

## **FOURTH REPORT - 11 JUNE 1993**

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## **FOURTH REPORT TO THE NEGOTIATING COUNCIL BY THE TECHNICAL COMMITTEE ON THE INDEPENDENT ELECTORAL COMMISSION**

11 JUNE 1993

1. Since the lodgment of its Third Report (3 June 1993), the Technical Committee has received further written submissions from the undermentioned delegations, viz:

Democratic Party  
Inkatha Freedom Party  
KwaZulu Government  
Labour Party  
National People's Party  
South African Government

and

IDASA

These submissions relate predominantly to issues which have already been mentioned by the Technical Committee as matters upon which divergent opinions have been expressed by the negotiating parties. Nonetheless, it is apparent that a broad measure of agreement already exists with reference to the principle and perspectives reflected in the Committee's initial draft Bill, although there are a number of suggestions with regard to amendments and additions to the original text directed to achieving clarification or emphasis, which do not appear to raise significant new issues.

Increasingly, the parties have expressed themselves with regard to matters of procedure and detail affecting, for example, the appointment of senior electoral officials, the formulation of ballot papers, the location of polling stations, preferred terminology, the identification of voters, and the envisaged public voter education program.

These proposals indicate the need for some fairly extensive editing of the present draft, but the Committee does not consider it appropriate to embark upon a major redrafting process, until such time as the Negotiating Council has had the opportunity, in plenary session, to debate and consider this matter in order to assist the Committee in formulating provisions that are likely to enjoy broad acceptance.

2. In its Third Report, the Technical Committee has drawn attention to the need to clarify the ambit of its brief, in view of a divergence of opinions which have been expressed with regard to the timing and responsibility for drafting of a new Electoral Act.

After some initial prevarication, there now appears to be a near consensus that this Technical Committee should itself proceed with the consideration of a new Electoral Act as an integral part of its brief. The South African Government through its Department of Home Affairs, has forwarded the Technical Committee its proposal for a new Electoral Bill to be enacted in substitution for the existing Electoral Act, No 45 OF 1979. Accordingly, the Technical Committee now requests confirmation from the Negotiating Council that it is to undertake the drafting of a new Electoral Act, either as a self-standing piece of legislation, or as an integral part of the legislation establishing the Independent Electoral Commission.

3. The Technical Committee has been requested by one of the delegations to give further attention to a number of specific issues, viz:

3.1 The independence of the Commission, and whether this could be achieved by "any other techniques".

3.2 The Commission's jurisdiction in regulating and adjudicating matters involving other organs of State.

3.3 The Courts' power to review the decisions and regulations of the Commission.

3.4 The form of proportional representation to be adopted in the forthcoming elections.

4. The Technical Committee has itself identified the selection procedure of Commissioners as an important part of the process which may require further consideration by the Council. In particular, the Committee may suggest that the selection of Commissioners be referred in the first instance to a quasi-judicial body with a mandate to interview proposed appointees and make recommendations thereon to the Negotiating Council.

5. In conclusion, the Technical Committee records its intention to effect a number of textual and editorial changes to the text of its initial draft Bill tabled in the Negotiating Council on 21 May 1993. As indicated above, there are a number of textual amendments which have been suggested in representations received from the negotiating parties, with which the Technical Committee is in agreement. However, before proceeding with the preparation of such redraft, the Technical Committee awaits the Council's consideration of its initial draft Bill, and requests confirmation that it is to proceed with the consideration of a new Electoral Bill, which would include some provisions

presently located within the Technical Committee's initial draft Bill, but which might be more appropriately located within a new Electoral Act.

On the assumption that this proposal may be acceptable to the Negotiating Council, the Technical Committee requests specific guidance with regard to those matters already itemised in paragraphs 3.2 to 3. 10 of its Third Report (3 June 1993). These paragraphs relate to a number of matters of principle which should preferably be clarified by the Negotiating Council before the Technical Committee proceeds to draft a new version of its proposed Act which is likely to receive broad acceptance.

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Mr S K Ndlovu  
Mr R B Rosenthal

In the absence of:

Dr F Ginwala  
Adv H R Laubscher