

THESE MINUTES ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE NEGOTIATING COUNCIL.

MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 11h00 ON WEDNESDAY 29 SEPTEMBER 1993 AT THE WORLD TRADE CENTRE

PRESENT: See Addendum A

1. Moment of Prayer/Meditation

A moment of prayer/meditation was observed by all members.

2. Welcome and Attendance

The participants were welcomed.

3. Ratification of the Agenda

The agenda was ratified with no amendments.

4. Minutes

4.1 The minutes of the meeting of 6 September 1993 were ratified with no amendments.

4.2 No matters arising were noted out of the minutes of the meeting of 6 September 1993.

5. Planning Committee Reportback

5.1 It was noted that it was necessary for the Planning Committee to meet from 14h00 to 16h00 today. The Negotiating Council would therefore break for lunch at 14h00.

5.2 It was noted that the Planning Committee was scheduled to meet with representatives of the Traditional Leaders at 08h30 on Tuesday 5 October 1993.

5.3 It was noted that the Negotiating Council meeting would commence at 11h00

on Tuesday 5 October 1993.

6. Substantive Issues - Draft Electoral Bill

- 6.1 The Technical Committee on the IEC was welcomed. Present were J Bruwer (state law adviser), D Davis, SK Ndlovu, RB Rosenthal and F Ginwala. Apologies were noted from HR Laubscher. The Technical Committee presented the first version of the Draft Electoral Bill.
- 6.2 It was noted that the Draft Electoral Bill should be read with the Independent Electoral Commission Act.
- 6.3 It was noted that, in drafting the Electoral Bill, the Technical Committee had been bound by the agreement reached by the Negotiating Council with regard to the Independent Electoral Commission Act. It was further noted that the Electoral Bill had been drafted specifically in respect of the first election. Furthermore, this was an initial discussion and the clauses could be revisited when the report was next discussed. It was suggested that the Draft Electoral Bill could only be finalised once the Draft Constitution had been agreed upon.
- 6.4 It was suggested that the Technical Committee should bear in mind that Schedule 5 as part of the Draft Constitution was the subject of conflicting debate in the Negotiating Council.
- 6.5 It was agreed that the Planning Committee should consider the advisability of a member of the Technical Committee on Constitutional Issues attending the debate in the Negotiating Council when the reports of the Technical Committee on the Independent Electoral Commission were dealt with and to also consider the reverse situation.
- 6.6 It was agreed that the meeting should proceed to discuss the Draft Electoral Bill clause by clause. Questions of clarity were put to the Technical Committee.
- 6.7 Definitions:

* "acceptable identity document" refers:

It was suggested that the words "of the Republic" should be deleted. It was noted that this definition should be read with the definition of "the Republic" in the Independent Electoral Commission Act. No decision was taken.

- * "non-governmental military force refers":

It was suggested that the Technical Committee should consider the definition of "armed force" contained in the TEC Draft Bill as the two should tally.

- * "party" refers:

It was suggested that this definition should be brought into line with the definition of party in the Independent Electoral Commission Act.

- * "prescribe" refers:

It was suggested that the Technical Committee should reconsider this definition.

- * "qualified person" refers:

It was suggested that the Technical Committee should reconsider this definition with regard to the reference to section 21.

- * "region" refers:

It was noted that this definition should be reconciled with the one agreed upon for the Draft Interim Constitution.

- * It was suggested that a definition was necessary for the word "Commission". It was noted that "Commission" was defined in the Independent Electoral Commission Act.

- * It was suggested that a definition of "Electoral Code of Conduct" was necessary.

- * It was suggested that for the discussion of this Bill the issues relating to the TBVC States should not be drawn in.

- * The Transkei reserved its position with regard to the definitions of "acceptable identity document", "district", "region" as read with clause 12 of this Draft Bill.

- * No comments were noted with regard to any of the other definitions.

6.8 Clause 2 "Application of Act" refers:

- * No comments were noted.

6.9 Clause 3 "Administration of Act" refers:

- * It was suggested that the word "democratic" should read "election". Other participants did not agree with this view.

