it still forms the legislative cornerstone of the self-governing territories.
25. Although not implemented it is a constitutional law premised on apartheid.
26. Fails to restore citizenship to all South Africans deprived of South African citizenship due to creation of TBVC states.
27. Partnership between self-governing territory and Natal.

2. DISCRIMINATORY LAWS WHICH FLOW FROM THE LAWS CONSTITUTING THE FOUNDATIONS OF APARTHEID

ACT NUMBER	SHORT TITLE
39 of 1976	National Education Policy Act
70 of 1988	Education Affairs Act (House of Assembly)
47 of 1963	Coloured Persons Education Act
3 of 1987	Development Act (House of Representatives)
61 of 1965	Indians Education Act
12 of 1968	Indians Advanced Technical Education Act
1 of 1987	Housing Development Act (House of Delegates)
27 of 1951	Black Building Workers Act
90 of 1979	Education and Training Act
27 of 1981	Technikons (Education and Training) Act

91 of 1984 University Staff (Education and Training) Act

104 of 1987 Community Welfare Act (House of Representatives)

81 of 1976 Aged Persons Act (particularly section 23)

44 of 1957 Defence Act (compulsory military service for whites only)

There are furthermore still laws of provincial and local authorities bat discriminate on grounds of race in the field of health, pensions etc.

It has been suggested that this Committee should consider reparations for harm caused by discriminatory laws (submission of Mr A Rajbansi). This seems to go beyond our mandate.

3. LAWS WHICH DISCRIMINATE ON GROUNDS OF SEX AND RELIGION

Sex

ACT NUMBER	SHORT TITLE
44 of 1949	Citizenship Act
73 of 1986	Restoration of South African Citizenship Act (Section 5)
72 of 1986	Identification Act (Sections 43 and 44)
96 of 1991	Aliens Control Act (Section 28)

See Government Gazette No 14591 of 19 February 1993 which lists a number of discriminatory statutes (Annexure B).

A number of customary law systems discriminate against women. This Committee does not believe that discriminatory laws of such a kind fall within its jurisdiction since they do not interfere with free and fair elections.

The minority status of women under customary law encourages a climate of thought that such women are subject not only to the guardianship but also to the political direction of their husbands.

Many of the obstacles that prevent the political participation of women are not found in existing laws, but in practices and attitudes of husbands, employers, civic leaders and politicians.

Particularly important here is the access of women to canvassing, political information, voter education and voting. Domestic workers and farm workers are particularly vulnerable. Women, who bear the double burden of work and housework, are also prevented from attending meetings etc.

Religion

Laws governing Sunday observance discriminate against non-Christians.

4. LAWS WHICH MAY IMPEDE FREE AND FAIR ELECTIONS

4.1 Every city and town in South Africa has by-laws regulating the holding of public meetings, demonstrations, processions, etc. Obviously it is beyond the resources of this Committee to identify all these laws and to consider the extent to which they may impede free and fair elections. Their validity must be measured against the standards contained in the attached Higher Code. After the adoption of such a code they should automatically become null and void to the extent that they violate this code. See for
example:

Standard street and Miscellaneous By-Laws of Transvaal Administration
Notice 36 B of 14 March 1973

By-laws relating to Streets and Street Collections GN R2606 of 2
December 1983 (99 8990), in respect of black Local Authorities

4.2 Some self-governing territories have enacted laws dealing with public safety, public peace, order, or good government which impose serious restrictions on freedom of political activity and freedom of speech in the territory, They are permitted to enact such legislation in terms of section 21A of Schedule I of the Self-Governing Territories Constitution Ant 21 of 1971. Such legislation must be strictly scrutinized to ensure that it complies with the standards contained in the attached Code. After the adoption of the Higher Code legislation which violates the Code should automatically he null and void.

The following are examples of legislation from the self-governing territories which should be repealed:

Lebowa

Public Service Amendment Act of 1984 amending section 25A of Act 2 of 1972 which denies the political freedoms of civil servants.

KwaNdebele

The KwaNdebele Public Safety Act 5 of 1987.

KwaZulu

KwaZulu Black Administration Amendment Act 26 of 1988 dealing with the movement of black persons at the instance of the executive.

4.3 The laws of the TBVC states governing public safety and the conduct of elections require social scrutiny.

ACT/ ORDINANCE NUMBER		SHORT TITLE	REASON FOR REPEAL OR AMENDMENT
1.	30 of 1977	Public Security Act (Transkei)	Based on the following Acts of the RSA that have since been repealed: (a) Suppression of Communism Act 1950 (b) Unlawful Organizations Act 1960 (c) Section 22 of the General Law Amendment Act, 1962 (Sabotage) (d) Terrorism Act, 1967 (e) Certain provisions of the Riotous Assemblies Act, 1956 The Act consequently provides for a prohibition on organizations and publications; restriction of persons; prohibition on gatherings; detention without trial; and further provides for wide discretionary emergency powers.
2.	32 of 1979	Internal Security Act (Bophuthatswana) As amended by Acts 39 of 1985, 5 of 1986, 13 of 1986, 2 of 1988.	Provides for a prohibition on organizations, publications and gatherings; the restriction of persons; detention without trial and wide discretionary powers.
3.	13 of 1982	National Security Act (Ciskei) As amended by Acts 35 of 1983, 33 of 1985, 4 of 1991 and Security Amendment Decree 1992	Resembles the Internal Security Act, 1982 of the RSA and provides for a prohibition on organizations, publications and gatherings; detention without trial and wide discretionary emergency powers.

4.	13 of 1985	Maintenance of Law and Order Act (Venda)	A replica of the Internal Security Act, 1982 of the RSA before its amendment in 1991.
5.	40 of 1985	Bophuthatswana Security Clearance Act	
6.	1 of 1988	Republic of Bophutatswana constitution Amendment	

4.4 South Africa

Obviously South Africa will require security laws during the election period. Such laws should not, however, place arbitrary powers in the executive authority. The
South African Internal Security Act 74 of 1982 as amended by the Internal Security Amendment Act 138 of 1991 is a much better model than the laws of the TBVC states. Nevertheless it has certain shortcomings.
The following laws should be repealed or substantially amended:

ACT NUMBER	SHORT TITLE	REASON FOR REPEAL OR AMENDMENT
3 of 1953	Public Safety Act	Grants unfettered powers to State President and Minister of Law and order to declare a state of emergency or an unrest area respectively and to promulgate emergency regulations or regulations in an unrest area. Jurisdiction of the courts ousted to a great extent.
74 of 1982	Internal Security Act	Empowers Minister of Law and Order to declare certain organizations unlawful and further provides for detention without trial; a prohibition on gatherings and offences regarding organized resistance against laws of the RSA.

67 of 1976	Parliamentary Internal Security Commission Act	Establishes a Parliamentary Internal Security Commission.
52 of 1973	Gatherings and Demonstrations in the Vicinity of Parliament Act	Prohibits demonstrations in the vicinity of Parliament.
71 of 1982	Demonstrations in or near Court Buildings Prohibition Act	Prohibits demonstrations in or in the vicinity of court buildings.
103 of 1992	Gatherings or Demonstrations in or near the Union Buildings Act	Prohibits demonstrations at the Union Buildings.
31 of 1974	Affected Organizations Act	Empowers the State President to declare certain organizations to be affected organizations whereupon such organizations are prohibited from receiving funds from abroad.
42 of 1974	Publications Act	Section 47(2) permits the banning of publications deemed to be prejudicial to the safety of the state, the general welfare, peace and social order.
26 of 1989	Disclosure of Foreign Funding Act	Regulates the disclosure of the receipt of money form outside the RSA by or for certain organizations or persons.
5 I of 1968	Prohibition of Foreign Financing of Political Parties Act	Prohibits the receipt by political parties of financial assistance from abroad.

5. THE "HIGHER CODE"

5.1 Why this Code?

This committee has been instructed to prepare and submit two documents:

5.1.1 A list containing some of the most important discriminatory laws (see I - IV)

5.1.2 A Code which can serve as a "higher law" to be used for judging all Acts that may impede free and fair elections. This Code is not another Electoral Act. It has to be far more and quite different - a supreme law to be applied by properly equipped structures in order to ensure that any Act impeding free and fair elections can be judged and an adequate and swift remedy be made available. The need for a separate Electoral Act will remain, albeit a new or updated one.

The following exposition will explain the purpose, content and operation of the proposed Code. In certain areas these proposals could overlap with the work of other Technical Committees - like the one on an Independent Electoral Commission. Such areas will become clearer when reports from the various Committees are available. Joint tasks may then be undertaken if necessary.

At this stage it is however clear that this proposal for an Election Code has a focus of its own:

5.1.2.1 To provide for principles, mechanisms and remedies to ensure that actions in terms of existing legislation (original and subordinate) and by existing authorities (of various governments and tiers) are judged uniformly. Its purpose is not so much to provide for the technical means of conducting and monitoring the first democratic election and the campaigning preceding it but rather to deal with the myriad of existing laws that could impinge upon free and fair elections. It is not possible in the time available to identify all such laws and to have them repealed or amended by the various legislators.

5.2 Purpose

The ultimate objective is to achieve free and fair elections in South Africa as a whole when the first democratic elections are held.

South Africans have to avoid at all costs a situation where such an election will not qualify as free and fair. If the result of the election is not accepted, peace and democracy will suffer irreparable damage. We have to avoid the "Angolan Spectre".

The objective of free and fair elections in a democratic society also becomes the basic criterion for determining whether any particular action is to be declared invalid or its perpetration prevented. The detailed criteria of the Code that follow are all related to this basic objective. It is the ultimate criterion and guiding principle for subsequent rulings.

5.3 Method

This code will be implemented in terms of the following framework:

5.3.1 A set of Criteria. It will consist of all those principles associated with the " of behaviour which is to be expected in a democratic society and which qualify as participation in the process of free and fair elections.

These criteria will provide the yardstick for the proposed to apply in coming to its decisions. These criteria seek to achieve free and fair elections in a democratic society.

The criteria are formulated in a positive manner. They indicate what South Africa should be free to do when participating in democratic elections. They are not formulated by providing descriptions of prohibited behaviour (like in a Penal Code).

It is believed that in this manner the Tribunal will be able to judge more effectively whether activities claimed to be impeding free and fair elections should be disqualified. These principles provide the yardstick against which to measure such behaviour. This approach is akin to the implementation of a typical bill of rights. They will also be "supreme" in nature. In order to be valid behaviour, the standards contained in such principles are to be complied with.

Such principles function as typical judicial standards. Concepts such as "in free and democratic society" (of the European Convention for the Protection of Human Rights and Fundamental Freedoms), proportionality and fairness are inherent in these principles. They refer to certain well known human rights and freedoms contained in international instruments and the constitutions of democratic societies. When they have to be applied by he Tribunal, recourse could be had to the of courts and other bodies well-versed in the enforcement of such concepts in giving judgement the Tribunal will often have to balance the claims of an individual or a political party. A typical limitation clause approach will therefore be adopted -as is usual when a bill of rights is enforced through a court of law.

5.3.2 Mechanisms. The above mentioned principles will have to be declared invalid in securing the rights and freedoms associated with free and fair elections in a democratic society. They must therefore be enforced (and remedies provided for when necessary) by properly equipped bodies. A special Tribunal will be proposed, (performing the judicial function) as well as other organs more of a political nature. They should all be adequately empowered.

5.3.3 Remedies. Violations of the Code will have to be declared invalid and other appropriate relief should be provided for. In certain cases it may be sufficient to provide for administrative procedures aimed at correcting wrong practices, or to achieve the desired result through legislation.

5.4 Criteria

In expanding on **5.3.1** the following criteria (principles) for participation in free and fair elections will apply:

5.4.1 Uniformity of application. The same principles should apply in the whole of the country.

5.4.2 The freedom to form political parties, to belong to them and to stand as candidates. This is part of what is also included under freedom of association. This is a central concept and will have to be expanded in order to include:

5.4.2.1 Freedom from intimidation. (This will have implications also for private behaviour. This Code will in certain circumstances be enforceable against individuals or private organizations too.)

5.4.2.2 The right to qualify and timeously "register" as voter.

5.4.2.3 The right to a secret ballot and to cast a vote freely and without fear of victimization. (This aspect is usually dealt with in an Electoral Act.)

5.4.2.4 Right to canvassing. (Of both parties and their members.)

5.4.2.5 Equal opportunity to receive funding.

5.4.3 Freedom of assembly. Here the access to suitable venues must be included. In this country such venues are sometimes privately owned. It may require rulings on insurance against damage or paying for the use of facilities, which will have to be done without causing discrimination. Who gives permission for the use of such facilities?

5.4.4 Freedom of expression and thought.

5.4.4.1 To include freedom of petition and peaceful demonstration.

5.4.4.2 Access to information.

5.4.4.3 Freedom of the press

5.4.4.4 Special protection of journalists.

5.4.4.5 Access to the media (State and private?).

5.4.5 Equality. No political party or person should be discriminated against in the enjoyment of any of the above-mentioned freedoms. Women are in a special position and particular care should be taken to prevent gender discrimination.

5.4.6 Limitation. Such rights and freedoms are not absolute in nature. Their exercise may be limited in order to protect the rights of others, the public order and safety. Only those limitations necessary in a democratic society should be permitted. Limitations should not negate the essence of these freedoms and rights and they should be to an ascertainable extent be prescribed by law. In this regard the various "security laws" of South Africa require careful scrutiny. A power to limit is not a power to take away, it is in itself also a limited power which has to comply with certain standards in order to be valid. These freedoms have to be balanced against the grounds permitting limitation. This is to be done by judicial process (Tribunal) while applying such standards as proportionality and reasonableness.

5.4.7 Derogation. In times of emergency threatening the life of the nation. Who should proclaim an emergency? Should certain rights be non-derogable? See further 5.5.4 hereunder.

5.5 Mechanisms

5.5.1 In deciding on the nature and powers of the mechanisms necessary for implementing and enforcing these freedoms, the following are to be considered:

*Uniformity

*Expeditiousness

*Effectiveness

*Fairness

*Clarity

*Accessibility

5.5.2 It is proposed that judicial and representative structures are established.

5.5.3 Judicial. Should include an Ombud and a Tribunal with the typical functions usually associated with each Both central and regional offices will be required. Appeal to be provided for?

5.5.4 Representative control. To be undertaken by something like the Electoral Commission (area of another Technical Committee) which will form part of a Transitional Executive Council (TEC)- Will involve tasks such as passing, amending and repealing laws together with existing legislative structures in a manner to be worked out. The declaration of an emergency, derogation of rights and freedoms and the limitations upon their exercise to be done here.

The adoption of this Code itself will have to entail broader involvement and be cleared through the negotiating structures.

5.5.5 The appointment of those people to serve on these bodies deserves careful attention. (See further infra.) It might be necessary to construct the judicial machinery on the same basis as that of the industrial court, with an appeal body included.

5.6 Remedies

5.6.1 Access

5.6.1.1 It should be possible for political parties, NGO's and individuals to bring their cases before the Tribunal. Locus standi requirements should be flexible enough in order to permit the achievement of the original objective of free and fair elections.

Access to the Ombud should be even easier. Informal administrative procedures should suffice.

5.6.1.2 The procedure for bringing applications or laying complaints should be. Complaints by lay people should be the general rule. Where necessary assistance in bringing cases should be provided. The office of the Ombud should be involved in this. This might call for a specialised department.

5.6.1.3 Costs should not hinder the bringing of applications.

5.6.2 Sanctions

All sanctions and remedies necessary in order to ensure effective participation in free and fair elections should be available. These may differ - depending on the nature of the body (electoral commission, tribunal, ombud) involved.

5.6.2.1 Nullity of legislation

Should the Electoral Commission be empowered to perform a political control function with respect to existing legislation? The need for new legislation could involve other legislative structures as well.

The Tribunal will perform a judicial control function when it too should be able to declare legislation on certain provisions of laws to be in conflict with the criteria laid down by the code. Actions taken in terms of such provisions will therefore be invalid.

These powers flow from the supreme nature of the Code. The concept of the sovereignty of Parliament will obviously not apply with respect to the Tribunal. A testing right should be part and parcel of the powers of the Tribunal.

The Tribunal will be an independent institution, staffed by experts. It will therefore enjoy the esteem necessary for creating acceptance of rulings and legitimacy.

Nullity will prevent repetition.

5.6.2.2 Specific performance

To be ordered by the Tribunal. The ombud should also be able to achieve specific relief through negotiations, mediation, and, if necessary, by seeking judicial involvement by the Tribunal.

5.6.2.3 Interdicts - if the usual legal requirements are met.

5.6.2.4 Nullity of executive acts.

5.6.2.5 Contempt - necessary when rulings are not respected. It may require fines by the Tribunal.

5.6.2.6 Damages.

5.6.3 Execution

It will probably be necessary to include in the Code a set of principles on procedure and execution. One possible means of enforcement could be through the Registrar of the Supreme Court - as is done with respect to the Industrial Court. Another possibility is simply to give the Tribunal the required powers and status. If this is not acceptable, the ordinary courts could become involved in the execution and enforcement of procedures. Involving the ordinary courts might cause a delay and increase costs. This may frustrate the objective of cheap and expeditious remedies.

