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**DOCUMENT PACK FOR THE  
MEETING OF THE PLENARY OF THE  
MULTI-PARTY NEGOTIATING  
PROCESS**

**17 NOVEMBER 1993**

***VOLUME I***

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**EMBARGOED UNTIL THE START OF THE PLENARY**

**PLENARY SESSION  
OF THE MULTI-PARTY NEGOTIATING PROCESS  
HELD ON WEDNESDAY 17 NOVEMBER 1993  
AT THE WORLD TRADE CENTRE**

**DRAFT AGENDA**

***Section 1 - Opening:***

1. Moment of Prayer/Meditation
2. Welcome
3. Rules for Plenary (see Addendum A, p4)

***Section 2 - Substantive Issues:***

4. Overview of Process (see Addendum B, p6)
5. Report of the Negotiating Council to the Plenary (see Addendum C, p7)
  - 5.1 Transitional Structures: (see Addendum D, p14)
    - 5.1.1 Transitional Executive Council
    - 5.1.2 Independent Electoral Commission
    - 5.1.3 Independent Media Commission
    - 5.1.4 Independent Broadcasting Authority
  - 5.2 Constitution for the Transitional Period (see Addendum E, p15)
  - 5.3 Electoral Bill
  - 5.4 Other proposed Bills or matters being considered

***Section 3 - Way Forward:***

6. Final Resolution (see Addendum F, p16)
7. Addresses by Leaders of Delegations (see Addendum G, p17)

**Signing of Solemn Convention/Declaration of Commitment to Democracy**  
(available in meeting)

8. Closure

# Sessions of Chairpersons

*Chairpersons : Judges P Schabort and I Mohamed:*

## Section 1 - Opening:

1. Moment of Prayer/Meditation
2. Welcome

*Chairperson : L Landers*

3. Rules for Plenary
  - 3.1 Steering Committee

## Section 2 - Substantive Issues:

4. Overview of Process

*Chairperson : B Kgositsile*

5. Report of the Negotiating Council to the Plenary
  - 5.1 Transitional Structures:
    - 5.1.1 Transitional Executive Council
    - 5.1.2 Independent Electoral Commission
    - 5.1.3 Independent Media Commission
    - 5.1.4 Independent Broadcasting Authority

*Chairperson : PJ Gordhan:*

- 5.2 Constitution for the Transitional Period

*Chairperson : DJ de Villiers:*

- 5.3 Electoral Bill

*Chairperson : MJ Mahlangu:*

- 5.4 Other proposed Bills or matters being considered



*Chairperson : M Finnemore:*

**Section 3 - Way Forward:**

**6. Final Resolution**

*Chairpersons : Judges P Schabert and I Mohamed:*

**7. Solemn Convention/Declaration of Commitment to Democracy**  
Signing and speeches by leaders

**8. Closure**

## GUIDELINES/RULES FOR PLENARY

The following guidelines and rules are recommended to the plenary in order to facilitate the business of the Plenary.

### 1. Role of the Plenary:

The role of the Plenary is to formally adopt agreements. (As per the decision taken by general consensus at the Negotiating Forum Meeting of 1 April 1993.)

### 2. Steering Committee:

2.1 A Steering Committee consisting of the following persons shall be established by the Negotiating Council subject to approval by the Plenary:

- \* B Alexander
- \* C Eglin
- \* PJ Gordhan
- \* C Kruger
- \* RP Meyer
- \* MC Ramaphosa
- \* S Sigcau
- \* J Slovo
- \* Z Titus
- \* M Maharaj
- \* SS van der Merwe

2.2 The Steering Committee will:

- \* Assist the Chairpersons
- \* Consider resolutions placed before Plenary
- \* Help to manage the program
- \* receive technical amendments if necessary

### 3. Procedure on Substantive Issues:

3.1 The TEC Act, the IEC Act, the IMC Act and the IBA Act will be put to the plenary for adoption as a package.

3.2 Participants should note that all Acts will have an addendum which will indicate the decision on each clause. A participant which reserved its position or objected will observe that its position has been recorded as such in the

addendum. There would be, therefore, no need for any participant to verbalise such reservation and objection in the plenary.

3.3 There will, therefore, be no debate on substantive issues. participants will be permitted to have their reservations/objections recorded if necessary.

3.4 Constitution for Transition:

Each Chapter/Schedule of the draft Constitution will be put to the Plenary for adoption. Clause 3.3 above will apply in this instance as well.

4. **Time:**

4.1 The interventions indicated in 3.3 above should be brief and should not exceed 2/3 minutes for each organisation for each item of the agenda.

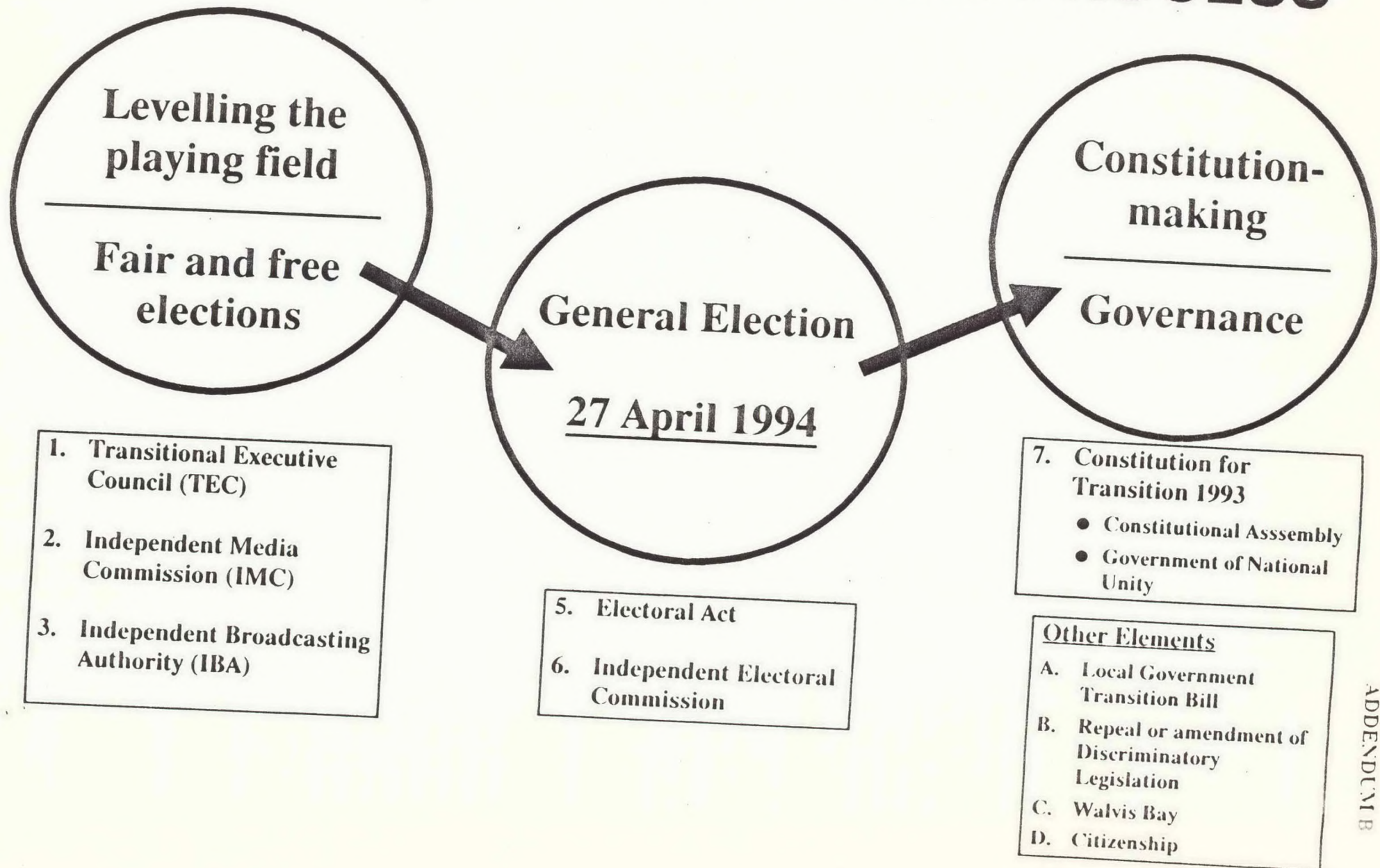
4.2 Leaders will be permitted 6 minutes to address the Plenary under item 7 of the agenda.

