

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

MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 14h30 ON MONDAY 6 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 the following amendment:

- * Item 6.1 be deleted. The subsequent numbering was amended accordingly.

4. Minutes

4.1 The minutes of the meeting of 25 August 1993 were ratified with the following amendment:

- * Item 5.3.5, the fourth asterisk should read : "The Bophuthatswana Government and the Ciskei Government noted that until a decision or an agreement is reached on reincorporation, any legislation passed in South Africa could not apply to Bophuthatswana or to the Ciskei."

4.2 No matters arising were noted out of the minutes of the meeting of 25 August 1993.

4.3 The minutes of the meeting of 26 August 1993 were distributed for ratification at the next meeting of the Negotiating Council.

- 2.2 Apologies were noted for non-attendance by B Alexander, FT Mdlalose and B Ngubane (sub-committee).

3. **Ratification of the Agenda**

The agenda was ratified with no amendments.

4. **Substantive Issues**

4.1 **Preparation for the implementation of the TEC, IEC, IMC and IBA:**

- 4.1.1 A document was submitted to the meeting by the Sub-Committee (see Addendum A). The Sub-Committee proceeded to present the document to the meeting.
- 4.1.2 The Sub-Committee recommended that the TEC and its Subcouncils be housed in one building.
- 4.1.3 IEC and TEC in a reasonable radius of one another.
- 4.1.4 IEC, IMC and IBA in the same building?
- 4.1.5 Instead of accommodation rather provide for an allowance.
- 4.1.6 Proposal by PJ Gordhan:
 - * TEC, Subcouncils, Management Committee and staff in one building - agreed.
 - * Operational facilities in 3.2.3 can make those necessary arrangements.
 - * Location of the IEC close as possible but separate from TEC - agreed.
 - * Temporary facilities for housing based on actual needs, no need for ministerial housing and permanent accommodation - agreed.
 - * Conference facilities - i.e. might need bigger and smaller facilities - agree with Sub-Committee observations.
 - * IMC and IBA and IEC housed together - agreed.
- 4.1.7 It was noted that the next report on this issue would come from the Sub-Committee on Tuesday 5 October 1993.

5 Planning Committee Reportback

5.1 Commission on the Delimitation/Demarcation of Regions:

- 5.1.1 It was noted that advertisements had appeared in the weekend press advising the public that representations could be made to the Commission.
- 5.1.2 It was noted that participants would receive, today, a formal invitation advising them of the work and the sittings of the Commission and inviting them to make further representations should they so wish.

5.2 Submission of three (four) Draft Bills to Parliament:

- 5.2.1 The Planning Committee recommended the formation of a Task Group consisting of M Maharaj (sub-committee), Z Titus, F van der Merwe (sub-committee), M Webb and T Eloff (Administration) to be available and present during the processing of the Draft Bills through Parliament to monitor the process and to ensure that the Draft Bills as approved by Parliament were in conformity with the Draft Bill as approved by the Negotiating Council.
- 5.2.2 It was noted that Planning Committee would be on continuous standby to deal with any problems that should arise. The Task Group was to ensure that Parliament did not go beyond its terms of reference with regard to the Draft Bills and make any substantive amendments. The Task Group would report any such proposed amendments to the Planning Committee.
- 5.2.3 This recommendation was agreed to.

5.3 Commission on National Symbols:

- 5.3.1 It was noted that the Planning Committee had received the curriculum vitae's of the nominees.
- 5.3.2 A draft list of names was currently being processed and the Planning Committee would submit a recommendation with regard to the composition of the Commission at the meeting of the Negotiating Council on 7 September.

5.4 Legal Action by the Kwazulu Government:

- 5.4.1 It was noted that the hearing was scheduled to take place on 9 September 1993 in the Pretoria Supreme Court before the presiding officer, the Judge President of the Transvaal Division and a full bench.

5.4.2 It was noted that Z Titus and M Webb would be present and available during the course of the hearings as representatives of the process.

5.5 Proposal regarding Repeal of Legislation impeding Free Political Activity as well as Discriminatory Legislation:

5.5.1 The recommendation of the Planning Committee was agreed to (see Addendum B).

5.5.2 It was noted that the question of time frames would be dealt with by the Planning Committee through its Sub-Committee once the Task Group and its structures had been created.