5.7 Implementation

This proposal has some far reaching and new consequences. Because it will play such an important role during the transition to a new dispensation it should be debated and adopted through the negotiating structures.

The early implementation of this proposal will provide an opportunity to conduct election campaigns and the election itself in terms of clear and precise guidelines. This is of particular importance in South Africa because we have no experience of such an election. The majority of the population have never voted. The present violence requires effective and adequate structures.

It will be necessary to implement this proposal as a matter of urgency. Electioneering will probably start once an election date is announced.

The implementation of and actual practice of this Code will also provide a useful learning experience. This code will for all practical purposes function as a typical bill of rights - albeit that it would only focus on those rights and freedoms associated with free and fair elections in a democratic society. When the (interim) constitution becomes operative and its bill of rights has to be implemented, some valuable expertise will then be available. The public will then be accustomed to the idea and the practice.

5.8 Staffing

Who will serve on the various bodies proposed? The bulk of the members should not come from the present judges. They have no experience of a supreme constitution and the different approach involved in giving effect to human rights and freedoms. The existing courts also do not enjoy the required legitimacy - although some of the judges (and practising lawyers) will be quite suitable and effective in these positions. Legal academics might also be a useful pool from where to make amendments, as well as those lawyers actually involved in human rights work and organisations. This method of appointment should be legitimate. This requires involvement of the negotiating structures.

The majority of the appointees should be South Africans.

The election Tribunals shall have all the powers provided for in this code and those necessary in order to give effect to the purposes and objectives of this code.

5.9 Further steps to be taken

As indicated in the introductory section of Section 5 it will be necessary to create mechanisms for the enforcement of this Code. Suggestions have been made in paragraphs 5.5 to 5.8 as to how this may be achieved. This committee has not drafted a complete "technical" code on this subject as this matter seems to us to fall in the jurisdiction of the Committees on the Independent Electoral Commission and the Transitional Executive Council (TEC).

We have, however, included an example of how such a Code could be formulated. This deals with the principles and main machinery only. Other aspects such as the remedies, sanctions, enforcement, execution, implementation and staffing will still have to be dealt with. Our explanatory document on the content of the code (5.1 - 5.8) is complete insofar as it describes all the aspects to be dealt with in the final Code. Should our assistance in the preparation of the final document be required, we are prepared to comply.

We also attach a number of submissions received from parties to the negotiating process.

5.10 Draft Code

5.10.1 Title: Election Code

The Election Code is to provide for the principles to govern the democratic process of free and fair elections (for a Constituent Assembly Legislature to be held in 1994) and to provide for the implementation and enforcement of such a Code.

5.10.2 Implementation of Election Principles

The rights and freedoms enshrined in this Code shall be respected and upheld by the Executive, Legislature, Judiciary and all organs of the Government and its agencies, including the structures established in terms of the Multiparty Negotiations and where applicable to them, by all natural and legal persons and associations of persons and shall be enforceable by the Election Tribunal and Election Ombud in the manner hereinafter prescribed.

5.10.3 Election Principles

The elections for a Constituent Assembly/Legislature are to be democratic, free and fair.

5.10.3.1 These elections are to take place in terms of the same uniform principles and criteria to be applied in the whole of South Africa as it existed in 1910.

5.10.3.2 Participation in Elections:

5.10.3.2.1 Every South African national, 18 years of age, shall be entitled to be registered timeously as a voter and to participate in the elections for a Constituent Assembly/Legislature.

5.10.3.2.2 Every South African, ? years of age (the Committee feels that this decision should be left to the Negotiating Council), shall be entitled to stand as a candidate in these elections.

5.10.3.2.3 All South Africans shall have the right to participate in all peaceful political activity, free from any form of intimidation, associated with democratic, free and fair elections.

5.10.3.2.4 All South Africans shall have the right to cast their vote in secret and free from victimization and undue influence.

5.10.3.2.5 The right to vote and to stand as a candidate may be qualified by law on grounds of infirmity or on such grounds as are necessary in a democratic society.

5.10.4 Political parties

5.10.4.1 All South Africans have the right to form and join political parties.

5.10.4.2 All political parties are to be registered, subject to such requirements prescribed by law as are necessary in a democratic society.

5.10.4.3 Political parties and their members shall be entitled to canvass for and solicit the support of voters peacefully, subject to such qualifications prescribed by law as are necessary in a democratic society.

[The references to 'prescribed by law' will in the majority of instances refer to the Electoral Act which will contain provisions on, for example, the periods when opinion polls will he prohibited. The existing Electoral Act will have to scrutinized and updated. It does e.g. not provide for proportional representation.]

5.10.5 Assembly

All South Africans have the right to assemble peacefully and without arms and to have access to venues suitable for political meetings as are necessary for democratic elections.

5.10.6 Expression

5.10.6.1 All South Africans have the right to freedom of speech and expression, which shall include freedom of the press and of other media. For the purpose of conducting democratic, free and fair elections, this right shall include the freedom to submit petitions and of peaceful demonstration.

5.10.6.2 Freedom of expression also requires access to such information and to the media as is required for participating in democratic, free and fair elections.

5.10.6.3 Freedom of the press requires the protection of the gathering of information by journalists as required for the purpose of conducting democratic, free and fair elections.

5.10.7 Movement

All South Africans shall have the right to move freely throughout the whole of South Africa in so far as it is necessary for the purpose of conducting and participating in free and fair elections.

5.10.8 Equality

5.10.8.1 No person or political party should be discriminated against on the grounds of race, gender, colour, ethnic origin, religion, creed, political belief or economic or social status.

5.10.8.2 These rights and freedoms should apply equally in all regions and societies of South Africa.

5.10.8.3 Special care is to be taken in order to ensure the full participation of women in the elections.

5.10.9 Restrictions

5.10.9.1 The rights and freedoms referred to in this Code shall be subject to such reasonable qualifications and restrictions prescribed by law as are necessary for the purpose of conducting and participating in democratic, free and fair elections and are required in the interest of public order, national security, the rights of others or in relation to contempt of court and of the Election Tribunal, defamation or incitement to an offence.

5.10.9.2 Restrictions permitted under this Code shall not be used for any purpose other than that for which they have expressly or by necessary implication been authorized.

5.10.9.3 Any law providing for regulating or restricting the rights and freedoms granted by this Code shall:

(a) be of a general nature

(b) not negate the essential content of such a right or freedom

(c) specify to an ascertainable extent the scope of such a restriction or qualification

(d) identify the provision in the Code on which such restriction or qualification is based.

5.10.10 Derogation

5.10.10.1 If, during the period up to the establishment of the Interim Government of National Unity, there is a threat to the life of the South African nation justifying the declaration of a state of emergency, the State President, on the advice of the T E C, may by proclamation in the Government Gazette, declare a state of national emergency for the duration of such an emergency.

5.10.10.2 Such a proclamation may enact the measures necessary for the protection of the life of the nation or public safety.

5.10.10.3 Such measures may suspend, for the duration of the declared emergency, the operation of the provisions of this code provided that no derogation of provision 8 will be permissible.

5.10.10.4 Such a declaration any apply to do whole of the country or only to a part thereof.

5.10.11 Supervision by the Transitional Executive Council (TEC) (see ANC Submission, p. 22)

5.10.11.1 During the duration of the state of emergency the State President shall report to the Transitional Executive Council (TEC) at intervals not longer than one month on he effects of the emergency measures and on the need for their continued existence.

5.10.11.2 The TEC shall promptly consider these reports and may revoke the declaration of an emergency or restrict the area of its operation.

5.10.11.3 During the duration of the state of emergency the TEC may not be abolished.

5.10.11.4 The Election Tribunal may decide on the existence of conditions threatening the life of the nation and its continued existence.

[If any of the other Technical Committees propose structures to be established for the period until the adoption of a new constitution or interim constitution providing for measures and structures controlling states of emergency, this part of the code should he harmonised with such other provisions, provided they are comprehensive and elective in securing the holding of democratic, hue and fair elections.]

5.10.12 Election Tribunal

5.10.12.1 There shall be an Election Tribunal and ten Regional Election Tribunals, which will be independent and which will be subject to this Code only.

5.10.12.2 The Election Tribunal shall act as forum of final decision with respect to the final implementation of this code and shall enforce the principles contained therein.

5.10.12.3 The Regional Election Tribunals will act as forums of first instance with respect to the implementation of this code and shall enforce the principles contained therein.

5.10.13 Election Ombud

5.10.13.1 There shall be an Election Ombud and ten regional offices of the Election Ombud which shall be independent en which shall be subject to this code only.

5.10.13.2 The election Ombud shall exercise all the functions conferred upon it by this code.

ANNEXURE A

The following proclamations create self-governing territories. They provide for ethnic-based citizenship.

(a) Lebowa: Procs R224 and R225, GG 3666 of 29 September 1972(Reg Gaz 1762).

(b) Gazankulu: Procs R14 and R15, GG 3772 of January 1973 (Reg Gaz 1735).

(c) Qwaqua: Proc R203, GG 4461 of 25 October 1974 Reg Gaz 2060).

(d) KwaZulu: Proc R11, GG 5387 of 28 January 1977 (Reg Gaz 2417) read with Proc R70 GG 3436 of the 30 March 1972 (Reg Gaz 1594).

(e) KwaNdebele: Proc R205, GG 6661 of 14 September 1979; Proc R60 GG 7499 of 20 March 1981; Proc R114, GG 9303 (Reg Gaz 3721).

(f) KaNgwane: Proc R2104 of 16 September 1977 and Proc 12 of 18 July 1986.

ANNEXURE B

see Government Gazette Vol.332 No. 14591, 19 February 1993 : Draft Bills to abolish discrimination against women, to prevent domestic violence, to promote equal opportunities.

ANNEXURE C

The following parties have made submissions to the Committee :
[Editor's note: Refer to the database collection of Multi-party Submissions]

Transkei Government
National People's Party
United People's Front
African National Congress
Inkatha Freedom Party
Inyandza National Movement

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL 12H00 ON TUESDAY 1 JUNE 1993

THIRD REPORT
FROM THE TECHNICAL COMMITTEE ON THE REPEAL OR AMENDMENT OF LEGISLATION IMPEDING FREE POLITICAL ACTIVITY AND DISCRIMINATORY LEGISLATION TO THE NEGOTIATING COUNCIL

15 JULY 1993

On 14 July 1993, the Technical Committee for the Repeal of Discriminatory Legislation and Free and Fair Elections met with, respectively, the Committees for the Transitional Executive Council, the Independent Electoral Commission, and the Committee for Fundamental Rights during Transition. The overlap and potential overlap of areas dealt with by the committees was discussed.

1. TRANSITIONAL EXECUTIVE COUNCIL TECHNICAL COMMITTEE

1.1. The discussions with the TEC committee confirmed the need for guiding principles to ensure that the elections are free and fair, and for machinery to enforce these principles. It was also agreed that judicial supervision of the electoral process would be necessary.

1.2. Both committees assume that the interim/transitional constitution and the interim bill of rights will only start to apply after elections for the constituent assembly have been held. There will therefore not be any special code to govern the elections beforehand unless created through the MPNP.

1.3. We accept that if this assumption is wrong - that is, if a fully equipped transitional constitution and bill of rights, to be enforced by a new constitutional court, were to come into existence in the immediate future then the need for a special election code and machinery of enforcement should fall away.

2. INDEPENDENT ELECTORAL COMMITTEE TECHNICAL COMMITTEE

2.1. The IEC informed us that they are drafting a "Code of Conduct for Political Parties". They are also proposing a new Electoral Act. The enforcement of these 2 instruments is foreseen to take place through the IEC and directorates with a special focus.

2.2. After hearing our proposals they supported the need for a special "Electoral Code" and Electoral Tribunal. Our proposal for an electoral ombudsman can now fall away because the area of "administrative control" will be covered by the machinery proposed by the IEC.

(NOTE: 2 different types of code are therefore proposed which will probably have to be given appropriate names. One deals with political parties and officials. The other purports to be a supreme code/ "higher code" aiming to ensure free fair and democratic electioneering - binding on government and private bodies and people)

2.3. We were then requested by the IEC to finalise our proposal on the "higher code". The two committees will meet again to decide on how to integrate the "higher code" and Electoral Tribunal into the broader IEC structure.

3. TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS DURING TRANSITION

3.1. This committee assured us that all the rights envisaged in the "higher code" being dealt with by our committee would be catered for in an Interim Bill of Rights.

3.2. It conceded that it had not paid sufficient attention to the machinery for the enforcement of the Interim Bill of Rights. It also acknowledged that it made no provision for the horizontal enforcement of the Bill of Rights.

3.3. It was agreed that our committee need not continue with the drafting of a "higher code", provided that:

3.3.1. The Interim Bill of Rights would apply in the period running up to the elections.

3.3.2. Effective judicial enforcement be provided for.

3.3.3. Provision was made for the horizontal and vertical enforcement of the Interim Bill of Rights.

3.4. The Committee on Fundamental Rights agreed that there was a need for the enforcement of the rights contained in the Interim Bill of Rights or the "higher code" of the Committee on Repeal of Discriminatory Legislation by a proper judicial tribunal.

3.5. The committee for the Repeal wishes to raise two possible election irregularities for the purpose of illustrating the need for a "higher code" backed by a judicial tribunal:

Example 1: The Town Council of Blikkiesdorp prohibits the National Freedom Party from holding a meeting in the market square in

terms of a municipal by-law. The previous week it had given permission to another party to do so.

Example 2: The Society for the Preservation of Male Rights, a private association, decides that none of the women in the families of members of the society should attend political meetings or vote. Members of the society agree to enforce this situation domestically.

If the existing structures alone are retained, the decision of the Blikkiesdorp Town Council will have to be challenged through the ordinary courts. This will be both expensive and extremely time consuming (the outcome of the proceedings is unlikely before 27 April 1994). The same consideration will apply in the second example. In addition, courts are unlikely to interfere in such a "private matter". Moreover, even if the traditional Bill of Rights is adopted for the interim period and does not provide for horizontal enforcement, the women denied their political rights in this way would have no redress.

4. CONCLUSION

It seems clear to us that there must be machinery which can deal urgently and effectively with such irregularities to ensure that at the end of the elections on 27 April 1994, no party can claim that irregularities of this kind occurred and were not addressed immediately. We repeat, the Angolan spectre must be avoided at all costs. No party must be able to claim after the election of 27 April 1994 that it was not free, fair and democratic.

The committee's proposed "higher code" setting out the guiding principles to ensure free and fair elections, backed by an Electoral Tribunal to redress irregularities immediately and effectively, therefore remains valuable.

1.

A **B**

Election Campaign, Effective Remedies Available?

MPNP> ..... <**Interim Const.**

2) What code applies during this period?

Sept '93 April '94: Elections
Free and fair result
Outcome accepted

2.

Requirements for democratic free and fair Elections

1. Peace structures (Technical Committee on Violence)

	Code for political parties	> How to enforce?
2. IEC	Electoral Act	> How to enforce?

3. Tech Comm 7	Electoral Code	Binds Govt Structures Binds individuals

Enforcement
Electoral Tribunal(Court)

* Central
* Regional
* Effective
* Expeditious
* Legitimate

Supreme Principles

- Meetings
- Movement
- Access
- Press

REPORT : SPECIAL MEETING OF THE TECHNICAL COMMITTEES ON THE REPEAL OF DISCRIMINATORY LEGISLATION, FUNDAMENTAL RIGHTS, THE I.E.C., THE T.E.C. AND CONSTITUTIONAL PRINCIPLES.

10 August 1993

1. AGENDA

This special meeting had to consider a document prepared by the convenors of the Technical Committee on the Repeal of Discriminatory Legislation and Free and Fair Elections. It dealt with proposals on how to ensure free and fair participation in the election process.
(Copy of this document attached. Note the background as explained in the "Assignment" paragraph).

2. CHAIR

Mr. S.S. van der Merwe

3. RECOMMENDATIONS

After general discussion, questions and clarification, the following recommendations, based on the proposals made in the document under discussion (paragraph 4), were adopted.

3.1 It was recommended that the status quo was not acceptable. (Free and fair elections will not be possible if nothing is done and the legislative and executive conditions remain as they are at present.)

3.2 It was recommended not to pursue the possibility of a comprehensive, justiciable bill of rights being adopted in the immediate future.

3.3 It was recommended that an Independent Election Commission with political powers only, will not suffice. (Although such a Commission is necessary and should form part of the general election structures, additional mechanisms and remedies are to be provided for in order to achieve free and fair elections.)

3.4 It was recommended that the repeal of discriminatory legislation should be continued with. Some kind of body should have the task to identify discriminatory legislation. Another "functionary" or entity should then issue proclamations repealing or amending such laws. It was also necessary that in the meantime the legislative bodies of the [Editor's note: two illegible words] in the NC would take the initiative in repealing offensive legislation. (This possibility did not appear in the document under discussion. It was added by the chair as a result of discussion from the floor. The relevance of such a

process for free and fair elections was queried by some; especially since it will deal with all discriminatory laws. The principle was eventually accepted. No machinery was identified and no specific tasks formulated.)

