

**SOUTH AFRICA MULTI-PARTY NEGOTIATING PROCESS NEGOTIATING
COUNCIL TECHNICAL COMMITTEE: TRANSITIONAL EXECUTIVE
COUNCIL AND SUB COUNCILS REPORTS 1-6 1993**



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TECHNICAL COMMITTEE ON VIOLENCE

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TECHNICAL COMMITTEE ON
TRANSITIONAL EXECUTIVE COUNCIL
(TEC)

1983
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TECHNICAL COMMITTEE ON VIOLENCE

Date

19 May 1983

27 May 1983

27 May 1983

3 June 1983

26 July 1983



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INTRODUCTION

**TECHNICAL COMMITTEE ON
TRANSITIONAL EXECUTIVE COUNCIL**

1. THE NEED FOR A TRANSITIONAL EXECUTIVE COUNCIL

For the reasons set out below, the Committee is of the opinion that there is a need for a Transitional Executive Council (TEC) during the period leading to the first elections:

(TEC)

- 1.1 In view of the wide acceptance of the need for democratic elections in South Africa, the date of which has provisionally been set for not later than the end of April 1994, it is important that the electoral process be seen as fair, open, free and unbiased;
- 1.2 A TEC will offer all participants in the Multi-Party Negotiating Process (MPNP) the opportunity of participating in matters relating to the effective and satisfactory management of the first stage of the transition to democracy;
- 1.3 In view of the multi-party participation in the process, a TEC will provide the required acceptance and acceptability of the process (legitimacy);
- 1.4 With increased legitimacy and acceptability of the management of the process, stability will be promoted and the levels of violence are likely to diminish;
- 1.5 This, in turn, will foster a climate conducive to fair and free elections;
- 1.6 A TEC will have the added advantage of making the process leading to the elections more transparent;
- 1.7 A TEC will promote domestic and international confidence in the constitutional process.

FIRST REPORT OF THE TECHNICAL COMMITTEE ON THE TRANSITIONAL EXECUTIVE COUNCIL / 13 MAY 1993

Within its terms of reference, and having regard to the decisions of the MPNP, other submissions made documents furnished to it including the report of Working Group 2 of Codes, the Committee recommends as follows:

INTRODUCTION

2.1 That legislation be drafted to provide for the establishment and functioning of a TEC and sub-councils.

1. THE NEED FOR A TRANSITIONAL EXECUTIVE COUNCIL

2.2 That the proposed legislation adopts the following scheme:

For the reasons that follow, **the committee is of the opinion** that there is a need for a Transitional Executive Council/Authority (TEC) during the period leading to the first elections:

2.2.2 Composition

- 1.1 In view of the wide acceptance of the need for democratic elections in South Africa, the date of which has provisionally been set for not later than the end of April 1994, it is important that the electoral process be seen as fair, open, free and unbiased;
- 1.2 A TEC will offer all participants in the Multi-Party Negotiating Process (MPNP) the opportunity of participating in matters relating to the effective and satisfactory management of the first stage of the transition to democracy;
- 1.3 In view of the multi-party participation in the process, a TEC will provide the required acceptance and acceptability of the process (legitimacy);
- 1.4 With increased legitimacy and acceptability of the management of the process, stability will be promoted and the levels of violence are likely to diminish;
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- 1.6 A TEC will have the added advantage of making the process leading to the election more transparent;
- 1.7 A TEC will promote domestic and international confidence in the constitutional process.

2. THE TEC AND SUB-COUNCILS

Within its terms of reference, and having regard to the decisions of the MPNP, other submissions made documents furnished to it including the report of Working Group 3 of Codesa, **the Committee recommends as follows:**

- 2.1 That legislation be drafted to provide for the establishment and functioning of a TEC and sub-councils.
- 2.2 That the proposed legislation adopts the following scheme:
 - 2.2.1 Establishment and Purposes / Objectives
 - 2.2.2 Composition
 - 2.2.3 Powers
 - 2.2.4 Sub-Councils: Establishment, Composition, Appointments and Powers
 - 2.2.5 Jurisdiction and Disputes
 - 2.2.6 Meetings
 - 2.2.7 Decisions
 - 2.2.8 Finances
 - 2.2.9 Amendment

SECOND REPORT OF THE TECHNICAL COMMITTEE ON THE TRANSITIONAL EXECUTIVE COUNCIL AND SUB-COUNCILS / 21 MAY 1993

PROGRAMME OF WORK AND THE REPORT OF THE TECHNICAL COMMITTEE ON THE TRANSITIONAL EXECUTIVE COUNCIL AND ITS SUB-COUNCILS

- 1 The technical committee has designated its future programme of work as the specification and elaboration of the powers of the Transitional Executive Council and its sub-councils and the mode of exercise of these powers.