5.5.3 It was noted that this recommendation was not in conflict with the work of the Technical Committee. The Technical Committee was proceeding with its work on the "Higher Code" and the decision to form the Task Group was in fact aimed at issues that the Technical Committee was unable to deal with at this point.

5.6 Women and the TEC:

The recommendation of the Planning Committee was noted and would be dealt with when the Negotiating Council next debated the report of the Technical Committee on the TEC and its Subcouncils (see Addendum C).

6. Substantive Issues: Third Draft Interim Constitution

6.1 The Technical Committee on Constitutional Issues was welcomed. Present were GE Devenish, M Olivier and F Venter. Apologies were noted from A Chaskalson, E Moseneke, B Ngoepe, W Olivier and M Wiechers.

6.2 Effect of dissolution of SPR legislatures (section 112 of Draft):

6.2.1 The Technical Committee presented an overview of this section to the meeting. Questions of clarity were put to the Technical Committee. Discussion and debate followed.

6.2.2 It was noted that this provision would ensure that there was no break in legal continuity should a fundamental change occur with regard to the SPR's. It was suggested that it was important that legal certainty existed and in order to have this certainty, legislative continuity should prevail.

6.2.3 After discussion it was agreed to accept this section as drafted.

6.2.4 The PAC reserved its position on this section.

6.3 Remuneration of SPR executives (par 7.12 of 10th Report and section 113 (6) of Draft):

- 6.3.1 The Technical Committee presented an overview of this section to the meeting. Questions of clarity were put to the Technical Committee. Discussion and debate followed.
- 6.3.2 It was suggested that uniformity with regard to remuneration was important. Other participants did not agree with this.
- 6.3.3 It was suggested that there was no point in comparing the new dispensation with the existing dispensation as one of the fundamental defects in the present dispensation was the lack of accountability and in the new dispensation the SPR executive would be just as accountable as the national executive. Furthermore, the present dispensation with all its defects was not really an adequate guide in this regard.
- 6.3.4 It was suggested that it should not be left to the discretion of the SPR to determine the remuneration of SPR executives.
- 6.3.5 It was suggested that there should be a national statute that determines the standards of remuneration for all SPR executives and personnel. Alternatively, as SPR's would be of different sizes with different responsibilities and different magnitude of tasks, at a national level there should be a provision to categorise SPR's in terms of size providing for different sizes of local authorities to afford different kinds remuneration to their offices. It was suggested that the Technical Committee should evaluate these suggestions and come forward with answers as an alternative to the current formulation.
- 6.3.6 The question of accountability as an essential and necessary issue was raised.
- 6.3.7 It was suggested that the Senate, consisting of representatives out of SPR's, could be the body that could lay down guidelines or rules concerning the remuneration of SPR political office bearers. This would ensure some uniformity.
- 6.3.8 After lengthy discussion it was agreed that this issue be revisited when sections 113 to 118 had been dealt with by the Council.

6.4 Appointment of SPR officers (par 7.13 of the 10th Report; section 113 (7) of the Draft):

- 6.4.1 The Technical Committee presented an overview of this section to the meeting. Questions of clarity were put to the Technical Committee. Discussion and debate followed.

- 6.4.2 Support was expressed for the inclusion of section 113 (7).
- 6.4.3 No decision was arrived at as the Negotiating Council was going to revisit this section once Chapter 6 was completed.
- 6.5 Criteria for the exercise of exclusive and concurrent powers (par 7.14 and par 7.11 of 10th Report; section 118 (3), (4), (5), (6) and (7) of Draft):
- 6.5.1 The Technical Committee presented an overview of this section to the meeting. Questions of clarity were put to the Technical Committee. Discussion and debate followed.
- 6.5.2 It was noted that this section had been referred to the Planning Committee for its attention.
- 6.5.3 It was agreed to revisit this section later as it was at present being dealt with by bilateral and/or multilateral meetings.
- 6.6 Transfer of administrative responsibilities and preparation therefor (par 7.15 of 10th Report, section 119 of Draft and graphics attached to 10th Report):
- 6.6.1 The Technical Committee presented an overview of this section to the meeting with the assistance of graphics (see Addendum D). Questions of clarity were put to the Technical Committee. Discussion and debate followed.
- 6.6.2 The Technical Committee suggested the establishment of an independent and non-partisan statutory body to undertake studies in order to make the transitional and rationalisation process more effective. This body could be appointed from nominees by the Negotiating Council and its specific task should be to do the preparatory work and to facilitate the continuation, transfer, consolidation and rationalisation of the existing administrative and financial responsibilities envisaged in section 119. This body should work on a full time basis and should be able to continue its task at least until the envisaged Commission on SPR Government in terms of section 121 has been established.
- 6.6.3 Another concern raised was with regard to the reconstruction of the whole financial situation at the various levels of administration. It was suggested that there should be clarity regarding the sources of finance as well as the taking over of the obligations by the SPR's. Provision should be made for the manner in which the assets and the liabilities of the TBVC States, the self-governing territories and the provinces will be dealt with and how the SPR's will be funded. Another area to

