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TECHNICAL COMMITTEE ON IMC: MEETING WITH THE NEGOTIATING  
COUNCIL ON 28 JUNE 1993

Mr R Cronjè

Are we all at the same page. Good. Clause one: Definitions. Mr Webb, Definitions.

Mr M Webb

Can we come back to them as you did in the past

Mr R Cronjè

Why?

Mr Webb

Because it seems to b a useful way of going about.

Mr R Cronjè

No, no, no we are right at the beginning so let's start at the beginning. First page of definitions, second page of definitions, that is the small four on the top right hand of your page. Page five, clause two, Establishment of Commission. Clause three, The objects of the Commission. Clause four, The appointment of members of the Commission. I am going to be through before you are with me. Clause five, The persons qualified to members of the Commission.

Mr L Wessels

Mr Chairman I may be wrong but this is now more or less passing this legislation by exhaustion.

Mr R Cronjè

What do you suggest we do? Go for a holiday first.

Mr L Wessels

No, no I don't. But I do suggest that maybe we take a little bit more time, because.....

Mr R Cronjè

How much time? I can only, if there is no discussion on a clause I move.

Mr L Wessels

Yes but I would.....

Mr R Cronje

How do you mean more time? Do you want to read it first.

Mr L Wessels

I Believe so mr chairman.

Mr W Felgate

Mr chairman why don't you put the whole thing up for adoption as is.

Mr R Cronjè

How do you suggest I deal with it if I don't deal with it clause by clause, Mr Felgate.

Mr W Felgate

You can deal with it clause by clause mr chairman but don't rush through it because we were supposed to have read this. We did read this, we have studied this weeks and weeks ago. ?????? any warning today and we just cannot proceed in this manner.

Mr R Cronjè

What do you suggest we do?

Mr W Felgate

I suggest we actually ???? debate. That is my own suggestion. It is quite ridiculous to expect delegates to speak sensible about something they have studied weeks ago, thrust upon

PROPOSALS TO THE NEGOTIATING COUNCIL FOR CONSIDERATION BY THE PLANNING COMMITTEE WITH REGARD TO THE FUNCTIONING OF THE TECHNICAL COMMITTEE ON THE INDEPENDENT MEDIA COMMISSION AND INDEPENDENT BROADCASTING AUTHORITY

1. Due cognisance has been taken of the work done so far by the Technical Committee, and appreciation for the progress in finalising the Bills on the Independent Media Commission and the Independent Broadcasting Authority needs to be expressed.
2. However, cognisance has also been taken of the fact that -
  - 2.1 in respect of both Bills, there are still various outstanding matters that will require extensive deliberations in the Technical Committee; and
  - 2.2 the Technical Committee received voluminous comment from the broadcasting industry and other interested bodies and parties on the IBA Bill after it was published for general information and comment.
3. In view of the aforementioned, and because time is of the essence, it was proposed that -
  - 3.1 the Technical Committee finalise both Bills with incorporation of all alternative proposals in respect of those clauses in the Bills on which there are dissenting views.
  - 3.2 the Committee submit its final report before or on 29 July 1993.
4. It is further proposed that the Negotiating Council set up a subcommittee of the council to deal with the report of the Technical Committee referred to in paragraph 3.2, and that the subcommittee presents its report to the Council on or before 5 August 1993.

you without any warning, without your notes on the subject matter with you, to speak from memory.

Mr R Cronjè

Mr Felgate I have a difficulty in the sense that the agenda was adopted by this forum with no objection.

Mr L Landers

Mr chairman to take your argument a little further then we should have done the same with the previous draft bill.

Mr R Cronjè

Is it the wish of Council that we allow a little bit of time for you to read through it?

Mr L Wessels

Mr chairman, could I maybe just suggest that as you put the clause we allow the delegates just to make one hundred percent sure that and refresh our memory on the clauses as we go through. Because, as mr Felgate said, there were a moment weeks ago when one were ?????? of the contents of this and what is happening now is one simply hears people shouting noted, agreed to and I have a problem really understanding what it is what we have just noted or agreed to.

Mr C de Jager

Inaudible

Mr R Cronjè

If you looked at the previous, at the previous document that we dealt with, there were a number of reports. Some which prefaced the reports and some which were added at the back. I read through some of that just to help people. But this is the bill that is now in front of us and if you look at the front, third report for instance, merely gives a background of the submissions made by the various parties, which comments of which parties have been accommodated, for what reasons and for what reasons some of the submissions made by

other parties have not been accommodated. In other words to give a rationale for why it is drafted in a particular way. But that of course does not stop any party from repeating their comments for consideration by this Council.

Mr C de Jager

Mr chairman I have got a problem. Inaudible.

Mr R Cronjè

We will make enquiries about that. The bill that has been presented to all of us, including myself, is the one which has ?????, the third report and which has attached to it the fourth report dated the 11th of June.