As this topic concerned the very "nuts and bolts" of the Transitional Executive Council it was deemed inappropriate to furnish a report on this aspect until all the participants' submissions have been received. The deadline for the submissions was 17H00 on Wednesday 19 May 1993, which was after this report had been drafted. We would however make the point that once this task has been completed it may be necessary to revisit aspects of the structure and function of the Transitional Executive Council and its sub-councils.

- 2 In regard to the Transitional Executive Council and its sub-councils' powers, the technical committee recognises its tasks as follows:

- 2.1 The specification of the powers of the three less contentious sub-councils in respect of which, it is believed, the technical committee will be able to make proposals relatively expeditiously. These three sub-councils are Finance, Regional and Local Government and Foreign Affairs.

In our view, it may be advisable to defer the consideration of the Regional aspect of the Regional and Local Government sub-council until greater clarity emerges from those committees dealing with interim/ transitional regional arrangements.

- 2.2 The definition of the Law and Order sub-council's powers are considered of critical importance. The committee is currently considering this issue.
- 2.3 The definition of the Defence sub-council's powers which involves peculiar and developing considerations. This topic will be addressed after the above.
- 2.4 The definition and specification of any general powers, if any, of the Transitional Executive Council which the committee deems necessary to supplement the above powers.

- 3 The committee wishes to draw attention to an error contained on page 7 of our first interim report. In our view the participants in the Transitional Executive Council should not be represented by more than ONE member in any sub-council.

NOTE: The previous report has suggested that parties could be represented by two members in any sub-council.

- 4 In regard to the structure and operation of the Transitional Executive Council, the committee now wishes to supplement its initial report with a section on Finances which reads as follows:

9. Finances

- (1) The Transitional Executive Council shall have the necessary legal status and capacity to open and administer its own financial accounts.
- (2) The Transitional Executive Council shall have a seat of office and for the purposes set out in sub-paragraph (1) shall appoint its own executive officer.

NOTE: The need to approve guidelines for the Transitional Executive Council's staffing, its administration and operation, to secure and furnish accommodation timeously, and to prepare a budget suggests that a decision, in principle, on a Transitional Executive Council should be made sooner rather than later.

A decision will also need to be made regarding the body which will decide on the appropriate budget of the Transitional Executive Council.

SUMMARY OF INPUTS RECEIVED UNTIL 13H00 ON WEDNESDAY 19 MAY 1993

In alphabetical order, the following organisations have made submissions relating to the brief of the Committee. The import of each submission is briefly stated:

1 African National Congress:

The African National Congress has submitted a comprehensive document entitled 'Legislative Framework for a Transitional Executive Council'. The submission is an elaboration on the report of Working Group 3 of Codesa.

2 Afrikaner-Volksunie:

The Afrikaner-Unie maintains that the transition can only be planned once a new constitution has been adopted.

3 Bophuthatswana:

In view of its proposals on constitutional matters, which were not made available to the Committee, the Government of the Republic of Bophuthatswana is of the opinion that there is no need for a Transitional Executive Council.

4 Conservative Party:

The Conservative Party, in a general submission on the negotiating process, expresses a view from which it can be inferred that the Conservative Party would regard the work of the technical committee on the Transitional Executive Council as premature.

5 Ciskei:

The Government of Ciskei shares the view of Bophuthatswana that there is no need for a Transitional Executive Council, but adds that if it is decided that there should be such a body, Ciskei reserves its right to make inputs regarding -

- the composition
- definition

- terms of reference
- authority
- and general matters

relating to such a body.

6 Democratic Party:

Two submissions have been received from the Democratic Party.

6.1 The first deals with the following matters:

6.1.1 The Transitional Executive Council should continue after the first election with a different composition and with increased authority.

6.1.2 A sub-council on finance should also be entrusted with responsibility for socio-economic development.

6.1.3 A sub-council on foreign affairs should also assist with the improvement of trade, finance, sporting and other international relations and liaison with foreign monitoring groups during the transition.

6.1.4 Members of governments/administrations should not be members of the Transitional Executive Council and sub-councils.