3.5 It was recommended that a higher law be adopted in order to protect election rights only. It will have to be enforced by a special judicial mechanism which is to form part of the structures of the IEC. The proposal contained in option 5 of the discussion document, i.e. the appointment of serving judges in a special election court/chamber to be appointed by two assessors, was generally supported. This higher law will be drafted by the Technical Committee on the IEC and the Technical Committee on Fundamental Rights. It will be included in the legislation for an IEC and will be referred to the Negotiating Council. This legislation (covering all aspects of the IEC) should be implemented as soon as possible.

JOHN DUGARD

1. IEC receive report from FHR on electoral rights ("Higher Code").

2. IEC - adjudication wing. IEC to consider tribunals, etc. (currently busy with this).

3. Recommendation that political parties repeal legislation identified.

4. Ongoing commission - no consensus.

THESE MINUTES ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE TECHNICAL COMMITTEES ON THE INDEPENDENT ELECTORAL COMMISSION, FUNDAMENTAL RIGHTS DURING THE TRANSITION, CONSTITUTIONAL AFFAIRS, THE TRANSITIONAL EXECUTIVE COUNCIL, THE REPEAL OF DISCRIMINATORY LEGISLATION, MEMBERS OF THE SUB-COMMITTEE, THE PLANNING COMMITTEE AND THE NEGOTIATING COMMITTEE.

MINUTES OF THE MEETING OF THE TECHNICAL COMMITTEES ON THE IEC, FUNDAMENTAL RIGHTS DURING THE TRANSITION, THE TEC, THE REPEAL OF DISCRIMINATORY LEGISLATION AND CONSTITUTIONAL AFFAIRS HELD AT 12h30 ON TUESDAY 10 AUGUST AT THE WORLD TRADE CENTRE.

Present:	H. Corder	(T.C. Fundamental Rights)
	L. du Plessis	(T.C. Fundamental Rights)
	J.D. de Bruyn	(T.C. Rep. Discrim. Legl.)
	J.C. Heunis	(T.C. TEC)
	Z.M. Yacoob	(T.C. Fundamental Rights)
	G.H. Grove	(T.C. Fundamental Rights)
	F. Venter	(T.C. Constitution)
	M.J. Erasmus	(T.C. Rep. Discrim. Legl.)
	J. Dugard	(T.C. Rep. Discrim. Legl.)
	S.K. Ndlovu	(T.C. IEC)
	H.R. Laubscher	(T.C. IEC)
	F. Ginwala	(T.C. IEC)
	R. Rosenthal	(T.C. IEC)
	G. Devenish	(T.C. Constitution)
	D. Moseneke	(T.C. Constitution)
	A. Chaskalson	(T.C. Constitution)
	W.H. Olivier	(T.C. Constitution)
	B.M. Ngoepe	(T.C. Constitution)
	M. Olivier	(T.C. Constitution)
	S. Nene	(T.C. Fundamental Rights)
	K. Moroka	(T.C. Rep. Discrim. Legl.)
	P. Langa	(T.C. Rep. Discrim. Legl.)
	D. Davis	(T.C. IEC)
	F. van der Merwe	(Sub-Committee) (Chair)
	M. Maharaj	(Sub-Committee)
	M. Emmett	(Minutes)

1. Welcome and Introduction

1.1 Mr Van der Merwe welcomed those present

1.2 It was noted that the purpose of the meeting was to discuss the recommendations presented in the report prepared by Professors Dugard and Erasmus entitled: **The Effect of Discriminatory Legislation on Democratic, Free and Fair Elections (**Addendum A)

1.3 It was noted that members were disconcerted by the fact that the time of the meeting had been changed at short notice and by the apparent general lack of concern for the work loads and time constraints experienced by members of Technical Committee.

1.4 Professor Erasmus was appointed rapporteur for the meeting.

2. Presentation of the Report

2.1 **Option One: Do nothing. Keep the present position. (Ref. Item 4.1 of the discussion document.)**

2.2. **Option Two: Introduce an interim Bill of Rights incorporating rights relating to the electoral process. (Ref. Item 4.2 of the discussion document)**

The problems identified if this option is preferred pertain to features of an interim Bill of Rights. It was considered that it might be more feasible to establish an electoral code or mini Bill of Rights to deal with rights affecting participation in elections alone.

It was also emphasised that an interim Bill of Rights could give rise to litigation unrelated to elections and the issue of whether or not it is desirable to allow the courts to be engaged in litigation unrelated to the electoral process would need to be given attention.

2.3 **Option Three: An Independent election commission with political structures. (Ref. Item 4.3 of the discussion document)**

This option relates to political protection and it is questionable whether political remedies will be sufficient.

2.4 **Option Four: A "mini Bill of Rights" that protects elections only - enforced by a new special tribunal (Ref. Items 4.4 in the discussion document)**

2.5 **Option Five: A "mini Bill of Rights" that protects election rights only enforced by the existing courts and enforcement agencies only with necessary modifications. (Ref. Item 4.5 of the discussion document)**

Professor Dugard explained that Option Five deals with elections only. Courts monitoring the implementation of the Bill would not be responsible for dealing with cases, for example, to do with freedom of expression unrelated to elections.

The "mini-bill" would operate both vertically and horizontally. The issue of which bodies would enforce such a bill of rights (with reference to Options Four and Five) would have to be given consideration. It was proposed that special courts be established in all SPR's. In addition a law enforcement mechanism would be required to ensure that decisions were carried out.

In terms of Option Five, the Chief Justice would select judges from each of the local or provincial judicial divisions and the Negotiating Council would compile a list of assessors. The "mini Bill" would be enforced by existing structures such as the police. The disadvantage of this Option is that existing courts lack legitimacy.

5. **General Discussion**

In the discussion which followed the presentation of the report a number of suggestions, concerns and questions of clarification were raised:

3.1 The Option of a special electoral force is practical for a number of reasons. The question of the incorporation of the TBVC states is complicated. In addition a Bill of Rights calls for formal proceedings which are not quick enough for elections.

Special election courts with special rules of procedure and practice are needed.

3.1 The Technical Committee on Fundamental Rights During the Transition had adopted a unanimous position with regard to the Options presented. Option Five was favoured in terms of enforcement but the substance of the code was of concern. It would be confusing to have one chapter on fundamental rights and a separate chapter on election rights. The Committee had isolated a list of rights which would pertain to the electoral process, subject to Section 28 on general limitations. A general limitation in the spirit of Section 28 of the Report containing additional restrictions pertaining to electoral rights would be incorporated. (**Ref. Page 3-4 of the Seventh Report of the Technical Committee on Fundamental Rights**): Paragraphs 9, 10, 11, 12, 14, 15, 16, 18. These clauses relate to:

* Freedom of Expression
* Assembly, Demonstration and Petition
* Freedom of Association
* Freedom of Movement
* Citizens Rights
* Political Rights
* Access to Court
* Administrative Decisions

Most rights contained in the group of protected rights applied vertically and it was emphasised that they would have to apply horizontally as well.

With regard to discriminatory legislation the Committee proposed that a special commission be set up to examine the statutory process and give advice.

3.3 A specific electoral code with both affirmative and negatived dimensions, enforceable against parties and organisations which would function as an adjudication mechanism was being proposed by the Technical Committee on the Independent Electoral Commission. The IEC's brief is to draw parties and candidates into a commitment which is enforceable by special tribunals constituted as part of an adjudication directorate.

3.4 The transitional constitution will take up to the day of the election and there is no overlap. With regard to the issue of overlapping it is essential to cut out areas as clearly as possible for participating parties.

3.5 The "Higher Code" proposed by the Technical Committee on the Repeal of Discriminatory Legislation would have both horizontal and vertical application and would cease to exist immediately after elections.

3.6 To ensure the levelling of the playing fields a game with specific rules and a legitimate referee is demanded. Offending legislation should be removed to ensure democratic, free and fair elections.

Whether the choice is for a fundamental rights regime prior to the implementation of a new constitution or offending legislation is repealed how will the problem of violence

be addressed and how can the implementation of democratic laws be ensured? Will a "mini Bill of Rights" be effective when the problem is the day to day activity of electoral campaigning? Offending laws have to be identified and removed to clear the path.

3.7 The Technical Committee on the Transitional Executive Council (TEC) perceives the TEC's objective as the promotion of conditions for free and fair elections and for that reason it is proposed that the TEC has wide-ranging powers. Have these powers been taken into account, with specific reference to the proposed electoral code?

3.8 The Technical Committee on the Repeal of Discriminatory Legislation held discussions with the Technical Committee on the TEC on the instruction of the Negotiating Council and as a result was of the impression that the TEC would be the over-arching political structure and the TEC would have links to the TEC structures. However, judicial as well as political remedies are needed.

3.9 The problem of identifying discriminatory legislation is that the TBVC states claim in many instances that their legislation is not repressive. The same applies to the self-governing territories. The identification of repressive legislation has much broader implications. For example, there are repressive municipal by-laws. Elections are due in April next year and it is not feasible to identify all repressive legislation before the proposed election date.

In addition, certain rights, e.g. property rights, are controversial and it will take time for these to be debated in the Negotiating Council.

3.10 The theoretical distinction between political and judicial functions is not helpful. Are the TEC's powers and functions adequate?

3.11 The Technical Committee on the Repeal of Discriminatory Legislation proposed a tribunal with the power to strike down a law if it interfered with the electoral process. There would also be the right of speedy appeal.

The Committee was under the impression that all laws governing self-governing territories were by their nature discriminatory. In a submission one of the self-governing territories claimed that they had no discriminatory laws. A self-governing territory cannot be expected to repeal its own foundations. However, a court could have the power to repeal laws.

3.12 The nature of the remedy is in essence administrative. What is needed is a restraining and directive order, e.g. regarding access to town halls. That is not the business of a judicial tribunal. What is needed is an authority to make recommendations which are restraining and directive and which can intervene. The Independent Electoral Commission could perform this function.

3.13 It may be possible to formulate a code in a way which makes clear that the code is geared to elections. If there is a suspension law it could become the last statute to take precedence over all other statutes.

3.14 Option Five is favoured with one qualification: the formulations in a "mini code: correspond as closely as possible to a Bill of Rights so as not to confuse issues as far as jurisprudence is concerned. Whether remedies are administrative or not a tribunal could deal with questions to do with the striking down of laws.

3.15 It is important to distinguish between discriminatory legislation, a code of conduct for elections and a Bill of Rights. The issue of whether or not to have a Bill of Rights is political but it is agreed then it must dovetail with a code of conduct.

3.16 An electoral code of conduct would bind political parties to behave in a particular way. Only a small selection of clauses dealing specifically with elections would be required. A justiciable code dealing with elections needs to be established. This task cannot be performed administratively.

3.17 A proliferation of structures should be avoided. If the powers of the TEC and the IEC are not adequate then the Electoral Act should be geared to deal with this.

3.18 An ongoing watchdog commission which can recommend repeal by proclamation is recommended. Perhaps this could be supervised by the Negotiating Council. Alternatively some body with the power to repeal or amend legislation should be tasked to identify offending legislation on an ongoing basis.

3.19 Options Four and Five are needed to deal with levelling the playing fields and for electoral purposes.

3.20 It would not be expeditious to create a situation where endless legislation is referred to a tribunal for assessment.

3.21 Should the IEC be given the power to suspend legislation?

3.22 The ad-hoc striking down of laws is problematic/capricious. There would have to be a procedure for examination either by the IEC or by way of a political decision by the TEC.

3.23 A tentative proposal is for a body to investigate and scrutinize legislation and make recommendations. This would probably need to be the IEC or the TEC.

3.24 What is needed is a code of conduct not a bill of rights and this should be grafted onto the IEC or the TEC. There should be no attempt to legitimize existing judicial structures.

3.25 A "mini Bill of Rights" or a complete one cannot be introduced and adjudicated upon before the new constitution. In principle there is no distinction between a short or a long bill of rights. Implementation in the constitution beforehand is the issue.

3.26 The problem is the effect of immediate implementation and of being thrown into a legal system with no legitimacy. The functions of the IEC are fundamentally a matter of politics. The Option (Five) of looking at narrowly defined rights essential to free

and fair elections and judicial authority as proposed in this option is the most feasible option..

3.27 It would be a mistake to set up a whole set of new tribunals. One tribunal should be charged with a number of responsibilities.

3.28 The two proposals are a "Higher Law" for levelling the playing fields and an electoral code.

4. Recommendations

The following recommendations were agreed to:

4.1 The Technical Committee on the Independent Electoral Commission will draft a "code" dealing with the freedom of the individual to participate in the elections (as opposed to a code for political parties). Towards this end they will receive an input from the Technical Committee on Fundamental Rights During the Transition.

4.2 The Technical Committee on the Independent Electoral Commission will continue its work on developing the adjudication functions of the Commission which include examination of the need for a tribunal to adjudicate a code as proposed in 4.1.

4.3 Participating parties should be called upon to repeal offensive legislation identified.

4.4 A recommendation that a commission or body be charged with the identifying of legislation offending against free political participation on an ongoing basis, and that the identified legislation could then be repealed or amended by proclamation was agreed upon but not supported by all members.

5. Closure

The meeting closed at 14H40.

ADDENDUM A

REPORT BY THE TECHNICAL COMMITTEE ON THE REPEAL OF DISCRIMINATORY LEGISLATION TO THE SUB-COMMITTEE : 2 AUGUST 1993

THE EFFECT OF DISCRIMINATORY LEGISLATION ON DEMOCRATIC, FREE AND FAIR ELECTIONS

1. ASSIGNMENT

How to reconcile the proposals of the Technical Committees on Fundamental Rights, the Independent Electoral Commission, Repeal of Discriminatory Legislation and Constitutional Issues with respect to the structures to be established for the period of the election campaign preceding the April 1994 elections.

The following outline is submitted by the convenors of the Committee on the Repeal of Discriminatory Legislation., It is done in response to a request by the Planning Committee after a meeting on Monday, 2 August 1993.

2. ASSUMPTIONS

2.1 Elections are essential for a peaceful transition to a new dispensation.

2.2 Everything possible should be done to ensure acceptance of the election results. (Angola's spectre to be avoided).

2.3 A large number of laws empower executive and other action which can hamper free and fair participation in the electoral process. (Private action could have the same effect).

2.4 These laws cannot all be identified and repealed in time for the electoral process to take place.

2.5 A comprehensive electoral structure is needed to ensure democratic, free and fair elections. This will be provided through the IEC.

2.6 Rules and enforcement machinery are necessary. This will address different needs such as :

2.6.1 The problem of violence
2.6.2 A code for political parties. (Being drafted by the TEC).
2.6.3 An Electoral Act. (Being drafted by IEC).
2.6.4 Rules ensuring democratic, free and fair political activity for individuals and parties. This is the concern of the present submission.

2.7 Effective, legitimate and visible sanctions and protection are required.

3. PROPOSAL

Five possible approaches on how to deal with the need identified in 2.6.4 are hereinafter discussed. If a final choice can be made in the immediate future, legislation can be adopted and the chosen mechanism be implemented in time.

4. FIVE POSSIBILITIES

4.1 Do nothing. Keep the present position.

4.2 A comprehensive bill of rights to be implemented soon (September 1993?)

4.3 An independent election commission with political structures.

4.4 A "mini Bill of Rights" that protects election rights only - enforced by a new special tribunal.

4.5 A "mini Bill of Rights" that protects election rights only enforced by the existing courts and enforcement agencies with necessary modifications.

5. OPTION ONE

Not to be considered. Existing law is inadequate and the structures illegitimate. Will not produce free and fair elections. Risks too high.

6. OPTION TWO

* It will be difficult to obtain political agreement before September on the rights not relating to the elections. The controversial aspects preventing agreement on a bill of rights now relate to matters not affecting election rights. These rights included in a comprehensive Bill of Rights that would not be included in a "mini Bill of Rights" (options 4 and 5) and that have or will give rise to prolonged debate in the programming council are :

    * Affirmative action : Article 2(3)
    * Right to life (does this abolish the death penalty?) : Article 3
    * Economic activity : Article 21
    * Labour relations : Article 22
    * Property : Article 23
    * Environment : Article 24
    * Children : Article 25
    * Education : Article 27

  (ten other controversial clauses that would not be included in a mini Bill of Rights are Articles 4, 5, 6, 7, 8, 13).

  It will be much easier to obtain speedy political approval for a Bill of Rights that excludes such rights and which limits itself to election rights.

* A comprehensive Bill of Rights in place during the election period will give rise to immediate challenges to law and administrative practices unrelated to the elections. Consequently at the very time that the judicial system should be available to hear election complaints it will be occupied with complaints brought by individuals and groups on matters unrelated to the elections.

* Similar complaints have been raised against the Bill of Rights proposed by the Technical Committee. The proposed Bill of Rights will also be considered by the judiciary, professional law groups, etc., if it is to enjoy credibility. This will take considerable time. It is unrealistic to expect a comprehensive Bill of Rights to be prepared in a short time.