5. **Technical Amendments:**

Any technical amendments proposed during the plenary will be referred to the Negotiating Council for consideration.



# OVERVIEW OF TRANSITIONAL PROCESS





**REPORT OF THE NEGOTIATING COUNCIL  
TO PLENARY OF THE MULTI-PARTY NEGOTIATING PROCESS  
HELD ON WEDNESDAY, 17 NOVEMBER 1993  
AT THE WORLD TRADE CENTRE**

**1. Introduction:**

- 1.1 The Planning Conference which met on 5 and 6 March, 1993 adopted a "Resolution on the Need for the Resumption/Commencement of Multi-Party Negotiations" (RESOLUTION NO. 2) in terms of which it resolved to:
  - 1.1.1 "commit ourselves, individually and collectively, to the resumption/commencement of multi-party negotiations within next month, in order to move as speedily as possible towards the attainment of our primary objective, which is the drafting and adoption of a new Constitution for South Africa";
  - 1.1.2 direct the multi-party negotiating forum established pursuant to the above to consider and implement various matters.
- 1.2 The Negotiating Forum meeting on 1 April, 1993, resolved (RESOLUTION NO. 4) to refer a number of constitutional issues to the Negotiating Council for its consideration. The Forum also adopted a resolution on violence (RESOLUTION NO. 5).
- 1.3 On 30 April, 1993 the Negotiating Council adopted an "Explanatory Memorandum" which, inter alia, stated:
  - "6. It is expressly understood by all participants that each of the above proposals and the documentation emanating from such technical committees shall be discussed in the Negotiating Council with the view to arriving at an agreement on these matters. Furthermore that as and when agreement is reached on each of these matters the Council shall expressly determine when and how the specific agreement shall be implemented. This provision is made so as to ensure participants have a clear understanding of the package of agreements which would constitute the key elements of the transition process".
- 1.4 This report of the Negotiating Council presents the progress made by the Negotiating Council on:
  - 1.4.1 "the package of agreements which would constitute the key elements of the transition process";

- 1.4.2 the work of the Negotiating Council generally;
- 1.4.3 the "levelling" mechanisms, viz., the Transitional Executive Council, the Independent Media Commission and the Independent Broadcasting Authority;
- 1.4.4 the holding of elections, in particular the election date; the Independent Electoral Commission and the Electoral Act;
- 1.4.5 the Constitution for the Transitional Period;
- 1.4.6 certain outstanding matters which have a bearing on the above; and
- 1.4.7 other matters, such as the role of the International Community.

2. **Work of The Negotiating Council:**

- 2.1 The Negotiating Council has had seventy-four meetings between 1 April and 17 November, 1993 (Addendum O).
- 2.2 The Negotiating Council established seven Technical Committees, two Commissions, two Task Groups and various ad hoc and sub-committees which assisted the Negotiating Council in its work.
- 2.3 The Planning Committee of the Negotiating Council, established to facilitate the work of the Negotiating Council, had sixty-three meetings from 1 April to 17 November, 1993.

3. **Four Bills Already Approved and Enacted by Parliament:**

- 3.1 The following were the first bills to be adopted by the Negotiating Council and submitted to Parliament for enactment, viz.:
  - (a) the Transitional Executive Council Bill;
  - (b) the Independent Media Commission Bill;
  - (c) the Independent Broadcasting Authority Bill; and
  - (d) the Independent Electoral Commission Bill.

These were enacted during the September session of Parliament.

- 3.2 The Transitional Executive Council (TEC) Bill:



3.2.1 This Bill established the TEC. The TEC was established with a view to promoting the preparation for and transition to a democratic order in South Africa. It will be assisted in the execution of its functions by a number of Subcouncils.

3.2.2 Addendum F provides details of the decisions taken by the Negotiating Council on each clause of the Bill.

3.2.3 The TEC Bill was adopted by sufficient consensus in the Negotiating Council with:

- (a) The Afrikaner Volksunie reserving their position;
- (b) The Governments of Bophuthatswana and Ciskei opposing the acceptance of the draft Bill, and the Pan Africanist Congress of Azania abstained from being party to the decision of adopting the draft Bill until further consultation with its principals.

3.3 Independent Media Commission (IMC) Bill:

3.3.1 This Bill established the IMC. The IMC is a body established for purposes of ensuring, during the period of the first national election for the National Assembly and other legislatures under the Constitution to be held after the commencement of this Act, the equitable treatment of political parties by broadcasting licensees and that State-financed publications and State information services do not advance the interests of any political party.

3.3.2 Addendum J provides details of the decisions taken by the Negotiating Council on each clause of the Bill.

3.3.3 The IMC Bill was adopted by general consensus in the Negotiating Council.

3.4 Independent Broadcasting Authority (IBA) Bill:

3.4.1 This Bill establishes the IBA. The IBA was established to provide for the regulation of broadcasting activities in the public interest and functions wholly independently of State, governmental and party political influences and free from political or other bias or interference.

3.4.2 Addendum L provides details of the decisions taken by the Negotiating Council on each clause of the Bill.

3.4.3 The IBA Bill was adopted by general consensus in the Negotiating Council.

3.5 Independent Electoral Commission (IEC) Bill:

3.5.1 This Bill establishes the IEC. The IEC has been established for purposes of ensuring the conduct of free and fair elections for the National Assembly and any other elected legislature contemplated in the Constitution of the Republic of South Africa Act, 1993.

