

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

MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 09H10 ON TUESDAY 15 JUNE 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

3.1 The agenda was ratified with the following amendments:

- * The addition of an item "A Motion on Constitutional Issues" proposed by the Kwazulu Government, just before Item 5.2; It was noted that once the motion was tabled, the Council would decide if and how it was to be dealt with at that stage of the meeting;
- * The addition of an item, proposed by the IFP, just before Item 5.2.1 to read "Resolution on Constitutional Issues";
- * The addition of an Item 6.4, proposed by the KP, to read "Motion on Procedural Matters";

All movers of the above motions/resolutions were requested to supply their documents in writing for distribution to the meeting.

3.2 The Chairperson suggested that to facilitate the proper planning of the agenda, participants who want specific items on the agenda, submit the documents to the Planning Committee timeously. This does not take away the right of any participant to submit any issue directly to the Negotiating Council in its meeting.

Minutes

- 4.1 The minutes of the meeting of 3 June 1993 were adopted with the following amendments:
 - 4.1.1 Item 4.2.2 was deleted, and the subsequent numbering was amended accordingly;
 - 4.1.2 Item 5.2.3 to read "After discussion it was agreed not to accept the proposal in its entirety, but to proceed with the debate and discussion on the General Constitutional Principles";
 - 4.1.3 Item 5.2.9.1, the third asterisk under the heading "The following reservations were noted", refers. The asterisk is deleted and the words "It was noted that the KP opposed the principle as it stands, but would consider the redrafted principle. Furthermore, the KP stated that the Form of State should be agreed upon before general Constitutional Principles are decided upon." should be a separate paragraph;
 - 4.1.4 Item 5.5.3 refers. The last sentence should read: "Part of the discussion focused on the election date".
 - 4.1.5 Item 5.5.7, paragraph 4 refers. The addition of a further sentence at the end of the paragraph to read "The AVU challenged the decision of the Chairperson to declare sufficient consensus."
- 4.2 Matters arising from the minutes of 3 June 1993:
 - 4.2.1 Item 5.2.9.12 refers : The Planning Committee referred participants to the First Supplementary Report on Constitutional Principles from the Constitutional Issues Technical Committee where this matter is addressed.
 - 4.2.2 Item 5.4.4 refers : It was agreed that the composition of the Technical Committee remain as is.
 - 4.2.3 Item 5.6 refers. After discussion of matters with regard to this item, it was noted that as the resolution provided an opportunity to revisit the item of the election date today, the Planning Committee investigate the concerns expressed in this regard.
 - 4.2.4 It was agreed that the Election Date be dealt with immediately after the afternoon tea break.

- 4.2.5 It was suggested that the Planning Committee should discuss the issue of sufficient consensus and report back to the Negotiating Council.

5. **Substantive Issues**

5.1 **SA Government/PAC Report Back:**

A proposal that this issue be deferred until after lunch was agreed to.

5.2 **Motion on Constitutional Issues by the Kwazulu Government and Resolution from the IFP on Constitutional Issues:**

- 5.2.1 Copies of the Motion and the Resolution were circulated and tabled in the meeting (See Addendum B and C).

- 5.2.2 It was agreed that the Technical Committee on Constitutional Issues be present at this stage. The members of the Committee were welcomed. Present were F Cachalia, A Chaskalson, GE Devenish, M Olivier, W Olivier, F Venter, E Moseneke and M Wiechers. Apologies on behalf of B Ngoepe were noted.

- 5.2.3 It was agreed to adjourn and to request the Planning Committee to meet and consider the way forward in this regard.

The meeting adjourned at 11h00.

The meeting reconvened at 15h00.

- 5.2.4 A reportback was given to the meeting on behalf of the Planning Committee by the current Planning Committee Chairperson, R Cronje. In this reportback a draft resolution as recommended by the Planning Committee was tabled (see Addendum D). It was noted that some of the Planning Committees members disagreed with the resolution but that sufficient consensus existed in the Planning Committee for this resolution. R Meyer elaborated on the resolution.

- 5.2.5 At the Chairperson's request for a seconder, the KP (T Langley) seconded the IFP Resolution and Kwazulu Government motion.

- 5.2.6 The Technical Committee was then given an opportunity to address the Negotiating Council on the concerns underlying the resolution (from the IFP) and the motion (from the Kwazulu

Government).

- 5.2.7 On a question from the Chairperson, the mover of the Kwazulu Government motion indicated that he was willing to let the motion/resolution stand down, provided it is included as an addendum to the minutes. This was accepted. On a similar question to the mover of the IFP resolution, he indicated that the resolution stands.
- 5.2.8 Debate then followed on the resolution from the IFP. After discussion the Chairperson ruled that there was neither consensus nor sufficient consensus to carry the resolution. The resolution, therefore, fell away. The IFP challenged the ruling of the Chairperson.