Mr P Gordhan

Mr chairperson if I can help you, what mr de Jager is referring to is the draft bill on the IBA, the Independent Broadcasting Authority. What we are looking at is a draft bill on the IMC

Mr R Cronjè

We are not dealing with the IBA because that is the old Telecommunication authority, the old ITA. What we are dealing with, you are quite right, thank you very much mr Gordhan, is the Independent Media, the IMC. So the suggestion is that I should give you time when I put a clause, to read through the clause. Definitions, the definition of authority.

Mr W Felgate

Mr chair, I have got my hand up please. The adoption of the agenda notwithstanding. Our experience of this debate and the debate of the previous item on the agenda, leaves me to protest most vigorously that we are conducting a time consuming and time wasting procedure. We have not come prepared for this. We cannot do justice to it and I think one must register this process and say we cannot abide by decisions reached in this stage.

Mr R Cronjè

Mr Felgate, the difficulty is that we were made aware at the Planning Committee, that if we had dealt with constitutional issues today, we would have had experienced some difficulties. So therefore ??????? the difficulties that was explained to us, we decided to postpone the

discussion on constitutional principles. Now the Planning Committee found themselves in great difficulty what then to deal with, except those reports who have been prepared by Technical Committees which have not yet been debated at all. So what do we deal with then at this meeting. There is nothing else to be dealt with.

Mr W Felgate

Mr chairman, this is again the haste with which you are trying to get through things and in doing so confusing the minds of all delegates.

Mr P Gordhan

On a point of order mr chairperson.

Mr R Cronjè

I Think the reports have been made available to delegates some time.

Mr P Gordhan

With deep respect to everyone's feelings in this regard. Under the relevant item on the agenda, item three, this agenda was ratified Mr Chairman and Mr Felgate I think might not have been present at that moment and time. But wit the greatest of respect we don't want to hear the old arguments about pushing things on and so on. I think you have exercised your patience to a great degree Mr Chairperson. If flexibility is required lets talk about that in a reasonable and constructive way and lets move this debate on. I Really don't think that I want my time wasted by sitting and listening to unnecessary procedural arguments. Thank you.

Mr R Cronjè

I have difficulties in the sense that I have heard a protest that we received this weeks ago and we must refresh our memories. A proposal has been made that in order for people to refresh their memories I should put the clause and allow delegates to read through the clause and then comment on them. I am not quite sure what is expected of me.

Mr W Felgate

Mr Chair. I would suggest the minimum requirement is that we adjourn for twenty minutes to enable us to phone our offices and see if we can get our notes faxed to us. We studied these documents weeks ago and we made notes about them. We did not anticipate this debate today.

Mr R Cronjè

Not today but surely this week and then you would have brought your notes with you.

Mr W Felgate

I do not have my notes with me today and I would really require time to go and consult and get my notes.

Mr L Landers

Mr Chairman the argument is really futile. If we consider item 5.1. Nobody came here knowing in advance that we were going to discuss the Technical Committee's report on the Independent Electoral Commission. Nobody knew that and therefore in the same light we must then proceed to discuss this item on the agenda.

Mr E Pahad

There was a proposal by Mr Wessels. I want to second that proposal because I don't think we should now spend time discussing whether we should discuss. As I understood it, the proposal by Mr Wessels was that as you go through, clause by clause, either we read it or just give each of the delegates a little time to think it through before saying yes or no. I think that is a fair enough proposal and that is how we should proceed on this basis.

Mr W Felgate

Just that I would like my position to be noted in the minutes, that this whole procedure is most unseemly.

Mr R Cronjè

I have difficulty as the chairman, after having put the agenda and the whole meeting, without a single objection, ratified that agenda. We have dealt with item 5.1. I have no alternative,

in terms of the decision of this meeting, to put the next item on the agenda.

Mr W Felgate

Mr Chair, that notwithstanding once we went to into the debating of the issues it became quite clear that in retrospect we should have reconsidered that position.

Mr R Cronjè

I am in the hands of the meeting. Are you making a proposal Mr Felgate

Mr W Felgate

I am making a proposal Mr Chair

Mr R Cronjè

What is the proposal?

Mr W Felgate

That we adjourn for twenty minutes before each of these ???? in order to enable us to refresh our minds and acquire our notes.

Mr R Cronjè

Is there a seconder? I put the motion. Those who are in favour that we postpone the discussion for twenty minutes. Agreed.

Meeting

No.

Mr R Cronjè

We continue with the agenda.

Mr A Rajbansi

Can I raise a very important point. That is that we took a decision to look at the definitions



after we went through this bill. There may be tremendous measure of wisdom in that decision. But also Mr Chairman, I believe that when we finish going through this bill and come to the definition we might be shocked with one or two points in the definition. So therefore allow us that when we are dealing with that particular clause to refer to the definition because there might be serious implications.

Mr R Cronjè

Page 5, right hand top of your page, clause 2, Establishment of Commission. Is there any debate? Three, "The objects of the Commission shall be ....."

Mr M Webb

Mr Chairman in the reference to the definition of broadcasting service, it seems to me that this regulates private broadcasters as well. Am I correct in understanding that?

Mr R Cronjè

I am afraid I cannot respond. Is the secretary of the particular Committee available?

Next speaker

Yes, it includes all broadcasters.