3.5.2 Addendum H provides details of the decisions taken by the Negotiating Council on each clause of the Bill.

3.5.3 The IEC Bill was adopted by general consensus in the Negotiating Council. The AVU reserved its position.

3.6 Recommendation:

The Negotiating Council recommends that the Plenary:

- (a) Endorses these four Bills which are now Acts of Parliament;
- (b) Instructs the Negotiating Council to implement these Acts when appropriate and also to undertake the necessary preparatory work in respect of the implementation of these Bills.

4. **Constitution for the Transitional Period:**

4.1 On 30 June, 1993 the Negotiating Council as per Resolution No. 21 resolved:

- (a) that "the Multi-Party Negotiating Process shall adopt the Constitutional Principles, including principles of regional government, providing for both strong regional government and strong national government"; and
- (b) instructed the Technical Committee on Constitutional Issues to "draft a Constitution for the transition which shall make provision for:

2.1 The election according to a system of proportional representation of a Constitution-Making Body, legislature and national government for the transitional phase which will include a national and regional component. With regard to constitution-making, this Constitution shall provide for dead-lock breaking and special majorities by which decisions will be taken;

2.2 The election of regional legislatures and the establishment of regional government in the transition;



- 2.3 The powers, functions and structures of regions for the transitional period;
  - 2.4 Fundamental human rights on a justiciable basis during the transitional period;
  - 2.5 A Constitutional Court/Tribunal to ensure the justiciability of the Constitutional Principles, of the fundamental rights and of the Constitution itself".
- 4.2 The Draft of the Constitution for the Transitional Period which is being presented for consideration of the Plenary appears in Addendum Q.
  - 4.3 This draft contains all the chapters and schedules of the said Constitution but still requires technical revision.
  - 4.4 Recommendation:
    - 4.4.1 The Negotiating Council recommends that the Plenary endorses this draft of the Constitution for the Transitional Period.
    - 4.4.2 The Negotiating Council recommends that it be mandated to complete further technical processing of this draft Constitution for the Transitional Period and submit it to Parliament.

## 5. **Electoral Bill:**

- 5.1 On 22 June 1993, the Negotiating Council agreed that an Electoral Bill shall be drafted for the purposes of the election to be held on 27 April 1994.
- 5.2 The Negotiating Council submits a draft of the Electoral Bill for consideration by the Plenary of the Multi-Party Negotiating Process (Addendum R).
- 5.3 Addendum S is a schedule of decisions in respect of the Electoral Bill which indicates the status of the various clauses of the Bill.
- 5.4 Recommendation:
  - 5.4.1 The Negotiating Council recommends that the Plenary endorses the Electoral Bill.
  - 5.4.2 The Negotiating Council recommends that it be mandated to complete further technical processing of this draft Electoral Bill and submit it to Parliament.

6. **Role of The International Community:**

- 6.1 The Negotiating Council has given consideration to the role of the International Community in respect of various elements of the transition process. Provision has been made for their participation in the IEC and in various other aspects relating to the electoral process.
- 6.2 The Negotiating Council acknowledges that the International Community has a vital and indispensable role in the transition process in South Africa and looks forward to their involvement in the process leading up to the elections.
- 6.3 Recommendation:

The Plenary directs the Negotiating Council to inform the respective international organisations of their role in the transition process.

7. **Other Matters Receiving Attention:**

- 7.1 The following bills or matters which may result in legislation are in various stages of discussion or processing in the Multi-Party Negotiating Process:
  - 7.1.1 Local Government Transition Bill;
  - 7.1.2 Repeal or Amendment of Discriminatory Legislation and Legislation impeding Free Political Activity;
  - 7.1.3 Reintegration of Walvis Bay into Namibia;
  - 7.1.4 Citizenship;
  - 7.1.5 Bill dealing with the future of TBVC States;
  - 7.1.6 Establishment of an Independent Telecommunications Authority.
- 7.2 These matters are not vital to the principal package of key elements but might be necessary to give effect to the resolutions already adopted by the Negotiating Council. The decisions taken on repeals appear in Addendum M3.
- 7.3 Recommendation:

The Negotiating Council, therefore, recommends to Plenary that it:

- 7.3.1 Endorses the need for these matters to be dealt with and finalised by the Negotiating Council; and



- 7.3.2 Mandates the Negotiating Council to continue to finalise these matters and thereafter submit to Parliament any required legislation and, where appropriate, take the necessary steps to implement the resultant legislation.

**SECOND DRAFT PLENARY RESOLUTION 1**

**DRAFT RESOLUTION OF PLENARY  
OF MULTI-PARTY NEGOTIATING PROCESS  
ON ENDORSEMENT OF LEGISLATION  
ADOPTED BY NEGOTIATING COUNCIL**

This Plenary of the Multi-Party Negotiating Process held on Wednesday, 17 November 1993 at the World Trade Centre:

**1. Noting the:**

- 1.1 Adoption of the Transitional Executive Council Bill, the Independent Electoral Commission Bill, the Independent Media Commission Bill and the Independent Broadcasting Authority Bill by the Negotiating Council; and
- 1.2 Enactment of these Bills by Parliament and their subsequent publication in the Government Gazette.

**2. Hereby resolves to:**

- 2.1 Endorse the Transitional Executive Council Act, the Independent Electoral Commission Act, the Independent Media Commission Act, the Independent Broadcasting Authority Act;
- 2.2 Mandate the Negotiating Council to take the necessary steps to implement these Acts; and
- 2.3 Mandate the Negotiating Council to process any technical amendments to these Acts should this be necessary.



## SECOND DRAFT PLENARY RESOLUTION 2

### DRAFT RESOLUTION OF PLENARY OF MULTI-PARTY NEGOTIATING PROCESS ON THE CONSTITUTION FOR THE TRANSITIONAL PERIOD

This Plenary of the Multi-Party Negotiating Process held on Wednesday, 17 November 1993 at the World Trade Centre:

1. **Noting:**

The report of the Negotiating Council on the Constitution for the Transitional Period;  
and

2. **Therefore Resolves to:**

- 2.1 Agree on the draft of the Constitution for the Transition; and
- 2.2 Mandate the Negotiating Council to agree on outstanding issues in this regard, to agree on necessary technical amendments and to monitor the legislative process.

## SECOND DRAFT PLENARY RESOLUTION 3

### DRAFT RESOLUTION OF PLENARY OF THE MULTI-PARTY NEGOTIATING PROCESS ON A MANDATE TO THE NEGOTIATING COUNCIL

This Plenary of the Multi-Party Negotiating Process held on Wednesday, 17 November 1993 at the World Trade Centre:

1. **Salutes:**

The commendable progress made by the Negotiating Council in concluding negotiations on constitutional issues;

2. **Humbly Aware:**

Of the momentous agreements reached in the negotiating process which provide a constructive foundation for a transition to democracy;

3. **Recognising:**

That the Negotiating Council still has matters before it which require further attention;

4. **Therefore Resolves:**

To adopt with acclaim the package of agreements presented by the Negotiating Council to this PLENARY, including the election date of 27 April 1993;

5. **And Further Resolves to Mandate the Negotiating Council:**

- 5.1 To continue with the negotiating process in order to complete the work before it/to complete the work of the Multi-Party Negotiating Process;
- 5.2 To establish the Transitional Executive Council which shall be the successor to the Negotiating Council;
- 5.3 To undertake such technical amendments in order to finalise the Acts endorsed by the plenary as might be necessary;
- 5.4 To supervise the legislative process in respect of the Acts.