The meeting adjourned for tea at 17h15.

The meeting reconvened at 17h30.

- 5.2.9 The IFP requested that, as the ruling of the Chairperson with regard to their resolution stood and in terms of the Standing Rules, that the meeting be adjourned to allow consultation with their principal. This was supported by the Ciskei Government and the Kwazulu Government.
- 5.2.10 R Meyer requested that before an adjournment was agreed to, that the Chairperson put forward on behalf of the Planning Committee how the item on the Election Date could be dealt with, and still allow the meeting to adjourn at 18h00 which was the target for adjournment.
- 5.2.11 It was noted that the PAC had considered its position during the tea break and that it opposed the resolution of the IFP.
- 5.2.12 A request for an adjournment was refused by the meeting. At this point the following participants excused themselves from the meeting to consult with their principals:
- * The AVU;
 - * The Bophuthatswana Government;
 - * The Ciskei Government;
 - * The IFP;
 - * The KP; and
 - * The Kwazulu Government.

It was then agreed by sufficient consensus to proceed with the agenda.

5.3 **Election Date**

- 5.3.1 The Resolution, as adopted by the Negotiating Council on 3 June 1993 was again put to the meeting in an effort to maximise consensus on the resolution. As recommended by the Planning Committee, it was decided that parties who might have changed their positions on the Election Date resolution, will be given an opportunity to address the meeting.
- 5.3.2 As a proposed amendment by the PAC had no seconder, the PAC reserved its position on the resolution until the Multi-Party Negotiating Process had decided on what the election would be.
- 5.3.3 The NPP noted that they support the setting of the election date in accordance with the "Declaration of Intent on the Negotiating Process", as adopted by the Negotiating Council on 7 May 1993.
- 5.3.4 As no other participants changed their positions, the meeting noted that the resolution as adopted by the Negotiating Council on 3 June 1993 (see Addendum E) stands and would therefore be placed before the meeting of the Negotiating Forum on 25 June 1993.

9. **Closure**

- 9.1 The Chairperson was thanked for the way the proceedings were handled.
- 9.2 The meeting was closed at 18h00.

These minutes were ratified at the meeting of the Negotiating Council of 17 June 1993 and the amended version signed by the Chairperson of the original meeting on 24/6/1993.....


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CHAIRPERSON

Addendum A

The following delegates and advisers were present at the meeting of the Negotiating Council on Tuesday 15 June 1993:

MJ Mahlangu : Chairperson
 FT Mdlalose : Assistant to the Chairperson

Organisation	Delegates	Advisers
ANC	C Ramaphosa B Kgositsile	MV Moosa N Zuma
AVU	CD de Jager J Gouws	JJC Botha MJ Mentz
Bophuthatswana	R Cronje R Mangope	SG Mothibe BE Keikelame
Cape Trad. Leaders	M Nonkonyana SN Sigcau	DM Jongilanga GD Gwadiso
Ciskei	M Webb VT Gqiba	TM Bulube SM Faku
DP	C Eglin M Finnemore	K Andrew P Soal
Dikwankwetla	TJ Mohapi K Ngwenya	SOM Moji JSS Phatang
IFP	VJ Matthews FX Gasa	WS Felgate
IYP	NJ Mahlangu N Mtsweni	AP Laka Q Vilankulu
KP	T Langley A Budd	SC Jacobs CP Mulder
INM	SS Ripinga K Mahlaba	MS Gininda PMH Maduna
Kwazulu	BS Ngubane H Ngubane	SH Gumede
Labour Party	L Landers C August	J Douw D Lockey
NIC/TIC	PJ Gordhan S Pillay	C Salojee K Mayet

NP	DJ de Villiers MM Gabriels	SJ Schoeman L Wessels
NPP	A Rajbansi VP Ramdhany	S Ismail BP Jaglal
OFS Trad. Leaders	MA Molefe RH Mopeli	M Moroke MB Mota
PAC	B Alexander P de Lille	E Sibeko M Molete
Solidarity	DS Rajah JN Reddy	AS Razak Y Molla
SACP	J Slovo L Jacobus	E Pahad S Shilowa
SA Government	RP Meyer D Govender	DA Schutte SS van der Merwe
Transkei	Z Titus N Jajula	LL Mtshizana
TVL Trad. Leaders	MA Netshimbupfe FF Kekana	LM Mokoena NE Ngomane
UPF	A Chabalala	RJ Dombo J Maake
Venda	SE Moeti JJ Tshivhase	GM Ligege S Makhuvha
XPP	EE Ngobeni PT Shiluvani	MH Matjokana JC Ackron
T Eloff	:	Administration
G Hutchings	:	Minutes
K Morgan	:	Administration
H Bobaka	:	Administration
M Radebe	:	Administration