Mr R Cronjè

Even privately owned and what would be the difference between broadcasters, private broadcasters and private media, written media? A decision was taken that the Commission will have jurisdiction over state controlled and state publications, but will have no control over the privately owned media. The question is what is the difference between the media and the broadcasting, privately owned.

Next Speaker

I can just give you the background to this. This state financed publications to be monitored in terms of this act is something decided by Codesa II, last year already and that principle the Government was itself really barged by it. So we have got no problems with the state financed publications, but that will include state financed publications of the TBVC countries

as well.

Mr R Cronjè

The issue is not whether it is state financed, it is the differential in as far as the written media is concerned, excluding privately owned written media, but according your understanding of this definition, privately owned broadcasting media. Surely there is a principle involved. What is the point Mr Webb?

Mr M Webb

No, Nr Chairman we are now reaching the stage where the people who own information services or own communication services will not have the discretion to broadcast as they wish. They will be bound to ?????

Mr R Cronjè

So you ask the Committee to give consideration to that aspect.

Mr M webb

You see I have a problem with private enterprise sir. If I have an enterprise economy or free market economy, I can do what I like with a facility that I own. This seeks to over regulate the situation, in fact, regulates the situation to the extend that your ownership, your effective ownership is deprived. This is what I am trying to say that I don't believe the policy or the principles, the objectives are correct. That is the point that I wish to make.

Next Speaker

Mr Chairman when you have asked me about what is the difference between state financed publications and broadcasters. One should just have a look at clause forty. There the Commission will in fact monitor all broadcasting services in the Republic. So private broadcasting is not excluded from the ????? of this bill at all.

Mr R Cronjè

That is not the question. The issue is that as far as the written media is concerned, we say we cant control privately owned written media, because we cant interfere with private

enterprise. Yet when it comes to the broadcasting media we say we must now interfere with private enterprise. So that is just the question. I think what we should do is to note the observation, refer it to the Technical Committee and ask them to come back to us because there is none of us here who can really speak on their behalf.

Mr C Eglin

Mr Chairman I don't think that was a ????? of the Technical Committee. I think this was part of their Terms of Reference. One can argue it from any way but if you actually look at the means of communication via the media, there are three categories, one is the printed media, one is the broadcast media and another is the television media and certainly even under our own rules we would assume that the television media is so powerful, that in fact there should be some restriction on the way it behaves during an election time. There seems to be little doubt about that. There is also a strong view that the printed media should not be subject to censorship and in between the extraordinary powerful television media and the printed media there is the broadcast. One can argue whether broadcasting should have any restrictions on it or not. The practical reality is that in most countries over an election time there is a restriction to this extent that they all operate under a license, unlike printed media who can print anything, broadcast operate under a license and the license lays down a certain code of conduct. So to the extent that a private broadcaster is still required to comply with a code of conduct that would be a restriction on private media. But I think it is a critical decision to take in between the printed media and the television, should the broadcast media be unrestricted or should it comply with a certain code. I think that is the way that it is also analysed and dealt with in other countries. But we are free to make our own decisions.

Mr E pahad

Mr Chairman I think that what is important here and not to repeat what Collin has just said in relation to the differences. It is nevertheless that even with private broadcasting service you would want to be in a situation in which a private broadcasting service do not put out party political broadcasting of only one or two parties and that would therefore be an unequitable treatment. So that for example you would have a situation were Radio 702 may decide only to put out party political broadcasting of the ANC. That would obviously unfair to all of the other parties who are participating in the elections and therefore you would want

a clause which would include the private broadcasters in so far as that is also concerned. Secondly, you would want a situation in so far as the private broadcasters are concerned in radio and TV in which you have some fallback in terms of saying there is, as you will see later, some code of conduct for these people, that they comply with the code of conduct in terms of ensuring a fair and equitable treatment of all political parties. It is therefore important for us, at the moment we can seek more clarification from this Technical Committee on this, but it is important that we include private broadcasters on this because they would be unfair, in my view, later you will find to the smaller parties because they may well decide in their own interest because the big parties are going to be the influential ones to be favourable to the big parties. It seems to me that this clause is very much more favourable to the smaller parties who will be participating in the elections and therefore it is important.

Mr R cronjè

There could be two alternatives, you allow no political broadcasts or in view of the fact that you are a commercial station and allow those for which the parties pay. That may once again be a problem

Mr Ntsentense

Our understanding of the draft of the Technical committee. First and foremost is that they proceed from the premise that the electro magnetics spectrum is a ????? resource that would need to be regulated. Unlike the printed media where anybody can open up a newspaper. The electromagnetic spectrum is a ???? one and therefore you would need to regulate that. Secondly and even more important, in so far as the print media is concerned, there is a selfregulatory structure, the Media Council that is now called the Press Council and in so far as the broadcasting industry is concerned there is no such regulatory structure. That why it was felt necessary that it should be included. Even privately owned broadcaster should be included in this legislation.