## ORDER OF SPEAKING

1. African National Congress
2. Afrikaner Volksunie
3. Cape Traditional Leaders
4. Democratic Party
5. Dikwankwetla Party
6. Intando Yesizwe Party
7. Inyandza National Movement
8. Labour Party
9. Natal/Transvaal Indian Congress
10. National Party
11. National People's Party
12. Orange Free State Traditional Leaders
13. Pan Africanist Congress of Azania
14. Solidarity Party
15. South African Communist Party
16. Transkei Government
17. Transvaal Traditional Leaders
18. United People's Front
19. Venda Government
20. Ximoko Progressive Party
21. South African Government



1. Insert the following new subclause (5):

SEE CL. 89

of Constitution 17/11/11

- "(5) (a) Subject to the provisions of subclause (6), appointments in terms of sections 87(2) and 89(4) and (5) shall only be made on the recommendations of the Judicial Service Commission together with its motivation for such recommendations of not more than three nominees more than the number of persons required to be appointed: Provided that in the event of the appointment of the first six judges referred to in section 89(4), the Judicial Service Commission shall submit a list of ten nominees.
- (b) If the appointing authorities decide not to accept all or some of such recommendations, the Judicial Service Commission shall be informed thereof and be furnished with the reasons therefor.
- (c) After having been informed in terms of paragraph (b), the Judicial Service Commission shall, in accordance with the provisions of paragraph (a), submit further recommendations whereafter the appointing authorities shall fill the vacancies from the names submitted in the latter recommendations.
- (d) In submitting its recommendations to the appointing authorities in terms of paragraphs (a) and (c) the Judicial Service Commission shall have regard for the need to constitute a court which is independent, competent and representative in respect of race and gender.

2. Insert the following new subclause (6):

- (6) "Recommendations referred to in section 89(5) shall not be required in respect of the appointment of the first President of the Constitutional Court referred to in section 87(2).".

3. Renumber the existing subclause (5) as subclause (7).



**FAX** | TO: ETIENNE MUREINKA  
 FAX NO: 339-4733 PAGE: 1 OF: 15  
 ATTENTION OF: \_\_\_\_\_  
 FROM: J. COOTRENS DATE: 14.11.93  
 COMPANY: NEWSWEEK  
 FAX NO: 726-2489 Post-It Notes from 3M

17 November 1993  
 Negotiating Council a package of  
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## BILATERAL UNDERSTANDING ON OUTSTANDING CONSTITUTIONAL ISSUES BETWEEN THE SOUTH AFRICAN GOVERNMENT AND THE AFRICAN NATIONAL CONGRESS

### 1. Decision-making in Cabinet: ANC

The Cabinet shall function in a manner which gives consideration to the consensus seeking spirit underlying the concept of a Government of National Unity as well as the need for effective government.

### 2. Government of National Unity:

National elections will not be held under a New Constitution adopted by the Constitutional Assembly until 1999, unless the Cabinet loses the confidence of Parliament.

### 3. Boundaries, Powers and Functions of SPR's: NP

The provisions of the New Constitution to be adopted by the Constitutional Assembly, regarding the boundaries, powers and functions of provinces, and any amendment thereto, will require the approval of the Senate with a two-thirds majority. If the deadlock-breaking mechanism comes into operation, a sixty percent majority in the Senate will be required.

### 4. SPR Constitutions:

Immediately after the first elections, a provincial legislature shall be entitled to adopt a constitution for their province. The provincial constitution must be consistent with the constitutional principles and the national constitution, and, when the final constitution is adopted, consistent with that constitution. The constitutional court shall certify that the provincial constitution complies with the constitutional principles and the relevant national constitution.

2

## 5. Clause 32 of the Electoral Bill:

BNC

- (a) In the first elections for national and SPR legislatures a single ballot paper will be used.
- (b) A proposed formulation for Schedule 5 of the Constitution is submitted herewith.

## 6. Deadlock-breaking Mechanisms:

KWP

Should the employment of a deadlock-breaking mechanism in the making of a new constitution become necessary, the deadlock-breaking procedures provided for in clause 68(9) will culminate in the adoption of the new constitution by a majority of 60%.



7

## DRAFT RESOLUTION ON TRANSITIONAL ARRANGEMENTS

It is resolved that -

- (a) a chapter dealing with general and transitional provisions be included in the Constitution;
- (b) such chapter shall contain provisions dealing inter alia with the repeal of laws, continuation of existing laws and conventions, considerations of international law, definitions and transitional arrangements regarding legislatures, executive government, public administration, public assets and liabilities, the judiciary and education;
- (c) the Negotiating Council be empowered to negotiate and finalise this chapter.



See Schedule  
2 of the 17/1  
Constitution

# SCHEDULE 5

## System for the Election of the National Assembly and SPR Legislatures

### Nomination of candidates and compilation of party lists

1. Parties registered in terms of the Electoral Act, 1993, shall nominate candidates for election to the National Assembly and SPR legislatures on lists of candidates in accordance with the provisions of the Electoral Act, 1993, and compile such lists in accordance with the provisions of this Schedule.
2. The 400 seats in the National Assembly shall be filled in the following way:
  - (a) 200 seats from regional lists, with a fixed number being allocated to each region by the Independent Electoral Commission taking into account available scientifically based data in respect of voters and representations by interested parties and with due regard to the following distribution:
 

Western Cape	-	21 seats
Eastern Cape	-	26 seats
Northern Cape	-	4 seats
Natal	-	40 seats
Orange Free State	-	15 seats
North West	-	17 seats
Northern Transvaal	-	20 seats
Eastern Transvaal	-	14 seats
PWV	-	43 seats
  - (b) 200 seats from the national list in order to restore proportionality in accordance with the total number of votes cast for each party in the national election.
3. A list of candidates submitted by a party for election to the National Assembly shall contain the names of not more than 400 candidates in such fixed order of preference as that party may determine.
4. A list of candidates may consist of -
  - (i) both a national and regional lists; or
  - (ii) regional lists,
 and in such proportions as that party may determine in the case of a list referred to in paragraphs (i) and (ii).
5. For the purpose of filling the two hundred seats in the National Assembly contemplated in item 2(a), the total number of votes cast in a region shall be divided by the number of seats plus one in that region and the result, disregarding fractions, shall be the quota of votes per seat.
6. The total number of votes cast in favour of a registered party, shall be divided by the quota of votes per seat and the result shall, subject to item 7, determine the number of seats allocated to that party.