6.1.5 No political organisation should have more than one representative on a sub-council.

6.2 In addition to some editorial and consequential changes to the committee's proposal for the Transitional Executive Council and sub-councils, the second report contains the following suggestions:

6.2.1 It reinforces the Democratic Party's contention in 6.1.4 that members of governments/administrations should not be members of the Transitional Executive Council or sub-councils.

6.2.2 Regional government should be part of a sub-council's brief in a generic sense to include existing provincial administrations, self-governing territories etc.

6.2.3 The sub-council on finance should have a broader mandate to include social, economic and developmental issues impacting on fair and free elections.

- 6.2.4** No party should be allowed to have more than one member on a sub-council.

The PAC proposes the following:

7 Natal Indian Congress:

The NIC proposes that:

- 7.1** The terms of reference of the TEC should be expanded to include "levelling the playing field" and "creating a climate of free political activity".
- 7.2** A sub-council on education should also be established.

An unspecified reference to decision making also occurs in the submission.

8 National Peoples Party of SA:

The following points emerge from the NPP submission:

- 8.1** Full support for the need for the Transitional Executive Council.
- 8.2** The Transitional Executive Council should have full cabinet status.
- 8.3** Each participant in the MPNP should have at least one representative on the Transitional Executive Council. No participant should have more than one representative on a sub-council.
- 8.4** Each member of the Transitional Executive Council should serve on at least one sub-council.
- 8.5** No provision should be made for substitutes.
- 8.6** "Levelling of the playing fields" should be mentioned as an objective.
- 8.7** A sub-council for social development should be established.
- 8.8** The Transitional Executive Council should have the power to call to its meetings any political office bearer or official responsible for a matter before it.
- 8.9** Members of the Transitional Executive Council and sub-councils should be remunerated equally and certain discrepancies indicated should be avoided.

9 Pan Africanist Congress of Azania:

The PAC proposes the following:

- 9.1** That the transitional body should be called the Transitional Executive Authority, that it should have full executive powers in respect of its area of jurisdiction, and that the current government relinquishes its powers over those matters. (These views are reinforced in the PAC submission on the constituent assembly/constitution making body.)
- 9.2** Constitutional changes to provide for the situation in 9.1 should not amount to an interim or a new constitution.
- 9.3** Composition: multi-party, with one non-voting representative from each of an unspecified number approved international bodies; it would further appear that the Independent Elections Commission, the Independent Media Commission and Independent Telecommunications Board, a Commission on Security Forces including Armed Formations and a Commission on defined aspects of Finance should also form part of the composition of the TEA; specifics concerning the number and type of representation were not provided.
- 9.4** In its submission on a constituent assembly/constitution making body, the PAC states that the TEA should through its commissions prepare for elections for an 'unfettered Constituent Assembly' with the sole task of drafting a new constitution, a task which should be completed within 18 months (it is not clear from the submission whether the preparation for the election and the drafting of the constitution should both be completed within 18 months, or only the latter.)

10 Solidarity Party:

The Solidarity Party expresses the view that the Transitional Executive Council and sub-councils should be established as soon as possible.

11 South African Government:

Apart from specific inputs regarding the powers of sub-councils, a submission by the South African Government on matters relating to other Technical Committees, has the following bearing on the Transitional Executive Council:

- 11.1** Legislation for the institution of the Independent Elections Commission should have the approval of either the Multi-Party Negotiating Process or the Transitional Executive Council.
- 11.2** The chairperson of the Adjudication Tribunal (as part of the IEC structure) could be 'designated' by the Multi-Party Negotiating Process or by the

12 Transkei:

A letter from the Chairman of the Military Council of Transkei to the Planning Committee was also tabled in the Committee. However, the letter is not of direct relevance to the brief of the Committee.

SEE ITEM 1 OF THE SECOND REPORT

13 Ximoko Progressive Party:

1. Position of the Ximoko Progressive Party.

While supporting the idea of a TEC, the XPP expresses concern about the practicability of the proposed structures unless the system of the TEC and sub-councils would also play a role during the full transitional period.