*Appendix**B*

**THE KWAZULU GOVERNMENT POSITION STATEMENT
DELIVERED BY DR BS NGUBANE TO THE NEGOTIATING COUNCIL**

JUNE 15, 1993

The KwaZulu Government wishes to submit a Motion as a preliminary matter which would condition the development of today's Agenda in the future work of this Negotiating Council. The KwaZulu Government is extremely concerned about the course that negotiations have taken. It is clear that many of the principles adopted by the Technical Committee on Constitutional Matters in its Third Report would not be compatible with a federal system and would describe a relation between central and regional levels of government which is in conflict with the KwaZulu Government proposal for a federation.

Moreover, many of the Technical Committees are working under the implicit or explicit assumption that the process of transformation will be based on a two-phase transition model requiring interim arrangements. The KwaZulu Government has endorsed the one-phase model proposed by the Inkatha Freedom Party as other participants in this process have done.

The entire Fourth Report of the Technical Committee on Constitutional Matters, as well as the work of the Technical Committee on Human Rights, are based on this assumption.

We submit and maintain that this Council can not make any intelligent decision on constitutional principles or on the process until and unless it is provided with a clear alternative between principles related to federalism and principles related to a unitary state, and between a process capable of establishing federalism before the next elections and an

open-ended process which relies on the discretion of a Constituent Assembly for the final determination of the parameters of a political settlement of this country.

We feel that we are entitled to receive and consider both alternatives and that the Technical Committees should be instructed accordingly. We maintain and submit that no final decision has been made on the process of transformation on the form of state and that these decisions can no longer be delayed.

We demand that the Negotiating Council begins to consider proposals for the establishment of a federation under a fully-fledged constitution to be drafted by this forum. We also submit and maintain that no election date can be determined until there is clarity on the issue of the process and the final determination on the form of state. It is unreasonable to set an election date when we do not know what type of stages and phases need to precede the election and what the purposes and functions of that election are going to be in the process of constitutional development of our country. Differently put, are we going to vote for the election of a Constituent Assembly or for the empowerment of a federal legislature after member states have already been established?

Accordingly the KZG is submitting a resolution which will put these matters on the Agenda of the Negotiation Council with urgency and priority. We feel the obligation to warn all participants that the KZG has reached the end of its road in tolerating the manipulation of this process which is steamrolling through the real issues of our society preventing full awareness and full debate on the possible alternatives.

Therefore the KZG hereby gives notice that should the Negotiation Council reject the KZG Resolution as proposed, the KZG is no longer willing to provide its consensus for any further decisions taken by this Negotiating Council or by any other body of this negotiation process.

We will continue to be present through discussions but irrespective of anything we may say or do, until a preliminary determination on the form of state is achieved and a process capable of establishing federalism is surely entrenched, nothing shall be construed as our providing consensus for any type of decisions whatsoever, including procedural matters, scheduling of meetings, establishment of committees, adoption of resolutions of any nature, press statements, administrative matters and any other matters of substance or procedures.

The KZG hereby announces that it will challenge any ruling of the chair determining that sufficient consensus has been achieved in spite of KZG opposition.

We do not want to disrupt negotiations and we will implement what we consider a constructive form of filibustering until there is clarity on the process and our demands are heard for the sake of South Africa. This should also offer the opportunity to break the wall of silence built by the press around us.

We will also give notice to all participants that we will resort to the additional step of withdrawing even from participation and discussions if we assess that discussions on subject matter other than the form of state/process and violence are getting ahead of the issue of the form of state/process and violence and are becoming prejudicial to a preliminary determination on the form of state and related process.

We will not find ourselves in a situation where anybody can claim that progress has been achieved and then attempts to label us as spoilers because we prevent the finalisation of any agreement before federalism is entrenched and a climate of serene and violence-free negotiations is secured. Whoever pushes negotiations on the basis of a two stage process centred around a Constituent Assembly and the denial of federalism, and in spite of the fact that we are not providing consensus, will be politically responsible for the withdrawal from negotiations of the KwaZulu Government

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5457

**SUBMISSION BY THE DELEGATION OF THE GOVERNMENT OF KWAZULU
TO THE MULTI-PARTY NEGOTIATING COUNCIL AT ITS SITTING ON
JUNE 15, 1993**

**THE DELEGATION OF THE GOVERNMENT OF KWAZULU PROPOSES THAT
THE FOLLOWING INSTRUCTIONS BE PASSED ON TO THE TECHNICAL
COMMITTEE ON CONSTITUTIONAL ISSUES :**

1. THAT the Technical Committee on constitutional issues reconsider its attitude on the issue of Asymmetry.
2. THAT the Constitution of the State of KwaZulu-Natal which forms part of the documentation of the Technical Committee should be considered as an immediate option for state/regional government, together with any other state/regional constitutions which may be submitted to the Negotiating Council.
3. THAT the Technical Committee on the powers and functions of regions should incorporate in its report the option for asymmetry of the provisions of the Constitution of the State of KwaZulu-Natal and any other constitution submitted to the Negotiating Council.
4. THAT the Technical Committee should submit a report in accordance with the above within one week from today.