7. Where the formula set out in item 6 yields a surplus not absorbed by the number of seats allocated to the party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any undistributed seat or seats (in terms of the formula set out in item 6) shall be awarded to the party or parties concerned in sequence of the highest surplus.
8. For the purpose of filling the 200 seats contemplated in item 2(b), the total number of votes cast in a general election shall be divided by 400 plus one and the result, disregarding fractions, shall be the quota of votes per seat.
9. The total number of votes cast in favour of a registered party, shall be divided by the quota of votes per seat and the result shall, subject to items 10 and 11, determine the number of seats allocated to that party.
10. Where the formula set out in item 9 yields a surplus fraction not absorbed by the number of seats allocated to the party concerned, such surplus shall compete with other similar surpluses accruing to any other party or parties, and any undistributed seat or seats (in terms of the formula set out in item 9) shall be awarded to the party or parties concerned in sequence of the highest surplus to be a maximum of 5 seats so allocated: Provided that subsequent allocations shall be made in sequence to those parties having the highest average number or votes per seat already gained.
11. The number of seats allocated to a party in accordance with the provisions of items 8, 9 and 10 shall be reduced by the number of seats a party gained in accordance with the provisions of items 5, 6 and 7 and the result shall be the seats allocated in terms of item 2(b).
12. Where a party -
  - (i) submitted lists of candidates as contemplated in section 3(i) its representatives in the National Assembly shall be allocated from regional lists in accordance with the provisions of items 5, 6 and 7 and from the national lists in accordance with the provisions of items 8, 9, 10 and 11.
  - (ii) submitted lists of candidates as contemplated in item 3(ii) its representatives in the National Assembly shall be allocated in accordance with the provisions of items 5, 6 and 7, with the remainder of its seats in terms of items 8, 9, 10 and 11 being allocated from regional lists in the same proportion as those allocated in terms of items 5, 6 and 7; Provided that surplus fractions shall be disregarded save that unallocated seats shall be allocated to regions in sequence of the highest surplus fractions.
13. In the case of a list of candidates containing less candidates than a party is entitled to, that party -



- (i) shall only be allocated the number of representatives on its list; and
  - (ii) shall forfeit its entitlement to any further representation in excess of the representation so allocated.
14. The provisions of item 13 shall mutatis mutandis apply to each regional list referred to in item 4(i) and (ii) in respect of which a list of candidates was submitted by that party.
15. In the event of a party forfeiting its entitlement to representation in terms of items 13 and 14 -
- (i) a new quota shall be determined on the following basis:
    - (a) the total number of votes cast, minus those votes cast for all parties referred to in the said items, shall be divided by the seats plus one, still to be allocated to the other parties; and
    - (b) the quotient of such division shall be the new quota; and
  - (ii) a new determination of the allocation of representatives in respect of such other parties shall then mutatis mutandis be made as provided for in items 5, 6, 7 and 8, 9, 10 and 11 respectively.
16. In the event of a party being entitled to an additional number of representatives in terms of the provisions of item 15, and its lists of candidates then does not contain a sufficient number of candidates, the process as provided for in items 13, 14 and 15 shall repeat itself until all representatives have been allocated.

#### Election of members of SPR legislatures

17. A list of candidates submitted by a party for election to a SPR shall contain the names of not more than the number of seats being contested.
18. A list of candidates of a party shall consist of a single list in such fixed order of preference as that party may determine..
19. The provisions of items 5, 6 and 7 shall apply mutatis mutandis to the election of the members of an SPR legislature contemplated in section 101 of this Constitution. The quota of votes per seat shall be determined by dividing the total number of votes in each region by the number of seats plus one for each SPR.



### Manner of casting and counting votes

20. The manner of casting and counting of votes in the election of the National Assembly and the election of each SPR shall be in accordance with the provisions of the Electoral Act, 1993.

### Declaration of support by one party of another party

21. (1) If a party wishes to contest the election of one or more SPR legislatures, but does not wish to contest the election in the National Assembly, it may, within the time and in the manner prescribed by the Electoral Act, 1993, declare that it supports a party which has entered the election of the National Assembly, and if it makes such declaration, all votes cast in its favour shall, for the purpose of the election of the National Assembly, be deemed to be a vote in favour of such other party.
- (2) If a party wishes to contest the election of the National Assembly, but does not wish to contest the election of one or more of the SPR legislatures, it may, within the time and in the manner prescribed by the Electoral Act, 1993, declare that it supports a party which has entered the election of a SPR legislature, and if it makes such declaration, all votes cast in its favour shall, for the purpose of the election of the relevant SPR legislature, be deemed to be a vote in favour of such other party.
- (3) If a party wishes to contest the election of one or more SPR legislatures but does not wish to contest the election of all SPR legislatures, it may, within the time and in the manner prescribed by the Electoral Act, 1993, declare that it supports a party which has entered the election of the SPR legislatures that it is not contesting, and if it makes such a declaration, all votes cast in its favour shall, for the purposes of the elections of the SPR legislatures that it is not contesting, be deemed to be a vote in favour of such other party.
- (4) For the purposes of subitems (2) and (3), a party may support different parties in the different SPR's.

### Designation of representatives

22. After the counting of votes has been concluded, the number of representatives of each party have been determined and the election had been certified by the Independent Electoral Commission as having been free and fair,



- (i) the Independent Electoral Commission shall within two days thereafter designate from each list of candidates published in terms of section 24 of the Electoral Act, 1993, the representatives of each party in each legislature; and
- (ii) following the designation in paragraph (i), if a candidate's name appear on more than one list for the National Assembly or on a list of both the National Assembly and a SPR legislature and he is due for designation as a representative in more than one case, the political party concerned shall within two days thereafter indicate to the Independent Electoral Commission in which legislature the candidate shall serve or which component he or she will represent, as the case may be, in which event his or her name is deleted from the other components or lists.
- (iii) The Independent Electoral Commission shall forthwith publish the list of names of representatives in all legislatures.

#### Supplementation of lists of candidates

- 23. No lists of candidates of a party for any legislature shall be supplemented prior to the designation of representatives as contemplated in item 21.
- 24. Lists of candidates may after the designation of representatives in terms of item 21 had been finalized, be supplemented by the addition of an equal number of names at the end of the applicable list, when:
  - (i) a representative is elected as President or other executive office which requires him to resign as a representative from a legislature;
  - (ii) a representative is elected as member of the Senate;
  - (iii) a candidate is eligible for representation in both the National Assembly and a SPR legislature and his name is deleted from a list in terms of item 16(ii); or
  - (iv) a vacancy has occurred and the appropriate list of candidates of the party concerned is depleted.
- 25. Lists of candidates of a party published in terms of section 24 of the Electoral Act, 1993, may be supplemented on one occasion only at any time during the first 12 months following the date on which the designation of representatives in terms of item 21 had been finalized, in order to fill vacancies which may subsequently occur: Provided that any such supplementation shall be made at the end of the list.
- 26. The number of names on lists of candidates as supplemented in terms of item 24 shall not exceed the difference between the number of seats in the National Assembly or a SPR legislature and the number of representatives of a party in any such legislature.



