

DRAFT BILL

To prohibit discrimination on the ground of sex, marital status and pregnancy; to promote equality and equal opportunities between males and females; and for this purpose to establish an Equal Opportunities Commission; and to provide for matters connected therewith.

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

Definitions

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

“advertisement” means any notice or invitation to the public or to any section of the public, irrespective of the medium used to communicate such notice or invitation and irrespective of the form or method in which such notice or invitation is communicated, and “advertise” has a corresponding meaning;

“Commission” means the Equal Opportunities Commission established by section 17; 10

“educational institution” means any educational institution—

(a) which is managed or operated by the State or with the aid of state funds;

(b) established or registered by or under any law; or

(c) of which the standard of education or training which is provided there is determined or controlled by or under any law; 15

“employee” means a person who is in the employment of or who works for an employer and receives a reward or is entitled to receive a reward or who works under the direction or supervision of an employer;

“employer” means— 20

(a) a person who employs another person or provides such person with employment and rewards or expressly or tacitly undertakes to reward such person; or

(b) a person who intends to become an employer within the meaning of paragraph (a); 25

“executive act” means—

(a) any authorization which is granted to a person under any law, including any permit, licence, registration, approval, permission, concession, benefit or grant provided for in terms of a law; or

(b) any bursary, loan, subsidy or financial allocation granted to a person by the State, a statutory council or a local authority; 30

“local authority” means—

(a) an institution or a body contemplated in section 84(1)(f) of the Provincial Government Act, 1961 (Act No. 32 of 1961);

(b) a local authority as defined in section 1(1) of the Black Local Authorities Act, 1982 (Act No. 102 of 1982); 35

(c) a regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act No. 109 of 1985);

- (d) a board of management as defined in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act No. 9 of 1987);
 - (e) a local council established under section 2 of the Local Councils Act (House of Assembly), 1987 (Act No. 94 of 1987); or
 - (f) any other institution established by law which the Minister by notice in the *Gazette* declares to be a local authority for purposes of this Act: 5
- "marital status" means the status of—
- (a) being single;
 - (b) being married;
 - (c) being married but not living together with the other spouse as husband and wife: 10
 - (d) being divorced; or
 - (e) living together with a person of the opposite sex as husband and wife as if married;
- "Minister" means the Minister of Justice: 15
- "occupational controlling body" means any body, board, association or organization, whether or not established or recognized by law, which exercises control by way of membership, registration or any other system over the practice by persons of a particular profession, occupation, craft or trade:
- "partnership" means also a partnership yet to be established: 20
- "registered association" means—
- (a) a trade union registered under the Labour Relations Act, 1956 (Act No. 28 of 1956);
 - (b) an employers' organization registered under the Labour Relations Act, 1956: 25
 - (c) a pension fund organization registered under the Pension Funds Act, 1956 (Act No. 24 of 1956);
 - (d) a friendly society registered under the Friendly Societies Act, 1956 (Act No. 25 of 1956);
 - (e) a medical scheme registered under the Medical Schemes Act, 1967 (Act No. 72 of 1967). 30

CHAPTER I

PROHIBITION OF DISCRIMINATION

Discrimination on the ground of sex

2. (1) In any of the circumstances specified in sections 5, 7, 8 and 10 to 13, a person 35 discriminates against a female on the ground of sex if such a person—
- (a) treats the female less favourable, solely on the ground of her sex or on the ground a quality which is generally attributed to females, than that person treats or would treat a male;
 - (b) refuses or deliberately fails to afford the female, solely on the ground of her sex or on the ground of a quality which is generally attributed to females, any benefit or opportunity over which such a person has control; or 40
 - (c) imposes a requirement or condition with regard to the female which such person imposes or would impose equally with regard to a male, but—
 - (i) which is such that the females who can comply with it are considerably less in proportion to the proportion of males who can comply with it; 45
 - (ii) which cannot be reasonably justified irrespective of the sex of the person to whom it is applied; and
 - (iii) which is to her detriment because she cannot comply with it.
- (2) In any of the circumstances specified in sections 5, 7, 8 and 10 to 13, a person 50 discriminates against a male on the ground of sex if such a person—
- (a) treats the male less favourable, solely on the ground of his sex or on the ground of a quality which is generally attributed to males, than such a person treats or would treat a female;
 - (b) refuses or deliberately fails to afford the male, solely on the ground of his sex or solely on the ground of a quality which is generally attributed 55

to males, any benefit or opportunity over which such a person has control; or

(c) imposes a requirement or condition with regard to the male which such person imposes or would impose equally with regard to a female, but—

(i) which is such that the males who can comply with it are considerably less in proportion to the proportion of females who can comply with it;

(ii) which cannot be reasonably justified irrespective of the sex of the person to whom it is applied; and

(iii) which is to his detriment because he cannot comply with it;

Provided that any special treatment of women with reference to pregnancy or childbirth shall not be taken into consideration for the purpose of this subsection.

Discrimination on the ground of marital status

3. In any of the circumstances specified in sections 5, 7, 8 and 10 to 13, a person discriminates against another person on the ground of marital status if the first-mentioned person—

(a) treats the other person less favourable, solely on the ground of his or her marital status or solely on the ground of a quality which is generally attributed to persons with the marital status of such other person, than the said first-mentioned person treats he would treat a person with another marital status;

(b) refuses or deliberately fails to afford the other person, solely on the ground of his or her marital status or solely on the ground of a quality which is generally attributed to persons with the marital status of such other person, any benefit or opportunity over which the said first-mentioned person has control; or

(c) imposes a requirement or condition with regard to the other person which the said first-mentioned person imposes or would impose equally with regard to a person with another marital status, but—

(i) which is such that persons with a marital status similar to that of such other person who can comply with it, are considerably less in proportion to the proportion of persons with another marital status who can comply with it;

(ii) which cannot be reasonably justified irrespective of the marital status of the person to whom it is applied; and

(iii) which is to such other person's detriment because he or she cannot comply with it.