7. OPTION THREE

Political Protection through an Independent Election Commission.

7.1 **Advantages**

* Can be linked to the new political umbrella provided by the IEC and TEC.
* High profile
* International participation

7.2 Disadvantages

* Are political remedies really sufficient?
* Political remedies in the present atmosphere will be based on compromises reflecting wide ranging views. Will be watered down.
* Could take long to work out.
* What sanctions to be adopted if compliance and acceptance do not follow?
* Typical judicial remedies are the proven, final remedies when infringements of human rights (including those pertaining to elections) occur.

8. OPTION FOUR AND OPTION FIVE

Mini Bill of Rights that Protects Election Rights Only

Options four and five both envisage a limited Bill of Rights that protects only those rights relating to the elections. It will therefore protect equality and the freedom of speech, expression, assembly, association, demonstration, movement, political rights and access to information but only insofar as they relate to the elections. A mini Bill will:

(a) Declare the basic rights referred to above.
(b) Contain a clause to the effect that the courts supervising this Bill will only have jurisdiction to adjudicate on such rights if they affect the election.

For Example:

(1) A court would consider a complaint to enforce freedom of speech if someone was prevented from addressing an election rally. But it would not entertain a complaint that the banning of a magazine portraying explicit oral sex violated the right to freedom of speech.

(2) A court would consider a complaint under the equality clause that a woman had been denied the right to address a political meeting on the ground that only men might address such a meeting. But it would not entertain a complaint that a woman had been discriminated against in her employment on grounds unrelated to the elections.

A mini Bill will operate both vertically and horizontally. It will be possible to enforce it against all state agencies and against private individuals or groups that seek to deny election rights. It will therefore, for example, be enforceable against -

* the Johannesburg City Council if it denies party A the right to demonstrate in the streets, but permits party B to exercise such a right;

* a farmer who prohibits his farm workers from attending a political meeting;

* a man who prohibits his wife and daughters from voting.

8.1 OPTION FOUR envisages that a mini Bill will be enforced by -

* special courts presided over by "judges" who are not currently serving as judges or magistrates;

* specially appointed law enforcement officers not attached to the present court structures of security forces.

8.1.1 **Advantage**

The problem of legitimacy will be overcome.

8.1.2. Disadvantage

It will be very difficult to establish special structures of this kind to serve the whole of South Africa (including the TBVC States).

8.2 OPTION FIVE envisages that the mini Bill will be enforced by the existing courts as modified.

It is proposed that the Chief Justice be empowered to establish a special panel of judges for each region drawn from the existing judiciary. Such a panel would serve on a special election court. A single judge assisted by two assessors would hear complaints. The list of potential assessors would be compiled by the Negotiating Council. Such assessors could be, but need not be, lawyers. Decisions of such a court would be enforced by the existing structures (deputy sheriff, police) assisted by representatives of the Peace Secretariat.

Example

A trader in Pietersberg tells his staff that if they vote in the elections he will dismiss them. A staff member may appeal to a special election court attached to the Transvaal Provincial Division. The court will be presided over by Judge X, appointed by the Chief Justice to serve on a panel of judges to hear such complaints. Judge X will be assisted by two assessors drawn by lot from a panel of assessors appointed by the Negotiating Council. The three person court decides by majority vote (that is, the judge may be overruled by the two assessors). If the court rules against the trader he

will be advised to withdraw his threat. If he refuses he may be arrested for contempt of court.

8.2.1 Advantages

* More practical than option four.

* The modification to the existing structures go some way towards overcoming problem of illegitimacy

* No new enforcement machinery necessary.

8.2.2 Disadvantage

Some use is made of the existing structures seen to be illegitimate in some quarters.

REPORT OF SUB-COMMITTEE TO THE PLANNING COMMITTEE ON: THE "HIGHER CODE" PROPOSED BY THE TECHNICAL COMMITTEE ON THE REPEAL OF DISCRIMINATORY LEGISLATION, ON THE IMPLEMENTATION OF A BILL OF RIGHTS AT AN EARLIER DATE, ON ENFORCEMENT MECHANISMS AND RELATED ISSUES

1. The Negotiating Council referred a number of issues relating to the work of the Technical Committee on the Repeal of Discriminatory Legislation to the Planning Committee for recommendations - See the attached document.

2. The Planning Committee instructed the Sub-Committee to discuss these issues with the Technical Committees involved.

3. The Sub-committee had various discussions with Technical Committees and this culminated in a joint discussion with the full committees on:

   * the Repeal of Discriminatory Legislation
   * FHR
   * Constitutional Issues, and
   * the IEC.

4. Draft Minutes of the discussions are attached. The recommendations emanating from the meeting are as follows:

   (i) The Technical Committee on the Independent Election Commission will draft a "code" dealing with the freedom of the individual to participate in the elections (as opposed to a code for political parties). Towards this end they will receive an input from the Technical Committee on Fundamental Human Rights.

(ii) The Technical Committee on the Independent Election Commission will continue its work on developing the adjudication functions of a Commission which will include examination of the need for a tribunal to adjudicate a code as proposed.

(iii) Participating parties should be called upon to repeal legislation offending against free political participation.

(iv) A recommendation that a commission or other body be charged with the identifying of legislation against free political participation on an ongoing basis, and that the identified legislation could thereafter be repealed or amended by way of proclamation, was agreed upon but not supported by all members.

5. The Sub-Committee supports the recommendations. As far as recommendation (iv) is concerned, the Independent Election Commission could very well be the body identifying offending legislation.

ADDENDUM B

REPORT OF A SPECIAL MEETING OF THE TECHNICAL COMMITTEES ON THE REPEAL OF DISCRIMINATORY LEGISLATION, FUNDAMENTAL RIGHTS DURING THE TRANSITION, THE IEC, THE TEC AND CONSTITUTIONAL MATTERS HELD AT 12H30 ON TUESDAY 10 AUGUST 1993 AT THE WORLD TRADE CENTRE

1. AGENDA

This special meeting had to consider a document prepared by the Convenors of the Technical Committee on the Repeal of Discriminatory Legislation and Free and Fair Elections. It dealt with proposals on how to ensure free and fair participation in the election process. (Copy of this document attached. Note the background as explained in the "Assignment" paragraph).

2. RECOMMENDATIONS

After general discussion, questions and clarification, the following recommendations, based on the proposals made in the document under discussion (Paragraph 4), were adopted:

2.1 It was recommended that the status quo was not acceptable. (Free and fair elections will not be possible if nothing is done and the legislative and executive conditions remain as they are at present.)

2.2 It was recommended not to pursue the possibility of a comprehensive justiciable bill of rights being adopted in the immediate future.

2.3 It was recommended that and Independent Electoral Commission with political powers only will not suffice. (Although such a Commission is necessary and should form part of the general election structures, additional mechanisms and remedies are to be provided for in order to achieve free and fair elections.

2.4 It was recommended that the repeal of discriminatory legislation should be continued with. Some kind of body should have the task of identifying discriminatory legislation. Another "functionary" or entity should then issue proclamations repealing or amending such laws. It was also recommended that in the meantime the legislative bodies of the parties participating in the Negotiating Council should take the initiative in repealing offensive legislation. (This possibility did not appear in the document under discussion. It was added by the chair as a result of discussion from the floor. The relevance of such a process for free and fair elections was queried by some; especially since it will deal with all discriminatory laws. The principle was eventually accepted. No machinery was identified and no specific tasks formulated).

2.5 It was recommended that a "higher law" be adopted in order to protect election rights only. It will have to be enforced by a special judicial mechanism which is to form part of the structure of the IEC. The proposal contained in Option 5 of the discussion document, i.e. the appoint of serving judges in a special election court/chamber to be assisted by two assessors was generally supported.

Report prepared by Professors M.G. Erasmus and J. Dugard, Co-Convenors of the Technical Committee on the Repeal of Discriminatory Legislation

11 August 1993

THIRD PROGRESS REPORT

TO THE PLANNING COMMITTEE OF THE TASK GROUP ON THE IDENTIFICATION AND REPEAL OF LEGISLATION IMPEDING FREE POLITICAL ACTIVITY AND DISCRIMINATORY LEGISLATION

25 October 1993

1. Since the submission of the first two progress reports, the members of the overall Task Group and the sub-groups have continued to work.

2. The convenor has since been notified that the Bophuthatswana Government did not deem it prudent to contribute to the Task Group's work under the present
circumstances. Earlier a member of the Task Group visited Mmabatho, after previous arrangements had been made with Mr G Mothibe, but was informed on his arrival that members of the administration had been instructed not to co-operate with him.

3. From the KwaZulu administration no response to several telefaxed letters has been received.

4. On Wednesday 20 October 1993 a meeting of the members of the overall Task Group and sub-groups, including representatives of all the relevant regions, took place at the World Trade Centre. Substantial draft reports were presented and discussed.

5. At the meeting it was agreed with Dr T Eloff of the MPNP administration that a **first substantial report** will be made available for distribution on **Friday 29 October 1993** (instead of 22 October, as agreed earlier).

6. During the discussion two questions emerged, on which guidance from the Planning Committee would be most helpful:

6.1 In view of the Task Group's mandate, as well as the earlier work of the Technical Committee on Discrimination, the identification of specific legislation for the purposes of repeal or amendment is indeed regarded as the most urgent matter and is receiving attention. However, the idea of once again proposing a 'higher code' to serve as a "safety net" mechanism is being contemplated by some members. Is the "higher code" concept still a viable option at all, as far as the negotiators are concerned, and to what extent should the

Task Group proceed to investigate this possibility, as addition to the first aspect?

6.2 The Task Group's initial mandate dealt with South Africa and the TBVC territories. in the First Progress Report an extension to KwaZulu was requested. After this had been agreed by the Planning Committee, a subgroup was appointed and very substantial progress has been made by a Durban lawyer. However, the decision to concentrate in quite considerable detail on KwaZulu, but not on other self-governing territories, may be open to criticism. Therefore it is suggested that the possibility to extend the Task Group's mandate to include one or more of the other self-governing territories deserves consideration, on the longer term. Alternatively, the reasoning behind a distinction between KwaZulu and the other territories may need some reflection. In view of the fact that a considerable amount of work has already been done regarding KwaZulu, it is suggested that information and recommendations on KwaZulu be included in the First Substantial Report, together with either an undertaking that other territories will also receive attention, or some explanation as to KwaZulu's "special' treatment.

7. Some feedback on 6 will be appreciated.

Johana van er Westhuizen
Convenor: Overall Task Group

25.10.93

CONTENTS

Copies of Statutory Clauses referred to will be available or accessible

INTRODUCTION

On 6 September 1993 the Planning Committee made a recommendation to the Negotiating Council, namely to propose a two person Overall Task Group which would be responsible for identifying legislation in the South African statute book, as well as setting up and coordinating four sub-groups charged with identifying legislation in each of the TBVC territories. In setting up sub-groups, the overall Task Group had to ensure that in the case of each of the TBVC territories a person seconded by the Ministry of Justice from the respective territory was included. In terms of the proposal, the overall Task Group would consist of a person seconded from the South African Ministry of Justice, and Professor Johann van der Westhuizen of the Centre for Human Rights of the Law Faculty of the University of Pretoria. The Planning Committee's proposal was apparently thereafter accepted by the Negotiating Council. Adv Jaap du Bruyn was seconded by the Ministry of Justice. Prof van der Westhuizen has acted as the de facto convenor of the group.

Two Progress Reports (dated 4 October and 12 October) have since been submitted to the Planning Committee. The following sub-groups were established:

TRANSKEI

Mrs LT Booi was seconded by the Department of Justice of Transkei.
Mr Dumisa Ntsebeza, a practising attorney of Umtata, also attached to the University of Transkei, was approached by the convenor. Mrs Booi and Mr Ntsebeza jointly submitted proposals.

BOPHUTHAT'SWANA

The name of **Mr SG Mothibe,** the Minister of Justice, was put forward by the MPNP Administration. In a personal conversation on 7 October 1993, Mr Mothibe submitted the name of chief state law advisor, **Mr Nico Jagga,** who would co-operate with the Task Group, according to Mr Mothibe.

Prof Christof Heyns, of the University of Pretoria was approached by the convenor and started working, but had to go to the United States for two weeks.

Prof Johan van der Vyver of the University of the Witwatersrand was then approached, in view of his experience in the area. Prof van der Vyver visited Mmabatho on Tuesday 12 and Wednesday 13 October, where he was planning to work with the State Attorney, as well as Mr Jagga. Before his visit, he called in order to arrange to visit Mr Mothibe as well. On Thursday 7 October I informed Mr Mothibe of Prof Van der Vyver's visit. Mr Mothibe indicated that he knew Johan Van der Vyver and raised no objections. After his return, Prof Van der Vyver reported that on his arrival in Mmabatho he was informed by the State Attorney that he, Mr Jagga and their colleagues in the Department of Justice had received

instructions not to co-operate with Van der Vyver or the Task Group. Consequently Van der Vyver was assisted by a practising lawyer in the area. Subsequently Mr Jagga indicated in a letter to the Task Group that it was not deemed prudent to contribute to the Group's work, in view of his Government's present stance regarding the Multi-Party Negotiating Process.

VENDA

Mr SN Mahada, a Senior Law Advisor in the Department of Justice, was seconded and worked together with **Mrs Annette Kirk-Cohen** and **Mr Adriaan Haupt** of the University of Venda Law Faculty, who were appointed by the convenor. A report was submitted.

CISKEI

Mr M Bulube of the Supreme Court in Bisho was nominated by the Ciskei Administration. **Mr Dumisani Tabata,** a practising attorney, was appointed by the convenor. Mr Bulube gave his full co-operation to Mr Tabata and the Task Group and found himself in full agreement with the report.

KWAZULU

In the First Progress Report it was suggested that a sub-group for KwaZulu should also be set up. The Planning Committee accepted this submission and the name of **Mr Mtetwa** was received from the MP NP Administration as a contact person for the KwaZulu Ministry of Justice. Two letters were telefaxed to Mr Mtetwa, but no response has been received.

'Me convenor approached **Mr Howard Varney,** a practising lawyer in the office of the Legal Resources Centre in Durban, who agreed to co-operate on KwaZulu and submitted proposals.

SOUTH AFRICA

The two members of the overall Task Group were supposed to concentrate on South Africa. **Mr Danie Brand,** a senior law student who assisted the Technical Committee on Discrimination, was co-opted, to assist with research. Mr Du Bruyn was out of the country between 8 and 23 October. **Dr Flip Jacobs** of the Ministry of Justice acted as a contact person in his absence.

The different members of the sub-groups started to put together proposals on very short notice, in their respective territories.

On Wednesday 20 October 1993 a meeting took place at the World Trade Centre. The meeting was attended by Prof van der Westhuizen, Dr Jacobs, Prof Heyns, Mrs Kirk-Cohen, Mr Bulube, Mr Tabata, Prof van der Vyver, Mrs Booi, Mr Ntsebeza and Mr Brand. Draft reports were discussed and compared.

2. BACKGROUND AND APPROACH

2.1 In view of the difficulties regarding the availability of legislation of the TBVC states, as well as access to the necessary documentation, it was thought best to appoint people to the sub-groups who have been or are active in the relevant areas. Members of sub-groups were asked to go ahead, in order to save time, rather than to have meetings and to work as a committee at the World Trade Centre. Up to now, one meeting of the overall Task Group and the members of the sub-groups has taken place, in order to standardise information and to discuss general strategy. The recommendations of the Task Group are essentially those of the members of the overall Task Group, with the advice and input of members of the sub-groups. However, at the meeting there was considerable consensus - at least in principle - on most matters.

2.2 Technical Committee No 7, the committee on Discriminatory Legislation, submitted several reports between May and August 1993 and followed the following approach:

The Committee found that a comprehensive list of all discriminatory and repressive laws in South Africa, the self-governing territories and the TBVC territories would constitute a useful compilation of statutory enactments, but that repealing or amending these will have to be implemented by 11 different legislative bodies, numerous local authorities and other law-making persons and bodies. The Committee found that the likelihood of obtaining uniformity on non-discrimination and free political activity from 11 different legislative bodies is small. If no uniformity in legislation is obtained, this will inevitably result in discrimination. They preferred a single structure for the enforcement of laws and regulations pertaining to free political activity and equality. Therefore they proposed a "higher code", which was not supposed to be an interim Bill of Rights, but a code prescribing principles for free political activity, free and fair elections and non-discrimination. They regarded such a higher code as a useful measure to set aside any law, administrative act or private activity in violation of the code and was of the opinion that parties taking part in the negotiating process should all be given the opportunity to endorse the higher code. The higher code would have "supreme legal status" and cancel out objectionable provisions in a statute while the rest will remain intact. Ale Committee thought that the typical characteristics of free political activity in a democratic society include principles such as:

(i) freedom of expression;

(ii) freedom of the press;
(iii) freedom of association;
(iv) freedom of movement;

(v) **freedom of assembly; and**

(vi) free access to information.