### Reviewal of lists of candidates by a party

27. A party may review its undepleted lists as supplemented as provided for in items 23, 24 and 25, within 7 days after the period referred to in item 24, and annually thereafter, until the date on which a party has to submit lists of candidates for an ensuing election.

### Vacancies

28. In the event of a vacancy having occurred in the representation of a party in any legislature -
- (i) such vacancy shall forthwith be filled by the Secretary of that Legislature, by the designation of the candidate at the top of the appropriate list of candidates of the party concerned, as representative of that legislature; or
  - (ii) if the party concerned no longer exist at the time the vacancy has to be filled, the vacancy shall be filled in the manner mutatis mutandis as provided for in items 5, 6 and 7 as well as items 8, 9, 10 and 11 in respect of the remaining parties represented in a legislature.



17/11/93

## PROVISIONS WHICH WILL BE INCLUDED ELSEWHERE IN THE CONSTITUTION

## CHAPTER 'Y' : RESTITUTION OF LAND RIGHTS

- (1) Any person who, or any community which, at any time after a date fixed by an Act of Parliament (which date shall not be earlier than 19 June 1913), was dispossessed of a right in land under, or for the purpose of furthering the object of, any law which would have been inconsistent with the prohibition of racial discrimination contained in section 8(2), had that section been in operation at the time of such dispossession, shall be entitled to claim restitution in a court of law in respect of such right from the state.
- (2) Any claim under subsection (1) shall be subject to such conditions, limitations and exclusions as may be prescribed by the said Act and shall not be justiciable by a court of law unless processed in accordance with such Act by a Commission established for the purpose by such Act.
- (3) The Commission referred to in subsection (2) shall at least be competent -
  - (a) to investigate the merits of any claims;
  - (b) to mediate and settle disputes arising from such claims; and
  - (c) to draw up reports on unsettled claims for submission as evidence to a court of law and to present any other relevant evidence to the court.
- (4) Where an unsettled claim is lodged with a court of law and the land in question is -
  - (a) in the possession of the state, the court may, subject to subsection (7), order the state to restore the relevant right to the claimant if the state certifies that such restoration is feasible; or
  - (b) in the possession of a private owner and the state certifies that the acquisition of such land by the state is feasible, the court may, subject to subsection (7), order the state to purchase or expropriate such land and to restore the relevant right to the claimant.
- (5) The court shall not issue an order under subsection (4)(b) unless it is just and equitable to do so, taking into account all relevant factors including the history of the



dispossession, the hardship caused, the use to which the property is being put, the history of the acquisition by the owner, the interest of the owner and others affected by any expropriation, and the interests of the dispossessed: Provided that any expropriation under the said subsection (4)(b) shall be subject to the payment of compensation calculated in the manner provided for in section 28(3).

- (6) If the State certifies that any restoration in terms of subsection (4)(a) or any acquisition in terms of subsection (4)(b) is not feasible, or if the claimant instead of the restoration of the right prefers alternative relief, the court may, subject to subsection (7), order the state in lieu of the restoration of the said right -
- (a) to grant the claimant an appropriate right in available alternative state-owned land designated by the State to the satisfaction of the court, provided that the state certifies that it is feasible to designate alternative state-owned land;
  - (b) to pay the claimant compensation; or
  - (c) to grant the claimant any alternative relief.
- (7) (a) The compensation referred to in subsection (6) shall be determined by the court as just and equitable, taking into account the circumstances which prevailed at the time of dispossession and all such other factors as may be prescribed by the said Act, including any compensation that was paid upon such dispossession.
- (b) If the court grants any claimant relief contemplated in subsection (4) or (6) it shall take into account, and, where appropriate, make an order with regard to, any compensation that was paid to the claimant upon the dispossession of the right in question.
- (8) (a) This section shall not apply to any rights in land expropriated under the Expropriation Act, 1975 (Act No. 63 of 1975), or any other law incorporating the Expropriation Act, 1975, or its provisions with regard to compensation, if just and equitable compensation as contemplated in subsection (6) was paid in respect of such expropriation.
- (b) In this section "Expropriation Act, 1975" shall include any expropriation law repealed by that Act.
- (9) No claims under this section shall be lodged before the passing of the Act of Parliament contemplated herein.



DOCUMENT PACK FOR THE  
MEETING OF THE PLENARY OF THE  
MULTI-PARTY NEGOTIATING  
PROCESS

17 NOVEMBER 1993

*VOLUME II*

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REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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## STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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KAAPSTAD, 27 OKTOBER 1993

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STATE PRESIDENT'S OFFICE

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KANTOOR VAN DIE STAATSPRESIDENT

No. 1876.

27 October 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 151 of 1993: Transitional Executive Council Act, 1993.

No. 1876.

27 Oktober 1993

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hiertye algemeen inligting gepubliseer word:—

No. 151 van 1993: Wet op die Uitvoerende Oorgangsraad, 1993.

# ACT

To establish a Transitional Executive Council with a view to promoting the preparation for and transition to a democratic order in South Africa; and to provide for matters connected therewith.

*(English text signed by the State President.)  
(Assented to 18 October 1993.)*

**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

## Definitions

1. In this Act, unless the context indicates otherwise—

- (i) "administration" means any department of state of any Government, or any provincial administration or local government body: (i) 5
- (ii) "armed force" means any armed force not established by or under any law and which is under the authority and control of, or associated with and promotes the objectives of, a participant in the Council: (iv) 10
- (iii) "Constitution" means the Constitution of the Republic of South Africa, 1993: (v)
- (iv) "Council" means the Transitional Executive Council established by section 2: (xix)
- (v) "defence force" means any defence force of any Government, established by or under any law: (xxx) 15
- (vi) "election" means an election for any legislative body established by any law: (xxix)
- (vii) "Government" means—
  - (a) the Government of the Republic of South Africa;
  - (b) the Governments of the self-governing territories; and 20
  - (c) the Government of the Republic of Transkei, Bophuthatswana, Venda or Ciskei, as the case may be, if the provisions of this Act have been incorporated into the law of the State concerned: (xx)
- (viii) "Independent Broadcasting Authority" means the Independent Broadcasting Authority established by the Independent Broadcasting Authority Act, 1993: (xiii) 25
- (ix) "Independent Electoral Commission" means the Independent Electoral Commission established by the Independent Electoral Commission Act, 1993: (xiv)
- (x) "Independent Media Commission" means the Independent Media Commission established by the Independent Media Commission Act, 1993: (xii) 30
- (xi) "intelligence service" means any intelligence service of any Government, established by or under any law: (vi)
- (xii) "intelligence structure" means any intelligence structure not established by or under any law and which is under the authority or control of, or associated with and promotes the objectives of, a participant in the Council: (vii) 35
- (xiii) "military force" means any defence force or armed force, but shall not include any policing agency: (viii) 40
- (xiv) "Multi-Party Negotiating Process" means the negotiating process that commenced in March 1993 at the World Trade Centre, Kempton Park: (xxviii)
- (xv) "National Peace Accord" means the National Peace Accord signed on 14 September 1991 at the Carlton Centre, Johannesburg: (xi) 45
- (xvi) "National Peacekeeping Force" means the National Peacekeeping Force referred to in section 16(10): (x)