Discrimination on the ground of pregnancy

4. In any of the circumstances specified in sections 5, 7, 8 and 10 to 13, a person discriminates against a female on the ground of pregnancy if such a person—

(a) treats the female less favourable, solely on the ground of her pregnancy or solely on the ground of a quality which is generally attributed to pregnant females, than such a person treats or would treat a female who is not pregnant;

(b) refuses or deliberately fails to afford the female, solely on the ground of her pregnancy or solely on the ground of a quality which is generally attributed to pregnant females, any benefit or opportunity over which such a person has control;

(c) imposes a requirement or condition with regard to the female which such a person imposes or would impose equally with regard to a female who is not pregnant, but—

(i) which is such that pregnant females who can comply with it are considerably less in proportion to the proportion of females who are not pregnant who can comply with it;

(ii) which cannot be reasonably justified irrespective whether the female to whom it is applied is pregnant or not; and

Prohibition of discrimination by partnerships

8. (1) No partnership shall with regard to—
 (a) any position as a partner in the partnership which is offered by the partnership;
 (b) any arrangements made by the partnership to invite persons or to recruit or select candidates for a position as partner;
 (c) any advertisement in which the partnership advertises a position as partner; or
 (d) the conditions, including the remuneration and other partnership benefits, on which the partnership offers the position.
 discriminate against a person on the ground of sex, marital status or pregnancy. 10
- (2) No partnership shall with regard to—
 (a) the benefits or profit-sharing by partners in the partnership;
 (b) training or any other benefits, facilities or services;
 (c) the dissolution of a partnership against a partner; or
 (d) general working conditions.
 discriminate against a partner in the partnership on the ground of sex, marital status or pregnancy. 15
- (3) Subsections (1) and (2) shall, in so far as they prohibit discrimination on the ground of sex, not apply with regard to a position as partner where the sex of the partner is a genuine occupational requirement for the relevant position. 20

Work, employment and positions where sex is an occupational requirement

9. The Minister may, without derogating from the generality of section 5(3), 7(2) and 8(3), by notice in the *Gazette* specify the types of work, employment and positions which for the purposes of those sections shall be regarded as employment and positions in respect of which the sex of a person is a genuine occupational requirement. 25

Prohibition of discrimination by registered societies

10. (1) No registered society shall with regard to the admission, or the conditions of admission, of persons as members of the society discriminate against a person on the ground of sex, marital status or pregnancy. 30
- (2) No registered society shall with regard to—
 (a) the benefits, facilities or services which it offers its members;
 (b) the conditions of membership or the variation of the conditions of membership; or
 (c) the renewal, extension, withdrawal or suspension of membership.
 discriminate against a member of the society on the ground of sex, marital status or pregnancy. 35

Prohibition of discrimination by occupational controlling bodies

11. (1) No occupational controlling body shall with regard to the admission or conditions of admission of persons to the profession, occupation, craft or trade which is controlled by the occupational controlling body, discriminate against a person on the ground of sex, marital status or pregnancy. 40
- (2) No occupational controlling body shall with regard to—
 (a) the benefits, facilities or services which it offers to persons who have been admitted to the profession, occupation, craft or trade;
 (b) the conditions of any registration, admission or recognition of such persons, or the variation of such conditions;
 (c) the renewal, extension, withdrawal or suspension of any such registration, admission or recognition.
 discriminate against a person who practise such profession, occupation, craft or trade on the ground of sex, marital status or pregnancy. 45
- (3) Subsections (1) and (2) shall, in so far as they prohibit discrimination on the ground of sex, not apply with regard to the participation in a competitive sport or 50

sport activity in which males and females do not as a rule compete with each other on the ground of physical attributes.

Prohibition of discrimination by educational institutions

12. (1) No educational institution shall with regard to—
- (a) the admission of persons to or the expulsion of persons from such an institution; or
 - (b) the education or training which is provided at such an institution.
- discriminate against a person on the ground of sex, marital status or pregnancy.
- (2) Subsection (1) shall not prevent—
- (a) an educational institution which is managed exclusively or mainly for pupils or students of a particular sex to refuse the application of a person of the opposite sex for admission to the institution; or
 - (b) separate living quarters for males and females who receive education or training at such an institution.

Prohibition of discrimination in respect of executive acts

13. No person who has a discretionary power in respect of an executive act shall in the exercise of such power discriminate against a person on the ground of sex, marital status or pregnancy.

Sexual harassment

14. (1) No employer shall sexually harass an employee in his or her employment or a person who applies for employment or a position with him or her.
- (2) No employee of an employer shall sexually harass another employee in the service of such an employer or a person who applies for employment or a position with such employer.
- (3) No member of the staff of an educational institution shall sexually harass a pupil or student at such institution or a person who applies for admission as a pupil or student at such institution.
- (4) For the purpose of this section sexual harassment means any conduct where a person makes an unwelcome sexual suggestion to another person, or makes an unwelcome request for a sexual favour to another person, or engages in any other unwelcome conduct of a sexual nature in relation to another person, in circumstances where such other person has reasonable grounds to believe that the rejection of such conduct may prejudice him or her—
- (a) in any application for employment or a position with an employer or for admission to an educational institution; or
 - (b) in the continuation or the circumstances of his or her employment with an employer or of his or her studies at an educational institution.

Jurisdiction of Industrial Court

15. For the purpose of the Labour Relations Act, 1956 (Act No. 28 of 1956), a contravention of sections 5, 6, 7, 8, 10, 11, 12, 13 or 14 of this Act shall be deemed to be an unfair labour practice.

Certain agreements invalid

16. (1) Subject to the other provisions of this Act or any exclusion or exemption under section 31, no agreement, whether in writing or verbally and whether concluded before or after the commencement of this Act, shall be valid in so far as it is contrary to a provision of this Act.
- (2) Subsection (1) shall for a period of two years after the commencement of this section not apply to agreements existing at such commencement.

CHAPTER II

PROMOTION OF EQUAL OPPORTUNITIES

Equal Opportunities Commission

17. Hereby is established a Commission to be known as the Equal Opportunities Commission. 5

Objects of Commission

18. The objects of the Commission shall be to promote the elimination of discrimination on the ground of sex, marital status and pregnancy and the creation of equal opportunities between males and females.