3. Inkomo Yezwele Party.

4. Transkei Indian Congress.

5. African National Congress.

5.1 Terms of Reference for a Sub-Council on Local and Regional Government.

5.2 Proposed Terms of Reference for the Transitional Executive Council Sub-Council on Defence.

5.3 Restructuring Local Government - Political, Financial and Administrative structures during the Pre-Interim Period.

**LIST OF SUBMISSIONS RECEIVED BY THE TECHNICAL COMMITTEE ON THE
TRANSITIONAL EXECUTIVE COUNCIL AND SUB-COUNCILS AFTER THE
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 - 5.3 Restructuring Local Government - Political, Financial and Administrative structures during the Pre-Interim Period.

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL 12H00
ON FRIDAY 28 MAY 1993

**THIRD REPORT OF THE TECHNICAL COMMITTEE ON
THE TRANSITIONAL EXECUTIVE COUNCIL / 27 MAY 1993**

1. INTRODUCTION

Since the submission of its previous two reports, the Technical Committee has begun to identify the powers and functions which, in its opinion, should be exercised through the Transitional Executive Council's specialist sub-councils. In the time at its disposal the Committee was able to deal with the powers and functions of the sub-councils on foreign affairs and finance.

Once the Negotiating Council has had occasion to express itself on the proposals that have been and will be made regarding specific powers and functions, the proposals will be appropriately integrated with the rest of the Committee's proposals in its first report.

2. POWERS AND FUNCTIONS

Based on submissions received, the Technical Committee proposes the following terms of reference in relation to foreign affairs and finance. This section of the report has been submitted in a format resembling draft legislation.

2.1 POWERS AND FUNCTIONS IN RELATION TO FOREIGN AFFAIRS

'The Transitional Executive Council will, within its powers of review and other general powers, through its sub-council on foreign affairs, in regard to foreign policy, liaise, monitor, make recommendations and, where it deems necessary, assist with a view to -

- (i) achieving progressively the broadest possible consensus on matters affecting the country's international interests, particularly its long-term interests;

- (ii) securing appropriate agreements with the international community regarding the contribution this community may make to the peaceful transition to democracy;
- (iii) securing such international assistance as the sub-council deems necessary to address the socio-economic needs of the people as a whole and not one or other political grouping;
- (iv) ensuring that foreign policy initiatives benefit the country as a whole and not one or other political grouping;
- (v) promoting such international relations including trade, finance, culture and sport relations, which in the opinion of the sub-council will benefit the country as a whole.'

NOTE: *Access to information by the TEC and its sub-councils will be dealt with separately*

2.2 POWERS AND FUNCTIONS IN RELATION TO FINANCE

- (1) The Transitional Executive Council will, within the scope of its objectives, its powers of review and other general powers, have the following powers to be exercised through its sub-council on finance:
- (i) to acquaint itself with recent economic developments, economic policy objectives and targets for the medium-term and more particularly, for the ensuing fiscal year (1994/1995);
 - (ii) to be represented on all function and budgeting committees with a view to ensuring that funds are not applied in a manner favouring one or other political grouping participating in the election of a democratic government;
 - (iii) to receive such reports, and in addition such information relating to fiscal transfers, as are reasonably necessary for the sub-council to perform its functions in terms of the empowering legislation;
 - (iv) to approve any measures designed to rationalise treasury functions in the process of realignment of government structures during transition;
 - (v) to make recommendations to the relevant departments concerning the

- privatisation or tendering out of functions currently performed by relevant departments of state;
- (vi) to request any auditor-general to investigate allegations of general or specific corruption and inefficiency, and to request such auditor-general to report to the sub-council upon completion of such investigation;
 - (vii) to review the contents of existing public service disciplinary codes and to request disciplinary investigations into the conduct of public servants who fail to perform their tasks within guidelines governing financial discipline and authorised or proper expenditure; and
 - (viii) to make recommendations regarding the prevention of wasteful expenditure.
- (2) In the performance of its functions and exercise of its powers, the sub-council shall -
- (i) have access to all relevant information available from departments of states (including the TBVC states and self-governing territories), the South African Reserve Bank, the Central Economic Advisory Service, the Tax Advisory Committee and the National Economic Forum;
 - (ii) be entitled to conduct such research as it deems necessary.
- (3) The views of the sub-council shall, in the course of the preparation of the 1994/1995 national budgets, be taken into account, and specifically there shall be consultation on -
- (i) the overall level of state expenditure;
 - (ii) the broad composition of security, social, economic and general government expenditure, broken down into capital and recurrent expenditure;
 - (iii) the level and composition of any taxes to be collected;
 - (iv) the financing of budget deficits; and
 - (v) the contingent liabilities of government.