- (xvii) "National Peace Secretariat" means the National Peace Secretariat established by section 2 of the Internal Peace Institutions Act, 1992 (Act No. 135 of 1992); (ix)
- (xviii) "Negotiating Council" means the Negotiating Council of the Multi-Party Negotiating Process; (xv) 5
- (xix) "participant", in relation to the Council, means any Government, political party or organization that is a participant in the Council by virtue of section 4; (ii)
- (xx) "Police Board" means the Police Board established in terms of Chapter 3 of the National Peace Accord; (xvi) 10
- (xxi) "policing agency" means any public police force in South Africa established or governed by or under any law; (xvii)
- (xxii) "political party" means any party or organization, whether on its own or as an alliance of parties or organizations, which participates in or intends to participate in an election in terms of the Constitution; (xviii) 15
- (xxiii) "region" includes a province or a self-governing territory; (xxiii)
- (xxiv) "self-governing territory" means a self-governing territory as defined in section 38(1) of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971); (xxi) 20
- (xxv) "South Africa" means—
  - (a) the Republic of South Africa, including the self-governing territories; and
  - (b) the Republic of Transkei, Bophuthatswana, Venda or Ciskei, as the case may be, if the provisions of this Act have been incorporated into the law of the State concerned; (xxv) 25
- (xxvi) "Special Electoral Court" means the Special Electoral Court established by the Independent Electoral Commission Act, 1993; (xxii)
- (xxvii) "subcouncil" means a subcouncil established by or under this Act; (xxiv) 30
- (xxviii) "the Subcouncil", in sections 14, 15, 16, 17, 18, 19 and 20, means the subcouncil referred to in section 8(1)(a), (b), (c), (d), (e), (f) or (g), respectively; (iii)
- (xxix) "traditional authority" means any authority which in terms of indigenous law or any other law administers the affairs of any tribe or group of indigenous people or any other persons resident within an area under the control of a traditional leader; (xxvii) and 35
- (xxx) "traditional leader" means any person who in terms of indigenous law or any other law is in charge of or exercises control over a traditional authority; (xxvi) 40

## TRANSITIONAL EXECUTIVE COUNCIL

### Establishment of Transitional Executive Council

- 2. There is hereby established a council to be known as the Transitional Executive Council, which— 45
  - (a) shall, subject to section 3, for the purpose of attaining the objects referred to in that section, have the executive and other powers conferred upon it by or under this Act; and
  - (b) may exercise such other powers and shall perform such duties as may be conferred or imposed upon it by or under any other law. 50

### Objects of Council

- 3. The objects of the Council shall be to facilitate and promote, in conjunction with all legislative and executive structures at all levels of government in South Africa, the preparation for and transition to a democratic order in South Africa by— 55
  - (a) creating and promoting a climate for free political participation by endeavouring to—



- (i) eliminate any impediments to legitimate political activities;
- (ii) eliminate any form of intimidation which has a bearing on the said transition;
- (iii) ensure that all political parties are free to canvass support from voters and to organize and hold meetings and for those purposes have access to all voters;
- (iv) ensure the full participation of women in the transitional and electoral structures and processes; and
- (v) ensure that no Government or administration exercises any of its powers in such a way as to advantage or prejudice any political party;
- (b) creating and promoting conditions conducive to the holding of free and fair elections;
- (c) exercising such powers and performing such duties as may be conferred or imposed upon it by any other law.

### Constitution of Council

4. (1) Each Government, political party or organization which—
- (a) is or was at any time represented on the Negotiating Council; and
  - (b) by notice in writing to the Negotiating Council commits itself to the objects of the Council, and in respect of itself and all organizations which are under its authority or control, and any armed force which is under its authority and control, or associated with it and promotes its objectives—
    - (i) undertakes to be bound by and to implement directions issued by the Council in terms of this Act; and
    - (ii) renounces violence as a means of achieving political objectives.
- shall be a participant in the Council and shall be entitled to be represented by one member on the Council.
- (2) The Government of the Republic of Transkei, Bophuthatswana, Venda or Ciskei, or any political party registered only in or operating only from or any organization operating only from such a State, shall not be a participant in the Council unless—
- (a) the provisions of this Act, as well as the provisions of the Independent Electoral Commission Act, 1993, the Electoral Act, 1993, the Independent Media Commission Act, 1993, and the Independent Broadcasting Authority Act, 1993, have been incorporated into the law of the State concerned; or
  - (b) formal provision has been made by law in such a State for the application of any Act referred to in paragraph (a) in that State.
- (3) A participant in the Council that wishes to be represented on the Council shall within seven days after the commencement of this section by notice in writing to the State President nominate a member and an alternate member to the Council.
- (4) The State President shall within seven days after the receipt of such a notice, by proclamation in the *Gazette* appoint the persons so nominated as a member and alternate member, respectively, of the Council.
- (5) (a) If the Council determines that any Government, political party or organization which is not a participant in the Council, but which by notice in writing to the Council commits itself to the objects of the Council, and in respect of itself and all organizations which are under its authority or control, and any armed force which is under its authority and control, or associated with it and promotes its objectives—
- (i) undertakes to be bound by and to implement directions issued by the Council in terms of this Act; and
  - (ii) renounces violence as a means of achieving political objectives.
- should be such a participant, the Council shall notify the State President thereof in writing, and the State President shall by proclamation in the *Gazette* declare that Government, political party or organization to be a participant in the Council.



(b) If such a participant wishes to be represented on the Council, it shall within seven days after the date of the proclamation concerned by notice in writing to the State President nominate a member and an alternate member to the Council.

(c) The State President shall within seven days after the receipt of such a notice, by proclamation in the *Gazette* appoint the persons so nominated as a member and alternate member, respectively, of the Council. 5

(6) The Council shall determine whether a member thereof shall serve in a full-time or part-time capacity.

(7) If a member of the Council is for any reason unable to perform the duties of his or her office, the alternate member concerned shall act in the place of that member, and for that purpose the alternate member shall have all the powers and duties of the member concerned. 10

(8) (a) If a participant in the Council or any organization under its authority or control, or any armed force which is under its authority and control, or associated with it and promotes its objectives— 15

(i) breaches the undertaking or renunciation submitted by the participant in terms of subsection (1)(b) or (5)(a); or

(ii) fails or refuses to comply with any provision of this Act or any regulation made thereunder, or with any direction of the Council or a subcouncil in terms of this Act or any other law, 20

the Council may, if it has reason to believe that such breach, failure or refusal is of a material nature or has occurred persistently, by notice in writing to that participant direct it to refrain from such breach or to comply with such provision or direction, or to see to it that such organization or armed force refrains from such breach or complies with such provision or direction, as the case may be. 25

(b) If the participant concerned or such an organization or armed force, after the receipt of such a notice—

(i) fails or refuses to comply with a direction of the Council under paragraph (a) within a reasonable time; or

(ii) wilfully persists with any conduct referred to in subparagraph (i) or (ii) of paragraph (a). 30

the Council may, without derogating from its powers under section 7(1)(j), suspend that participant from participating in the Council or any subcouncil or any body, committee or subcommittee established by or under this Act, for such period and on such conditions as may be determined by the Council. 35

(9) A participant in the Council which fails or refuses to nominate a member on the Council, or terminates or suspends its participation in the Council, or whose participation in the Council is suspended under subsection (8), shall nevertheless remain bound by the obligations it incurred by becoming such a participant.