As far as discrimination is concerned, the Committee considered:
(i) discriminatory laws which constitute the **foundations of political apartheid,**
(ii) discriminatory laws which **flow from the above laws,**
(iii) laws which are **inherently discriminatory** and
(iv) laws which may **impede free and fair elections.**

The Committee relied on the definition of discrimination in Article 1 of the International Convention on the Elimination of All Forms of Race Discrimination of 1965, as well as in Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979.

Laws that may impede free and fair elections, according to the Committee, include any law that may:

(i) deny or interfere with the right to vote;
(ii) deny the equality of treatment of voters in the whole election process from the time of qualification as a voter to the casting of the ballot;
(iii) prevent the free exercise of freedom of speech, expression or access to information; and
(iv) deny political parties equal access to voters, to venues for meetings, to the media, to funding resources etc;
(v) interfere with the freedoms of association and assembly (including the right to demonstrate);
(vi) interfere with or deny freedom of the press or media;
(vii) prevent an election from being conducted in accordance with uniform rules for the whole country;
(viii) deny the right to stand for election;
(ix) deny the right to vote freely without fear of victimisation;
(x) deny the right of political parties to canvas voters.

The Committee furthermore identified discriminatory legislation and legislation irnpeding free political activity and provided a list of discriminatory laws constituting the foundations of apartheid, discriminatory laws which flow from the laws constituting the foundations of apartheid, laws which discriminate on grounds of sex and religion and laws which may impede free and fair elections in the TBVC territories and in South Africa.

The Committee furthermore made a draft "higher code" available.

DISCRIMINATORY LEGISLATION

29 October 1"3

After some liaison between the Committee on the Repeal of Discriminatory Legislation and the Technical Committees dealing with Elections, with the Transitional Executive Council and with Fundamental Rights, it became clear that there were areas of overlap or potential overlap, especially as far as the idea of a "higher code" was concerned. Some of the principles proposed in the higher code would have been included in the Electoral Bill, others in the Interim Bill of Fundamental Rights, etc. It now seems that the proposed aims and functions of a "higher code" have indeed been covered by other proposals and structures, and there is little time left to establish new structures, especially for the "higher code".

It is not clear to the Task group what the present status of the concept of the "higher code" is, and whether the idea ought to be investigated further as a possible "safety net mechanism". in as far as this may be necessary to deal with legislation which may be over-looked.

2.3 It would seem that the instructions of the Planning Committee to the Task Group emphasised the need to identify legislation impeding free political activity, for such

legislation to be repealed, or amended, on an urgent basis. Therefore the Task Group decided, as a first step, to concentrate on the most crucial aspects of legislation possibly impeding free political activity and discriminating as far as free participation in elections is concerned, in the
relevant territories. Lawyers working in the relevant areas, and the representatives of the different administrations, were asked to concentrate on those aspects of legislation which seem to have a very direct and immediate effect concerning free political activity.

In principle the Task Group agrees with the definitions and descriptions, as well as the findings and approach of the Technical Committee on Discrimination. The Task Group attempts to give more substance to the last mentioned leg of the Technical Committee's approach, namely to make concrete submissions as to legislation which has to be repealed or amended in South Africa and the TBVC territories, as a matter of urgency.

It is to be hoped that aspects of legislation identified by the Task Group as impeding free political activity, will indeed receive the urgent attention of the relevant legislatures, after decisions have been taken or sufficient consensus has been reached in the MPNP.

2.4 The Task Group was also guided by the rights and principles set out in several international and regional human rights instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the African Charter on Human and Peoples Rights and the Council of Europe Convention for the Protection of Human Rights and Freedoms.

2.5 At this stage the Task Group has identified aspects of legislation and briefly recommends the substance of proposed amendments. The Task Group has not been mandated to draft legislation in this regard, but could possibly proceed to do so, if necessary.

2.6 On the longer term, the Task Group could proceed with the identification of legislation which is inherently or otherwise discriminatory, and to make recommendations in this regard. Obviously future structures such as the Transitional Executive Council, Electoral Commission, Electoral Court and Constitutional Court and the provisions of the Interim Bill of Fundamental Rights will have to be taken into account.

2.7 As was the case with the Technical Committee on Discrimination, the Task Group does not regard it as falling within its present mandate to pronounce on the statehood or constitutional position of the TBVC territories. Therefore the constitutional position of the territories is addressed only insofar as it is directly related to specific laws impeding free political activity. In some cases the possible

unconstitutionality of legislation, judged by the present constitution, is pointed out, rather than expressing an opinion on the constitution as such.

2.8 In previous submissions aspects of citizenship in South Africa and the TBVC states were mentioned. The Task Group considered this facet, but decided not to go into the issue of citizenship and franchise, in view of the work of the Technical Committees on the Electoral Bill and on Constitutional Principles, as well as ad hoc committees. Inherently discriminatory aspects of citizenship legislation may be considered in future reports.

2.9 In the reports of the different sub-groups and the overall Task Group, certain differences in emphasis and viewpoints occurred. This is due to, amongst other things, the different experiences of people and atmospheres prevailing
in the various territories. An aspect which may be experienced as a significant problem in one area, may be much less relevant in another, even though the legislation in force may technically be the same, or similar. An attempt was made to formulate a standardized approach as far as possible, but differences may still occur. In some cases legislation in one territory may have been amended in others, which could make a difference as to its meaning and impact.

2.10 In terms of the Task Group's mandate and above mentioned approach, the focus in this report is on relatively urgent matters related to free political activity. These recommendations do not represent an attempt at "cleansing" the statute books in order to get rid of all legislation which violate basic human rights or other principles. Various aspects are not addressed including other provisions in Acts which need to be revised and reformed or

repealed to conform with a Bill of Fundamental Rights, as well as with principles of democracy and commo

2.11 In the following tables, the contents of certain provisions are stated very briefly. Thereafter more co motivations follow.

3. LIST OF LEGISLATION, WITH MOTIVATIONS

A SOUTH AFRICA

In identifying the relevant objectionable legislation in the Republic of South Africa the Working Group has account the provisions of the proposed Regulation of Gatherings Act (popularly known as the Goldsto Transitional Executive Council Act, the Draft Electoral Bill and the proposed functions of the Independent Commission and the Electoral Court. The following Acts or provisions in Acts are then those regarded a dangerous or inhibiting towards the free political process, which are not dealt with in the aforementioned do and which the working group consequently thinks should be repealed or amended. In some cases, eg Security Act 74 of 1982, it may be advisable or necessary to revise, repeal, or amend the Act as a whole, fully to comply with a Bill of Fundamental Rights, other legislation and common law principles. So clearly deserve immediate attention, even though other sections may also be debatable.

	Title, No and Year of Law.	Particular Sections Summary of Contents	@@@Recommendations an d Reasons
	Repeal or Amend		
(1)	Prohibition of Foreign Financing of Political Parties Act 51 of 1968	Prohibits the receipt of foreign funding by political parties	Repeal in toto - impedes free political activity and related rights

(2)	Affected Organisations Act 31 of 1974	Discretion to State President to declare political organisations receiving foreign funding to be affected organisations	Repeal in toto - same
(3)	Publications Act 42 of 1974	Section 47(2) permits the banning of publications or films deemed to be "undesirable" because it ...	Repeal 47 (2)(e)- it could be used to impede free political activity; sections 47 (2)(c) and (d) are arguable. As to the Act as a whole, see below

(c) brings any section of the inhabitants into ridicule or contempt

(d) is harmful to the relations between sections of the inhabitants

(e) is prejudicial to the safety of the state, general welfare, peace and good ord

(4)	Parliamentary Internal Security Commission Act 7 of 1976	Wide ranging powers to Parliamentary Internal Security Commission	Repeal in toto - violates several fundamental rights, including access to court, access to information. etc

(5) Internal Security Act 74 of 1982

(6) Disclosure of Foreign Funding Act 26 of 1989

Section 4:
The Minister has the power to declare certain organisations unlawful

Section SO:
Power of police officer to arrest without wan-ant

Section 58, 59, 60:
Additional sanctions

for unlawful behaviour, aimed at prohibiting civil disobedience

Section 62: Prohibition on causing hostility between population groups

Powers to Registrar to declare an organisation a reporting organisation, which has to disclose information regarding funding; also, powers of search and seizure

Amend to narrow the scope - free political activity may be impeded

Amend to subject decision of police to objective instead of subjective test violates freedom of the person

Repeal - freedoms essential to legitimate civil disobedience

violated

Repeal, or amend to lessen vagueness and wide scope violates freedom of expression

Repeal in toto see (1)

Other Matters

(7)	Public Safety Act 3 of 1953	Grants unfettered power to State President, Minister of Law and Order to declare a state of emergency or an unrest area respectively and to promulgate emergency regulations or regulations in an unrest area. Jurisdiction of the courts ousted to a great extent.	Could violate several rights and freedoms; dealt with in TEC Bill; not an immediate problem
(8)	Gathering and Demonstrations in the Vicinity of Parliament Act 67 of 1976	Prohibits demonstrations in the vicinity of Parliament	Could violate freedom of assembly and expression; to be repealed by

(9)	Demonstrations in or near Court Buildings Prohibition Act 71 of 1982	Prohibits demonstrations in the vicinity of Court Buildings	As above
(10)	Gathering or Demonstrations in or near the Union ildings Act 103 of 1992	Prohibits demonstrations at the Union Buildings	As above

MOTIVATION

(1) **Prohibition of Foreign Financing of Political Parties** Act 51 **of** 1968

This act prohibits the receipt by any political organisation of foreign funding for political purposes. The Act c not take account of the present political situation, where many political parties or movements do in fact receive ex funding for political purposes from abroad. Furthermore, if the Act were indeed to be applied, such applicatio result in an impediment to the free political

process. Any regulation of foreign funding by political parties should be left to the Transitional Executive Council or the Independent Electoral Commission. The Working Group consequently recommends that the Act be repealed in toto.

(2) **Affected Organisations** Act **31 of 1974**

This Act grants the discretion to the State President to declare any political organisation that receives foreign aid or monies for political purposes to be an affected organisation. An affected organisation is prohibited from receiving any aid or money from abroad. Such money already in possession of an affected organisation may furthermore not be used for any purpose other than to donate it to a welfare organisation specified by the Minister of Justice. The Act also provides for a Registrar of Affected Organisations, with wide ranging powers, to be appointed by the State President. The powers of the Registrar include the power to bring an application in the Supreme Court for the confiscation of the monies of an affected organisation. The Act further provides for the appointment of an Authorised Officer. This officer is granted extensive powers in relation to the searching of premises and the seizure of documents and other information of an affected organisation. The Working Group is of the opinion that the extensive discretionary powers conferred on the State President, the Minister of Justice and the appointed officials in terms of this

Act accords the State an unwarranted amount of control over political organisations. Taking into account that the Government is but one of the parties to take part in the upcoming general election, the possibility of such control resting in the hands of the Government casts doubt on the possibility of free political activity on an equal footing. The Working Group acknowledges that the issue of foreign funding of political parties taking part in an election is sensitive but feels that if this issue is to be regulated at all, it should be dealt with by the Transitional Executive Council or the Independent Electoral Commission. The Working Group consequently recommends that the Act be repealed in toto.

(3) **Publications** Act **42 of 1974**

This Act has not been used to impede free political activity lately. It is recommended that the Act as a whole should be revised and repealed or amended in accordance with a Bill of Fundamental Rights. As far as the immediate future is concerned, the clauses dealing with the safety of the state, general welfare, good order, ete (47(2) (e)) should be repealed. Clauses dealing with racial "hate speech", such as 47 (2) (c) and (d) could arguably be retained, in the short term, until the Act as a whole is repealed or amended.

(4) **Parliamentary Internal Security Commission Act 7 of 1976**

This Act, which has not been put into operation since its enactment, makes provision for a Parliamentary Internal Security Commission, with the function of investigating matters which, in the opinion of the State President, affect Internal Security, and of reporting thereon to the State President. Furthermore the Commission is also empowered to investigate legislation and contemplated legislation and to report

thereon to the State President. The President, in consultation with the leader of the opposition, is entitled to refrain from making the contents of these reports public. Furthermore, the Commission is accorded powers similar to those of a Provincial Division of the Supreme Court in relation to the summonsing of witnesses and the disclosure of documents, books and other objects. Failure to comply with a request to appear before the Commission or to furnish the Commission with information is declared a statutory offence, with specified punishment attached thereto. It is submitted that these wide ranging powers constitute an infringement by the executive on the functions of the legislature and furthermore confers judicial powers on the legislature and executive which are not their province. More importantly, the powers of the Commission pertaining to the disclosure of information, coupled with the element of secrecy and lack of accountability, constitute a threat to the free political process. The Task Group recommends that the Act be repealed in toto.

(5) **Internal Security Act 74 of** 1982

The need for security legislation is recognised, but the following provisions of the Act nevertheless place unnecessary and unjustified restrictions on free political activity.

Section 4

The Minister may declare an organisation to be an unlawful organisation, if he has reason to believe that such organisation intends to overthrow the State Authority or achieve, bring about or promote any constitutional, political, industrial, social or economic aim or change, etc, by the use of violence, or the instigation of violence, disturbance, doting or disorder, etc. Whereas the concern about violence and perhaps rioting is understandable, the mentioning of "disturbance" and "disorder" casts the net too wide. Legitimate protests and mass action could sometimes cause disturbance or disorder. It is recommended that the section be amended.

Section 50

This section furnishes a police officer with the competence to arrest and detain a person without a warrant if, in the subjective opinion of that police officer, the actions of that person are likely to result in certain specified effects, and if, again in his subjective opinion, the detention of that person will have certain specified desired results. The Working Group is aware of the continuing unrest and occurrences of public violence in the country and recognises the consequent necessity for police officers to be able to take quick decisions and act promptly under difficult circumstances. Nevertheless, it is submitted that a decision of this nature and magnitude, a decision to deprive a person of his/her personal freedom without adhering to the usual procedural requirements, should not be left to the subjective judgement of an individual police officer. The Working Group proposes that such a decision should rather be subjected to an objective test, so that the element of arbitrariness inherent in any subjective decision can be avoided. Consequently it is

recommended that the provision be amended so as to subject the merits of the decision by an officer to an objective test. This would enable the courts to test the substantive validity of such a decision and would contribute to the equal treatment of all citizens in this regard. Ultimately it would also contribute towards the attainment of the ideal of an atmosphere of free political activity.

Sections 58, 59 **and** 60

These three sections place an additional sanction on unlawful behaviour where the unlawful behaviour is specifically aimed at protesting against laws of the country. It would thus seem that the provisions have as their aim a prohibition on civil disobedience, that is on the wilful contravention of the law with the express aim of protesting against the law. The Working Group regards civil disobedience within certain constraints as a legitimate part of the free political process and therefore regards any such prohibition as inhibiting that process. It is therefore recommended that the provisions be repealed.

Section 62

This section contains a prohibition on the causing, fornenting or encouragement of feelings of hostility between different population groups. The Working Group recognises the pressing need for reconciliation between the different population groups in the country but maintains that the provision is too vague and wide and does not leave room for the degree of freedom of speech required to conduct free and fair elections. This provision can potentially inhibit free political activity. It should be repealed or amended.

(6) **Disclosure of Foreign Funding** Act **26 of** 1989

This Act makes provision for the appointment by the Minister of Justice of a Registrar of Reporting Organisations. This official is accorded the discretionary power to declare an organisation a reporting organisation, whereupon such an organisation is required to disclose specified information pertaining to foreign funding received by it. The Registrar is also accorded certain powers in relation to the searching of premises and the seizure of documents of the reporting organisation. The Working Group is of the opinion that this Act has the potential of inhibiting free political activity. The Act places undue power in the hands of the State and places an unnecessary burden on political organisations regarding their receipt of funding. The Working Group recognises that the issue of foreign funding of political parties is potentially sensitive, but is of the opinion that any possible regulation of such funding be left to the Transitional Executive Council or the Independent Electoral Commission. It is consequently recommended that the Act be repealed in full.

(7)-(10) See the tables **above**

B TRANSKEI

The sub-group for Transkei reported that the present Government of Transkei had set itself a policy to review on a periodic basis all laws which might stand in the way of free political discussion. Since its inception it has been the stated policy to promote dialogue aimed at reshaping the constitutional structures in Southern Africa. This policy is reflected in a statement by the chairman of the Military Council, dated 10 May 1990, in which the democratic right to engage in free political activity was recognised and the govemment's intention to allow everyone to make an input into the shaping of the future and to withdraw all previous pronouncements, the object of which was to discourage political activity was emphasised.

The sub-group furthermore pointed out that Transkei had dispensed with several measures of which the discriminatory provisions may impede free political activity and free and fair elections and has repealed several laws. (These were listed in a minute to the MPNP, dated 3 and 16 July 1993, which are to be found in MPNP documentation.)

There are still laws on the statute book which may be used to impede or inhibit free political activity, although these have not been used recently to achieve that purpose. Appropriate recommendations are thus made.