NOTE: *The Technical Committee would welcome any inputs regarding the feasibility of the recommendations in this sub-paragraph.*

- (4) The sub-council shall be informed of the creation of new posts in the public services, the filling of vacant posts above the level of director and any deviation from the rules and regulations applicable to retirement.
- (5) The sub-council shall be provided, on a continuous basis, with full particulars, including the intended purposes, concerning any new international financial agreement which is being negotiated with any foreign government or international agency.'

- NOTES:**
1. *Many of the powers provided for here are intended to create transparency in financial government and administration; it should be noted that the Transitional Executive Council's and its sub-councils' power to act is provided for elsewhere (eg paragraph 5 of the draft 'bill' in the first report).*
 2. *The question of secrecy provisions in existing legislation and existing secret accounts has arisen. This matter will be dealt with in a separate provision governing access to information.*

D. TRANSITIONAL EXECUTIVE COUNCIL (TEC)

CONFIDENTIAL

THIS REPORT IS EMBARGOED UNTIL 12H00
ON FRIDAY 28 MAY 1993

FOURTH REPORT OF THE TECHNICAL COMMITTEE ON THE TRANSITIONAL EXECUTIVE COUNCIL / 28 MAY 1993

I. INTRODUCTION

Having thus far produced three reports which mainly dealt with the composition and functioning of the Transitional Executive Council Authority and its sub-committees, the Commission is invited by the Negotiating Council regarding the need for the establishment of such a Transitional Executive Council. To this end, the Commission proposes to furnish the Negotiating Council with an overview of the positions of various participants as they emerged from submissions at the disposal of the Technical Committee.

The Committee should like to point out that a summary of the 13 submissions received until 13:00 on Wednesday 18 May 1993 is to be found in the second report of the Technical Committee (dated 21 May 1993). Six further submissions had been furnished, a summary of which appears as Addendum A to this report.

II. OVERVIEW OF POSITIONS

Even where a participant did not expressly indicate its attitude on the need or desirability of a transitional executive structure, its position could be inferred from the content and nature of the submission(s).

The majority of participants expressed themselves in favour of a transitional executive body, albeit not necessarily in the form proposed by Working Group 3 of Codex. The positions in support of such a body range from acceptance that there will be such a body, and that the early question is what it will look like and how it will function, to support which can hardly be expressed in other terms than overtly enthusiastic and

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL 12H00
ON FRIDAY 28 MAY 1993

**FOURTH REPORT OF THE TECHNICAL COMMITTEE ON
THE TRANSITIONAL EXECUTIVE COUNCIL / 28 MAY 1993**

1. INTRODUCTION

Having thus far produced three reports which mainly dealt with the composition and functioning of the Transitional Executive Council/Authority and its sub-councils were they to be established, the Technical Committee at this stage deems it advisable to facilitate a debate in the Negotiating Council regarding the need for the establishment of such a Transitional Executive Council. To this end, the Committee proposes to furnish the Negotiating Council with an overview of the positions of various participants as they emerged from submissions at the disposal of the Technical Committee.

The Committee should like to point out that a summary of the 13 submissions received until 13:00 on Wednesday 19 May 1993 is to be found in the second report of the Technical Committee (dated 21 May 1993). Six further submissions had been furnished, a summary of which appears as Addendum A to this report.

2. OVERVIEW OF POSITIONS

Even where a participant did not expressly indicate its attitude on the need or desirability of a transitional executive structure, its position could be inferred from the contents and nature of the submission(s).

The majority of participants expressed themselves in favour of a transitional executive body, albeit not necessarily in the form proposed by Working Group 3 of Codesa. The positions in support of such a body range from acceptance that there will be such a body, and that the only question is what it will look like and how it will function, to support which can hardly be expressed in other terms than overtly enthusiastic and

insisting that it should be established immediately.

In two submissions the need of a transitional executive body was questioned, one indicating that there was neither need nor time for such an institution, the other that if a transitional structure became a *fait accompli*, the right to make further inputs was reserved.

Three submissions did not express principled opposition to the notion of a transitional executive body, but intimated that other matters, such as the form of state, constitutional principles, the boundaries, powers and structures of regions and an interim constitution should first be addressed.

One submission contained an ambivalent position, suggesting on the one hand that there is no objection in principle to the establishment of a transitional executive, stating later on, however, that the powers of such a transitional executive should be exercised through 'established government structures and powers'.