Mr A Rajbansi

Mr Chairman, if one studies the definition, in various places there is a distinction as far as the electronic media is concerned between i licensee on the one hand, a state financed

publication or a state information service. As far as thy electronic media is concerned, throughout the definition, they refer to licensees and the state information service. As far as the print media is concerned, the definition indicates that it refers only to state Publications. So I think it is quite clear in my opinion that this bill refers to those who have private licenses for broadcast through the electronic media.

Mr L Landers

Mr Chairman, members of the Council must forgive me but I am not convinced of the argument that has been put forward here now. In a previous discussion on the whole question if the print media it was made very clear to me, keep your hands of the print media, it is private and therefore it falls under the whole question of freedom of the press. So that principle must be applied throughout and now I am hearing arguments about licensees and all sorts of things. I am really not convinced. We are talking about equitable treatment of political parties. Now if you want to provide that principle the provide it throughout and include the print media too. I am still not convinced of the argument.

Mr M Webb

To take it to an illogical conclusion it means that every donation given has got to be equitable to all political parties. I don't believe that, I believe that we are in a free market, free enterprise situation. He who pays the piper calls the tune.

Mr R Cronjè

I thought I understood Mr Landers to argue in favour of the point I thought you tried to make.

Mr M Webb

I thought Mr Landers was saying that you have got to include the print media into the code of conduct.

Mr R Cronjè

Shall we just ask the Committee to consider this particular aspect. Four, "Appointment of members of the Commission....."

Mr M webb

Clearly the same discussion as earlier.

Mrs Jacobus

I want to move an amendment to 4.2, the last line, "formally appointed by the State President on advice of the TEC or Multi-Party Forum". Just to ensure that the State President does not take it upon himself to disapprove of the selection made by the TEC or Multi-Party Forum.

Mr S van der Merwe

Chairman, as it presently stands, I mean the State President wont have any option. The members will be selected by the Forum or the Council. He will only make the formal appointment, that is all.

Mr R Cronjè

Any other comment on clause four. Clause five, "Persons qualified to be members....."

Mr L Landers

Mr Chairman, I have a particular problem with this section. With the exception of subsection three, which refers to: "two members having experience in the field of broadcasting". There seems to be an inordinate biased in favour of people from the legal profession and I would like to know why that is so. It seems to me that somebody here is looking out for people in a particular profession, jobs for pals, perhaps. I don't thin that it is appropriate Mr Chairman. I think the Commission should contain people from as wide as spectrum as possible and not as it is contained in subsections 1 and 2, coming from the legal profession.

Mr R cronjè

You say that a person with a legal qualification is not necessarily open minded.

Mr M Webb

I have got a feeling that the legal profession is being victimised.

Mr L Wessels

I would have liked to argue that is simply so because legal persons are normally wise, but seen that particular argument does not meet favour from this Council, I believe this is so because the person serving on this particular Commission will have to adjudicate in some way or the other. They will have to listen to complaints, there will be hearings etc and therefore a special legal expertise is required. It is not simply because it is biased in favour of, but the way they will be dealing and expose of their responsibilities will be of a judicial nature.

Mr R Cronjè

Mr Wessels in every civil case at least one of the legal representatives is unwise because he told his client he could win.

Dr P Mulder

??????????????

Mr R Cronjè

What the Council is saying is that we will ask the Technical Committee to reconsider the qualifications of those whom they are proposing.

Mr Ntsentsense

In referring it back to the Technical Committee, what should also be noted is that 4d), which talks about the Commission being representative of society, would in fact be contradicted by some of the criteria that we had earlier on. Judges or former judges come from one section of the population. Therefore in redrafting it they would also have to take that particular issue into account. It is quite true that you might need some legal expertise in this Commission, but it should not be as rigorous as formulated here.

Mr L Landers

I want to go back to 5.4c), I have a particular problem with this here. In terms of draft legislation, how do you determine whether a person is committed to openness and

accountability. I mean if you pose the question to him, he will say yes. I don't think you can draft that in legislation.

Mr R cronjè

I must say how you judge it and who judges it is great difficulty. So we will ask them to consider the necessity or desirability of that particular clause.

Mr L Wessels

I have no objection to them revisiting the matter. I would just like to draw the Council's attention to page three of the report dealing with clause five and it is mentioned in that report that the ANC had submitted and make mention of the fact that there is an overemphasis on the need for legal expertise and therefore they did advise that only the chairman ought to be a legal person etc. They are therefore aware of the sensitivities a mentioned in this Council.

Mr P Gordhan

I don't know about legislation, what should be there or not but that is an important principle to bear in mind which will instruct the people who are to appoint the Media Commission in terms of a very important criteria that they need to bear in mind or else there might legal nuances that might not be catered for here. That is certainly a state of affairs that we need to give primary importance to in choosing the people that will ultimately sit on the e IMC.

Mr E Pahad

Mr Chairman because 4.2 does quite clearly indicate that the Commission shall be selected by the TEC/Multi-Party Forum. Now quite clearly you want to give them some criteria. Whether you do it in the act itself or outside in making their selection a we did with the SABC Board. whatever problems it had subsequently and therefore it seems to me necessary that criteria should be there somewhere, whether it is in terms of the actual act itself or in terms of the Terms of Reference for TEC/ Multi-Party Forum, but it is a necessary part in the selection of the candidates for that particular one and I think that is the important element not necessarily where it goes. I think we have now agreed that it should go back to the Technical Committee and we can proceed.