The Public Security Act 30 of 1977, which was based on several Acts of the Republic of South Africa that have since been repealed (such as the suppression of Communism Act of 1950, the Unlawful Organisations Act of 1960, the Terrorism Act of 1967 and certain provisions of the Riotous Assemblies Act of 1956) deserves the most urgent attention and is therefore dealt with first, in the list below. This Act has undergone a series of amendments (especially brought about by Decree No. 10 of 20 June 1990) and in some cases the repeal of whole sections or definitions. Those unamended sections of the Public Security Act which may still impede free political activity, receive a somewhat detailed attention. Other sections do not seem to belong in this Act, but rather in a Public Service or Labour Relations Act.

It may well be advisable to revise and repeal or drastically amend the Act as a whole, in accordance with other legislation, such as a Bill of Fundamental Rights, also taking existing legislation and common law principles into account. For the immediate future, the following sections deserve attention.

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Public Security Act
30 of 1977

Particular Sections
Summary of Con
Section 7: Defines
the crime of
terrorism

Section 12:
Prohibits statements
and acts subverting
the authority of
chiefs and headman

Section 13:
Punishment of
protest against laws
or campaigns for
legalchange

Section 14:
Prohibits the
acceptance of
financial or other
assistance for
resistance

Section 22: The
prohibition of
publications and

unlawful organisations

Section 24: Provides for increased penalties for offenses related to initiatives aimed at the repeal or modification of laws

Recommendation and Reasons

Repeal - wide definition is open to abuse by state officials and thus violates basic rights and freedoms.

Repeal - open to abuse by chiefs and headman violating rights of assembly, freedom of expression, etc

Repeal or amend - could be used to silence legitimate expression of grievances or criticism

Repeal - inhibits free political campaigns and could discriminate against parties

Amend - open to abuse, violating

			freedom of expression and free political activity
			Repeal - could impede freedom of expression etc 'M campaigns for legal change

		Sections 33-37: Deal with the prohibition of gatherings and demonstrations	Repeal - could be used to violate freedom of assembly, expression, etc
		Section 40-42, Chapter 6, deal removal of subjects by their chiefs or tribes	Repeal - impedes freedom of with the movement and political expression
		Section 46: Provides for investigation concerning suspected organisations or publications	Repeal - could violate freedom of association, expression, etc
(2)	Transkei Authorities Act 4 of 1965	Section 42 confers powers on chiefs or headmen to regulate meetings, publications and movement	Repeal - freedom of assembly, expression, movement, etc could be violated
(3)	Transkei Prisons Act 6 of 1974	Section 25: Membership of a political organisation	Amend - unnecessary restrictions of political rights

			constitutes misconduct	
	(4)	Publications Act 18 of 1977	Provides for the banning of "undesirable" publications and films, as in the South African Publications Act of 1974	Repeal some sections which may violate freedom of expression and information and impede free political captivity. See the South African situation above - A(3

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freedom and may be	(5)	Newspaper and Imprint Registration Act 19 of 1977	Sections 2, 8, 9 and 10 restrict the printing and publishing of newspapers etc and impose financial burdens	Repeal - of expression information violated
sections or relevant certain Africans are unable freely	(6)	Aliens and Travellers Control Act 29 of 1977	Defines the rights of "aliens" and "Transkei Citizens" and restricts the movement and political activities of people	Repeal amend the definitions - otherwise South theoretically to participate in politics in Transkei

toto - eta	(7)	Undesirable Organisations Act 9 of 1978	Empowers President to declare organisations undesirable or unlawful	Repeal in freedom of association violated
amend - political should limited	(8)	Public Service Act 43 of 1978	Section 18(g) restricts the political activities of officials; Section 18 (h) prohibits attempts by an official to secure intervention from political sources in relation to his position and conditions of employment	Repeal or reasonable activities not be

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could freedom of etc, and	(9)	Penal Code Act 9 of 1983	Sections 57 to 60 define and regulate unlawful assemblies and demonstration and penalties	Sections violate assembly, ought to be amended in

with the			applicable for transgression	accordance Bill of
		Fundamental		Rights, or "Goldstone
Bill".				See A(8) -
(10)				above.
amend -	(10)	Education Act 26 of 1983	Section 24 restricts the political activities of officials	Repeal or reasonable activities
political should restricted				not be
new African Act	(11)	Electoral Laws Provisions Act 8 of 1987	Regulates elections in Transkei	Replace by South Electoral

MOTIVATION

(1) **Public Security Act** 30 **of 1977**

Section 7

The definition of the crime of terrorism is very widely cast and can be open to abuse by state officials and might thus be used to impede free political activity. It is recommended that the entire section be repealed, or as a first step, that it should be amended in accordance with the present South African situation. Ordinary common law offences concerning public violence, sedition, insurrection and treason, should be sufficient.

Section 12

Statements and acts subverting the authority of chiefs and headmen are prohibited. This section has been used in one community in the Transkei to charge a whole location. It transpired during the course of the trial that the headman had invoked this section when members of a political movement met to discuss, amongst other things, who was going to represent them at a meeting that was to elect the head of the organisation's Women's League. Ale headmen took the attitude that the community had disobeyed his lawful order that no such meetings should be held. It is therefore conceivable that

in an election campaign a headman might invoke this section to frustrate meetings and other free political activity by parties that he does not agree with ideologically. It should be repealed in toto.

Section 13

This section punishes anyone who advises, encourages, incites, commands, aids or procures any other person in general or uses any language or does any act or thing calculated to cause any person or persons in general, to commit an offence by way of protest against any law or in support of any campaign for repeal or modification of any law or variation or limitation of the application or administration of any law. It could be used to silence legitimate political expression challenging any repressive law in the run up to elections. This section should be repealed or amended.

Section 14

The acceptance of financial or other assistance for resistance against the law of Transkei is prohibited. This section may be invoked to hamper certain parties from accessing financial resources necessary for the conduct of political campaigns. The section should be repealed. (See also Sections 58, 59 and 60 of the South African Internal Security Act A under (5) above.)

Section 22

This section deals with the prohibition of publications and immediately vests the repository of such power with a discretion to determine which publications ought to be in circulation. The definition of an unlawful organisation may well be interpreted to cover political organisations. 'Re section needs to be amended appropriately as it might be open to abuse.

Section 24

This section provides for increased penalties for offenses committed by people who are involved in protests or campaigns for the repeal or modification of any law. In an election campaign laws ought to be attacked for their deficiencies. Those involved in such campaigns risk heavy fines and

in some cases imprisonment or whipping or a combination of the above. The section consequently constitutes a prohibition of civil disobedience and should be repealed. (See sections 58, 59 and 60 of the South African Internal Security Act A under (5) above.)

Sections 33 to 37

These sections deal with the prohibition of gatherings and demonstrations including the need to seek the permission of a magistrate to hold a peaceful gathering or demonstration. In view of what has been taking place regarding demonstrations and gatherings, these sections have virtually fallen into disuse. However, they could still be used to limit free political activity. The South African situation regarding gatherings and demonstrations could be taken note of. (See A (8), (9), (10) above.)

Chapter 6, Sections 40 to 42

These sections deal with the removal of subjects by their chiefs or tribes, communities and persons by the President and of certain persons from Transkei. Section 43 provides for the exclusion of the Supreme Court from reviewing or testing the validity of such powers. It is conceivable that in the run up to the elections communities can be moved from one area to another to influence the outcome in favour of one political party over others. This would obviously hamper a free and fair election. These sections must be repealed.

Section 46

It provides for an investigation concerning suspected organisations or publications. Certain organisations or publications may be subject to such close scrutiny for the simple reason that they are appositional and may in that way be seriously disrupted in their election campaigns. This section ought to be repealed.

(2) **Transkei Authorities Act 4 of 1965**

Section 42 confers on the paramount chief, chief or headmen powers to disperse or order the dispersal of any unlawful meeting or gathering and to prohibit the distribution of undesirable literature or unauthorised entry of any person into his area. If in his opinion a state of lawlessness exists in his area which cannot otherwise be prevented, he can order that all or any of the following be prohibited, eg the gathering of men in groups, the brewing of beer, the shouting of war cries or blowing of bugles or whistles. Any person who at any meeting obstructs, disobeys or insults an official, may be removed from such meeting and detained. Penalties

- including fines and imprisonment - could be imposed. The Act should be amended in such a way that the powers of the traditional leaders are in accordance with notions of fundamental rights and freedoms, especially assembly, free expression, movement, etc. The relevant section should be repealed. See also C(2) and E(7) for the position in Bophuthatswana and Ciskei.

(3) **Transkei Prison Act 6 of 1974**

Section 25 of Schedule 5 states that a member of the Service is guilty of misconduct if he becomes a member of a political organisation or takes an active part in partypolitical matters. Membership and political activity as such should not be prohibited; restrictions on high profile active involvement may be reasonable.

(4) **Publications Act 18 of 1977**

The motivation supplied with regard to the South African Publications Act of 1974 is applicable - see A(3) above.

(5) **Newspaper and Imprint Registration Act 19 of 1977**

Section 2 requires the registration of newspapers to be published in Transkei. Section 4 8 requires the editor to be resident in Transkei. Section 9 gives the Minister the power to prohibit certain newspapers, including those promoting "communism" or associated with an "unlawful organisation". Section 10 places a financial burden on newspapers. The Act ought to be repealed.

(6) **Aliens and Travellers Control Act 29 of 1977**

The definition of "alien" and "Transkei citizen" makes certain South African, who are relevant political actors, theoretically unable to participate freely in politics in Transkei. The definition of "citizenship" should be amended, perhaps to be in line with the pre-1976 definition of a South African citizen.

(7) **Undesirable Organisations Act 9 of 1978**

This Act empowers the President to declare certain organisations to be undesirable and certain undesirable organisations to be unlawful organisations. It furthermore confers certain powers on

the Minister in respect of such organisations. Such wide sweeping powers could be used to impede freedom of association and several other rights related to free political activity. Ale Act should be repealed, or amended drastically.

(8) **Public Security Act 43 of 1978**

Section 18 (g) defines it as misconduct on the part of any officer to become a member of any party political organisation or any organisation which the President may by proclamation declare to be an organisation of which an officer may not be a member, or to take an active part in party political matters.

Section 18(h) defines as misconduct an attempt by an officer to secure intervention from political sources in relation to this position and conditions of employment. Whereas restrictions on certain high profile and active political activities of officers in the Public Service are not unreasonable ruling, the attendance of meetings and mere membership ought not to be prohibited. These sections should be revised and repealed or amended.

(9) **Penal Code Act 9 of 1983** See the tables above.

(10) **Education Act 26 of 1983**

Section 24 defines as misconduct the membership of any party political organisation, by a departmental official, and also the taking of any active part in party political matters. Restrictions on high profile active involvement in political activities could be reasonable. Mere membership and attendance of meetings, eg, should not be prohibited.

(12) **Electoral Laws Provisions Act 8 of 1987**

Transkei residents should vote as South Africans in upcoming elections and developments in South Africa, as far as the Electoral Commission Act and Electoral Bill are concerned, should be taken note of.

c **BOPHUTHAT'SWANA**

The Republic of Bophuthatswana Constitution Act 18 of 1977 contains a Declaration of Fundamental Rights which include freedom of expression and freedom of assembly. However, it is submitted that various legal provisions are in force in Bophuthatswana which impede or could impede free political activity. A number of these provision are arguably unconstitutional in terms of the Declaration of Fundamental Rights.

The Internal Security Act 32 of 1979, provides the most comprehensive and the widest framework for measures which could impede free political activity and is dealt with first. Those provisions that pose the clearest threat to free political activity are mentioned below. It is submitted, however, that consideration be given to the suspension, repeal or drastic amendment of the Act as a whole, in accordance with the Bophuthatswana Declaration of Fundamental Rights, or a future South African Bill of Fundamental Rights, or other legislation and common law principles.

'fitle, No **and Year**
of **Law**

(1) The Internal Security Act 32 of 1979

Particular Sections
Summary of Conte **ts**

Sections 2, 3, 4, 7 and 8 provides for the banning of organizations by the Minister

Sections 5, 7, 8, *10,* 12, 13, 14 provide for the curtailment of the freedom of persons to participate in political activity.

Section 6: Provides for the banning of publications

Section 9: Provides for the banning of meetings

Section 1 5: Criminalizes contravention of the above, as well as advocacy of a "doctrine hostile to the State "

Section 19: Provides for the

deportation of noncitizens

Section 22: Defines and criminalizes "terrorism"

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Reco mendatiolm and Reasons

Repeal, or amend to limit the discretion of the Minister. Freedom of assembly and association and the exercise of political rights are violated

Repeal - several rights associated with political activity are violated

Repeal - freedom of expression, information etc. are violated

Repeal - freedom of assembly, expression etc violated

Repeal for the above reason

Repeal - free political activity impeded Amend - it could be used to stifle legitimate political activity	

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Section 25: Provides for preventative detention	Repeal - violates the right to a fair trial and due process and could be used to silence political opponents
Section 26: Provides for the detention of witnesses	Amend to bring in line with Section 185 of the South African Criminal Procedure Act of 1977.
Section 27: Provides for declaration of a state of emergency	Amend - several rights could be violated by subjective test and wide powers of President. See the TEC Act in South Africa
Sections 30 - 36 and 43 A impose far-reaching impediments on gatherings	Amend - in accordance with "Goldstone Bill" and freedom of assembly

(2)	Bophuthatswana Traditional Authorities Act 23 of 1978	Section 38 compels, empowers and authorizes chiefs and headmen to report, prohibit and dispense meetings	Repeal - freedom of assembly and expression violated
(3)	Bophuthatswana Electoral Act 13 of 1979	Sections 16, 16A, 16C and 16D control the registration of political parties and cancellations thereof and contain disqualifications and prescribe payments	Amend - political parties are unnecessarily restricted

(4)	Newspaper and Imprint Registration Act 18 of 1979	Sections 2, 9 and 10 regulate the registration and prohibition of newspapers and impose financial burdens	Repeal - the Act restricts freedom of expression, information, etc
(5)	Bophuthatswana Aliens and Travellers Control Act 22 of 1979	Sections 17(d) and (f), 48A, 64 and 65 define "prohibited persons" who are denied access to the country and gives the Minister the power to deport aliens and impose conditions on their political activities. Section 2(1) of Government Notice 209 of 1992	Repeal - the provisions are aimed at the exclusion of people from political participation related to the elections, or to remove political opponents from Bophuthatswana

		prohibits aliens from political participation	
(6)	Publications Act 36 of 1979	Section 41 (2): Provides for the banning of publications, including newspapers, as "undesirable"	Freedom of expression and information violated - Repeal or amend - as recommended above regarding the SA Publications Act of 1974 (see A (3) above)

(7)	Bophuthatswana Broadcasting Control Act 28 of 1989.	The Act places broadcasting activities in Bophuthatswana under control of the Postmaster General (Section 2) and provides for a system of licensing of the right to engage in broadcasting activities in the country (Sections 4 and 5)	The Act ought to be amended to place the control of broadcasting activities and the issuing of licences, certificates or permits under the control of a non-partisan body
(8)	Bophuthatswana Broadcasting Corporation Act 30 of 1989	In terms of Section 3, the Bophuthatswana Broadcasting	The Act should be amended so as to place the Corporation under

		Corporation is under the control of a Board of Directors, appointed by the Minister of Post and Telecommunications and Broadcasting. A Broadcasting Advisory Committee (Section 18) is likewise appointed by the Ministry	non-partisan control
(9)	Prevention and Control of Mass Action Act 59 of 1992	Section 2 prohibits itmass action": Section 4(g) regulates and limits gatherings of political parties	Repeal - freedom of assembly and other rights related to free political activity are security violated

MOTIVATION

(1) The Internal Security Act 32 of 1979

Sections 2,3.4,7,8

These sections provide for the banning of organizations "if the Minister is satisfied" that they engage in certain activities included in the definition of a "doctrine hostile to the State"; inter alia the advocacy of the reincorporation of Bophuthatswana into South Africa. llese sections violate freedom of association, assembly, and the exercise of political rights. The definition of a "doctrine hostile to the State" is unacceptably wide. The Minister's discretion is non-justiciable. These Sections should be repealed or at least amended to limit the right to ban an organisation to those instances where violence is pursued. The Minister's discretion should be justiciable.

Section 5,7,8,10,12,13,14

llese sections provide for the listing, restriction and banning of persons, resulting in the drastic curtailment of their freedom to participate in political activity. People not formally listed, banned or restricted are also affected.

These provisions should be repealed. They constitute a serious violation of political rights.

Section 6

Publications could be banned, inter alia when they propagate doctrines regarded as "hostile to the State". This section clearly violates several fundamental rights and could impede free political activity and should be repealed.

Section 9

This section makes provision for the banning of gatherings, when the Minister is satisfied that a doctrine hostile to the State is being furthered.

It gives the Minister arbitrary powers to violate freedom of assembly, demonstration, and petition and should be repealed.

Sections 15, 16, 18, 20

See the above table.

Section 19

Section 19 provides for the deportation of non-citizens of Bophuthatswana, who, inter alia, promote a "doctrine hostile to the State".

Free political activity and elections necessarily imply the involvement of italiens" - including South Africans who may qualify for citizenship of Bophuthatswana but have declined to apply for it - in meetings and other activities in Bophuthatswana.

