

THESE DRAFT MINUTES ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE NEGOTIATING COUNCIL. THE MINUTES ARE STILL TO BE RATIFIED AT THE NEXT MEETING OF THE NEGOTIATING COUNCIL.

DRAFT MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 11h25 ON WEDNESDAY 27 OCTOBER 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

2.1 The participants were welcomed.

2.2 An appeal was made to all participants for meetings to commence timeously.

2.3 Sympathies were expressed to E Pahad with regard to the incident in which he was mugged and stabbed. It was agreed that a delegation representing the Negotiating Council should go and visit him in hospital. The delegation was composed as follows:

- * ANC
- * DP
- * NIC/TIC
- * PAC
- * A Traditional Leader
- * Transkei.

3. Ratification of the Agenda

3.1 The agenda was ratified with no amendments.

3.2 At this point, the AVU raised an issue concerning the Ad-Hoc Committees' appointed by Council on address the matters pertaining to the Delimitation/Demarcation of Boundaries. The AVU noted that the Convenors of the Ad-Hoc Committees had decided to submit their reports to the Council via the Planning Committee. The AVU suggested that this was the incorrect procedure and that the reports should come directly to Council but if the

reports did first go the Planning Committee, the Ad-Hoc Committees should have the right to appoint members to attend the Planning Committee meeting. Furthermore, it was the view of the AVU that the Planning Committee may in some way amend the recommendations contained in the reports which would result in the deliberations of the Ad-Hoc Committees not being transparent. The discussion on the reports should, therefore, occur in Council. The AVU also raised concerns with regard to the convenors and chairpersons of the Ad-Hoc Committees, as some of the Ad-Hoc Committees had both a convenor and a chairperson.

3.3 Z Titus, on behalf of the Planning Committee noted the following:

- * The function of the Planning Committee was not to alter or amend a recommendation emanating from any body established by Council and this had not been done by the Planning Committee on any occasion;
- * The Planning Committee considers reports and recommendations and then comes forward with suggestions or recommendations to Council;
- * If there were recommendations emanating from the Ad-Hoc Committees, the Planning Committee would not deal with the recommendations, but would consider the process based on what had emerged from the Ad-Hoc Committees;
- * The convenors and chairpersons of the Ad-Hoc Committees should convene to sort out the problems that had arisen amongst themselves;
- * The Planning Committee was considering reports presented to it not the convenors or chairpersons, but from the mandated Ad-Hoc Committees.
- * That any problems that the Ad-Hoc Committees were experiencing could be placed before the Planning Committee with a view to facilitate and make recommendations with regard to process.

3.4 Following on, C Eglin, on behalf of the Planning Committee, endorsed the view expressed by Z Titus (see item 3.3 above) and further noted that, with regard to the problems raised in connection with the convenors and chairpersons of the Ad-Hoc Committees, both could attend the Planning Committee meeting and present their reports.

3.5 The AVU noted that it accepted the role of the Planning Committee with regard to process. The AVU requested that the Planning Committee should urgently give Council a date on which the issue of the Delimitation/Demarcation of Regions, dealing also with the reports and recommendations of the Ad-Hoc Committees would be further discussed and debated in Council.

- 3.6 The Chairperson noted that the AVU agreed and accepted the views expressed by Z Titus and C Eglin on behalf of the Planning Committee.

4. Minutes

- 4.1 The minutes of the meeting of 13 October 1993 were ratified with no amendments.
- 4.2 Matters arising out of the minutes of the meeting of 13 October 1993:
 - * Item 5.5 refers: It was noted that the issue referred to was still under discussion in the Planning Committee.
- 4.3 The Planning Committee minutes of the meeting of 31 August 1993, 1 September 1993, 13 September 1993, 14 September 1993, 24 September 1993 and 28 September 1993 were distributed for noting by the Negotiating Council.
- 4.4 The ratified Negotiating Council minutes of 5 October 1993 were redistributed for noting by participants.
- 4.5 The Negotiating Council minutes of 18 October 1993 and 20 October 1993 were distributed to participants for ratification at the next meeting of the Negotiating Council.

5. Substantive Issues - The Second Version of the Draft Electoral Bill by the Technical Committee on the Electoral Bill:

- 5.1 The Technical Committee on the IEC was welcomed. Present were J Bruwer (state law adviser), D Davis, F Ginwala, SK Ndlovu and RB Rosenthal. Apologies were noted from HR Laubscher. Discussion proceeded on the report. Questions of clarity were put to the Technical Committee during the course of the debate.
- 5.2 Clause 50 "Announcement of Result of Election and Determination of Number of Candidates of Registered Parties Duly Elected" refers:
 - * It was agreed to defer discussion on this clause until Schedule 5 of the Draft Interim Constitution was completed and agreed upon by the Council.
- 5.3 Clause 51 "Forfeiture of deposit paid by registered party" refers:
 - * It was noted that the Technical Committee would reconsider this clause taking into account the debate in the Negotiating Council.