3. CONCLUSION

From the above it would appear that, with the exception of one participant who felt that there was no time for a transitional executive structure, there was no opposition in principle to a transitional executive structure.

ADDENDUM A

SUMMARY OF REMAINING INPUTS RECEIVED BY THE COMMITTEE (FOR THE OTHERS SEE SECOND REPORT OF THE TECHNICAL COMMITTEE DATED 21 MAY 1993)

1. Inkatha Freedom Party

The IFP supports a two phase transitional process on the condition that the following should be agreed upon prior to further negotiations on a Transitional Executive Council: interim constitution; a set of constitutional principles that would be binding on the constitution making body; final and entrenched boundaries, powers and structures of regions; form of state; full agreement on the nature of the political dispensation.

2. Intando Yesizwe

Intando Yesizwe supports the establishment of the Transitional Executive Council and maintains that its decisions should be binding on parliament, departments of state and administrations; that it should be entitled to overrule decisions of any of these bodies; that it should have the power to prescribe to these bodies on matters within its jurisdiction.

3. Inyandza National Movement

Inyandza supports the establishment of a Transitional Executive Council with a multi-party character with effective executive powers. A sub-council on elections is further proposed.

4. KwaZulu Government (in conjunction with Inkatha Freedom Party)

The KwaZulu Government expresses the view that the Transitional Executive Council should not be established until an agreement on the process of transformation and on the form of state has been reached. However, it is also of the opinion that the powers of the Transitional Executive Council could be exercised through existing government structures and powers.

5. Transvaal Indian Congress/Natal Indian Congress

In a further submission, the Transvaal Indian Congress and the Natal Indian Congress

propose the following:

- 5.1 The Transitional Executive Council should be established by mid-1993.
- 5.2 It should have cabinet status and full executive powers.
- 5.3 The State President, ministers and officials (of all administrations) should only act with the prior approval of the Transitional Executive Council in regard to matters falling within the Transitional Executive Council's jurisdiction.
- 5.4 The Transitional Executive Council should have full access to all relevant information and personnel.
- 5.5 The Transitional Executive Council should have specific powers of intervention.
- 5.6 Decisions should be taken by a two-thirds majority.
- 5.7 Disputes should be resolved by the Transitional Executive Council.

6. Venda

Venda supports the fact that the Transitional Executive Council should have effective executive powers, that it should have access to all relevant information, and that it should be able to delegate powers to sub-councils.

7. African National Congress

Two further detailed submissions dealing specifically with the terms of reference of sub-councils were subsequently provided by the African National Congress.

Prepared by the Technical Committee on the Transitional Executive Council in the Multi-Party Negotiating Process

12 July 1993

TRANSITIONAL EXECUTIVE COUNCIL BILL

EMBARGOED UNTIL TABLING IN THE NEGOTIATING COUNCIL

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 indicates otherwise -

TRANSITIONAL EXECUTIVE COUNCIL BILL

"Council" means the Transitional Executive Council established by section 2;

"Election" means an election to any legislative body established by any law;

"Government" means the Government of the Republic of South Africa, Transkei, Bophuthatswana, **(FOURTH WORKING DRAFT)** parts of the self-governing territories proclaimed in terms of the Self-Governing Territories Act, 1971 (Act No 24 of 1971);

"Independent Broadcasting Authority" means

"Independent Electoral Commission" means

"Independent Media Commission" means

"Local Government Negotiating Forum" means

"Multi-Party Negotiating Process" means

"National Economic Forum" means

"National Steering Forum" means

**Prepared by the Technical Committee on the Transitional Executive Council in
the Multi-Party Negotiating Process**

22 July 1993

TRANSITIONAL EXECUTIVE COUNCIL BILL

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 indicates otherwise -

"Central Economic Advisory Service" means

"Council" means the Transitional Executive Council established by section 2;

"Election" means an election to any legislative body established by any law;

"Government" means the Governments of the Republics of South Africa, Transkei, Bophuthatswana, Venda and Ciskei, as well as the Governments of the self-governing territories proclaimed in terms of the Self-Governing Territories Act, 1971 (Act No 21 of 1971);

"Independent Broadcasting Authorities" means.....