Functions of Commission

19. (1) In order to achieve the objects of section 18, the Commission may, in addition to that which the Commission shall or may do in terms of the other provisions of this Act— 10

- (a) gather and process information on any matter to which this Act applies;
- (b) undertake studies and surveys on such a matter;
- (c) make recommendations on such a matter to any relevant authority;
- (d) draw up and disseminate information documents on such a matter;
- (e) draw up and promote draft legislation on such a matter. 15

(2) The work incidental to the functions of the Commission shall be performed by officials in the service of the Department of Justice designated for that purpose by the Director-General of that Department. 20

Constitution of Commission

20. (1) The Commission shall consist of five members appointed by the State President on the ground of their special knowledge or experience and dedication to the object for which the Commission is established in terms of this Act. 25

(2) The State President may when appointing the members of the Commission under subsection (1), consult any organization which strives for equality and equal opportunities between males and females.

(3) At least one of the members of the Commission shall be appointed in a full-time capacity. 30

Chairperson

21. (1) The State President shall designate a member of the Commission as chairperson of the Commission.

(2) A member of the Commission who has been designated as chairperson shall hold office as chairperson for as long as he or she continues to be a member. 35

(3) Whenever the chairperson is absent or not able to perform his or her functions as chairperson, or whenever the designation of a chairperson is pending, the Minister may designate any member of the Commission to act as chairperson during the absence or inability of the chairperson, or until a chairman has been designated, as the case may be. 40

Period of office and remuneration

22. (1) A member of the Commission shall be appointed for a period determined by the State President at the time of the member's appointment, but not exceeding five years.

(2) A person whose period of office as a member of the Commission has expired, may be reappointed. 45

(3) A member of the Commission may be paid from moneys allocated by Parliament for this purpose, such allowances (including remuneration in the case of

a full-time member), which the Minister, with the approval of the Minister of Finance, may determine.

Meetings

23. (1) A meeting of the Commission shall be held at such time and place determined by the chairperson. 5

(2) The majority of the members of the Commission shall form a quorum for a meeting of the Commission.

(3) The decision of the majority of the members of the Commission present at a meeting of the Commission, shall constitute a decision of the Commission, and in the event of an equality of votes on any matter the chairperson of the Commission shall, 10 in addition to a deliberative vote, also have a casting vote.

(4) In this section "chairperson" includes a member of the Commission designated under section 21(3).

Discriminatory laws

24. (1) The Commission may inquire into a provision of any law, including a 15 provision of the common law, which distinguishes between males and females, or has a different effect in its application between males and females, with a view to establishing the possible unreasonableness of such a distinction or effect.

(2) If the Commission finds that the provision concerned constitutes an unreasonable distinction between males and females or has an unreasonable effect with 20 respect to either males or females, the Commission may submit proposals for the amendment or repeal of the provision, together with a report of the Commission's inquiry, to the Minister.

(3) Subsection (1) shall not affect any provision which on the ground of physical attributes, other than mere strength or stamina, applies differently to males and 25 females or applies only to males or only to females.

Discriminatory practices

25. (1) The Commission may inquire into any arrangement, custom, condition or circumstance which is generally applied or in force with regard to any matter and 30 which distinguishes between males and females, or which has a different effect on males and females, with a view to establishing the possible unreasonableness of such a distinction or effect.

(2) If the Commission finds that the arrangement, custom, condition or circumstance concerned constitutes an unreasonable distinction between males and females 35 or has an unreasonable effect with respect to either males or females, the Commission may submit proposals (including legislative proposals) for the elimination of such unreasonable distinction or effect, together with a report of its inquiry, to the Minister.

(3) Subsection (1) shall not affect any arrangement, custom, condition or circumstance which on the ground of physical attributes, other than mere strength or 40 stamina, or on the ground of the religious rights of a religious group, applies differently to males and females or applies only to males or only to females.

Commission's power to conduct inquiries

26. (1) The Commission shall for the purposes of an inquiry under section 24 or 25 45 have the same powers as the South African Law Commission under the South African Law Commission Act, 1973 (Act No. 19 of 1973).

(2) The Commission may undertake any inquiry under sections 24 or 25 in conjunction with the South African Law Commission, and the South African Law Commission may undertake any such inquiry on behalf of the Commission if 50 requested thereto by the Minister.

Code of Conduct

27. (1) The Commission may draft a code of conduct, which shall not be inconsistent with this Act, with regard to the following matters:

(a) the identification of arrangements, customs, conditions and circumstances

which in practice differentiate or may differentiate unreasonably between males and females or which have or may have an unreasonable effect on either males or females:

- (b) the elimination of such arrangements, customs, conditions or circumstances or of any unreasonable distinction or effect which such arrangements, customs, conditions or circumstances may have; 5
 - (c) the creation of special measures directed towards establishing equality between males and females, with due regard to the interests of other persons;
 - (d) care centres for children of working parents; 10
 - (e) the treatment of female employees with regard to pregnancy and childbirth, including maternity benefits;
 - (f) in general the promotion of equality and equal opportunities between males and females.
- (2) The Commission shall submit to the Minister a code drawn up under subsection (1) for his approval. 15
- (3) The Minister may publish the code in the *Gazette* with such amendments as the Minister may think fit, or without amendments.
- (4)(a) A code published under subsection (3), may be amended from time to time.
- (b) For the purposes of such an amendment subsections (1), (2) and (3) shall apply *mutatis mutandis*. 20
- (5)(a) A provision of the code shall not be binding, except where, and to the extent to which, the Minister declares it binding by notice in the *Gazette*.
- (b) When the Minister declares a provision of the code binding, the Minister may determine that any contravention of or any failure to comply with such a provision shall be an offence. 25

Complaints with regard to contraventions

28. (1) The Commission may with regard to any alleged contravention of a provision of this Act which is brought to the notice of the Commission, take such steps which it may regard as necessary under the circumstances, including— 30

- (a) the giving of legal and other advice to any person who has been prejudiced because of the contravention;
- (b) the lodging of a complaint on behalf of the prejudiced person with the Ombudsman in terms of the Ombudsman Act, 1979 (Act No. 118 of 1979), in so far as such contravention falls within the jurisdiction of the Ombudsman; 35
- (c) the lodging of a complaint on behalf the prejudiced person with the Industrial Court, referred to in section 17 of the Labour Relations Act, 1956 (Act No. 28 of 1956), in so far as such contravention falls within the jurisdiction of the Industrial Court; or 40
- (d) the submission of representations on behalf of the prejudiced person to any person who is responsible for the contravention or has control over its rectification.