Mr R Cronjè

Agreed it goes to the Technical Committee? Clause six, "Person disqualified from being members....."

Mr L Landers

That effectively excludes the bulk of the people in the country.

Mr R Cronjè

It is myself and Bennie Alexander and quite a few others. Any comment on that clause? (Agreed). Clause seven, "Term of office of members....."

Mr E Pahad

Mr Chair can I just take you back to point i) in terms of six, on page seven, in terms of the question of conviction of theft, fraud, forgery etc. I think we need to bear in mind that the laws of this country, past laws for example, compel people to sometimes have a fraudulent document for which a court could have convicted them. What you would need to do is that this particular one needs to go back to the Technical Committee to take into account that we are actually talking about South Africa in which a lot of people who were engaged in the political struggle may have been convicted for the wrong reasons. Therefore we don't want to exclude people because of the bad laws of this country. That is why I am just proposing that this goes back to the Technical Committee for total reformulation.

Mr R Cronjè

One may have to read this in conjunction with 6c).

Chief Nonkonyana

If the SACP can also have regard to what is stated in the last portion of that clause, it says that: "if you are imprisoned" then you are excluded.

Mr R Cronjè

I was just worried you are going to move that traditional leaders should be members of the Commission. We note that Mr Pahad.

Mr J Mathews

In respect of 6i) I think it is important to say that the conviction had been taken place between a specified period. For instance if a prisoner has been sentenced for a period without option of a fining and has been outside for ten years or five years then that sentence or punishment should be deemed to have expired and he should qualify to participate.

Mr R Cronjè

We will ask the Committee to look at that. We are busy with clause seven, it just says the election is over that is it. Clause eight, "vacation of office of members. The member shall....."

Mr M Webb

As you are aware some of us don't believe that a TEC will see the light of day but even though if it does, 8.1a), should in fact have a ????? the words Multi-Party Forum just so that we know that in the event of there being no TEC.

Mr R Cronjè

That will be in conformity with earlier clauses.

Mr M Webb

And in fact it is mentioned in paragraph f on page eight.

Mr R Cronjè

Anyone else on clause eight?

Mr L wessels

Mr Chairman I feel uneasy about 8.1f), the formulation at it stands, this particular member could be removed if the TEC or the Multi-Party Forum should decide that such a person is incompetent to fulfil his/her duties. Incompetency as defined here is quite a wide concept and I would like the Technical Committee to look at it and may be come up with a more explicit kind of formulation. When would a person be incompetent? One does open yourself for some inaccurate decisions.

Mrs Gasar

I would like to agree with what Mr Wessels has just raised in to say also on the question of a person being guilty of misconducts. I think we need then some kind of code of conduct so that we are clear what we are talking about when we say a person is guilty of misconduct. I mean a person can actually being victimised by some person somewhere who works out something against them.

Mr R Cronjè

Noted for the Committee. Any other debate? Clause nine, "Remuneration: A person shall be paid....."

Adv de Jager

10.6a) and 6d and e, a member who have a direct or indirect interest should not serve on the Committee at all.

Next Speaker

Inaudible

Mr R Cronjè

Not necessarily because you may have a matter under discussion in which you may have a direct interest and the you accuse yourself in respect of that matter that is on the agenda. That is normal. There may be a matter which affect you and you accuse yourself from that discussion. Not an interest in the profession as such.

Next Speaker

Then section six, the first word, office that you hold that will be in conflict to your.

(Dinner)

Mr R Cronjè

"????? has the following two committees, a broadcasting committee to monitor all broadcasting services and enforce compliance by the services with the guidelines on party

election broadcast, political advertising and secondly fairness concerning broadcasting related to the election....." Mr Dison you are welcome from the Commission. In the event of any questions or observations you will note please. Thank you very much for coming along at short notice. Clause twelve, "Appointment of experts. It may appoint as many....."

Mr de Jager

Is that not inherent powers of the Commission to appoint an expert. It may be an asked-for-opinion, paying the person. Should that be in here? I think that is inherently their powers, but any company or.

Mr R Cronjè

Can such an expert include a person seconded by an international organisation. Clause thirteen, "Staff of Commission. It shall employ....." Clause fourteen, "Powers and functions of the Commission. The Commission in order to....." Comment? Clause fifteen, "party election broadcast. On public sound....."

Mr C Eglin

Mr Chairman I would like to raise a point of procedure. If you look at clause fifteen, sixteen, seventeen, eighteen. This is the essence of what I call the political element of this bill. If you look on the Independent Broadcasting Authority Bill, clauses 59, 60, 61 and 62 are identical and in fact they refer in the bill to these particular clauses here, on the basis that once the IMC disappears they will be administered by the Independent Broadcasting Authority. My question is whether it is appropriate to agree to these now or whether we should agree to them in conjunction with each other, on the basis that the Technical Committee and this Council has asked people to comment by the 6th on the Broadcasting Act. I wonder if the Technical Committee could indicate whether it would be helpful to discuss 15 - 18 under this bill or whether we should defer discussion until we deal with 59 - 62.

