

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

**MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 14h15 ON MONDAY 23 AUGUST 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 Ratification of Minutes:**

4.1.1 The minutes of the meeting of 16 August 1993 were ratified with the following amendment:

- \* Item 6.1.3, the addition of a further asterisk to read "It was noted that the Technical Committee had accepted a suggestion made on 27 July 1993 to amend the definition of regional government to include provinces, TBVC States and Self-Governing Territories".

**4.2 Matters arising out of the Minutes:**

No matters arising were noted out of the minutes of 16 August 1993.

**5. Reportback from the Planning Committee**

**5.1 Preamble to the Constitution:**

It was noted that this was included in the report of the Technical Committee on Constitutional Issues.

5.2 Constitutional Issues:

5.2.1 It was reported that the General Council of the Bar had indicated its willingness to make an input on the chapter of the constitution dealing with the Administration of Justice.

5.2.2 It was then noted that a letter would be sent to the General Council of the Bar requesting it to make its submissions in writing to the Technical Committee on Constitutional Issues for consideration by the Negotiating Council.

5.2.2 It was noted that the recommended mechanism to deal with the constitutional issues that had been referred to the Planning Committee for its attention, were bilaterals and/or multilaterals.

5.3 Commission on National Symbols:

It was noted that the Planning Committee would report back on this issue to the Negotiating Council in the course of the day or at its meeting of 24 August 1993.

5.4 Fundamental Human Rights during the Transition:

5.4.1 It was noted that the recommendation from the Technical Committee with regard to the Administration of Justice has been referred to the Technical Committee on Constitutional Issues for its attention and recommendations.

5.4.2 It was noted that, the fourth recommendation ("The Committee recommends that the chapter on fundamental rights and freedoms comes into operation before the election of a Constitution-Making Body") was referred to the joint meeting of the Technical Committees on Fundamental Human Rights, Constitutional Issues and the TEC.

5.5 Technical Committee on the TEC and its Subcouncils:

It was noted that the report of the TEC and its Subcouncils would be distributed in the Negotiating Council on 25 August 1993 for discussion at the Council meeting of 26 August 1993.

5.6 Legal Action by the Kwazulu Government:

It was noted that no date had yet been set for the hearing of the action.

5.7 Request from Kempton College:

It was noted that representatives of the Kempton College would be presenting participants with flowers and that this would be done in such a way so as to not disrupt the proceedings of the Council.

5.8 Meetings programme and schedule:

5.8.1 It was noted that this would be circulated during the course of the day.

5.8.2 It was noted that lunch for the Council would take place at 12h00 to 13h00 during the course of the week.

5.8.3 It was noted that tea breaks would occur for the Council at 17h00 to 17h30 during the course of the week.

5.8.4 It was agreed that meetings on Thursday should adjourn at 18h00.

5.9 The Independent Electoral Commission:

It was noted that the next report of the IEC would be distributed during the course of the day on 24 August 1993 for discussion by the Council on 25 August 1993.

6. **Substantive Issues**

6.1 **Special Report on the Sixth Draft of the Independent Broadcasting Authority:**

6.1.1 The Technical Committee on the Independent Media Commission was welcomed. Present were A Armstrong, D Dison, P Pretorius, M Markowitz (technical advisor), C Noffke and D van Zyl (legal advisor). Apologies were noted from EJ Mabuza. Discussion and debate followed during the course of which questions of clarity were put to the Technical Committee.

6.1.2 Definition on "Political Party" refers:

\* After discussion the Technical Committee was requested to reformulate the definition taking into account the views expressed in the meeting.

6.1.3 Definition of "Republic" refers:

\* It was agreed to return to this definition once the

bilaterals dealing with the issue of the TBVC States and other related issues had been completed.

6.1.4 Section 2 (5) (a) refers:

- \* It was noted that "religion" had been expressly catered for in Section 2. This was agreed to.