(2) For the purposes of section (1) the Commission may order any person who is responsible for the alleged contravention of a provision of this Act to submit to it within a fixed period a report in writing on the circumstances regarding the alleged offence. 45

Annual report

29. The Commission shall within six months after the expiry of each year submit to the Minister in both official languages a report regarding its activities during that year. 50

Submission of certain reports and proposals of the Commission to Parliament

30. Copies of—

- (a) an annual report of the Commission submitted to the Minister in terms of section 29; and 55
- (b) any reports and proposals of the Commission submitted to the Minister in terms of section 24 or 25.

shall be tabled by the Minister in Parliament within 14 days after its receipt, if

Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of the next ordinary session.

CHAPTER III MISCELLANEOUS PROVISIONS

Exclusions and exemptions 5

31. (1) The Minister may by notice in the *Gazette*, on the conditions and subject to the qualifications determined by the Minister, exclude from the operation of one or more of or all the provisions of this Act—

- (a) any industry, profession, occupation, craft or trade; 10
- (b) any person or institution or category of persons or institutions;
- (c) any agreement or category of agreements;
- (d) any category of employment or positions; or
- (e) any category of executive acts.

(2) The Minister may exempt any person in writing, on the conditions and subject to the qualifications determined by him, from the operation of one or more of or all the provisions of this Act. 15

(3) The Minister may at any time—

- (a) amend or revoke a notice issued under subsection (1) by notice in the *Gazette*; 20
- (b) amend or revoke an exemption granted under subsection (2) by written notice to the exempted person.

Permissible discrimination in favour of females

32. This Act shall not affect—

- (a) a provision of any law, the common law or the law of indigenous groups, a provision of any agreement or the domestic rules of any society or organization, or any rule of practice, custom or understanding aimed at protecting or treating differently any particular female or females, or any particular category of females, or females in general, for reasons inherent to the physical nature of the female; 25
- (b) the performance of military service in so far as it is only required of males; 30
- (c) any special treatment which a female receives because of pregnancy or childbirth or recovery after childbirth; or
- (d) any special measures of which the sole purpose is the furthering of the development and advancement of females to enable them to realize their natural talents and potential in equality with males. 35

Permissible discrimination on the ground of religious rights

33. This Act shall not affect the *bona fide* application by a religious association, society or organization of the religious rights of that association, society or organization.

Prohibition of victimization 40

34. An employer shall not dismiss an employee from his or her employment, or reduce the scale of the employee's remuneration, or alter the terms or conditions of the employee's employment to terms and conditions which are less favourable, or alter the employee's position in relation to other employees in the service of such an employer to the employee's detriment, because of the fact, or because such employer suspects or believes, whether or not the suspicion or belief is justified or correct, that the said employee— 45

- (a) has lodged a complaint or intends to lodge a complaint under section 28 with the Commission, or has supplied or intends to supply the Commission with any information in connection with such an employee's employment with that employer; 50

- (b) has laid or intends to lay a matter under section 4(1)(c) of the Ombudsman Act, 1979 (Act No. 118 of 1979), with the Ombudsman;
- (c) has applied or intends to apply to the Industrial Court to declare any conduct of that employer in terms of section 15 to be a unfair labour practice; or
- (d) has applied or intends to apply to a court of law for relief with regard to the said employee's employment with that employer.

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Offences and penalties

35. Any person who—

- (a) contravenes or fails to comply with a provision of the code referred to in section 27(5)(b);
 - (b) fails to comply with an order under section 28(2);
 - (c) contravenes a provision of section 34;
 - (d) furnishes information or makes a statement to the Commission which is false in a material respect knowing it to be false.
- shall be guilty of an offence and on conviction be liable to a penalty not exceeding R5 000 or to imprisonment for a period not exceeding six months.

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Insertion of section 2A in Act 118 of 1979

36. The following section is hereby inserted in the Ombudsman Act, 1979, after section 2:

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"Appointment, conditions of service and functions of Assistant Ombudsman

2A. (1) The State President shall appoint, in a full-time or part-time capacity, a person as an Assistant Ombudsman.

(2) The provisions of section 2 shall apply *mutatis mutandis* in respect of the Assistant Ombudsman.

(3) The Assistant Ombudsman shall, subject to the control and directions of the Ombudsman, deal in the name of the Ombudsman with matters brought before the Ombudsman under section 4(1)(e)."

Amendment of section 4 of Act 118 of 1979, as amended by section 3 of Act 55 of 1983 and section 3 of Act 104 of 1991

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37. Section 4 of the Ombudsman Act, 1979, is hereby amended by the addition after paragraph (d) of subsection (1) of the following paragraph:

- "(e) he has been discriminated against in an unlawful manner by the State or an institution, body, society or organization referred to in the definition of 'public moneys' on the ground of sex, marital status or pregnancy within the meaning of the Promotion of Equal Opportunities Act, 1993, and that he has suffered serious prejudice or account of such discrimination."

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Act binds State

38. This Act shall bind the State.

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Short title and commencement

39. (1) This Act shall be called the Promotion of Equal Opportunities Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.