Mr Dison

Mr Chairman If you look at the IBA Bill it provides that for the first transitional election, there will be no jurisdiction that the IBA will have in relation to party political broadcast,

political advertising. So this function for the first transitional election is given to the IMC alone. But Mr Eglin is correct that these functions would then be taken over by the IBA to apply to future elections, after the first transitional election. So one needs guidance in relation to these provisions for the first transitional election. But hopefully if these provisions are workable, they could be taken over by the IBA. My sense is that it would be important to hear what the members think about this now.

Mr R Cronjè

Fifteen, a question arose earlier, Mr Dison, and I think it also refers to 15.1, just before we start. If you have a privately owned public sound broadcasting service that is commercial. One assumes that to permit political parties to make party ????? broadcast will be at a fee or do we expect them to deliver a public service if they are privately owned.

Mr Dison

With regard to political advertising that will be, there will be a fee involved. With regard to direct political broadcasts by political parties, there will be no obligation on a commercial radio station to broadcast these.

Mr M Webb

Can I clarify it Mr Chairman. In section two or three were the objects of the Commission were.

Mr R Cronjè

Lets not go back

Mr M Webb

We have to. Mr Dison has raised a point that the commercial enterprises are not subject to the provisions of this act.

Mr R Cronjè

He didn't say that.

Mr Dison

Mr Chairman once they decide to broadcast, direct political broadcasts, they will then become subject to the provisions of this act. But there is no obligation upon them to broadcast direct political broadcasts. Once they get into that arena they would subject to the fair and equitable provisions that are laid down in this act.

Mr R Cronjè

If a political organisation wants to make a broadcast and pay for its time that is their affair.

Mr Dison

Absolutely, Sir.

Mr A Rajbansi

On this particular issue; Party election broadcast, according to the definition, Party election broadcast means a " direct address....." That is in the definition Mr Chairman. If you look at subsection two of clause 15: "The Commission shall....." My question is that does this mean that all political parties through the Commission will have free time on the sound broadcasting service?

Mr Dison

Mr Chairman what it means if you look at 15.1,2 and 3 is that on public broadcasting services there will be an obligation for those broadcasting services to give fair and equitable treatment in relation to direct political broadcasts. Private broadcasting service can make a decision as to whether to get into that arena. It is correct that in relation to direct political broadcasts those will be free of charge, but for political advertising a fee can be charged.

Mr R Cronjè

I Think that is clear.

Mr E Pahad

Chairman on this point can we not go into the merits of this thing. If we take a decision at the end that there should be no political broadcasts, then none of these really applies. It is

the same with advertising. If we do take a decision that there should be, then we need to come back to the whole question about what extent can commercial broadcasters become part of this thing. Because there are problems, which I don't want to go into now, where you can have party political broadcasting on one channel and not the other channel which is licensed. So I think we don't want to get into that debate now, we just want to reserve the position that if we agree to party political broadcast and party political advertising, we then have to come back to the question of to what extent can commercial broadcasters be part of this.

Mr R Cronjè

Clause 16, "Political advertisements, It shall only...."

Mr C Eglin

Mr Chairman May I through you ask the Committee whether this clause and the one that preceded and the next two, in general terms reflect the inputs that were made by the various parties or whether this is a creature of the Technical Committee?

Mr Dison

Mr Chairman it does reflect the inputs to a large extent. The Committee plumped for disallowing direct political broadcasts and political advertising on TV. This was as a result of some submissions made by some political parties, but it did not reflect the general consensus in this regard. The rules relating to radio advertising and direct political broadcasts generally reflect what the political parties had to say.

Mr R Cronjè

Seventeen. I don't understand it. What does it mean? It seems to be contradicting what we have just talked about.

Mr Dison

What we are saying Mr Chairman is that only on sound broadcasting services are these direct political broadcasts by the political parties entitled to be made and there is a prohibition on them being broadcast on the television medium.

Mr R Cronjè

Eighteen

Let it be noted that we would then come back to the question of whether or not we as the Negotiating Council want to make the distinction between sound broadcasting and Television with respect to party political broadcasts and ?????

Mr R Cronjè

Equitable treatment, "If the coverage by any service....."

Mr C Eglin

May I just ask the Technical Committee, number six, "no state financed....." Would that permit a publication explaining a bill or an attitude of a government or a law which is to be enforced as opposed to merely identifying a political party.

Mr R Cronjè

Surely if it is a bill it is a national issue.

Mr Dison

I think that the IMC will have to develop some sort of ??????? in this regard as to the division between pure government interests and the ruling party interests. It is quite a difficult dividing line. But we have not over regulated and hoped that the seven eminent persons would be able to resolve those kinds of issues.