6.10 Clause 4 "Appointment and control of electoral officers and staff" refers:

- * It was suggested that there should be provision in this clause for the Chief Director or for the Regional Electoral Officer to divide the regions into districts and criteria should be provided.
- * It was suggested that high ranking officers should be appointed either by the Directorate or by the Commission.
- * It was suggested that there should be provision for agents of political parties to monitor/scrutinise the appointments.
- * It was suggested that the monitoring and appointing of staff at a lower level should be left to the Chief Director.

6.11 Clause 5 "Powers, duties and functions of regional electoral officers" refers:

- * It was suggested that there should be communication/interaction with political parties on the issues referred to in clause 5 (1). Other participants did not agree with this viewpoint.
- * It was suggested that there should be liaison with political parties (clause 5 (1) refers). Other participants did not agree with this viewpoint.
- * It was noted that the Technical Committee would consider the issue of political parties objecting to appointments for whatever reason.
- * It was suggested that there should be a mechanism to cater for objections of political parties to certain appointments but that the authority should be left with the Commission itself or some dispute resolution mechanism of the Commission.
- * It was suggested that the powers prescribed in clause 5 (2) should be elaborated upon and clearly stated.

6.12 Clause 6 "Powers, duties and functions of district electoral officers" refers:

- * No comments were noted.

6.13 Clause 7 "Powers, duties and functions of presiding officers at voting stations" refers:

- * It was suggested that with regard to clause 7 (1) (a) and (b) any rules in respect of the orderly conduct of voting at a voting station should be prescribed and clearly stated for the purpose of uniformity.
- * It was suggested that clause 7 (1) (a) and (b) should be combined to read as follows "take steps as may be necessary for the orderly conduct of the voting including the regulation of voters to be admitted at a time".
- * It was suggested that although regulations are promulgated as to the conduct at polling stations, an element of discretion is introduced.
- * With regard to clause 7 (1) (c) it was suggested that the clause should be phrased differently and not use the idea of exclusion but enshrine the right of the Chief Director, voting agent, etc. to be present. The issue of discretion on the side of the presiding officer should be dealt with separately.
- * It was noted that the Technical Committee would give consideration to the question of what would constitute "reasonable steps" as referred to in clause 7 (3).
- * It was suggested that the issue of translation and the provision of interpreters should be provided for in this clause.

6.14 Clause 8 "Powers, duties and functions of voting officers at voting stations" refers:

- * No comments were noted.

6.15 Clause 9 "Powers, duties and functions of counting officers" refers:

- * It was noted that the reference in clause 9 (1) was incorrect. The Technical Committee was requested to make the necessary amendment.
- * It was suggested that votes ought to be counted at the venue they had been cast, the results thereof transmitted and ballot boxes then taken to counting centres where the results could be verified. Various participants did support this viewpoint but noted that the Commission should be allowed flexibility in this regard.

6.16 Clause 10 "Appointment and powers, duties and functions of agents of registered parties" refers:

- * It was suggested that under clause 10 (1) (a) provision should be made for the appointment of a chief election agent, a deputy and an agent for each region. Furthermore, if the appointments have not been made in terms of (a) and a particular SPR legislature was being contested, provision should be made in (b) for the appointment of a regional election agent for the said SPR.
- * It was suggested that in respect of clause 10 (1) (a) and (b), there should be a prescribed time by which the chief election agent or the regional election agent should be appointed.
- * It was suggested that the definition of "voting agent" should be reconsidered by the Technical Committee, taking into account the debate in the Council.
- * With regard to clause 10 (3) (b), it was suggested that, in addition to the Chief Director or the regional electoral officer, notice of any change in the appointment of election agents should also be given to the presiding officer.
- * With regard to clause 10 (5), it was suggested that the rule in respect of the appointment of voting agents by the election agent in the manner prescribed by the regional electoral officer should be uniform.
- * It was suggested that guidelines should be formulated for the election agents.

6.17 Clause 11 "Declaration of secrecy" refers:

- * It was suggested that provision should be made for remuneration of election officials or for the substitution of dismissed officials.