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ANNEXURE C

The following parties have made submissions to the Committee and these submissions are herewith included in the report:

- * Transkei Government
- * National Peoples Party
- * United Peoples Front
- * African National Congress
- * Inkhata Freedom Party
- * Inyandza National Movement

(C) AMENDMENT OR REPEAL OF LEGISLATION IMPEDING FREE POLITICAL ACTIVITY AS WELL AS DISCRIMINATORY LEGISLATION:

1. We undertake to offer the Technical Subcommittee our fullest support and co-operation.
2. You will be notified of the name of the officer from our Department of Justice who will work with you, in due course. Please notify us of the day and date on which the Technical Subcommittee will confer with him/her on this matter. Refer all enquiries to Z. Titus who can be contacted through Dr Eloff's office. In the meantime copies of the appropriate legislation as well as a list thereof will be made. We have an updated index covering subordinate and primary legislation introduced in Transkei after 1963. There are also a number of pre-1976 South African laws applicable in Transkei. Reference will also be made thereto. We are also compiling a list of the laws falling within the purview of the laws under consideration but which have otherwise been repealed or amended. We would welcome a comprehensive list of the laws the subcommittee has already identified in respect of the other States and homelands.
3. A practising attorney will work with the officer from the Department of Justice on this matter. We feel that someone from outside of Government will provide the team with the fair balance required in tackling a matter of this nature.

4. Finally, a circular letter will be sent to all organisations in Transkei requesting them to contribute to this exercise. This is being done in order to ensure that there will be no queries with regard to our handling of this matter.

19 May 1993

Dr.T. Sloff
Administration
Multi Party Negotiation Process
World Trade Centre

Dear Dr. Sloff

Technical Committee on the repeal or amendment of legislation
impeding free political activity and discriminatory legislation.

The N.P.P.'s comments on the First Report of the Committee

In addition to the repeal or the amendment of such legislation
a process should commence in order to restore the rights of
those who have suffered as a result of such legislation.

The Acts that repealed the Group Areas Act and The Population
Registration Act should be examined.

In respect of those who have lost their properties because
of Racially-Based Legislation the Government should arrange
for the affected persons to either get their properties back
or be provided with suitable alternative premises not at
market value.

The Technical Committee also dealt with the Freedom of the
Press and the question of Free access to information.

In this respect the Committee also referred (paragraph 5.4)
to the actions of Government bodies and also private individuals
or groups.

The Code should also deal with the rights of journalists
reporting on any movement without hindrance from his/her
superiors and also such rights must not be interfered with
by any individual or organisation that may want to coerce
journalist how to think and what to write .



With Kind Regards

A. Rajbansi

UPF'S SUBMISSION TO THE TECHNICAL COMMITTEE
ON THE AMENDMENT OR REPEAL OF DISCRIMINATORY LEGISLATION

1. LOCAL GOVERNMENT BODIES FRANCHISE ACT 117 OF 1984

There is no shred of doubt that this Act is cast in the same racial mould as the Constitution Act itself is. It is actually crystallization at local level of that which is envisaged by the constitution. For as long as this law remains on the statute book, it would not be possible for other races to participate in the local elections in such areas except those that are specifically mentioned in the Act. On the other hand the Black Local Authorities Act is designed to deal exclusively with Blacks within their own areas. This sound very much like the American pipe-dream of "separate but equal" philosophy.

In the kind of a situation created by this Act, it would not be possible to speak of a climate where free political activity can take place. This Act puts shackles on people on racial lines. It has to go before one could create an ideal climate for free political activity. The same point still holds good in respect of the Black Local Authorities Act.

2. ELECTORAL ACT 45 OF 1979

This Act extends the rights to vote to persons who are either White, Coloured or Indian in term of section 52 of the Constitution Act (Act 110 of 1983). Free political activity presupposes that a person should have the right to vote for an candidate of his choice. With this Act firmly in place, the Black people would not have such a right. How does one then exercise his democratic right to elect the government of his own choice if the very fundamental right to vote for such

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a right. How does one then exercise his democratic right to elect the government of his own choice if the very fundamental right to vote for such government is denied him by legislation.

3. REFERENDUMS ACT 108 OF 1983

There is presently much talk about a referendum being held with a view to testing the views of the people of South Africa before a transition into the new South Africa. In terms of this Act only the views of Whites, Coloureds and Indians may be tested and known. Blacks cannot lawfully participate in this kind of a referendum because for purposes of this Act they do not qualify as 'voters'.

4. SOCIAL PENSIONS

The tenets of justice would dictate that there be one act dealing with the aspect of social pensions without referring to a particular class of persons or a specified population group. However our Act empowers the Minister to issue a proclamation relating to a particular population. This would obviously tempt the Minister to issue proclamations designed to treat people unequally. This is the position as regards the benefits to which people belonging to different race are entitled ~~differs~~ and the yardstick is the colour of their skin.

These acts should be repealed.

5. PREVENTION OF ILLEGAL SQUATTING ACT 52 OF 1951

It is a notorious fact that the policy of the Government in the past has been that Blacks were so journeymen in the urban areas and therefore the policy was that they would remain

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there for as long as they were working. As a result there was no clear and permanent arrangement for the provision of housing for blacks. Hence the problems of squatting are mostly confined to Black communities.

If the policy has now changed and it is accepted that Blacks are in cities to stay, then this Act will fall into desuetude and there is no reason for its continued existence. Besides the harsh manner in which the "squatters" were treated cannot be countenanced by any society claiming to be civilized.

6. EDUCATIONAL POLICY

A plethora of laws are in place to regulate education issues of the numerous departments of education. The problem with these laws is that they were purposely made to disadvantage other races educationally.

It has now become urgent and imperative that these discriminatory laws be removed so that all the people in this country should have the right to the same educational opportunities. There should be only one system of education. This will ensure that the same quality and the standard of education will be maintained.

7. BLACK ADMINISTRATION ACT 38 OF 1927

This ACT was an ideal instrument in the hands of the Government to control the Black people in this country and their traditional institutions such as bogosi. Since the new policy is that all people should be equal in the eyes of the law, then there is no reason why there should still be acts controlling only lives of certain races. Such laws have no place in the new South Africa because they would go against the of equality.

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8. SELF-GOVERNING TERRITORIES CONSTITUTION ACT (ACT 21 OF 1971)

This is undoubtedly the foundation upon which separate development is built. It is the instrument by which the Government would extent the 'vote' to the voteless and voiceless Blacks. They were to be developed into independent nations. There was no hope for most of these enclaves because they could never be economically viable - they had to be sustained financially by the Central Government in order to survive.