"Independent Electoral Commission" means

"Independent Media Commission" means

"Local Government Negotiating Forum" means

"Multi-Party Negotiating Process" means

"National Economic Forum" means

"National Housing Forum" means

"National Peace Accord" means

"National Peace Secretariat" means

"Police Board" means

"political party" means any party or organisation, whether on its own or as an alliance of parties and/or organisations, which intends to contest the elections in terms of the Transitional Constitution;

"South Africa" means the Republic of South Africa, including the self-governing territories proclaimed in terms of the Self-Governing Territories Act, 1971, and includes the Republics of Transkei, Bophuthatswana, Venda and Ciskei;

"South African Reserve Bank" means

"State President" means the State President of the Republic of South Africa elected in terms of the provisions of the Republic of South Africa Constitution Act, 1983 (Act No. 110 of 1993)

"Subcouncil" means a subcouncil established by or under this Act;

"Tax Advisory Committee" means

"Transitional Constitution" means the draft constitution which is in the process of being drafted by the Multi-Party Negotiating Process;

NOTE: *The definition section will be finalised once the substantive content of the Bill has been finalised.*

Establishment of the Transitional Executive Council

2. There is hereby established a council to be known as the Transitional Executive Council, which shall remain in existence until the appointment of the first Cabinet in terms of the Transitional Constitution.

Objects of Council

3. The objects of the Council shall be to facilitate, in conjunction with all existing legislative and executive governmental structures at national, regional and local levels in South Africa, the transition to and preparation for the implementation of a democratic order in South Africa by -
 - (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 process;
 - (iii) ensure that all political parties are free to canvass support from voters, to organize and hold meetings and to have access to all voters for the purposes thereof; and
 - (iv) ensure that no government or administration exercises any of its powers in such a way so as to advantage or prejudice any political party;
- (b) promoting conditions conducive to the campaigning for and holding of free and fair elections which take place in terms of decisions of the Multi-Party Negotiating Process.

Constitution of Council

4. (1) The Council shall, subject to subsections (2), (3) and (4), consist of such number of full-time and part-time members as the State President may appoint from time to time by proclamation in the Gazette.
- (2) Each government and political party which -
- (a) is represented on the Negotiating Council of the Multi-Party Negotiating Process at the time of the coming into force of this Act;
 - (b) commits itself to the objects of the Council as contemplated in section 3; and
 - (c) undertakes in writing to be bound by and to implement the decisions of the Council,
- shall be a participant in the Council and be entitled to be represented by one member on the Council.
- (3) Each appointment made in terms of subsection (1) shall be made on the recommendation of the government or political party concerned.
- (4) (a) If the Council, on good cause, determines that any government or political party which is not entitled to participate in the Council by

- virtue of subsection (2) but which commits itself to the objects of the Council as contemplated in section 3 and which undertakes in writing to be bound by and to implement the decisions of the Council, should be a participant in the Council, it shall notify the State President in writing whereafter the State President shall by proclamation in the Gazette declare that government or political party to be a participant in the Council.
- (b) All the provisions of this Act shall apply in respect of a participant referred to in paragraph (a).
- (5) (a) Each participant in the Council may nominate in writing a substitute member to attend on its behalf any meeting of the Council in the place of the member concerned.
- (b) For the purposes of such a meeting the substitute member concerned shall have the powers and rights of the member concerned.
- (6) Any participant in the Council which fails or refuses to nominate a member on the Council or terminates or suspends its participation in the Council shall nevertheless remain bound by the obligations it incurred by becoming a member.

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

5. (1) If a member of the Council loses the confidence of the government or political party which recommended the appointment, the State President, on being advised thereof in writing by the government or political party concerned, shall, by proclamation in the Gazette, remove such person from office.
- (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 in terms of subsection (1), the government or political party 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*.

Remuneration, allowances and conditions of service of members of Council and Subcouncils

6. (1) The conditions of service, remuneration, allowances and other benefits of members of the Council and its Subcouncils shall be determined by the State President with the concurrence of the Multi-Party Negotiating Process: Provided that those members who receive remuneration, allowances and other benefits by virtue of their employment by or position in any government or public service and who continue to receive such remuneration, allowances and other benefits from such government or public service shall not receive any remuneration, allowance and other benefits from the monies appropriated by Parliament for purposes of remuneration of members of the Council and its Subcouncils, 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.
- (2) The remuneration, allowances and conditions of service contemplated in this section may differ according to whether a member is a full-time or part-time member of the Council.