be dealt with is what would happen to the various revenue funds of the government and the administrations that will cease to exist when the Constitution for the transitional period comes into force.

- 6.6.4 The Technical Committee suggested that a special technical group should be composed with the necessary expertise to make recommendations to the Negotiating in regard to how the issues raised should be addressed.
- 6.6.5 Another question raised was how the revenue previously accruing to such governments and administrations should be allocated in the period immediately following the elections. Furthermore, how such revenue will be handled and accounted for, including how assets and liabilities of former governments and administrations should be dealt with.
- 6.6.6 It was agreed to establish an independent non-partisan statutory body to consider the whole question of rationalisation. This body would undertake all such functions and duties as would constitute preparatory work to facilitate the continuation, transfer, consolidation and rationalisation of existing administrative and financial responsibilities envisaged in section 119. It was agreed to mandate the Planning Committee to consider the composition of this body and any other relevant issues. It was suggested that the Terms of Reference had already been drawn up by the Technical Committee itself.
- 6.6.7 It was agreed to establish a technical group with the necessary expertise to consider financial matters pertaining to SPR's and submit recommendations to the Negotiating Council. It was agreed to mandate the Planning Committee to consider the composition of this body and any other relevant issues. It was suggested that the Terms of Reference had already been drawn up by the Technical Committee itself.
- 6.6.8 It was suggested that while considering the issues raised around the establishment of the bodies as referred to in item 6.6.6 and 6.6.7, the Planning Committee should consider that the work of these two structures should fall under the supervision of the TEC Subcouncil on Finance.
- 6.6.9 It was noted that co-ordination was necessary between the two bodies are referred to in items 6.6.6 and 6.6.7.
- 6.6.10 The Technical Committee then proceeded to present the graphics to the meeting. It was suggested that the graphics

were an excellent schematic framework of how the process of rationalisation could take place.

6.6.11 It was noted that section 119 had been referred to the Planning Committee for its attention. The Planning Committee was requested to deal with the whole matter with a view to making a recommendation at the appropriate moment in connection with section 119 as a whole in conjunction with the decisions as referred to in items 6.6.6 and 6.6.7. A proper evaluation of section 119 should take place in terms of its practical outcome taking into account the graphics that were presented by the Technical Committee to the meeting (see Addendum D). It was agreed that the graphics should be utilised as a framework by the bodies as referred to in items 6.6.6 and 6.6.7. It was agreed that the Planning Committee should submit recommendations in this regard as soon as possible.

6.7 SPR loans and taxes (par 7.16 and par 7.17 of 10th Report):

6.7.1 The Technical Committee presented an overview of this section to the meeting. Discussion and debate followed.

6.7.2 The NP requested that it be noted that it had concerns with regard to some of the formulations in section 121 and the need for further expansion of the said formulations. It was suggested that extensive debate was required on this section. The Technical Committee noted that the submission of the NP on this issue had only been received after this report had been drafted and would be dealt with in another report.

6.7.3 It was noted that this issue had been referred to the Planning Committee for its attention and therefore it was agreed to defer discussion and decision on this section until a future meeting of the Negotiating Council.

6.7.4 It was noted that the issue of SPR competences had also been referred to the Planning Committee for attention and therefore this issue should be held over and dealt with at a later stage.