Reality has now dawned and it has been realised that this system cannot be sustained forever because it was prohibitively expensive to maintain.

Reality would dictate that as this law was founded on apartheid, it should go when apartheid goes.

At this stage the self-governing territories have original powers to legislate on certain scheduled matters. In those instances where the legislative Assemblies have such powers, not even RSA parliament legislation can apply in these self-governing territories. Therefore, this piece of legislation should go so that there could be uniformity and certainty in our law.

9. CONSTITUTION ACT 110 OF 1983

This is the basis of the tricameral parliament which despite all opposition from Black communities, was bulldozed into existence in 1983. There were hundreds of casualties as a result of the introduction of this Act. Even to this day the effect hereof are still felt. One can hardly speak of a climate conducive to free political activity for as long as this Act remains on the statute book.

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10. CONCLUSION

In a nutshell we are on all fours with the view expressed that all the acts referred to are discriminating on the basis of race. Some of these laws are so cruel that they dehumanised people and made them lose their self-esteem and self-esteem and self-respect. One need only think of the notorious migratory labour system that was designed to tear families asunder. The clear manifestations of the psychological effect that this system has had on our people is still with us.

There is no room for discriminatory laws in a new South Africa.

UNITED PEOPLE'S FRONT SUBMISSION TO THE TECHNICAL COMMITTEE
ON THE AMENDMENT OR REPEAL OF DISCRIMINATORY LEGISLATION

ADDENDUM:

The UPF is of the opinion that in view of the possibility that other administrations might be reluctant to disclose all discriminatory legislation operative within their jurisdictions, it would be wise if the technical committee were to invite members of the public to make representations on the legislation that in their respective opinions, inhabit free political activity within their respective areas.

This will, in the UPF's view, act to counter the possibility referred to above.

Submission by the African National Congress

To the Technical Committee on the Repeal of Discriminatory Legislation

19 May, 1993

These representations are done in line with the call by the Multiparty Negotiating Process for various political parties to make submissions to be considered by the various technical committees in order to prepare for their discussion and negotiation by the Negotiation council. Our submissions are based on the ANC Women's League submissions to Codesa and those decisions of the Gender Advisory Committee.

A. CONSTITUTIONAL MATTERS

1. Constitutional Principles

- 1.1 South Africa will be a united, sovereign state in which all will enjoy a common South African citizenship.
- 1.2 South Africa will be a democratic, non-racial and non-sexist country.
- 1.3 The constitution shall be the supreme law.
- 1.4 There shall be a justiciable Bill/Charter of Fundamental Rights, which will spell out fundamental and socio-economic rights of all citizens and how state policies will ensure their implementation.
- 1.5 There shall be separation of powers between the legislature, the executive and the judiciary with appropriate checks and balances.
- 1.6 There will be a legal system that guarantees the equality of all before the law.
- 1.7 There will be representative and accountable government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters role and, in general, proportional representation.
- 1.8 The diversity of languages, cultures and religions will be acknowledged subject to principles of equality, democracy, non-sexism and non-racialism.
- 1.9 All will enjoy universally accepted human right, freedoms and civil liberties including freedom of religion, speech and assembly which will be guaranteed by an entrenchment of a justiciable bill of fundamental rights subject to the principle of equality, democracy, non-sexism and non-racialism.
- 1.10 The government shall be structured at national, regional and local level. At each level there shall be democratic representation.
- 1.11 The Bill of Rights shall guarantee just property rights (Provided that legislation shall in the public interest, authorise expropriation against payment of reasonable compensation which shall, in the event of a dispute, be determined by a court of law).
- 1.12 The constitution shall define a suitable role for traditional leaders consistent with the objectives of a united, non-racial, non-sexist and democratic South Africa.

Other issues to be looked at:

- * Notion of the family
- * regressing historical racial and gender imbalances
- * charter for women's rights, to form part of the Bill of Fundamental Rights, which among other things will deal with abortion, privacy, the family, women and child protection, diverse cultural practices, etc.
- * the rights of the disabled people

2. Constituent Assembly/Constitution making Body

- 2.1 This must be a democratically elected body.
- 2.2 When drawing up electoral procedures, methods should be sought to encourage full participation of women. This should apply to both encouraging women to exercise their political rights to campaign and stand for elections and to vote. These provisions would include, among others, education programmes, elimination of sexual harassment, drawing up of electoral lists and giving women exposure in the media.
- 2.3 All parties should include a proportion of women in their electoral lists. It is essential that women are evenly distributed within the lists, to ensure their inclusion in the elected body.
- 2.4 Among the subcommittees to be formed there should be a gender sub-committee to monitor and raise gender issues in the drafting of the constitution and bill of rights.

B. TRANSITIONAL EXECUTIVE COUNCIL AND ITS SUB-COUNCILS AND COMMISSIONS

- 1. Women should be included in the TEC and its sub-councils in addition there should be a gender commission. This will be in pursuant of the principles of a non-racial, democratic and non-sexist South Africa. We recognise that the noble ideal of a non-sexist state will not be realised if the TEC stage of the transition does not have women represented in all structures as an appropriate structure to level the playing fields with regard to gender. The establishment of a gender commission will **enhance** women's participation in all the transitional structures.

1.1 Status of the gender commission

- * It should be an independent commission of a specialised nature, enjoying the same status as the other TEC Commission.

1.2 Composition of the commission

- * It should be composed of 7(seven) to 11(eleven) gender specialists

1.3 Functions/Powers of the Gender Commission

- * It should ensure gender sensitisation of the TEC and its Sub-councils.
- * It should scrutinise all recommendations from the sub-councils and come up with gender perspective of these.
- * It shall also make an input into legislation pertaining to the reform and repealing of law and administrative procedures that impinge on the rights of women.

1.3 Relations with other transitional structures

- a. Independent Electoral Commission: One of the tasks of the IEC would be to set out rules that would enable maximum participation in the first non-racial elections. We believe that such rules should ensure that women participate effectively in elections. Special procedures will have to be drawn so as to realise this goal. The commission will be in the best position of defining enabling legislation for women's maximum participation.