6.1.5 Section 4 "Constitution of Council and Schedule 1 - Procedure for appointing of councillors" refers:

- \* It was suggested that under 4 (1) (a) provision should be made for Co-Chairpersons. It was suggested that this issue should be dealt with once the IEC had reported back to the Negotiating Council on this issue on Wednesday 25 August 1993.
- \* It was suggested that the principles as referred to in 4 (1) (d) should be clearly stated. It was agreed that in Chapter Two the principles should appear somewhere.
- \* It was suggested that Schedule 1 was not necessary and that the TEC and/or Parliament be mandated to appoint the committee and then to decide on a procedure to appoint councillors. Provision should be made for this. If this was agreed to, guidelines should be drafted for the TEC and/or Parliament and be included in the Bill. It was suggested that Schedule 1 prescribed the procedure.
- \* Other participants did not agree with this viewpoint and agreed that Schedule 1 should remain.
- \* It was agreed that informal discussion between D de Villiers, L Landers, J Netshitenzhe, C Pienaar, DS Rajah and P Soal should take place and that the issue be revisited after the tea break.
- \* After the meeting reconvened from its tea break, D de Villiers gave a reportback on the informal discussions held. It was noted that a tentative agreement had been reached, to be confirmed when this Draft Bill was next discussed, on the following basis:

With regard to Schedule 1, councillors shall be appointed by a sub-committee consisting of members of the Negotiating Council or the TEC. Furthermore, in

paragraph 9 the amendment would be that the Committee shall submit names to the Multi-Party Negotiating Council or the TEC for its approval.

- 6.1.6 Section 5 "Persons disqualified from being or remaining councillors" refers:
- \* Sub-sections (b), (f), (g) and (j) were agreed to as formulated.
  - \* With regard to sub-section (d), it was agreed that with respect to the time frames there should be uniformity in all the Draft Bills.
- 6.1.7 Section 6 "Terms of office of councillors" refers:
- \* After discussion the recommendation of the Technical Committee with regard to the Chairperson was accepted by the meeting. Furthermore, it was agreed that the period of councillors should be for four years and should not be staggered.
- 6.1.8 Section 16 "Raising of loans by Authority" refers:
- \* The section as formulated was agreed to.
- 6.1.9 Section 17 "Banking account" refers:
- \* The section as formulated was agreed to.
- 6.1.10 Section 18 "Investment of surplus moneys of Authority" refers:
- \* The section as formulated was agreed to.
- 6.1.11 Section 19 "Accounting and auditing" refers:
- \* It was agreed that the Auditor General should be responsible for the audit.
- 6.1.12 Section 20 "Annual report" refers:
- \* The section as formulated was agreed to.
- 6.1.13 Section 26 "Remuneration and allowances of committee members" refers:

- \* It was suggested that the Council should differentiate between the Chairperson and the committee members.

6.1.14 Section 28 (8) "Inquiries into three critical policy and regulatory issues" refers:

- \* Lengthy discussion occurred on this section after which it was agreed to defer the decision on this section until section 50 had been dealt with.

6.1.15 Section 29 "Authority vested with exclusive powers in relation to administration, management and planning of broadcasting services frequency bands" refers:

- \* The section as formulated was agreed to.
- \* It was noted that the South African Government reserved its position on this section.

The meeting adjourned for tea at 16h00.

The meeting reconvened at 16h55.

6.1.16 Section 30 "Broadcasting Technical Committee" refers:

- \* The section as formulated was agreed to.

6.1.17 Chapter 6 (sections 32-38) "Broadcasting Signal Distribution Licences" refers:

- \* It was suggested that with regard to section 35, provision should just be made for notice to be given to the authority.

- \* Chapter 6 was approved of by the meeting.

6.1.18 Section 45 (3) and (4); and section 46 (2) and (3) "Grandparenting Provisions" refers:

- \* The Technical Committee was requested to state clearly the intention of the Draft Bill. In this regard, it was pointed out that because current licences (e.g. M-Net) might be in contravention of proposed cross media ownership provisions, the IBA should be required to hear presentations on this issue and make the necessary

arrangements.