Mr R Cronjè

Twenty, Hearings, "any party which believes....." Twenty one, "Orders, Penalties and Recommendations"

Mr A Rajbansi

Could the Technical Committee also consider, in respect of penalties, if there is wilful violation of this legislation by any individual; who is employed in the broadcasting services and that the Commission is satisfied that this person is taking sides to suggest his removal



from the duty. My suggestion is that if the Commission finds that any individual employed in broadcasting services, wilfully violates the provision of this legislation, could the Technical Committee as a punishment also suggest that broadcasting service take action against that staff member

Mr Dison

Yes, Mr Chairman we could take that into account. I would just draw the members attention to the ultimate sanction that the Commission would have, which would be 21e): "That it recommends to the authority the suspension....." So as you can see from 21 there is a grading of the penalties and the ultimate penalty would be to recommend to the IBA that the license be suspended.

Mr L Landers

I accept what Mr Dison has just conveyed to us, but that is not what Mr Rajbansi is saying. Mr Rajbansi is saying that if an employee or staff member of a broadcaster wilfully transgresses then that employee or staff member must be fired. That is what he is saying.

Mr R Cronjè

Mr Rajbansi is that what you are saying?

Mr Rajbansi

No Mr Chairman. I selected my words very carefully. I said that if any staff member wilfully violates the provision of this legislation, shall I say repeatedly, could the Commission consider recommending him removed from that particular duty. He could do clerical work.

Mr Dison

The Commission has jurisdiction over broadcasting over broadcaster as a broadcasting entity. It doesn't, at this stage contemplate jurisdiction over employees.

Mr R Cronjè

Twenty five, "Regulations, Regulations could be made....." Twenty six, "Offenses and

Penalties, A person who ....."

Mr L Landers

Could the Technical Committee explain to me, this anticipates the proceedings at a hearing. I don't quite understand that.

Mr R Cronje

What are you referring to?

Mr L Landers

A person who anticipates the proceedings at a hearing. How does that constitute an offence or a penalty?

Mr Dison

Mr Chairman these are standard types of provisions in relation to contempt of Commission and anticipation of the findings of the Commission is generally provided for in the legislation relating to Commissions generally as an offence. It is very difficult to prove but it is generally put in to prevent people from anticipating the findings. The way one would do it if it was proved against someone, would be if someone leak the finding of the Commission before it actually issued its findings. That would be the most prosecutable form of anticipation. This is a very difficult thing to prove. As I say this is taken from standard kinds of provisions in relation to Commission.

Mr R Cronje

What about criticism of the Commission.

Mr Dison

One can criticise it but one can't insult,???? or belittle it as in a).

Mr E Pahad

It is not clear to me who then is to decide to impose this fine, who then is to decide that their should be an imprisonment, whether you then are suppose to go to a court of law and a court

of law is suppose to. Yes I am asking. So I am saying that there is a problem relating to notions of insults and ????. Even if other Commissions have it, I am not sure that we want to start putting these things in which could create difficulties later on. I Think the rest of the are very correct in terms of interfering with the work of the Commission. Perhaps we shouldn't discuss it now but just ask the Technical Committee to have another look at it and see whether we actually need it. They might find that we don't need it and then we don't need to have discussion on it.

Mr C Eglin

Mr Chairman I think we should have another look at this. I think this clause a) generally relates to commissions of Inquiry, in other words commissions sitting in a judicial sense, where they are actually making a decision of a judicial kind and therefore one doesn't want to belittle or anticipate it. This Commission has got limited judicial function. It has got a vast executive function. I would have thought that in terms of its executive function its open to the ordinary criticism that any other executive body should. I would suggest that this clause should be reexamine in the light of the specific functions of this Commission.

Mr R Cronjè

Taken note of twenty six.

Mrs X Sigcau

I am worried about 25 only referring to the Commission with regard to making recommendations to State President. That doesn't seem to include the TEC or the Multi-Party Forum. I think this should not be bypasses. Should there be a reason for them to want to make some recommendation with regard to regulations. So I think lets include them, lets make space for the recommendation to all so come from the TEC/ Multi-Party Forum

Mr R Cronjè

The Commission has the right to make regulations in terms of this act, the Media Commission. I don't know how the TEC fits in.

In terms of any bill or act you are allowed, usually, you can make regulations in terms of this act. So all it is saying that this Commission could, in terms of this act, ask for

regulations to be passed. Unless you want to say it shouldn't be the State President

Mrs X Sigcau

All we are saying is that the State President should be able to make regulations on recommendations by the Commission but also by the TEC/Multi-Party Forum. The formulation should be able to make space for that possibility.

Mr R Cronjè

The Commission is responsible for the act and the implementation of the act and therefore it is for the Commission to ask that regulations be passed. The Tec do not have the responsibilities for the management of the act as it were. The act empowers the Commission and in terms of the Commission's responsibility.

Adv de Jager

I presume this act would be redrafted. Because it is not framed in a way, we have passed certain sections. We know what they want to say but it is not being said clearly and I think it should be redrafted and we will have to rediscuss the whole matter because we can't approve of certain of the sections as it stands here.

Mr R Cronjè

We are not approving anything. We are only discussing it. Twenty seven.