6.18 Clause 12 "Persons entitled to vote" refers:

- * It was suggested that the Technical Committee should draft this clause in a way that allowed all the people of South Africa, including people in the TBVC States, to vote in the elections.
- * It was proposed that there should be a provision to deal with the issue of the TBVC States which would read along the lines of "those eligible to vote would be in possession of South African and TBVC States identity documents". It was further suggested that the provision did not deal with re-incorporation but with extending the franchise.

- * The Transkei reserved its position with regard to this clause due to the concerns raised during the course of the debate.
- * It was agreed that the Technical Committee on the Independent Electoral Commission should liaise with the Technical Committee on Constitutional Issues with regard to clause 6 of the Draft Interim Constitution and the any practical problems that arose from the wording. Furthermore, the question of when clause 6 of the Draft Interim Constitution would come into operation should be dealt with. It was further suggested that the Draft Electoral Bill should be drafted in consultation with the Technical Committee on Constitutional Issues.
- * It was suggested that South African citizens who had left the country and who had not yet returned and as a result thereof may have legally lost their South African citizenship should be catered for in this Draft Bill.
- * It was suggested that birth certificates, baptismal certificates and marriage certificates should be included within the definition of an acceptable identity document. Other participants did not agree with the inclusion of birth certificates. Concerns were raised with regard to the practicality of using birth certificates as an acceptable identity document. It was further suggested that identity documents of the TBVC States should be acceptable as an identity document. Furthermore, it was suggested that temporary identity documents issued by the Department of Home Affairs, could serve as acceptable identity documents.
- * It was suggested that elections within the regions should occur before a national election was held. Other participants were of the view that although the Ciskei Government wanted regional elections to be held, this did not dilute the proposal referred to above.
- * It was suggested that the Negotiating Council should address the question of the enforceability of the Draft Electoral Bill with regard to the TBVC States.
- * It was proposed that the Negotiating Council should adopt a resolution instructing and empowering the Department of Home Affairs to issue an identity document to every person, including people of the TBVC States, who wished to vote in the elections.
- * It was suggested that it should be clearly stated in the Draft Bill that all people within the 1910 borders of South Africa had the right to vote and parties who were standing for election had the right to campaign to these people.

- * It was suggested that the principle of the right to vote should be dealt with in the Draft Interim Constitution and that this clause as it stands was in accordance with the principle of the right to vote. Other participants did not agree with this viewpoint.
- * Concerns were raised with regard to the issue of monitoring of elections in the TBVC States.
- * It was noted that the Bophuthatswana Government would not support any instruction given to the Technical Committee to make provision for the Draft Bill to apply extra-territorially.
- * It was noted that the Ciskei Government could not support any instruction given to the Technical Committee which in any way denied the sovereignty of an independent State or which in any way took away the rights of the individual in the said State. Furthermore, if such an instruction was given to the Technical Committee, the Ciskei Government would have to reconsider its position.
- * It was noted that the South African Government wished to make written submissions on the Draft Electoral Bill to the Technical Committee.
- * After discussion around the various proposals, it was noted that the ANC would table a written resolution to be debated once the Draft Electoral Bill was dealt with again.
- * It was suggested that the critical element was how "South African citizen" was defined in the Constitution.
- * It was suggested that the Technical Committee should examine the practical implications of the franchise being extended to people resident in the TBVC States.
- * It was agreed that the Technical Committee, in conjunction with the Technical Committee on Constitutional Issues, should present formulations on this issue assuming that the Negotiating Council will reach consensus that all the inhabitants of the TBVC States should be able to vote. The formulations should encompass the question of identity documents. It was noted that these formulations would form the basis for another debate on this issue.

The meeting adjourned for lunch at 14h45.

The meeting reconvened at 17h00. It was noted that the Planning Committee had met during the adjournment and had completed its business. Furthermore, a press statement would be

ended in this regard when the Negotiating Council adjourned for the day.

6.19 Due to time constraints it was agreed that the meeting should proceed to deal directly with issues raised by the Technical Committee requiring guidance.