- \* The South African Government reserved its position on all these sections.

6.1.19 Sections 48, 49, 50; and Schedule 4 "Limitations on the control of broadcasting services" refers:

- \* Debate proceeded around this issue. Various participants suggested that there should not be limitations on cross media control. Other participants did not agree with this view.
- \* It was suggested that there are guidelines to limit cross media control and these should come into operation if limitation was approved of. The Technical Committee stated that section 50 (2) did provide a framework of guidelines.
- \* After lengthy debate in which no agreement could be reached, it was agreed that informal discussions should take place between D de Villiers, L Landers, J Netshitenzhe, E Pahad, C Pienaar, DS Rajah and P Soal on this issue to attempt to resolve it.
- \* It was agreed that one member of the Technical Committee should form part of this ad-hoc committee. The Negotiating Council requested that the ad-hoc committee reports back on this issue by 24 August 1993.

6.1.20 Section 51 "Prohibition on granting of broadcasting licences to political parties" refers:

- \* The section was agreed to, but the Technical Committee was requested to consider deleting the word "primary".

6.1.21 Section 56 "Code of Conduct, and exemptions" refers:

- \* The section as formulated was agreed to.

6.1.22 Section 58 "Prohibition on broadcasting of party election broadcasts and political advertisements except in certain circumstances" refers:

- \* The section as formulated was agreed to.

- 6.1.23 Sections 59, 60 and 61 "Provisions on party election broadcasts, political advertisements and equitable treatment of political parties" refers:
- \* It was suggested that the word "public" should be removed from section 59 (1).
  - \* With regard to section 59 (8) it was suggested that the Technical Committee should consider reformulating the sub-section in such a way that the IMC could consider the question of sound broadcasting and see if and to what extent it is possible for a private sound broadcasting licensee, to become part of this, without imposing erroneous conditions upon the licensee.
  - \* The sections were agreed to with the possibility of the above suggestions being incorporated by the Technical Committee. If so, the sections would again be put before the Council for its approval.
- 6.1.24 Chapter 9 (sections 62-67) "Enforcement" refers:
- \* The Chapter as formulated was agreed to.
- 6.1.25 Section 68 "Minutes of council and its committees" refers:
- \* The section as formulated was agreed to.
- 6.1.26 Section 78 "Extraterritorial extension of Authority's jurisdiction by agreement between Republic and any state or territory previously part of Republic" refers:
- \* The section as formulated was agreed to.
- 6.1.27 Section 79 "Application of Act in event of conflict with other laws" refers:
- \* The section as formulated was agreed to.
- 6.1.28 It was agreed to not revisit the sections, that were unchanged and approved of, as identified by the Technical Committee.
- 6.1.29 It was agreed to not revisit the sections, that were reworded for reasons of drafting only, as identified by the Technical Committee.



- 6.1.30 The Technical Committee was requested to ensure consistency in the Draft Bill.
- 6.1.31 Various technical and typographical errors were pointed out to the Technical Committee during the course of the debate.
- 6.1.32 The Technical Committee was thanked for its work so far completed.

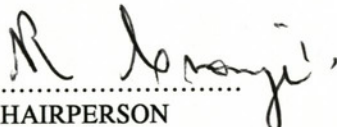
7. **Future Meetings**

- 7.1 It was agreed that meetings on Thursdays adjourn at 18h00.
- 7.2 It was agreed that the Council would debate constitutional issues until 16h00 at its meeting of 24 August 1993. Furthermore, the meeting would adjourn at 17h00.
- 7.3 The draft programme and schedule of meetings were noted by the meeting (see Addendum B)

8. **Closure**

The meeting was closed at 18h10.