6.8 Adoption of SPR constitutions (par 7.18 of 10th Report):

6.8.1 The Technical Committee presented an overview of this section to the meeting.

6.8.2 It was noted that this issue had been referred to the Planning Committee for its attention and it was therefore agreed that this issue stands over and be dealt with at a later stage. The

Technical Committee noted that once it received directives with regard to this issue, it would be able to redraft the section.

- 6.8.3 It was noted that cross referencing should occur between section 124 (6) and section 65 with regard to the function of the Constitutional Assembly relating to SPR's.
- 6.9 Second election of SPR governments (par 7.19 of 10th Report):
 - 6.9.1 The Technical Committee presented an overview of this section to the meeting. Questions of clarity were put to the Technical Committee. Discussion and debate followed.
 - 6.9.2 After discussion it was agreed to keep this matter in abeyance and not to take a decision on this issue until clarity and a decision on sections 124 and 125 were reached.
- 6.10 Commission on SPR Government (par 7.20 and par 7.21 of 10th Report; sections 129 and 131 of Draft):
 - 6.10.1 The Technical Committee presented an overview of this section to the meeting. Questions of clarity were put to the Technical Committee. Discussion and debate followed.
 - 6.10.2 It was suggested that this Commission should be politically accountable to the national as well as SPR governments. It was suggested that the Technical Committee should give consideration to the political implications of creating a structure to be set up just before the election, and being responsible to the national and the SPR governments.
 - 6.10.3 It was suggested that the following directive should be included in the functions of the suggested Commission : "The need to promote local and regional government that are accessible and accountable to the inhabitants of the region".
- 6.11 It was suggested that the Planning Committee should give a progress report to the Negotiating Council with regard to issues referred to it for its attention. It was noted that bilateral meetings were continuing.

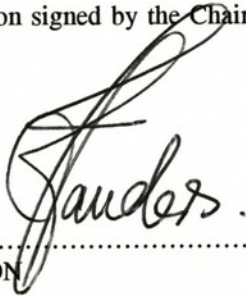
7. Closure

- 7.1 It was agreed to adjourn the meeting to allow bilateral meetings to continue with regard to the TEC and its Subcouncils.
- 7.2 It was suggested that the Negotiating Council meeting of Thursday 9

September 1993 should be postponed to allow time for the bilateral meetings on the Constitutional Issues to proceed. It was agreed to make a decision with regard to this suggestion at the Negotiating Council meeting of 7 September 1993.

- 7.3 The draft agenda for the Negotiating Council meeting of 7 September 1993, the draft programme and the schedule of meetings were noted (see Addendums E, F and G).
- 7.4 The meeting adjourned at 17h25.

These minutes were ratified at the meeting of the Negotiating Council of 29 September 1993 and the amended version signed by the Chairperson of the original meeting on 5/10/1993.....



J. Gaudes .

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CHAIRPERSON

The following delegates and advisers were present at the meeting of the Negotiating Council on Monday 6 September 1993:

L Landers : Chairperson
D de Villiers : Assistant Chairperson

Organisation	Delegates	Advisers
ANC	C Ramaphosa B Kgosisile	MV Moosa
AVU	C Pienaar C Kruger	AJJ van Rensburg
Bophuthatswana	R Mangope R Cronje	BE Keikelame SG Mothibe
Cape Trad. Leaders	M Nonkonyana SN Sigcau	GD Gwadiso DM Jongilanga
Ciskei	M Webb VT Gqiba	TM Bulube IJ Smuts
DP	C Eglin M Finnemore	KM Andrew PG Soal
Dikwankwetla	SOM Moji K Ngwenya	JSS Phatang
IFP		
IYP	NJ Mahlangu NS Mtsweni	AP Laka Q Vilankulu
KP		
INM	SS Ripinga ND Mokoena	MS Gininda
Kwazulu		
Labour Party	PAC Hendrickse CC August	K Lategan
NIC/TIC	PJ Gordhan	C Saloojee B Pillay
NP	L Wessels TJ King	
NPP	A Rajbansi S Naidoo	AA Koobair BP Jaglal