#### Vacation of office, removal from office and filling of vacancies in Council 40

5. (1) If a member of the Council loses the confidence of the participant which nominated that member, the Council, on being advised thereof in writing by the participant concerned, shall inform the State President accordingly in writing, and the State President shall by proclamation in the *Gazette* remove that person from office. 45

(2) If a member of the Council dies, resigns from office (which shall be in writing to the State President) or is removed from office under subsection (1), the participant previously represented by that member shall be entitled to nominate another person as a member of the Council, and in respect of such nomination, section 4 shall apply *mutatis mutandis*. 50

(3) Subsections (1) and (2) shall apply *mutatis mutandis* in respect of an alternate member of the Council.

#### Conditions of service, remuneration and allowances of members of Council

6. (1) The conditions of service, remuneration, allowances and other benefits of members of the Council shall be determined by the State President in consultation with the Negotiating Council. 55



(2) Those members of the Council who receive remuneration, allowances or other benefits by virtue of their employment by or position in any Government or public service or administration and who continue to receive such remuneration, allowances or other benefits while serving on the Council, shall not receive any remuneration, allowance or other benefits by virtue of subsection (1), except to the extent required to place those members in the position in which they would have been were it not for such employment or position. 5

(3) The conditions of service, remuneration, allowances and other benefits contemplated in this section may differ according to whether a member is a full-time or part-time member of the Council. 10

(4) An alternate member shall be entitled to such allowances, if any, as may be determined by the Council.

### General powers of Council

7. (1) The Council shall, in addition to the other powers conferred upon it by this Act or any other law, for the purpose of attaining its objects have the power to— 15

- (a) request and obtain, subject to any other provision of this Act, all such information and documents as may be necessary for attaining its objects;
- (b) direct a subcouncil to enquire into and to advise the Council on any matter in connection with the functions of the Council;
- (c) initiate or participate in negotiations relating to its functions and objects;
- (d) appoint staff to assist the Council and the subcouncils in the performance of their functions, and in consultation with the State President, to determine the conditions of service, remuneration, allowances and other benefits of such staff;
- (e) request the secondment of skilled staff from any public service in South Africa, subject to any law applicable to such staff in that regard, to assist the Council or a subcouncil in the performance of its functions;
- (f) make rules providing for the convening of and procedure at meetings of the Council and subcouncils;
- (g) appoint from among its members office-bearers, on either a fixed or a rotational basis;
- (h) appoint a person, body or subcommittee to investigate or deal with any matter relating to the Council's functions and to report thereon;
- (i) open and administer its own financial accounts; and
- (j) take such steps, including legal steps, in terms of any law or the common law, as may be necessary to give effect to this Act or to any decision taken by the Council or a subcouncil under this Act or any other law. 30 35

(2) The Council may delegate to a subcouncil any of its powers, but it shall not be divested of a power so delegated.

(3) In respect of any power delegated to a subcouncil under subsection (2) or any power referred to in sections 12(1) and 14 to 20, the Council— 40

- (a) shall identify categories of subjects in respect of which the Council shall itself take decisions or make recommendations;
- (b) shall identify categories of subjects in respect of which decisions or recommendations of subcouncils shall have no force or effect unless ratified by the Council;
- (c) shall be informed by each subcouncil of all decisions or recommendations of that subcouncil;
- (d) may review, amend or withdraw any such decision or recommendation of a subcouncil; and
- (e) may exercise that power itself. 45 50

(4) If the Council exercises any power by virtue of subsection (3), the relevant provisions of this Act relating to the subcouncil concerned shall apply *mutatis mutandis* in respect of the Council.



(5) Notwithstanding any provision of this Act, the Council or a subcouncil, in exercising any power referred to in section 14(e), 14(u), 15(1)(g), 16(2)(f), 16(2)(g), 17(1)(a), 17(1)(h), 17(3), 18(a), 19(j), 20(1)(k) or 20(1)(l) shall not be limited to acting within the scope of the objects of the Council.

## SUBCOUNCILS

5

### Establishment of subcouncils

8. (1) There are hereby established the following subcouncils under the control and supervision of the Council:

- (a) Subcouncil on Regional and Local Government and Traditional Authorities: 10
- (b) Subcouncil on Law and Order, Stability and Security;
- (c) Subcouncil on Defence;
- (d) Subcouncil on Finance;
- (e) Subcouncil on Foreign Affairs;
- (f) Subcouncil on the Status of Women; and 15
- (g) Subcouncil on Intelligence.

(2) (a) Additional subcouncils may be established at the request of the Council by means of an amendment to this Act as contemplated in section 28, if the establishment of such subcouncils is necessary for the Council to perform its functions. 20

(b) If any dispute between the Council and State President arises as to the necessity of establishing such subcouncils, the matter shall be referred to the Special Electoral Court for determination.

(3) A subcouncil shall—

- (a) subject to sections 3 and 7(2) and (3), for the purpose of attaining the objects of the Council have the powers conferred upon it by or under this Act or any other law; 25
- (b) report to the Council in such manner and at such times as may be determined by the Council.

### Constitution of subcouncils

30

9. (1) (a) The members of the subcouncils shall be appointed by the Council in a full-time capacity.

(b) The Council shall give notice in the *Gazette* of each such appointment.

(2) (a) The membership of a subcouncil shall not be restricted to members of the Council. 35

(b) The subcouncils referred to in section 8(1)(b), (c) and (g), shall each have eight members.

(c) The subcouncils referred to in section 8(1)(a), (d), (e) and (f), shall each have six members.

(3) The Council shall not appoint more than one person representing a particular participant in the Council on a particular subcouncil. 40

(4) If a member of a subcouncil is for any reason unable to perform the duties of his or her office, the Council may in writing appoint a substitute to act in the place of the member concerned, and for that purpose that substitute shall have all the powers and duties of the member concerned. 45

### Vacation of office, removal from office and filling of vacancies in subcouncils

10. (1) If the Council is satisfied that a member of a subcouncil is unable to perform his or her duties satisfactorily, the Council shall remove that member from office and shall give notice of such removal in the *Gazette*.

(2) If a member of a subcouncil dies, resigns from office (which shall be in writing to the Council) or is removed from office in terms of subsection (1), the Council shall appoint another member to that subcouncil and give notice of such appointment in the *Gazette*. 50

### Conditions of service, remuneration and allowances of members of subcouncils

11. (1) The conditions of service, remuneration, allowances and other benefits of members of the subcouncils shall be determined by the State President in consultation with the Council. 55