The following are examples of these functions. There is the need to be sensitive to women's situations such as the double burden of women which is employment and family management. Accordingly, electoral procedures should conform to the times when women are most available. Another is that of general illiteracy amongst women. Voter education should be tailored to suit women too. There are current indications that women under tribal authorities, in the farms and those in domestic service are denied the right to organise meetings or to attend meetings. The probability is that intimidation would increase during elections. There is therefore the need for educational material to be produced informing the populace and women on rights to vote. There is also need to repeal by-laws which restrict access to farm workers. Educational material directed to chiefs and employees should be produced.

- b. Media: currently there is a move towards setting up a media board. The drafting of guidelines for fair usage of the electronic media during the transitional period dominates the media discourse. The gender commission will make appropriate recommendations in this regard. The media personnel as relating to the board should include women. The commission will also define in terms of the gender perspective what fair coverage implies. These factors should apply to the print media as well.

REPEAL OF GENDER DISCRIMINATORY LEGISLATION

In its report to CODESA 2 the Gender Advisory Committee called for the "repeal of all legislation in South Africa and the TBVC states which discriminates on the basis of race, creed, or gender which circumscribe and impede free political, economic and social activity." It suggested that "this be attended to by a general law asserting certain basic civil and political rights, combined with an omnibus law repealing all legislation in accordance with a schedule of Acts to be provided."

The identification of such legislation is obviously a very involved task which might take a long time. It also has a danger of leaving some laws and thus not being able to repeal them. It will seem a practical way of dealing with this will be to enact an omnibus law which will automatically outlaw all discriminatory legislation will will impede political activity and to set up an enforcement mechanism which will be accessible to all citizens without going through long court procedures.

C. LAW REFORM FOR THE FREE AND FAIR PARTICIPATION OF WOMEN

CITIZENSHIP:

1. The South African Citizenship Act of 1949 contains many clauses which are discriminatory to women. It also includes clauses which may prove problematic to returning exiles and their families. This memorandum will only focus on the gender implications of the act. Some of the discriminatory consequences of these clauses relate to the law of domicile and the fact that the wife has always followed the domicile of her husband. These will doubtless be removed once the 1992 Domicile Act is proclaimed.

The following commentary on the act must be read with the act.

- 1.1 Section one deals with definitions. This requires amendment in the following manner:
 - 1.1.1 the definition of "father" should be rendered redundant; and
 - 1.1.2 the definition of "responsible parent" must apply equally to the mother or father of a minor.
- 1.2 Citizenship by Birth: persons born in SA before 1949 (section 2) Section 13 appears to protect the position of married women in this section.
- 1.3 Citizenship by Birth: Persons born outside of SA who qualify for citizenship by birth (section 4(1)(b)) This section only confers the status of citizenship by birth on children of SA fathers working outside SA. This must be amended to include the children of SA mothers working outside SA.
- 1.4 Citizenship by descent - Persons born outside SA before 1949 (section 5) This generally only allows for citizenship through the male line and must be amended.
- 1.5 Citizenship by descent - persons born outside SA after 1949 (section 6) Section 6 (1)(a) has different requirements according to whether the mother or father is a SA citizen. This distinction should be removed.
- 1.6 Citizenship by Naturalisation (section 10)

1.6.1 Section 10(2) makes allowances for the wives to qualify for permanent residence outside of the country in certain circumstances, but not for husbands. In other words the spouse of a man receives benefits that are denied the spouse of a woman.

1.6.2 Section 10(4) requires application by a "responsible parent" or "guardian". These are overwhelmingly fathers and not mothers. Thus women will generally not be able to apply on behalf of their children.

1.6.3 Section 10(4) bis only applies to the male line.

1.6.4 Section 10(6) provides special dispensations for wives and widows of SA citizens, but not for husbands and widowers.

1.7 Permanent residence and ordinary residence

These are important requirements for the acquisition of citizenship by naturalisation. One has to be lawfully admitted for the purpose of permanent residence, and to be ordinarily resident and physically resident for certain periods before qualifying for citizenship by naturalisation. This means that any discrimination in that acquisition of permanent and ordinary residence has to be considered. These are discussed in respect of the Aliens Act no 1 of 1937 below.

1.8 Problems of Proof Insofar as many people do not have papers of any kind, proof of birth, marriage and residence will be difficult.

2. The Aliens Act no 1 of 1937

2.1 Section 4 sets out the requirements for permanent residence. The following provision discriminates against women:

2.1.1 Section 4(3)(e) allows the wife, children and dependants of a qualified man to qualify for permanent residence; but does not extend the same benefits to the husband, children and dependents of a qualified woman.

2.2 Section 12 sets out the exceptions to the section 2 requirement of permanent residence permits. Insofar as section 12 (1)(a) bases an exception on the acquisition of a lawful domicile prior to 1937, this may discriminate against married women who follow the domicile of their husband.

3. The Restoration of South African Citizenship Act no 73 of 1986 provides for the restoration of SA citizenship to TBVC citizens. Insofar as this depends on actual

application and residence qualifications, amny people may be discriminated against. Careful attention should be paid to the posiution of all TBVC residents.

4. SECURITY OF EMPLOYMENT FOR PUBLIC SERVANTS

A. TEACHERS:

1. Women teachers are subjected to gender discrimination in the law and in the practices of the teaching profession. Legal discrimination against women (organised on a racial basis) means that they receive few or no maternity rights, and different pension, medical aid and housing subsidy benefits. The forms of indirect discrimination include unequal pay, unequal division of labour, gendered teacher training, sexual harassment and the allocation of "feminine" tasks within schools such as "pouring the tea".
2. Teachers are presently excluded from the Labour Relations Act and from the current initiative to draw up a Public Service Labour Relations Act. Teachers accordingly have no rights of freedom of association, collective bargaining and dispute resolution. Teachers in state schools have no recourse to the courts (civil or labour) in respect of "unfair labour practices".
3. In relation to job security, the rights of a women to retain her permanent status as a teacher after marriage is not always guaranteed. If an unmarried woman falls pregnant, this is regarded as "misconduct" and she is dismissed. Teachers generally are also restricted in their political participation:
 - 3.1 The Indians Education Act and Coloured Persons Education Act describes the following as "misconduct" which can lead to a disciplinary hearing: If a teacher "makes use of his position in the department to promote or to prejudice the interests of any political party, or presides or speaks at any public or political meeting, or draws up or publishes or causes to be published, any writing or delivers a public speech to promote or to prejudice the interests of any political party" (S16(ga) in both acts).
 - 3.2 The Education Affairs Act (House of Assembly) sets out the position on civil and political rights of teachers in section 96 of the act. It allows a teacher to be a member of and in the management of a political party but states that he or she may not act politically in a manner which "may embarrass the department", act as a chairperson of a public meeting, publish in his or her name a document to further or prejudice apolitical party or use his or her position as a teacher to promote a political party.
 - 3.3 Regulation 15 of the 1981 regulations in terms of the Education and Training Act provide that a teacher cannot use his or her position to promote the interests of a political party/organisation; publish a paper or

