

THESE MINUTES ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES.

MINUTES OF THE MEETING OF THE TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES HELD ON 10 MAY 1993 AT 16H30 AT THE WORLD TRADE CENTRE

PRESENT: F Cachalia
A Chaskalson
BM Ngoepe
M Wiechers
F Venter

Minutes: K Morgan

1. Chairpersonship

Resolved:

- 1.1 That the principle of a weekly rotating Chair be accepted.
- 1.2 That Dr Venter Chair the first meeting of the Technical Committee.

2. Quorum

Resolved:

- 2.1 That the Chair may declare a meeting open and permit discussion to proceed when at least four members of the participating delegates are present.
- 2.2 That, depending on the prevailing circumstances, some amount of flexibility should be exercised on the issue of a quorum.

3. REPORT OF THE TECHNICAL COMMITTEE

3.1 Noting:

- 3.1.1 That the Planning Committee has charged the Technical Committee on Constitutional Issues, to give consideration to the best way of proceeding specifically with the issue of the borders, functions and powers of Regions;

3.1.2 That bearing in mind that the above mentioned issue is part of the Terms of the Reference of the Constitutional Technical Committee, a view was expressed by the Planning Committee that it may be helpful to look at other methods of examining this aspect of the total constitutional package and that it in this context that the Technical Committee should give consideration to whether this issue would best be handled by:

- * The Technical Committee on Constitutional Issues;
- * A commission appointed to take evidence on this issue; or
- * A separate committee appointed to deal with this issue .

3.1.3 That the Technical Committee on Constitutional Issues should consider above all, how this matter can be handled expeditiously, in conjunction with the rest of its work.

3.1.4 That the Planning Committee requests that the Technical Committee have available, its first Report, on the issue of Regions, as well as the remaining constitutional items, on Thursday 13 May, so that it may be submitted timeously for discussion by the Planning Committee on 14 May, and the Negotiating Council on 18 May.

3.2 **Resolved:**

3.2.1 That the issue of Regions should, for the time being, be dealt with by the Technical Committee on Constitutional Issues;

3.2.2 That the following members be charged with making written inputs on the following issues:

3.2.2.1 F Cachalia: Form of State and the Process for resolving disputes over the determination of boundaries, functions and powers of Regions

3.2.2.2 Messrs Venter and Chaskalson: Constitutional principles, Constitutional Making Body/Constituent Assembly, Transitional/Interim Constitution

3.2.2.3 M Wiechers: Self Determination

3.2.2.4 BM Ngoepe: Future of the TBVC States

3.2.3 That these written inputs ultimately be formulated into a working document on Wednesday, 12 May, towards submitting a report to the Planning Committee on Thursday 13 May 1993.

4. **Date of next meeting**

It was agreed:

That the next meeting of the Technical Committee on Constitutional Issues should be held on Wednesday, 12 May 1993 at 11h00 at the World Trade Centre.

The Following documents were distributed by Dr Venter : (See Addendum A)

1. Technical Committees on Constitutional Matters: Proposed Agenda
2. Commission for Regional Government
3. Organogram (dealing with phases towards a new order)

TECHNICAL COMMITTEE ON CONSTITUTIONAL MATTERS

Proposed Agenda

1. **Regional Government**

- Process and procedures prior to the elections (Commission, Multi-party Negotiating Council)
- Position of the self-governing territories
- The TBVC states
- Process and procedures after the elections (constitutionalisation of the Commission and procedures regarding its reports)
- Regional government structures, powers and functions under the transitional Constitution

2. **Principles governing constitution making**

3. **Parliament under the transitional Constitution**

- Composition and electoral system
- Constitutional procedures
- Legislative procedures

4. **The Executive under the transitional Constitution**

5. **The Judiciary under the transitional Constitution**

- Constitutional Court
- Constitutional Tribunal

- Supreme Court (including the superior courts of reincorporated territories)
- Lower courts (including courts of reincorporated and self-governing territories)

6. **Local government**

7. **Miscellaneous constitutional matters**

- National symbols
- Financial matters
- SAP and SADF
- Ombudsman
- Auditor-general
- Commission for Administration
- Reserve Bank
- Civil society
- General and transitional provisions

COMMISSION FOR REGIONAL GOVERNMENT

1. Appointment

In order to provide the Commission initially with a statutory functional framework, its members should be appointed, and its terms of reference determined in terms of the *Commissions Act 8 of 1947*. This implies that the appointments will formally be made by the State President. It should however be generally accepted that the appointees and the terms of reference will be agreed to multilaterally and that such agreements will be honoured by the Government.