Mr A Rajbansi

27.1, "The Commission may delegate....." My question is that we have to be very clear about delegation of powers. If you refer to clause 13, you will notice that you have got to have a staff of the Commission and the staff is going to exercise and perform powers, functions and duties of the Commission. This can only be then through delegation. The danger is that if you leave it as it is, the Commission can delegate its power to anybody. Normally in terms of legislation you must state clearly to whom these powers are to be delegated.

Mr R Cronjè

I think that it is clear great care is taken how the Commission should be constituted. Having done that we can they can delegate any power to whom ever they wish and it doesn't make sense

Adv de Jager

Subsection two, the power has been delegated. Certain functions performed in terms of the delegation and a year after it has been done the Commission would come and say no I don't approve of what my delegate has done. At least there must be some time frame with it to say I am not approving of what my delegate has done. In the normal sense of the word I am bound by what my delegate said

Adv Jacobs

I agree with my colleague. To my mind what stands there is tantamount to say the following: one, I have delegated the authority and two I am not ???? of it. Secondly Mr Chairman as far as paragraph one is concerned, I know what stands there but we must also be sure that we would like this to be inserted in the act, because this is a vast ?????? on common law powers.

Mr R Cronjè

I think Mr Dison as noted the concern about one. I am sure that he has noted what has been said in respect of two and they will reconsider it.

Mr W Felgate

I just want to note about this draft bill and other draft bills before this Council that perhaps the Planning Committee should consider the matter that we appointed Technical Committees who are very good people. They haven't been appointed because they are able to draft legislation and then there is a hole in the procedure and perhaps the Planning Committee should give attention to turning the drafts of the Committees into draft bills and finally it is the bills and the wording of bills which this Council will have to consider.

Mr Rajbansi

Just my comment on the points raised in subsection two. I don't think that there is a need

for that. Somewhere it is understood that when you delegate a power to somebody lower down you delegate the power. The person who receives the delegation performs a function but the authority that is delegating it, does not at any stage delegates the responsibility. So at any time the person delegating it has the power to alter decisions.

Next Speaker

I just want clarification from the Technical Committee, page 7, it is a comparison and a clarification. We are not debating it. Page seven number seven, subsection two it reads as follows: "....." and then 28 say desolation of Commissions still to be decided. It seems as those two sections contradicts themselves.

Mr Dison

We drafted this six weeks ago and we then turned our attention to drafting the IBA Bill.

Mr R Cronjè

So you note what have been said

Mr Dison

I Note what has been said. We have now resolved this problem in the sense that the powers of the Commission, if accepted by this Council, would be transferred to the IBA. We will now be able to draft the ???? clause.

Adv Jacobs

28 could be called the judicial way of dissolution but also 27.1 must also be reframed not just to make room for a de facto dissolving of the Commission. If the Commission could delegate any of its powers to any other commission or body it could be devolved in that way.

Mr R Cronjè

Clause 29.

Mr Netsetene

We wanted to propose that the phrase on the recommendation of the TEC should include

Multi-Party Forum ie where the IEC could come into being at the same time of the TEC.

Mr M Webb

I support that.

Mrs Mangope

Throughout the Bill the words TEC and Multi-Party Forum are used interchangeably. That gives the impression that all the duties referred herein can be done by either, or. I don't recall us agreed or even debating the TEC. For that reason Bophuthatswana would like to reserve their position.

Mr R Cronjè

Definitions

Mr M Webb

The Republic talks about Ciskei and I want to give Ciskei's impression of it.

Mr R Cronjè

Do you wish to discuss the definition of republic?

Mr M Webb

No, I wish to discuss the act itself.

Mr R Cronjè

Anything on page 1 to 5.

Mr M Webb

You intimidated me into not responding to the definition of Republic and State because Ciskei does not accept that definition. Could I just talk in general about the act itself. It provides for an IMC and not Commission for an Independent Media. The only independence there is this legislation is the independence of the Commission ?????? The act particularly disfavours publish service broadcasts such as the SABC and broadcasters of the TBVC states.

These broadcasters will stand increasingly alone as providers of quality information?????. The act does little to protect minority interest groups. Effective ??? of the public interest will only be achieved through the clear separation between a regulatory authority and those responsible for the day to day management?????. The act does not control broadcast from outside of this country. However section seven completely silences our own television broadcasting services. With the political events that are occurring at this time it will mean that only those political parties who are attractive in the international scenario will be able to obtain free television broadcasting. I think that is incorrect. Locally a lack of funding will limit the small parties of making full use of the airtime. Major parties could afford to bring experts into the political arena, they will also be able to overshadow the smaller parties. The line between proper complaints about a content of programme and improper pressure on broadcasters is also a thin one. Covering of political violence, church services, etc may all lead to violations of this act. We believe that ????? it would also create a farce. In essence the act will effectively silence the public service broadcasting. ??????. As a result of all the reasons, Ciskei rejects the terms of the act and will not be supporting.

Mr E Pahad

Can I just make general comment on what was discussed in 25. I think what the Technical Committee would want to consider that an impression should not be left that in terms of making recommendations relative to regulations in the act, that it does not preclude other interested bodies and organisations from also making recommendation.

Mr Jacobs

The Commission's work is regulated but no attention is paid to judicially safeguarding the independence of the media

END