Section 22

This section defines, criminalises and provides for the penalties that could be imposed for terrorism. Terrorism is defined in exceedingly wide terms.

Section 22 should at least be amended to be brought into line with Section 54 of the South African Internal Security Act 74 of 1982.

Sections 25,26

See the above table.

Section 27

This section provides for the declaration of a State of Emergency if the President, in his subjective opinion, deems it necessary. Under the State of Emergency the President obtains virtually unlimited powers to do what he considers to be necessary to restore public order.

The section should be amended to provide for the declaration of a State of Emergency when the objective test whether the life of the nation is threatened, is met. Or limitations on the power to derogate certain rights should be posed.

Section 30-36, 43 A

See the above table.

(2) **The Bophuthatswana Traditional Authorities Act 23 of** 1978

Section 38(1)(f)(vi) compels chiefs and headmen to report to a competent authority the holding of any "unauthorised meeting, gathering or assembly or the distribution

of undesirable literature in, or the unauthorised entry of any person into, his area".

Section 38(1)(g) entrusts the chief or headman with power to disperse or order the dispersal of an "unlawful meeting or gathering".

Section 38(1) (h) authorises the chief or headmen to prohibit a gathering "if a state of lawlessness exists in his area or, in his opinion, cannot otherwise be prevented.

Tribal authorities thus have a virtual monopoly to restrict political activity in areas under their control. It is recommended that these sections be repealed. See also B(2) and E(7) for the position in Transkei and Ciskei.

(3) **The Bophuthatswana Electoral Act 13 of 1979**

Section 16 of the Act compels political parties wishing to take part in Bophuthatswana elections to register. Certain disqualifications for registration are recorded in section 16 A, some of which are linked to the provisions in the Internal Security Act 32 of 1979, described above as unacceptable.

Section 16 C requires payment of R500 to accompany an application for registration and 16 D provides for the cancellation of the registration of a political party, on the basis of unacceptable criteria posed in the Internal Security Act.

Section 16 A should be amended since it unfairly prevents political parties wishing to do so from registering. As a result those parties are not only prevented from participating in Bophuthatswana elections, but, more relevant for the upcoming South African elections, the political activities of unregistered parties are severely curtailed in terms of the Prevention and Control of Mass Action Act 59 of 1992, discussed below.

(4) **The Newspaper and Imprint Registration** Act 18 **of** 1979

Section 2 renders mandatory the registration of newspapers to be printed or published in Bophuthatswana. Section 9 prohibits certain newspapers, including those promoting "communism" or associated with an "unlawful organisation". Section 10 places a financial burden on newspapers desiring registration in an amount to be fixed by the Minister but not exceeding R20 000. It is submitted that the entire Act ought to be repealed.

(5) **The Bophuthatswana Aliens and Travellers Control Act 22 of 1979**

In terms of this Act a large number of people are defined as "prohibited persons" and could inter alia be denied access to Bophuthatswana (Section 17(d), 17(f) and see also Section 64). The Minister also has a non-justiciable discretion to deport aliens

(Section 65). Section 48 A sanctions regulations by the Minister imposing conditions on political activities of aliens. In accordance with this provision, Goverrunent Notice No 209 of 1992 prohibits any alien from participating in any gathering aimed at bringing about any constitutional or political change in Bophuthatswana (Section 2 (1)) -

These provisions should be repealed. They could be abused to deny a political adversary of the regime entry to or to remove such person from, Bophuthatswana. The regulations issued in terms of Section 48 A are directly aimed at excluding aliens from political participation related to the forthcoming general elections in South Africa.

(6) **The Publications Act 36 of 1979**

The same political criteria "for publications control that are applicable in South Africa, as explained under A(8) above are in force, and the same motivation is applicable.

(7)(8) **Bophuthatswana Broadcasting Control Act 28 of 1989; Broadcasting Act 30 of 1989.**

See the above table.

(9) **The Prevention and Control of Mass Action Act 59 of 1992**

Section 2 prohibits "mass action", defined largely as protest action entailing violation of the law, by any political party in terms of Section 3 and 4(g) a political party not registered in terms of the Electoral Act (see point 3 above) to obtain ministerial authorization for marches and gatherings involving more than certain specified numbers of people. These provisions seriously inhibit free political activity and should be repealed.

D VENDA

The Venda sub-group pointed out some aspects of the Republic of Venda Constitution Act 9 of 1979. Furthermore, the Maintenance of Law and Order Act 13 of 1985 seems to be of paramount importance. These two are firstly dealt with, whereafter several other aspects are mentioned.

'fitle, No and Year of Law

Legislation passed

by the Venda
National Assembly
and Council for
National Un tU

(1) Republic of Venda Constitution Act 9 of 1979

(2) Maintenance of Law and Order Act 13 of 1985 (as amended by Proclamation 38 of 1990)

Particular Sections;
Summary of Contents

Section 6A provides for a one party state.

Section 4: Gives the Minister the power to declare an organisation to be unlawful; Section 1 defines communism

Sections 5 - 9 deal with the powers of the Minister to prohibit publications and investigate organisations

Sections 10 and 12(2) deal with the Minister's power to declare an organisation unlawful

Recommendations and Reasons

Repeal - this section has been suspended.

Repeal or amend - freedom of association and political rights are violated

Repeal - in accordance with South African Internal Security

Act - freedom of expression and information violated

Amend - freedom of association and political rights violated

Section 14(10): Deals with the listing of persons

Sections 15 - 17 provide for restrictions on registration of newspapers

Sections 18 - 28 provide for several restrictions on persons, related to membership of organisations, movement, reporting to police stations etc

Section 46: Deals with prohibition of gatherings, etc by Magistrates

Section 50: Gives powers of arrest and detention to police officers

Section 54: Deals with terrorism

Section 55: Deals with offenses regarding communism.

Repeal in accordance with South African position

Repeal - freedom of expression and information violated

Repeal - these provisions impose harsh restrictions on several fundamental freedoms

Amend or repeal in accordance with "Goldstone Bill" 'M South Africa

Amend as recommended for the South African situation (see A(S) above)

Repeal, or amend in accordance with the South African situation, to do away with wide and vague definitions.

Repeal

DISCRIMINATORY LECFISLATION

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		Section 56: Deals with, inter alia, the publication of speeches of restricted persons, or persons prohibited to attend gatherings	Amend - in accordance with South African situation
		Sections 58 - 60: Deal with additional sanctions aimed at prohibiting civil disobedience	Repeal - see South African situation (A (1) above)
(3)	Population Registration Act 6 of 1980	Regulating population registration	Repeal in toto - discriminatory and redundant
(4)	Newspaper and Imprint Registration Act 22 of 1982, as amended by the Newspaper and Imprint Registration Proclamation 18 of 1992	Section 8: States that no one is allowed to be an editor of a publication in Venda unless he/she is a resident of Venda	Amend to include South Africa and TBC - could restrict freedom of expression and information
(5)	Publications Act 15 of 1983	Provides for the banning of publications	See A(3) above as to the South African situation - also see motivation below
(6)	Radio Act 15 of	Regulates	Amend or repeal to

		1984	broadcasting and provides for government control	allow transparency forin accordance with South African media developments.

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(7)	Venda Public Service Act 8 of 1986	Section 29: Limits political activities of public servants	Amendment arguable
	Pre - 1979 Lggislation		
(8)	eg. Internal Security Act 44 of 1953	Section 17 (6is): No action for damages and no criminal action against any person who describes as a communist a person who appears on the list	Repeal
	Public Safety Act 3 of 1953	Declaration of State of Emergency	See TEC Act of 1993 in South Africa and incorporate
	Gathering and Demonstrations Act 52 of 1973	Deals with gatherings and demonstrations	See the "Goldstone Bill " and incorporate
(9)	Proclamation R293/1962 - Regulations governing Townships	The administration and control of townships	Repeal or amend substantially - officials could impede free political activity

MOTIVATION

(1) Republic of Venda Constitution Act 9 of 1979

Section 6A determines that The Venda National Party shall be the only party in the Republic of Venda. his suspended by Proclamation 61 of 1990. It is recommended that the section be repealed.

(2) Maintenance of Law and Order Act 13 of 1985

This Act is a re12lica of the South African Internal Security Act, before its amendment in 1991. (Several other problematic sections have not been mentioned here) It is recommended that the entire Act be amended according to the South African situation, as a first step. Thereafter the Act should be revised and repealed or amended, depending on Venda's future statehood, and in accordance with the Bill of Fundamental Rights and the legislation.

(3) Population Registration Act 6 of 1980

See the tables above. More information will be provided if required.

(4) Newspaper and Imprint Registration Act 22 of 1982

(as amended by the Newspaper and Imprint Registration Proclamation 18 of 1992)

The amendment Proclamation repealed sections 9, 1 0 and 1 1. Section 9 provided for the prohibition of the printing, publication or dissemination of certain newspapers promoting the spread of communism, or which were published under the guidance of an unlawful organisation. Section 10 restricted the registration of certain newspapers and section 1 1 provided for the lapse of the registration of certain newspapers.

Section 8 provides that the editor of a newspaper in Venda should be a resident in Venda. It is recommended to amend section 8 to include: South Africa, Transkei, Ciskei and Bophuthatswana.

(5) Publications Act of 15 of 1983

No copy of this Act seems to be available in Venda, Department of Justice or Venda University. It is presumed to resemble The South African Publications Act 42 of 1974. If so, the South African recommendations and motivation would apply. (See A(3) above.)

(6) **Radio Act 15 of 1984**

The Act provides for the establishment of a Radio Advisory Board., consisting of 6 members, including a member of the Department of Defence and the Venda National

Force. It is recommended with regard to the two abovementioned Acts that independent mechanisms be established to ensure equal access to the media for all political parties, as well as transparency

(7) **Venda Public Service Act** 8 **of 1986**

Section 29 provides that an officer or employee may be a member of a lawful political party or attend a political meeting, but such officer or employee may not preside or speak at such a meeting.

As is the case with similar provisions in other areas, the political involvement and activities of public servants are limited. In this case membership as such and attendance of meetings are not prohibited, but more active conduct, such as speaking or presiding at meetings. It is arguable whether this constitute an unreasonable limitation.

(8) **Pre-1979 Legislation** See the Above table.

(9) **Proclamation R29311962**

The administration and control of townships are regulated. Sole discretionary powers for the hire of a hall are vested in the Superintendent and the control and prohibition of meetings and assemblies are in the hands of the Commissioner.

It is recommended that substantial amendments are made to prevent that these regulations are used to restrict free political activities, or that it be repealed. Also the situation in Ciskei in E(2) below.

E CISKEI

As is the case with Bophuthatswana, Ciskei has a constitutionally entrenched Bill of Rights. In the Republic of Ciskei Constitution Decree 45 of 1990, Schedule 6 contains a statement of Fundamental Rights and Responsibilities, inter alia recognising freedom of movement, expression, association and assembly. Some or all of the decrees, acts and proclamations mentioned hereafter as legislation that may have the effect of impeding free political activity, may therefore well be unconstitutional, in view of the fact that the Constitution is the supreme law of Ciskei

The National Security Decree 19 of 1993 seems to present the most crucial obstacle, and is dealt with first. The Decree replaced the National Security Act(Ciskei) 13 of 1982, sections of which was declared unconstitutional by the Supreme Court.

This decree, like its South African counterpart the Internal Security Act, created the crimes of terrorism, subversion and sabotage and imposes certain harsh maximum penalties for the contravention of the provisions thereof. The primary purpose of the legislation is to protect state security. The said crimes are defined widely, as has been the case with the South African "security legislation" and the decree is therefore open to serious criticism. The entire Decree may well have to be revised, repealed or amended, in accordance with a Bill of Fundamental Rights, other legislation and common law principles.

'fitle, No and Year of Law	**Particular Sections, <u>Summary</u> of Contents**
(1) National Security Decree 19 of 1990	
	Section 2: Defines the crime of terrorism
	Section 5 prohibits the rendering of assistance to persons suspected of having committed terrorism, subversion or sabotage, and Section 6 provides for competent verdicts

Sections 8 and 12 of Chapter 2 provide for the prohibition of organisations and publications

Recommendations and Reasons

The Decree should be repealed in toto - several fundamental rights are violated and free political activity impeded. See the motivations below
Alternatively the following sections should be deleted

Repeal or at least amend to bring into accord with South African situation

Repeal

Delete Chapter 2 in its entirety - violation of freedom of association,

			expression, information, etc or amend drastically
		Section 13: Provides for detention without trial	Delete or amend drastically - open to abuse by being used against political opponents
		Section 14 provides for the declaration of state of emergency by the Head of State.	Delete, or amend to require objective test or to provide for safeguards, otherwise serious violations of fundamental rights could take place. The South African situation, where this aspect if regulated in the TEC Act, should be noted
		Chapter 5 regulates unlawful gatherings.	Repeal - see the "Goldstone Bill" in South Africa
(2)	Proclamation R293 1962 - Regulations governing Black Townships	Chapters 5 and 6 deal with control of black people in townships	Repeal - Government officials could interfere with political activity; to control "blacks" is inherently discriminatory

(3)	Defence Act 1 of 1981	Section 75: Deals with the improper disclosure of information	Amend - freedom of information could be violated
(4)	Public Service Act 2 of 1981	Section 16(g): Restricts the political activities of civil servants	Amend - political rights of individuals unnecessarily limited

(5)	Police Act 32 of 1983	Section 22, Schedule 3 restricts political activities of public officers	Amend - political rights of individuals unnecessarily limited
		Section 43(B): Renders punishable the publication of untrue statements about the police	Amend, to accord with common law principles; freedom of information potentially violated
(6)	Prisons Act 36 of 1983	Section 22: Restricts political activities of officers	Amend - political rights of individuals unnecessarily limited
(7)	Administrative Authorities Act 37 of 1984	Sections 26 (ix), 26(n), 26(o) and 65 give wide powers to chiefs and headmen to control political activities	Repeal - freedom of movement and association and several related political rights are violated

		Sections 52 and 53 provide for the removal of persons and tribes by the Head of State	Repeal, for the same reasons as mentioned above
(8)	Broadcasting Act 8 of 1985	Regulates broadcasting and provides Government control of broadcasting	Amend - to achieve objectivity and transparency
(9)	Immigration, Emigration and Aliens Act 9 of 1988	Sections 7, 8, 56, 58, 60, 63, 64, 68, 69, the entry into and movement of people controlled	Amend to allow freedom of movement and political activity

(10)	Education Decree 22 of 1992	Sections 20(f) and 20(w)(iii) restricts the activities of teachers; Section 38 controls entry into school premises	Repeal or amend - free political activity may be impeded

MOTIVATION

(1) **National Security Decree 19 of** 1990

Section 2

It is proposed that the crime of terrorism created by Section 2 be deleted in its entirety, from the decr prosecutions envisaged thereunder should be prosecuted under the ordinary criminal law. It appears that most f normally accepted political dissent would fall within the arnbit of the intention requirement in Section 2 decree. The conduct that is encapsulated in the said Section is also wide and ill-defined. All the argumen presented with regard to the wide definition of "terrorism" and the intention to overthrow or endangeri authority, to bring about political, constitutional, industrial, social or economic change, to induce the governmer public to do to abstain from doing any act etc., and the forms of conduct having to accompany such in

applicable. The Section should be deleted and the common law position as to crimes of violence should Alternatively, the present formulation of Section 54 of the South African Internal Security Act 74 of 198 noted.

Section 5

Section 5 prohibits the rendering of assistance directly or indirectly to persons who are suspected of having co crimes of terrorism, subversion or sabotage. An accused person, in order to contravene the provisions Section must:

(i) have reason to suspect that some other person intends to commit or he has committed terrorism, sub or sabotage;

(ii) must be aware of the presence at any place of some other person who is so suspected of intending or having committed the said offenses. Further decree provides that a person shall be guilty of an of he:

(a) harbours or conceal the person suspected, or
(b) directly or indirectly renders any assistance to that other person, or
(c) fails to report to a member of the police in the presence of that other

person at such place. Section 6 of the decree provides for competent verdicts to the said offenses.

These wide-sweeping clauses may be abused to restrict political opponents.

Sections 8 **and 12, Chapter** 2

Section 8 gives power to the Minister of Police and Prisons to declare an organisation to be an unlawful organisation. This the Minister may do by notice in the Government Gazette without giving notice to the organisation concerned, if he has reason to believe that the said organisation attempts or intends in a violent manner or by the use of violent means or by the instigation or promotion of violence, disturbance, rioting or disorder to overthrow the authority of the State, to bring about constitutional, political, industrial, social or economic aim or change or to induce the Government to do or to abstain from doing any act or to adopt or abandon a particular standpoint. Certain consequences follow after the said declaration of an organisation as an unlawful organisation, eg. a person shall cease to become or continue or perform any act of an office bearer, officer or member thereof.

It is recommended that the provision of Chapter 2 be deleted in their entirety as they give a wide discretion to interfere with political activity to a Minister of State and may encourage the said functionary to abuse the discretion vesting in him. Alternatively, drastic amendments should be made. (Note: Ale motivation regarding Section 4 of the Internal Security Act in A(S) above.)