These minutes were ratified at the meeting of the Negotiating Council of 31 August 1993 and the amended version signed by the Chairperson of the original meeting on 31/8/1993

  
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CHAIRPERSON

The following delegates and advisers were present at the meeting of the Negotiating Council on Monday 23 August 1993:

R Cronje : Chairperson  
M Finnemore : Assistant Chairperson

Organisation	Delegates	Advisers
ANC	J Netshinenzhe M Manzini	
AVU	C Pienaar C Kruger	A Beyers JJC Botha
Bophuthatswana	R Mangope SG Mothibe	BE Keikelame
Cape Trad. Leaders	M Nonkonyana	GD Gwadiso DM Jongilanga
Ciskei	M Webb VT Gquiba	TM Bulube
DP	C Eglin M Finnemore	KM Andrew PG Soal
Dikwankwetla	TJ Mohapi JSS Phatang	K Ngwenya SOM Moji
IFP		
IYP	NJ Mahlangu NS Mtsweni	Q Vilankulu
KP		
INM	SS Ripinga ND Mokoena	MS Gininda GG Zama
Kwazulu		
Labour Party	L Landers CC August	D Lockey R O'Reilly
NIC/TIC	K Mayet	
NP	D de Villiers TJ King	L Wessels SJ Schoeman
NPP	A Rajbansi S Naidoo	H Pithambar R Ramnarain

● Trad. Leaders

MB Mota  
MT Moroke

RH Mopeli  
MA Molefe

PAC

P de Lille  
B Alexander

L Makhanda  
B Desai

Solidarity

DS Rajah

T Palan  
AS Razak

SACP

J Slovo  
L Jacobus

E Pahad  
S Shilowa

SA Government

RP Meyer  
LR Brink

AF Tredoux  
DPA Schutte

Transkei

Z Titus  
N Jajula

TVL Trad. Leaders

MF Mngomezulu

MA Netshimbupfe  
NE Ngomane

UPF

A Chabalala  
J Maake

NM Tsheole  
RJ Dombo

Venda

SE Moeti

GM Ligege  
S Makhuvha

XPP

ST Mona  
EE Ngobeni

MH Matjokana  
GNK Hetisani

T Eloff : Administration  
G Hutchings : Minutes  
P Lelaka : Administration  
M Radebe : Administration

**DRAFT PROGRAMME FOR MEETINGS**

23 AUGUST 1993

Monday 23 August 1993	Discussion:	*	IBA (finalise)
Tuesday 24 August 1993	Discussion:	*	Constitutional Issues
Wednesday 25 August 1993	Discussion:	*	IEC (finalise)
		*	IMC and IBA (finalise)
		*	Constitutional Issues
	(Distribution : TEC)		
Thursday 26 August 1993	Discussion:	*	TEC (finalise)
Monday 30 August 1993	Discussion:	*	Constitutional Issues
Tuesday 31 August 1993	Discussion:	*	FHR
Wednesday 1 September 1993	Discussion:	*	Constitutional Issues
Thursday 2 September 1993	Discussion:	*	Constitutional Issues

## REVISED PROPOSED SCHEDULE OF MEETINGS

23 AUGUST 1993

Planning Committee	Monday 23 August 1993	10h30-13h00
Negotiating Council	Monday 23 August 1993	14h00-19h00
Negotiating Council	Tuesday 24 August 1993	09h00-19h00
Negotiating Council	Wednesday 25 August 1993	11h00-19h00
Negotiating Council	Thursday 26 August 1993	09h00-18h00

Planning Committee	Monday 30 August 1993	09h30-13h00
Negotiating Council	Monday 30 August 1993	14h00-19h00
Negotiating Council	Tuesday 31 August 1993	09h00-19h00
Negotiating Council	Wednesday 1 September 1993	11h00-19h00
Negotiating Council	Thursday 2 September 1993	09h00-18h00

Please note :

**The adjournment times of the Negotiating Council meetings as stated are target times, which will only apply if the agenda has been completed, subject to the final decision of the meeting.**