6.20 The meeting proceeded to discuss the issue of whether prisoners should vote. This issue is encompassed in clause 13 "Persons not entitled to vote".

* It was suggested that prisoners should not be given the vote. Various participants did not agree with this viewpoint. Lengthy debate proceeded around this issue.

* It was suggested that the Technical Committee should submit recommendations with regard to the question of access to prisoners, the canvassing of prisoners by all political parties, the guaranteed information flow to prisoners and the issue of polling stations for prisoners.

* It was suggested that the Technical Committee should submit a recommendation with regard to different categories of prisoners and/or crimes.

* It was suggested that the Technical Committee should reconsider clause 13, taking into account the views expressed in the meeting.

* After lengthy debate on this issue, no agreement could be reached. It was, therefore, agreed to leave this matter in abeyance.

* The Technical Committee was requested to take note of the debate.

6.21 The meeting proceeded to discuss the issue of voters' cards (clause 14 refers). Due to time constraints the debate was curtailed on this issue.

6.22 The Technical Committee was thanked for its work so far completed.

7. **Administrative Matters**

It was noted that cheques for delegates were ready at the finance office.

8. **Meetings Schedule**

8.1 It was noted that the Planning Committee was scheduled to meet representatives of the Traditional Leaders on Tuesday 5 October at 08h30 to 09h30. The Planning Committee would then meet to deal with its business

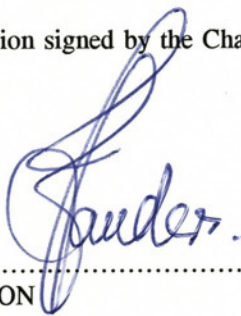
● from 09h30 to 13h00.

8.2 It was noted that the Negotiating Council meeting on Tuesday 5 October 1993 would commence at 13h00.

9. **Closure**

The meeting adjourned at 18h00.

These minutes were ratified at the meeting of the Negotiating Council of 18 October 1993 and the amended version signed by the Chairperson of the original meeting on *1/11/1993*



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CHAIRPERSON

The following delegates and advisers were present at the meeting of the Negotiating Council on Wednesday 29 September 1993:

L Landers : Chairperson
 MJ Mahlangu : Assistant Chairperson

Organisation	Delegates	Advisers
ANC	C Ramaphosa M Manzini	P Maduna P Molefe
AVU	S Burger C Kruger	AJ Horn JM Roos
Bophuthatswana	R Mangope SG Mothibe	
Cape Trad. Leaders	M Nonkonyana SN Sigcau	GD Gwadiso DM Jongilanga
Ciskei	M Webb VT Gqiba	TM Bulube AC Cilliers
DP	C Eglin D Smuts	KM Andrew
Dikwankwetla	SOM Moji K Ngwenya	TJ Mohapi
IFP		
IYP	NJ Mahlangu NS Mtsweni	
KP		
INM	SS Ripinga ND Mokoena	MS Gininda GG Zama
Kwazulu		
Labour Party	J Douw CC August	I Richards
NIC/TIC	PJ Gordhan F Hajaij	C Saloojee
NP	SJ Schoeman TJ King	
NPP	A Rajbansi S Naidoo	AL Singh N Rajaram

Trad. Leaders	MB Mota MT Moroke	RH Mopeli MA Molefe
PAC	P de Lille B Desai	L Makhanda
Solidarity	DS Rajah K Moodley	G Mari
SACP	J Slovo L Jacobus	
SA Government	DPA Schutte LR Brink	A Tredoux RP Meyer
Transkei	Z Titus N Jajula	R Nogumla
TVL Trad. Leaders	MF Mngomezulu LM Mokoena	NE Ngomane MA Netshimbupfe
UPF	A Chabalala MJ Mahlangu	J Maake JR Dombo
Venda	SE Moeti	S Makhuvha GM Ligege
XPP	PT Shilubana	GNK Hetisani

T Eloff	:	Administration
G Hutchings	:	Minutes
C Radebe	:	Administration
M Radebe	:	Administration