2. Composition

The Commission shall at no time consist of more than ten members. Two or more of the members shall be appointed on account of their expertise concerning geography or development planning, two or more shall be appointed on account of their expertise in constitutional law and two or more shall be appointed on account of their expertise in public administration.

The members of the Commission shall elect from among their number a chairman and vice-chairman.

The Commission may, within its discretion, divide into committees for the purposes of performing its functions regarding the various elements of its terms of reference.

3. Terms of Reference

- 3.1 The first priority task of the Commission will be to make recommendations to the Negotiating Council on the delimitation of regions for the purposes of the election of Parliament in terms of the transitional Constitution. For this purpose the Commission shall take into account the following criteria:

- 3.1.1 historical boundaries, including provincial, magisterial and district boundaries and infrastructures
- 3.1.2 administrative considerations including the availability or non availability of infrastructures and nodal points for services
- 3.1.3 the need to rationalise existing regional structures (including the TBVC states, self-governing territories and regional governments)
- 3.1.4 the necessity of limiting financial and other costs as much as is reasonably possible
- 3.1.5 the need to minimize inconvenience to the people
- 3.1.6 the need to minimize the dislocation of services
- 3.1.7 demographic considerations
- 3.1.8 economic viability
- 3.1.9 developmental potential
- 3.1.10 cultural and language realities

The Commission shall invite all interested parties and persons to submit their views and recommendations regarding the delimitation of regions either in writing or orally on or before a date determined by the Commission.

The Commission shall submit its recommendations regarding the delimitation of regions to the Negotiating Council not later than 13 August 1993.

- 3.2 The second task of the Commission will be to submit recommendations to the Negotiating Forum on the structures, procedures, functions and powers of regional governments under the transitional Constitution.

In the performance of this task the Commission shall take due cognizance of all progress made in the Negotiating Council regarding the formulation of consensus regarding the content of the transitional Constitution.

- 3.3 The third task of the Commission shall be to inquire into and recommend to Parliament elected in terms of the transitional Constitution final boundaries, powers, functions and constitutional structures of regions in the future constitutional dispensation. The appointment, composition and terms of reference of the Commission, as well the procedures regarding the acceptance, rejection or referral of its recommendations by Parliament, shall be regulated by provisions especially included in the transitional Constitution.

4 Functioning of the Commission

- 4.1. The Commission will determine its own procedures for gathering and considering evidence, provided that evidence and representations must be gathered from various parts of the country, and that cognizance must be taken of ongoing negotiations in the Negotiating Council.
- 4.2. The Commission will have sufficient staff and resources to perform its task as expeditiously and impartially as possible.

MPC April 1993

Agreements on:
TRANSITIONAL EXECUTIVE COUNCIL

ELECTIONS COMMISSION

CONSTITUTIONAL PRINCIPLES

TRANSITIONAL CONSTITUTION

APPROVES

→ **COMMISSION**

TRANSITIONAL EXECUTIVE COUNCIL

→ **ELECTIONS COMMISSION**

Legislation
May 1993

FOR REGIONAL GOVERNMENT
Delimitation
Functions
Powers
Structures

REPORTS

Establishment of

TRANSITIONAL EXECUTIVE COUNCIL

ELECTIONS COMMISSION

June 1993

Delimitation

Adoption of
TRANSITIONAL CONSTITUTION
September 1993

Functions

ELECTIONS

March/April 1994

Powers

Parliament, Government of National Unity, transitional regional government, phasing in of new local government structures, a Charter of Fundamental Rights, a Constitutional Court and binding Constitutional Principles.

Structures

Establishment of Provincial Government

VENDA GOVERNMENT POSITION PAPER ON VIOLENCE.

1. INTRODUCTION.

Violence has been the enemy to humanity and will always be apponent to peace and stability unless prevented. The escalating violence in our country is counter-productive and threat to a climate conducive to free political participation. Free political participation which refers to the right of every individual to freedom of expression, freedom of assembly and freedom of association is a basis for free and peaceful political climate conducive for negotiations to take place. Thus a proper climate will provide every individual or organisation with an opportunity to put forward their ideas and view points on the direction to be followed without any hinderance.

2. FACTORS CONTRIBUTING TO VIOLENCE.

Socio-economic conditions which have a bearing on violence especially within the black community should be addressed. Lack of social resources such as accommodation, high level of unemployment and poverty which came as a result of inequality in the distribution of wealth, play a role in the increase of violence.