Section 12 of the Decree prohibits the possession of any publications published or disseminated by the direction or guidance of an unlawful organisation. This provision should be repealed in its entirety for the same reasons.

Section 13

Section 13 of the Decree provides for detention of persons for the purpose of interrogation if a policeman of or above the rank of Lieutenant-Colonel has reason to believe that such persons have committed the offenses of terrorism, subversion or sabotage or are withholding from the police any information relating to the commission of the said offenses or intention to commit such offenses. The Commissioner is given a discretion to notify a relative or person indicated by the detainee of his arrest and the place where he is being detained.

The discretion given to the police official in this Section is open to abuse. Past experience has shown that these provisions are used to clamp down on legitimate political dissent and activity, in the circumstances it is proposed that this provision should be repealed as well, or at least drastically amended to provide for safeguards, legal assistance, etc.

Section 14

Section 14 deals with the declaration of the existence of a state of emergency. In this regard the Head of State has a discretion to declare a state of emergency if in his opinion any action or threatened action by any person or body of persons in the Republic is of such a nature and such an extent that the safety of the public or the maintenance of public order is seriously threatened thereby and that the ordinary law of the land is inadequate to enable the Government to ensure the safety of the public or to maintain public order.

The discretion given to the Head of State in this regard is very wide and is open to abuse. Further it is noted that the power to declare the said emergency is subjectively formulated. It is possible for such an emergency to be declared even if it does not objectively exist. Furthermore, the jurisdictional facts necessary for the declaration of an emergency may consist of any action or threatened action by a single person. It is recommended that the state of emergency should only be declared if objectively circumstances exist which threaten the life of the state or its existence and a mechanism for the review of the declaration of a state of emergency should be put in place to avoid abuse of the provision to interfere with free political activity.

Chapter 5

Chapter 5, dealing with unlawful gatherings, provides that any person who convenes or proposes to convene any gathering in any public place in any district in the Ciskei shall give prior notice of not less that 48 hours to a local authority whose permission is required for such gathering in terms of any law and the Commanding Officer of the police in the district. If it is the intention that such gathering be a procession or protest march or like event, it shall assemble outside the Ciskei and thereafter enter the Ciskei across the international border. Notice has to be given to the Minister of Police and Prisons. Whenever the Commissioner of Police or the Minister has reason to believe that the persons expected to participate in such a gathering will not do so peaceably and without carrying arms or that it is necessary in the interest of national security, integrity, public safety or the prevention of disorder or crime or the protection of fundamental rights of non participants to restrict the right of assembly of the persons about to take place, he may prohibit the gathering for a period not exceeding 48 hours or every gathering in the district in question or any gathering of a particular nature, class or kind at a particular place in the particular area or everywhere in such district, except in such cases as he may expressly authorise when imposing the prohibition or at any time thereafter. The Minister is also Qiven the pqwer to 12rohibit the i!athedne if the persons who are convening or who 12roPQse to convene the Qathedne are aliens as defined in Section 1 of the Immigration, Emigration and Aliens Act 1988.

]bus prominent South Afdcan leaders and politicians, who legitimately ought to be able to participate in political activities in the area, could be prevented from doing so.

As for the power to prohibit gatherings being given to the Police or the Minister, it is suggested that the right to free political activity and freedom of assembly and association should not be interfered with at the discretion of a police official or a political functionary such as the Minister. In the circumstances it is recommended that these provisions should be repealed in their entirety. Section 20 prohibiting the demonstrations near court buildings, Section 21 empowering police officials of or above the rank of Warrant Officer to close places if they have reason to believe that unlawful gatherings will take place therein as well as the power to disperse gatherings that have been prohibited should also be repealed in their entirety. So should Sections 23, 26, 27, and 28 be repealed for the same reasons. Note should be taken of the provisions of the "Goldstone Bill" in South Africa.

(2) **Proclamation R29311962**

The proclamation deals with the control of Blacks in townships. In terms of the Ciskei Constitution there is no discrimination on the basis of colour. Ale Regulations which were proclaimed under the Bantu Administration Act in respect of townships like Mdantsane, Zwelitsha, Sada and Ilitha are still in force. Provisions thereof which may be used to avail free and fair elections are to be found in Chapter 5 and 6 dealing with the holding of meetings and the use of public halls.

They provide that the Superintendent shall grant or refuse the use of such facilities at his"absolute and sole discretion". The Manager of a township must be given an application setting out the purpose of the meeting and he may in turn apply to the Magistrate to prohibit the holding of a meeting. Meetings cannot be held beyond I 1. OOPM.

It is undesirable that these officials who are invariably civil servants should have such powers. They are subject to Ministerial directives and other governmental influence. llese may lead to unnecessary interference with free political activity especially that officials authorised by the Superintendent or the Police are authorised to be present at any meeting in the township and to direct that it should close at any moment at their discretion and should at all times be obeyed.

(3) **Defence Act I OF** 1981

Section 75 of the Defence Act deals with the improper disclosure of information relating to the composition, movements or dispositions of the Ciskei Defence Force, any auxiliary or voluntary nursing service established under the Defence Act or any force of a foreign country aligned to the Ciskei, or any statement, comment or rumour calculated directly or indirectly to convey such information except where the information has been furnished or the publication thereof has been authorised by the Chief of the Ciskei Defence Force or under his authority. 7le Defence Force has been extensively used by the Government even in areas of law enforcement traditionally dealt with by the Police. The fact that the Ciskei has a military

government raises the profile of the Defence Force even more. To require the authority of the Chief of the Ciskei Defence Force may unduly interfere with the rights of the public to receive information about allegations of improper involvement by its members in the electioneering process.

(4) **Public Service Act 2 of 1981**

Section 16 (g) of the Public Service Act provides that an officer or an employee of the Public Service shall be guilty of misconduct if he on or after a date fixed by the Head of State by Proclamation in the Gazette is or becomes a member, or takes part in the activities, or in any manner promotes the objects of any organisation specified in such notice or encourages disobedience to, resistance against or defiance of any law. To place some restrictions on the political activities of civil servants is not necessarily unreasonable. This provision gives unfettered discretion to the Head of State to prescribe political activities of civil servants. There is nothing to suggest that such activities must be unlawful to attract sanction. Ale provision may be used selectively to interfere with activities of those organisations which the Head of State disagrees with and allow those with which he agrees. In the circumstances it is recommended that it be or amended so that it could not be used to prohibit political involvement such as mere membership,

but perhaps only certain activities, such as assuming high profile leadership roles in political parties or at political events.

(5) **Police Act** 32 **of** 1983

Section 22, **Schedule** 3

This section makes it an offence for any member of the Police Force to become or to take an active part in the activities of any political party or movement, organisation, body or association having political objectives or in manner whatsoever beyond recording his vote of the following official duty at any election, for such member to promote the candidature for public office of any person. This provision is couched in wide terms and may for instance interfere with the right to participate in a civic structure. Narrower restrictions may be more reasonable, as explained above.

Section 43(B)

This Section provides that any person who publishes any untrue matter in relation to any action by the Police Force or any part of the Police Force or any member of the Police Force in relation to the performance of his functions as such member, without having reasonable grounds for believing that the statement is true shall be guilty of an offence and liable on conviction to a fine not exceeding R5 000.00 or imprisonment for a period of not exceeding 5 years for such imprisonment without

option of a fine or both such fine and such imprisonment. Police are used in many instances of prescribing free political activity eg. meetings etc. It is in the public interest that their actions be subject to constant scrutiny by a fearless media. This provision may curtail the reporting of matters of public interest in which they are involved. Ale common law requirement of mens area, or subjective intent on the part of the accused, should not be abandoned, as in this case, when the absence of (objective) grounds for believing in the truth of the statement is sufficient for criminal liability.

(6) **Prisons Act 36 of 1983**

Section 22 of Schedule 4 makes it an offence for a member of the Prisons Service to become a member or take an active part in the activities of any political party or any movement, organisation, body or association having political objectives. Further such member is prohibited from whatever manner promoting the candidature for public office of any person, other than by recording his vote or performing official duty at any election. The arguments already raised are applicable. Whereas

high profile political roles and activities may have to be restricted, membership, attendance of meetings, etc, could reasonably be allowed.

(7) **Administrative Authorities Act no 37 of 1984**

Section 26, **65**

Section 26(ix) provides that a Paramount Chief, Chief or Headman shall have, inter alia, the duty to report promptly to the Magistrate the holding of unauthorised meetings or the distribution of publications or pamphlets in his administrative area. It is submitted that this provision interferes with the freedom of assembly and expression of inhabitants of any area under a Chief or Headman. It may also cause the said Chief or Headman to be in conflict with members of his community.

Section 26(n) authorises him to disperse or order the dispersal of persons any unauthorised assembly of armed persons or any rioters or unlawful meeting taking place in his area.

Section 26(o) provides that where a state of lawlessness or unrest exist in his area the Chief or Headman shall have authority to prohibit any or all of the following for a period of 7 days or such longer period as the Magistrate may fix:

(i) the gathering of men in groups or the brewing of beer, throughout the whole of the area under his control or within such area or at such place as he may specify;
(ii) the carrying by any person of a firearm or other dangerous weapons or more than one ordinary stick;

the shouting of war cries or the blowing of bugles or whistles.

Section 65 provides that any persons who obstruct the Minister, Chief or other civil servant in the lawful execution of his duty or disobeys a lawful order of such Minister, Chief or civil servant whilst he is acting within the course of his duty or who wilfully insults such official or obstructs the proceedings of any meeting convened by any Minister, Chief or other authority in connection with his duty shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or to imprisonment for period not exceeding one year or to both such fine and such imprisoranent. Further any person who at any meeting obstructs, disobeys or insults the said official may be removed from such meeting and be detained in custody by order of the person presiding at such meeting until the conclusion with the meeting.

It is proposed that the above provisions be repealed in their entirety as they interfere with the freedom of association, freedom of movement and freedom of expression of persons living under tribal authorities and may also be used to prevent electioneering within the said areas. See also B(2) and C(2) for the position in Transkei and Bophuthatswana.

Section 52, 53

Section 52 deals with the removal by the Head of State whenever he deems it expedient in the general public interest and without prior notice to the person concerned from any place to any other place or to any other district in Ciskei during the period specified in the order. A person who is removed under the said Section is compelled to move to the district indicated in the order unless he receives permission in writing of the Director-General of the Department of Justice. If a person disobeys fails to comply with any order issued or refuses or neglects to comply therewith or any condition thereof he shall be guilty of a punishable offence. the Head of State may when issuing the order or any time thereafter further order that the person who is required to withdraw from a certain area should be summarily arrested and detained and as soon as possible be removed in terms of the order. Section 53 provides for the removal of the whole tribe or community for administrative or other good and sufficient reasons on the order of the Head of State within a period specified in the said order to any other place or district within the Ciskei. Such tribe or community may not return to the place from which it has been ordered to remove itself without the prior approval in writing of the Head of State. Any person who is a member of the tribe or the said community who refuses or neglects to act in accordance with the said order will be guilty of a punishable offence.

The said provisions allow wide discretionary powers on the part of the Head of State to control the movement of individuals and whole communities. It may be used to interfere with free political activity of individuals or groups within administrative areas.

(8) **Broadcasting Act** 8 **of 1985**

In terms of this Act the Board of Directors which is in charge of the Ciskei Broadcasting Corporation is controlled by persons who are appointed by the Head of State. In practise persons who serve thereon are either Ministers of State or public

servants or other supporters of the government. It is suggested that a more transparent mechanism, such as was employed in the appointment of the SABC Board in South Africa should be adopted in the Ciskei, and that there should be established an independent mechanism to see that all political organisations obtain airspace on the Ciskei Broadcasting Corporation, along the lines of recent developments in South African media law.

(9) **Immigration, Emigration And Aliens Act of** 1988

This law deals with entry into, departure from and transit into the Ciskei of persons, the residence or temporary sojourn of aliens in the Ciskei, the registration of aliens and the removal from Ciskei of undesirable and certain other persons. An alien is defined as a person who is not a Ciskei citizen as set out in the Ciskei Citizen's Act. This legislation can be used to effectively block the entry into Ciskei and the free political activity of several persons from the Republic of South Africa, including leaders of political organisations and parties who may wish to campaign for votes within the Ciskei. It is submitted that the provisions of this legislation should be amended is such a way as to allow free movement of persons residing within the borders of South Africa as at 1910.

(10) **Education Decree 22 of** 1992

Section 20(f) provides that if any teacher, public or otherwise than at a meeting in committee in any association of teachers recognised in terms of Section 28 criticises derogatively any aspect of the administration of the department, he would be guilty of an act of misconduct.

Section 20(w)(iii) makes it misconduct for a teacher to incite, instigate or cause a pupil or student to take part in any meeting, gathering or assembly, concourse or riotous behaviour for party political ends or any subversive purpose.

Section 38 deals with the control of entry into schools or school grounds. It provides certain categories or persons may enter the school or school grounds eg. pupils, teachers, employees or the school, committee members etc. A member of the community may only enter at the invitation of the principal only to attend a particular school function.Any person not falling under the above categories may only enter with the authority of the Minister of Education in writing. To enter such premises without the written permission, constitutes a punishable offence.

The abovementioned unreasonably restricts teachers' freedom of expression, and their

duty to encourage critical thinking or to encourage political participation by pupils. It furthermore makes it possible for the Minister to effectively ban all political opponents from speaking on school grounds. Whereas some restrictions on the political activities of teachers may be reasonable, the abovementioned go too far.

F KWA ZULU

A thorough study was done by Mr Varney of numerous Acts, Proclamations and Regulations which may discriminate or impede free political activity in Kwa Zulu and a detailed report was submitted and discussed at the meeting of the Task Group on 20 October 1993. A large measure of consensus on the contents of the report was reached amongst members of the Overall Task Group and the sub-groups.

Some general aspects could be highlighted:

Several features regarding the situation in Kwa Zulu are of course also applicable to other self-governing territories, although the Kwa Zulu Legislative Assembly may have exercised its legislative powers in terms of Section 3 and Schedule 1 of the SelfGoverning Territories Constitution Act 21 of 1971 more actively than those of other territories.

In order for the South African Parliament to amend or repeal legislation made by a self-goveming Territory, the said Self-Governing Territories Constitution Act will have to be amended accordingly.

Especially as far as regulations are concerned, some of the aspects addressed in the Kwa Zulu report, or similar ones, may also be applicable to the TBVC territories, without having received much attention yet, due to a lack of time on the part of the Task Group.

Therefore it seems inappropriate to incorporate a detailed report on Kwa Zulu in this First Substantial Report. As explained in the INTRODUCTION, the Task Group's initial mandate dealt only with South Africa and the TBVC territories and was then extended to include Kwa Zulu. The Task Group would in principle be willing to investigate the situation in other self-goveming territories on the same basis as in Kwa Zulu - if mandated to do so - and to proceed with research regarding the TBVC states accordingly. A detailed report on Kwa Zulu could then be presented in context.

In the meantime a short summary of aspects mentioned in the Kwa Zulu report is herewith included, the full report being available on request:

Kwa Zulu Act on the Code of Zulu Law 16 of 1985 - powers of Chiefs and Headmen, prohibition of meetings;

Kwa Zulu Act on the Powers and Privileges of the Legislative Assembly 25 of 1988 - holding of enquiries;

Regulations for the Administration and Control of townships in black areas Proc R293 - communal halls, meetings, offenses, etc.;

Black Areas Land Regulations - Proe R188 of 1969 - presence of unauthorised persons in black areas;

Kwa Zulu Civil Defence Act 1 1 of 1984 - declaration of a state of disaster, entering of premises, search and seizure, etc.;

Kwa Zulu Act on the Tracing and Detention of Offenders 19 of 1987 -arrest and detention;

Kwa Zulu Education Act 7 of 1978 - discharge of teachers, criticism of the administration of the Department, etc.;

Regulations Governing Government Black Schools and Black Community Schools R1755 - restrictions on activities of teachers;

Public Service Act 5 of 1980 - misconduct, membership of trade unions, loyalty to the Government;

Proclamation R268 of 1968 - control of meetings etc. in black areas.

4. OTHER SUBMISSIONS; CONCLUDING REMARKS

Numerous submissions on discriminatory legislation and legislation impeding free political activity have been made, since CODESA and to the Multi-Party Negotiating Process. Furthermore, substantial submissions concerning discriminatory local government legislation have recently been received from the United Municipal Executive of South Africa. Members of the Task Group are aware of the possible existence of legislation on various levels which is inherently discriminatory, on the basis of race or gender or otherwise, or which may impede free political activity.

As explained earlier, not all of these aspects are addressed in the First Substantial Report of the Task Group, inter alia because of the time constraints, different experiences in the different territories and different degrees of co-operation from the relevant administrations. Some of these, as well as new aspects which may be brought to the attention of the Task Group could be investigated in future reports, if required.

It is submitted, however, that many of the statutory provisions dealt with in this report, could and should receive the immediate attention of the relevant legislatures, in order to ensure free political activity in the run up to the elections.

30 OCTOBER 1993