Powers of Council

7. The Council shall, for the purpose of achieving its objects and the performance of its functions, have the power to -
- (a) have access to all such information, including records, which may be required by it for that purpose;
 - (b) establish one or more Subcouncils, in addition to those established by section 8, to assist it in the performance of its functions;
 - (c) delegate to a subcouncil such of its powers as it may deem fit, but it shall not be divested of any power so delegated;
 - (d) except where the delegation concerned expressly otherwise provides, it may amend or withdraw any decision or recommendation of a subcouncil;
 - (e) require a Subcouncil, either generally or specifically, to enquire into and to advise the Council on any matter in connection with the functions of the Council;
 - (f) initiate or participate in negotiations relating to its functions and objects;

- (g) appoint staff to assist the Council in the performance of its functions, and in the case of staff not in the full-time service of any government or public service, to determine their remuneration and conditions of service;
- (h) request the secondment of skilled personnel from any public service to assist the Council in the performance of its functions;
- (i) make rules providing for the convening of and procedure at meetings of the Council and Subcouncils;
- (j) appoint from among its members office-bearers on a permanent or rotational basis;
- (k) appoint a person or body to investigate any matter relating to the Council's functions and to report thereon; and
- (l) open and administer its own financial accounts.

NOTE: *The question of any further general or specific powers will be re-examined once the powers of the Subcouncils have been completed and the Technical Committee can review the structure as a whole.*

Establishment of Subcouncils

8. There are hereby established the following Subcouncils which shall report to the Council in such manner and at such times as may be determined by the Council -
- (a) A Subcouncil on Regional and Local Government;
 - (b) A Subcouncil on Law and Order, Stability and Security;
 - (c) A Subcouncil on Defence;
 - (d) A Subcouncil on Finance;
 - (e) A Subcouncil on Foreign Affairs; and
 - (f) A Subcouncil on the Status of Women.

Constitution of Subcouncils

9. (1) (a) Subcouncils shall consist of such number of members as may be determined by the Council.
- (b) A member of a subcouncil need not be a member of the Council.
- (c) Unless the Council, on good cause, determines otherwise, the membership of a subcouncil shall not exceed six.
- (2) The members of a subcouncil shall be appointed by the State President by proclamation in the Gazette on the recommendation of the Council.
- (3) No government or political party shall have more than one representative on a particular subcouncil.
- (4) (a) A member of a subcouncil may nominate in writing a substitute member to attend any meeting of that subcouncil on that members' behalf.
- (b) For the purposes of such a meeting the substitute member concerned shall have all the powers and rights of the member concerned.

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

10. (1) If a member of a Subcouncil loses the confidence of the Council, the State President, on being advised thereof in writing by the Council, shall, by proclamation in the Gazette, remove such person from office.
- (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 State President shall, on the recommendation of the Council, appoint a another member to the subcouncil concerned by proclamation in the Gazette.

Remuneration and allowances and conditions of service of members of subcouncils

11. The provisions of sections 6 shall apply *mutatis mutandis* in respect of the remuneration, allowances and conditions of service of members of Subcouncils.

Powers of Subcouncils

12. Save as when otherwise directed by the Council, the Subcouncils, in respect of their terms of reference or areas of particular concern, shall have the same powers as those of the Council.

Powers and functions in regard to Regional and Local Government

- 12A. The Council shall, within the scope of its objects, its powers of review and other general powers, have the following powers to be exercised through its Subcouncil on Regional and Local Government -

- (a) to acquaint itself with and monitor recent developments, policy objectives and targets in relation to regional and local government for the period of the transition;
- (b) in regard to regional and local government matters administered by any government, provincial administration, regional and local governments, to propose the amendment, repeal or enactment of legislation, including subordinate legislation;
- (c) to promote the objects as contemplated in section 3 generally, and in particular in regard to regional and local government elections, including educating the public on the electoral processes;
- (d) to liaise with all organisations and/or structures relevant to its functions and powers, including the Local Government Negotiating Forum, the provincial and other regional governments, the Electrification Forum, the National Peace Secretariat, demarcation boards or commissions, the Independent Electoral Commission and the National Housing Forum;
- (e) to be advised of and to initiate proposals regarding regional and local government budgets, powers and functions, restructuring and rationalisation of regional and local government administrations, transitional measures, interim local government structures, demarcation, and shall consult with the Local Government Negotiating Forum regarding such proposals;
- (f) to set up committees to assist it in the exercise of its powers and functions;
- (g) to monitor, make recommendations and render assistance, where practical, regarding the collapse of services and shortfall of finances in local government;