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Resolution submitted by the Freedom Party
Resolution on Constitutional Issues
ADDENDUM C

We, the participants of the Multiparty Negotiation Process convening on this 15th day of June 1993 in the Negotiation Council have adopted this Resolution to guide the further development of the negotiation process.

HAVING NOTED;

The clear linkage between constitutional principles, the form of state, the constitution-making process and constitutional structures, powers and functions of the SPRs,

IT IS RESOLVED THAT:

1. The Negotiating Council shall not proceed to negotiate and shall not endeavour to agree on the constitutional principles recommended by the Technical Committee, including the principles related to the identification of powers and functions of the SPRs until the Technical Committee has reported to the Negotiating Council on the various alternatives, on the constitution making process.
2. The Negotiating Council shall consider ^{inter alia} proposals for:
 - 2.1 a fully fledged federal constitution, inclusive of a complete bill of rights compatible with the highest international standards of human rights protection, a jurisdictional Constitutional Court and standard procedures for constitutional amendment;
 - 2.2 a constitution-making process capable of capitalizing on and registering ground-up democracy building sub-processes such as the adoption of the Constitution of the State of KwaZulu/Natal or the SATSWA initiative, and capable of co-ordinating ground-up constitutional development with top-down negotiations.
3. The Negotiating Council instructs the Technical Committee on Constitutional Matters to make recommendations to it on:
 - 3.1 The powers, functions and structures of the SPRs in the next constitution of South Africa with a view to leaving residual powers to the SPRs and ensuring that the new SPRs are established as a federation of states prior to or at the same time as the next elections;
 - 3.2 The constitution-making process to be followed, including the structures that need to be established so as to finalise the next constitution of South Africa on the basis of a one phase process which relies on ground-up democracy building sub-processes to support the creation of SPRs;

- 3.3 The procedures to be followed in the drafting and in the adoption by the Multi-Party Negotiation Forum of a federal constitution which would establish a federal system prior to or at the same time as the next elections;

- 4. That any final determination of the election date be postponed until the Negotiation Council has adopted a final decision on the form of state and on the process of constitutional development which would lead to elections, in order to enable us to determine what phases must precede and prepare elections and the function and purposes of elections at central and regional levels in relation to the next constitution of South Africa.

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5450

**DRAFT RESOLUTION PUT BY THE PLANNING COMMITTEE
TO THE MEETING OF THE NEGOTIATING COUNCIL MEETING OF
15 JUNE 1993**

1. That discussions in the Negotiating Council continue on Constitutional Principles and other reports of the Technical Committee that are before the Negotiating Council.
2. Request the Technical Committee on Constitutional Issues to:
 - 2.1 Consider the constitutional options for SPR government which may have been submitted to the Negotiating Council; and
 - 2.2 Consider a Constitution-Making Process providing for a ground-up democracy building process; and
 - 2.3 To submit recommendations to the Negotiating Council on this.
3. That the Explanatory Memorandum accepted by all participants on 30 April 1993 in the Multi-Party Process relating to proposals arising from the Multi-Party Forum resolution on the Negotiation Process is re-affirmed and the Negotiating Council specifically reiterates its acceptance of paragraph 6 of the Explanatory Memorandum:
 - "6. It is expressly understood by all participants that each of the above proposals and the documentation emanating from such technical committees shall be discussed in the Negotiating Council with the view to arriving at an agreement on these matters. Furthermore that as when agreement is reached on each of these matters the Council shall expressly determine when and how the specific agreement shall be implemented. This provision is made so as to ensure participants have a clear understanding of the package of agreements which would constitute the key elements of the transition process. "**

RESOLUTION ON AN ELECTION DATE

ADOPTED BY THE NEGOTIATING COUNCIL ON 3 JUNE 1993

The Negotiating Council recommends to the Negotiating Forum of 25 June 1993 that the date of the election shall be 27 April 1994, but however with a view to maximise consensus on this matter, the Negotiating Council decides to finalize this matter on 15 June 1993.

Should a final settlement be reached at an earlier date to enable an election to be held earlier, the Negotiating Council should set an earlier date; while the period over which the election is to be held will have to be decided upon in co-operation with the Independent Electoral Commission.