● Trad. Leaders

MB Mota
MT Moroke

RH Mopeli

PAC

P de Lille
B Alexander

L Makhanda
B Desai

Solidarity

DS Rajah

N Singh
C Pillay

SACP

J Slovo

S Shilowa
E Pahad

SA Government

RP Meyer
LR Brink

Transkei

Z Titus
N Jajula

R Nogumla

TVL Trad. Leaders

MF Mngomezulu

NE Ngomane
MA Netshimbupfe

UPF

A Chabalala
RJ Dombo

NM Tsheole

Venda

SE Moeti
AK Masehela

S Makhuvha
GM Ligege

XPP

ST Mona
MH Matjokana

GNK Hetisani

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

**RECOMMENDATION TO THE NEGOTIATING COUNCIL
BY THE PLANNING COMMITTEE**

**PROPOSAL REGARDING REPEAL OF LEGISLATION IMPEDING FREE
POLITICAL ACTIVITY AS WELL AS DISCRIMINATORY LEGISLATION**

1. We propose a two person overall task group which would be responsible for identifying legislation in the SA Statute book as well as setting up and coordinating four sub-groups charged with identifying legislation in each of the four TBVC territories.
2. The overall task group will consist of:
 - a) A person seconded from the Ministry of Justice
 - b) Professor Johann Van der Westhuizen who is the director for the Centre of Human Rights, law faculty, University of Pretoria; Professor and head of the Department of Legal History, Comparative Law and Legal Philosophy, University of Pretoria.
3. The overall task group, in setting up sub-groups must ensure that in the case of each of the TBVC territories, a person seconded by the Ministry of Justice from the respective TBVC territories is included in the sub-groups.
4. The overall task group as well as each of the sub-groups should work continuously and file periodic reports for the attention of the MPNP.

6 September 1993

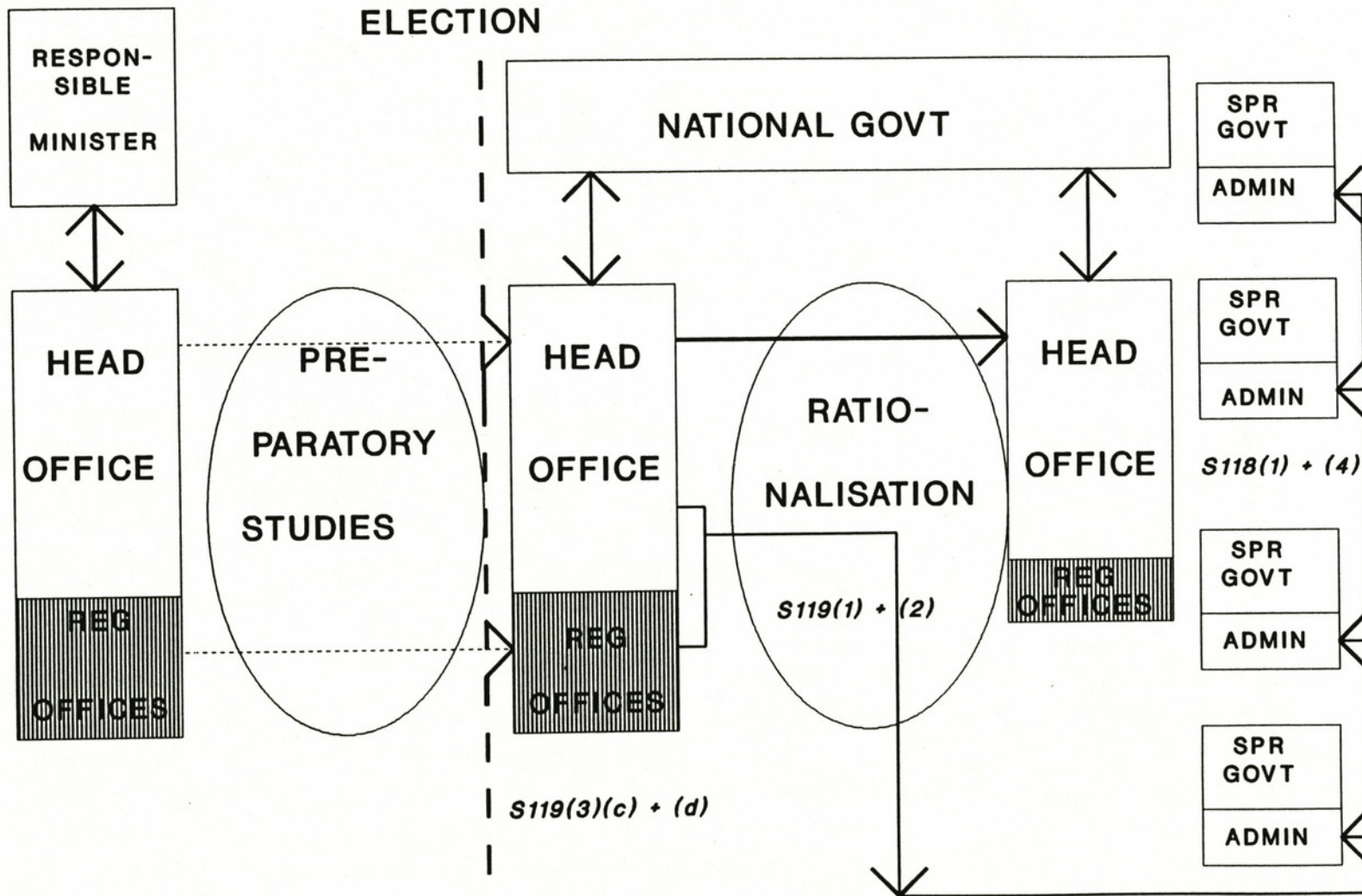
**RECOMMENDATION TO NEGOTIATING COUNCIL
FROM PLANNING COMMITTEE ON
TRANSITIONAL EXECUTIVE COUNCIL**