express him or herself in the press or in a public meeting on political matters. A teacher also not circulate documents relating to elections or work in respect of an election in a school, on school premises or at a school function.

B. POLICE:

The Police Act does not appear to contain any discrimination in respect of job security. If there is such discrimination, it is likely to be found in the regulations made in terms of the act. I was unable to track these down due to time restraints.

There are restrictions on the political involvement of the police but they are appropriate to the role of the police.

C. PUBLIC SERVICE:

There is no overt discrimination in the Public Service Act in respect of political freedom and job security. It may well be present in the regulations and practices of the public service.

The restrictions on political involvement appear to be appropriate to the role and position of public servants.

D. NURSES:

The situation of male and female nurses has also to be looked at. The Nurses Act restrict them from political participation and are not covered by the Labour Relations Act.

E. DOMESTIC AND FARMWORKERS: There is need to focus on these two groups - whose political participation is restricted by by-laws and other measures.

CITIZENSHIP:

5. TBVC citizenship: do women have lesser rights of citizenship than men?

In each case citizenship of the particular "independent state" is governed by the "constitution" act and a citizenship act.

5.1 Bophuthatswana: The Bophuthatswana Constitution act provides for citizenship as follows (sec. 80):

2.1.1 All Batswana defined by an act of parliament

2.1.2 All persons legally domiciled for at least 5 years (this was automatic until 1978 when application had to be made). This is a problem in so

far as women follow the domicile of their husband

2.1.3 Anyone else who applies and is accepted as a citizen

The Bop Citizenship Act is discriminatory. Persons born outside of Bop can only qualify for citizenship through the male line. This affects citizenship by birth and descent. The provisions regulating the acquisition of citizenship by registration or naturalisation grant greater rights and privileges to men and the dependants of men.

- 5.2 **Ciskei:** The Ciskei Constitution act states that citizenship shall be obtained by birth, descent and naturalisation on such conditions as may be determined by an act of parliament.

The Ciskei Citizenship Act grants citizenship to persons born outside of the Ciskei only through the male line. the provisions regulating the acquisition of citizenship by registration or naturalisation grant greater rights and privileges to men and thne dependants of men.

- 5.3 **Venda:** The Venda Constitution Act regulates citizenship and appears to allow citizenship to follwon either parent. The only discriminatory rule appears to apply to citizenship by registration / naturalisation which is dependent on 5 years domicile.

- 5.4 **Transkei:** I have been unable to track down the Transkei Constitution and Citizenship Act. It is probable that gender discrimination occurs in a similar maner to the other independent states.

"Democracy means freedom to choose"



INKATHA

Inkatha Freedom Party

IQembu leNkatha Yenkululeko

MULTIPARTY NEGOTIATION PROCESS
TECHNICAL SUBCOMMITTEE #6
ON THE AMENDMENT OR REPEAL OF
LEGISLATION IMPENDING FREE POLITICAL ACTIVITY
AND DISCRIMINATORY LEGISLATION

FIRST POSITION PAPER
OF THE INKATHA FREEDOM PARTY

WORLD TRADE CENTRE : 18 MAY 1993

All legislation impeding free political activity and discriminatory legislation should be amended or repealed immediately. This exercise needs to be preceded by the determination of applicable reference concepts. In fact this exercise amounts to a comparison between existing legislation and given concepts of political freedom and lack of discrimination. The preliminary threshold issue of what is discrimination and what is political freedom needs to be resolved. The IFP proposes that the Technical Sub-Committee reviews the existing legislation against the parameters of the Bill of Rights set forth in the Constitution of the State of KwaZulu/Natal and recommends the repeal of all the legislation which would not allow the free exercise of any of the rights set forth in such a Constitution.

Special attention should be given to those rights and considerations which are immediately related to the political presence of segments of society in the political process leading to elections and therefore special attention should be given to the rights of the victims of apartheid, women, the disabled and other groups which require special protection.

The IFP fear that any possible listing of legislation which carries with itself the potential for discrimination any impairment of free political activity would not be either exhaustive nor comprehensive. Therefore, rather than listing specific segments of legislation which ought to be repelled, the IFP finds it more appropriate to suggest the modus operandi of this technical sub-committee so as to ensure that this technical sub-committee will be able to identify any relevant piece of legislation to be amended or repelled.

Once this technical sub-committee has agreed on the reference parameter to be used to determine what needs to be amended or repelled --which we suggest to the Constitution of the State

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of KwaZulu/Natal-- it would be advisable that this technical sub-committee opens its door to receive the grievances of social and cultural formations throughout South Africa.

In fact, the type of work that the committee is going to undertake is substantially no different to a process of constitutional adjudication. In this respect it might be useful that the sub-committee forward a request letter to the judicial authorities of South Africa, requesting them to indicate what legislation would appear to be discriminatory or otherwise not in compliance with the preagreed parameter with relation to cases of controversy before them. The sub-committee should also open itself to the direct access of social and cultural formations in the country.

This exercise would be valuable to set the initial parameters for a future constitutional jurisprudence of a new South Africa. In this respect it would be advisable that this committee motivates all its recommendations on the basis of explicit constitutional principles rooted in acceptable and recognised principles of modern constitutionalism and human right protection.

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