Lack of political tolerance by political parties and organisations participating in negotiations is another area of concern. All political parties and organisations should submit themselves to the principle of democracy emphasising the freedom of the individual. Political intimidation has assumed different levels in Southern African which is evident of lack of a culture of political tolerance. All leaders of political parties and organisations should give a lead to their supporters and educate them towards acceptance of others and plant seeds of friendship. They should inspire and urge their supporters to desire and work for peace. Cooperation rather than confrontation amongst leaders should be the order of the day. To eliminate some of these problems, a code of conduct for political parties as spelt out in the National Peace Accord should be enforced.

Certain predisposing factors such as retrechments has a bearing on violence. This factor cannot be looked into in isolation but forms a chain reaction of factors. Once there is violence and instability within the country, there will be a sharp increase in disinvestment which ultimately leads to retrenchments.

It is also essential to consider other factors which look to be minor and having no bearing on violence but having such a tremendous effect. Trigger effects such as individual assaults, rumours, insults, to mention a few also play a prominent role. To this end we call upon all leaders of political parties and organisation to educate their supporters to practice the principle of acceptance, in other words to accept other people as part of the community and not wish them away.

3. CONCLUSION

Violence free community is the ideal situation for negotiation to take place but, it is difficult to attain such a situation. It is therefore essential to identify and analyse various causes of violence so that meaningful solutions can be establish for the betterment of the country. As some problems cannot be solved there and then, they need to be classified in terms of long and short term projects so as to pave the way for free political activity. Finally it is essential that all political parties and organisations should have common purpose to bring an end to violence which will culminate an a democratic society.

- [REDACTED]
- [REDACTED]
1. Violence continues to rage in our country despite political leaders' resolve to end this devastating malady.

Violence may continue to be with us for a long time if we continue to address the symptoms of violence and not its causes.

2. The causes of violence are numerous and very obvious to us. Violence rages within the present undemocratic socio-political order. It is Inyandza National Movement's view that the causes of violence and resolution cannot be permanently addressed within the present socio-political order. As a point of departure in this regard, there is an urgent need to drastically transform the socio-political order in this country.

3. We therefore wish to recommend and urge all political leaders committed to peace to commit themselves to a speedy resolution of the political conflict in the country to enable democratic elections to take place and in this way usher us into a democratic socio-political order in the country.

4. We further wish to wholeheartedly associate ourselves with the resolution under discussion.

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ISSUES CAUSING VIOLENCE/THREATENING THE NEGOTIATING PROCESS AND UNDERMINING THE IMPLEMENTATION OF THE NATIONAL PEACE ACCORD

The wanton killing of Mr Chris Hani and the finding of a hit list in the flat of the gunman arrested introduces a new dimension into the question of violence in South Africa. The appeal to all South Africans by top Political Leaders for calm and for a commitment to the negotiating process, we sincerely trust will contribute to the easing of tensions which have been exacerbated by the murder of Mr Chris Hani.

As it has been so often alluded to, it is abundantly clear that a concerted effort is being made in certain circles to derail the negotiation process and to allow the country to drift into chaos and anarchy so as to delay the transition to a democratic society.

It is also true that violence in some parts of the country is due to rivalry and disputes between factions which is of a localised nature. In addition business competition as evidenced by the ever present threat of violence between competing taxi operators is also a matter for great concern as conflicts emanating from these disputes have not only cost the lives of innocent people but has also served as a catalyst for further violence.

For so long as violence emanates from sources which are not directly linked to politics or political groupings as indicated above, the National Peace Accord will continue to be undermined by the parochial interests of certain persons/groups which unfortunately would appear to transcend the larger National interest.

Unemployment in our opinion is a further cause for violence as is evidenced by the increasing level of criminal activity presently being experienced throughout the country. The need to address this challenge on an urgent basis cannot be overemphasised. Progress in providing work opportunities will require the fullest possible co-operation and consensus between commerce/industry, the trade union movement and the Government. New Investments will only be made in a climate of peace and stability.

In the meantime/..(2)

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In the meantime the negotiation process must proceed without any further delay so that the Transitional Executive Committee and its various Sub-Councils can be brought into being at the earliest opportunity. The functioning of the Transitional Authority we believe will amongst other things make a positive contribution towards defusing violence and giving an impetus to economic growth.

We would be deluding ourselves if we are to believe that violence can be completely eradicated in our country before there is demonstrable evidence of a breakthrough in the negotiation process. Therefore a serious responsibility rests on all participants to expedite the negotiation process so as to facilitate the enactment of legislation flowing therefrom and designed to bring into being the Transitional Executive Committee.

SOLIDARITY PARTY