on page 40 to insert new subsection

24(7)

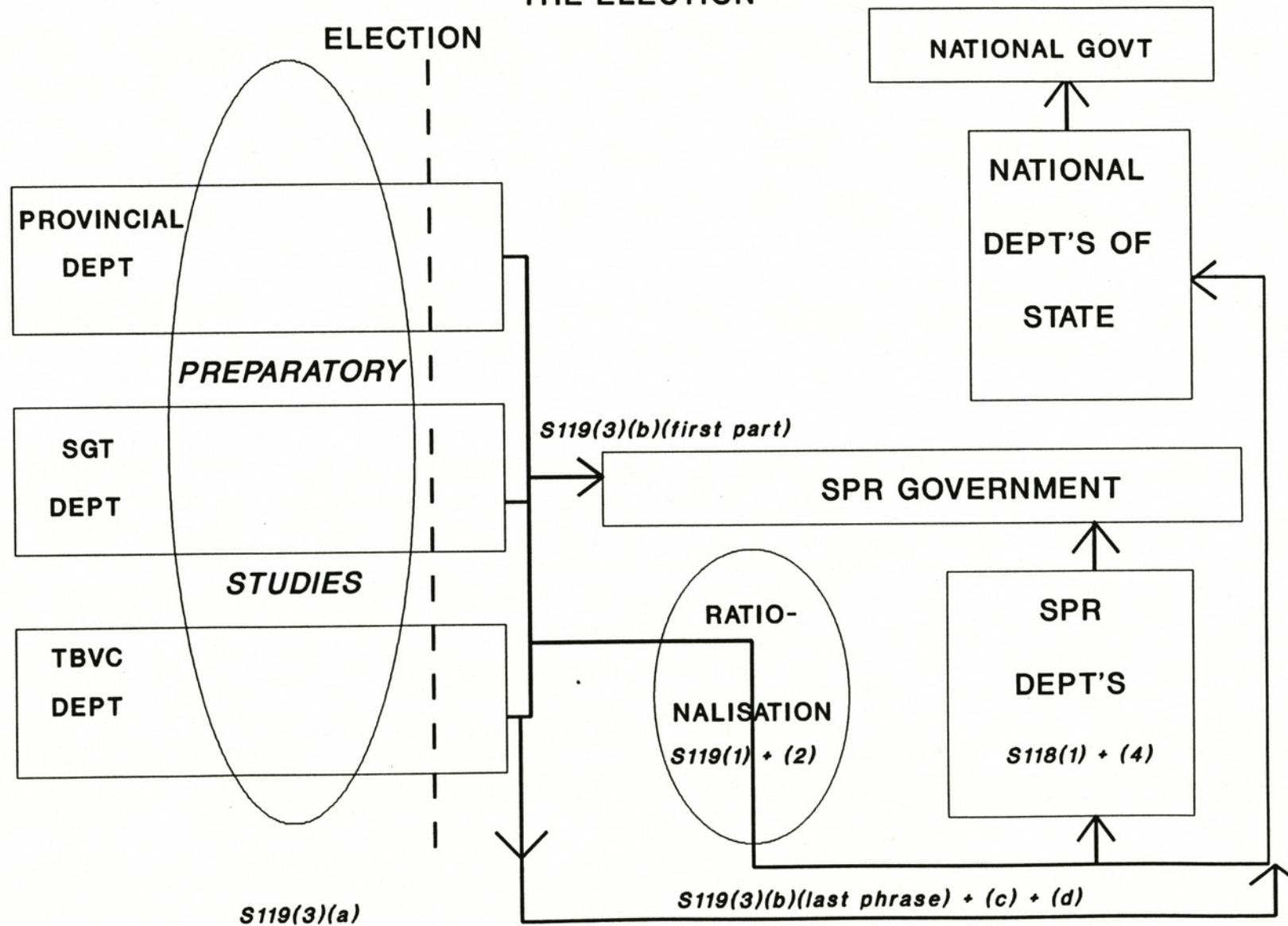
"The Subcouncil on the Status of Women from time to time shall nominate three persons, from amongst its members who shall be entitled to attend all meetings of the Council and to address it on any matters relevant to the Status of Women."

