

ADDENDUM B

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

1. AGENDA

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

2. RECOMMENDATIONS

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

- 2.1** It was recommended that the status quo was not acceptable. (Free and fair elections will not be possible if nothing is done and the legislative and executive conditions remain as they are at present.)
- 2.2** It was recommended not to pursue the possibility of a comprehensive justiciable bill of rights being adopted in the immediate future.
- 2.3** It was recommended that an Independent Electoral Commission with political powers only will not suffice. (Although such a Commission is necessary and should form part of the general election structures, additional mechanisms and remedies are to be provided for in order to achieve free and fair elections.
- 2.4** It was recommended that the repeal of discriminatory legislation should be continued with. Some kind of body should have the task of identifying discriminatory legislation. Another "functionary" or entity should then issue proclamations repealing or amending such laws. It was also recommended that in the meantime the legislative bodies of the parties participating in the Negotiating Council should take the initiative in repealing offensive legislation. (This possibility did not appear in the document under discussion. It was added by the chair as a result of discussion from the floor. The relevance of such a process for free and fair elections was queried by some; especially since it will deal with all discriminatory laws. The principle was eventually accepted. No machinery was identified and no specific tasks formulated).

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

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

11 August 1993