DEPARTMENT OF STATE AT NATIONAL LEVEL (STRUCTURES)



Rasman D

PROVINCIAL, SGT AND TBVC ADMINISTRATIONS OR INSTITUTIONS
EXISTING IN AN SPR PRIOR TO AND IMMEDIATELY AFTER
THE ELECTION



**DRAFT AGENDA FOR THE MEETING OF THE NEGOTIATING COUNCIL
TO BE HELD ON TUESDAY 7 SEPTEMBER 1993 AT 09H00**

Chairpersonship - DJ de Villiers assisted by M Finnemore

- 1. Moment of Prayer/Meditation**
- 2. Welcome and Attendance**
- 3. Ratification of Agenda**
- 4. Minutes**
 - 4.1 Ratification of the minutes of the meeting of 26 August 1993
 - 4.2 Matters arising out of the minutes of the meeting of 26 August 1993
 - 4.3 Distribution of minutes to be ratified at the next meeting of the Negotiating Council
- 5. Planning Committee Reportback**
- 6. Substantive Issues**
 - 6.1 The Sixteenth Draft of the Transitional Executive Council Bill
 - 6.2 Third Draft Constitution for the Transition
- 7. Administrative and Financial Matters**
- 8. Meetings Schedule and Draft Programme**
- 9. Closure**

REVISED PROPOSED SCHEDULE OF MEETINGS

6 SEPTEMBER 1993

Planning Committee	Monday 6 September 1993	09h30-13h00
Negotiating Council	Monday 6 September 1993	14h00-19h00
Negotiating Council	Tuesday 7 September 1993	09h00-19h00
Negotiating Council	Thursday 9 September 1993	09h00-18h00
Planning Committee	Tuesday 14 September 1993	09h00-11h00
Negotiating Council	Tuesday 14 September 1993	11h00-20h00
Negotiating Council	Wednesday 15 September 1993	09h00-19h00
Negotiating Council	Thursday 16 September 1993	09h00-18h00
Planning Committee	Monday 20 September 1993	09h30-13h00
Negotiating Council	Monday 20 September 1993	14h00-20h00
Negotiating Council	Tuesday 21 September 1993	09h00-19h00
Negotiating Council	Wednesday 22 September 1993	09h00-19h00

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.

DRAFT PROGRAMME FOR MEETINGS

6 SEPTEMBER 1993

Monday 6 September 1993	Discussion:	*	Constitution for the Transition
Tuesday 7 September 1993	Discussion:	* *	TEC (finalise & adoption) Constitution for the Transition
Thursday 9 September 1993	Discussion:	*	Constitution for the Transition
Tuesday 14 September 1993	Discussion:	*	Constitution for the Transition
Wednesday 15 September 1993	Discussion:	*	Constitution for the Transition
Thursday 16 September 1993	Discussion:	*	Electoral Act
Monday 20 September 1993	Discussion:	*	Electoral Act
Tuesday 21 September 1993	Discussion:	*	Constitution for the Transition
Wednesday 22 September 1993	Discussion:	*	Constitution for the Transition