● 5.4 Clause 52 "Safe-keeping of election material" refers:

- * It was suggested that the task should be given to an independent body and not the government of the day. Other participants did not agree with this view.
- * It was suggested that the IEC should supervise the destruction of election material.
- * It was suggested that there should be a deadline by when the destruction of election material was undertaken. It was further suggested that the period before the election material was destroyed should be considered very carefully by Council.
- * It was suggested that this clause be expanded to deal with the safe-keeping of election material before and during the election. It was noted that the Technical Committee had differentiated between voting material and election material.

5.5 Clause 53 "Electoral Code of Conduct" refers:

- * No comments were noted on clause 53 (1).
- * It was suggested that the reference to the Code should be removed from clause 53 (2). After discussion on this suggestion and various other issues raised, it was noted that the Technical Committee would reconsider this clause taking into account the debate in the Council.
- * No comments were noted on clause 53 (3).
- * No comments were noted on clause 53 (4).

5.6 Clause 54 "Bills, placards, etc., to bear publisher's name" refers:

- * With regard to clause 54 (1), it was suggested that it was necessary to set the date from which this particular clause would be applicable. It was further suggested that the period should be from the date of proclamation of the election in terms of clause 22 in the Government Gazette until the date of the election. It was also suggested that for the said period, the provisions of clause 54 (1) should apply. The Technical Committee stated that this was correct.
- * No comments were noted on clause 54 (2).
- * No comments were noted on clause 54 (3).
- * No comments were noted on clause 54 (4).

- * With regard to clause 54 (5), it was suggested that the words "or persons" should be inserted after the word "person" in the last line.
- * No comments were noted on clause 54 (5) (a).
- * With regard to clause 54 (5) (b), it was suggested that the provision should apply to all reports and articles written jointly by two or more persons.
- * No comments were noted on clause 54 (c).
- * No comments were noted on clause 54 (6).

5.7 Clause 55 "Prohibition on publication of opinion polls" refers:

- * With regard to clause 55 (1), it was suggested that the word "shall" should be deleted and replaced with the words "may make public".
- * With regard to clause 55 (1), it was suggested that the cut-off point should be 7 days and not 21 days before the day of the election. Other participants did not agree with this view. It was noted that the South African Government reserved its position on the 21 days as the period may be too short. It was agreed to by sufficient consensus that the time period should remain 21 days. The objection of the South African Government to the sufficient consensus ruling was noted.
- * The Technical Committee was requested to reconsider the grammatical wording of clause 55 (1).
- * No comments were noted on clause 55 (2).

5.8 Clause 56 "Prohibition on political activities during 48 hours prior to voting day" refers:

- * It was suggested that "any political activity" should be defined. The Technical Committee supported the viewpoint that the use of the words "any political activity" was too wide and vague.
- * It was suggested that the clause should be deleted. Other participants did not agree with this view.
- * When the Technical Committee reconsidered the clause, clarity should also be given with regard to conduct on the actual voting days and activities and presence permissible within the radius of the voting stations. Furthermore, the Technical Committee should consider the whole issue of door to door campaigning. This clause was referred back to the Technical Committee for redrafting. The discussion and

debate in the Negotiating Council should be taken into account by the Technical Committee.

5.9 Clause 57 "Offences and penalties" refers:

- * It was suggested that provision should be made in the Act that persons and parties at all times have the right to legal representation.
- * It was suggested that offences should be dealt with by the courts and not by the tribunals.

The meeting adjourned for lunch at 13h00.

The meeting reconvened at 14h00.

- * No comments were noted on clause 57.
- * With regard to clause 57 (1) (a), it was suggested that the concept of psychologic pressure was too wide.
- * With regard to clause 57 (1) (a), it was suggested that the concept of "improper influence" should be brought in.
- * With regard to clause 57 (1) (a), it was suggested that the concepts of "threatens", "damage", "loss" and "disadvantaged" were too wide.
- * No comments were noted on clause 57 (1) (i).
- * No comments were noted on clause 57 (1) (ii).
- * No comments were noted on clause 57 (b).
- * No comments were noted on clause 57 (1) (c).
- * No comments were noted on clause 57 (1) (c) (i).
- * No comments were noted on clause 57 (1) (c) (ii).
- * No comments were noted on clause 57 (1) (c) (iii).
- * It was suggested that it was necessary to qualify clause 57 (1) (c) (iv) in terms of public and private property. It was suggested that there should be some type of regulation regulating private property.
- * No comments were noted on clause 57 (1) (c) (v).

- * No comments were noted on clause 57 (1) (d).
- * With regard to clause 57 (1) (d) (i), it was noted that the Technical Committee would reformulate to make it clear that the clause was not intended to cover paid canvassers.
- * No comments were noted on clause 57 (1) (d) (ii).
- * With regard to clause 57 (1) (d) (iii), it was suggested that the definition in terms of the word "promises" was too narrow.
- * No comments were noted on clause 57 (1) (d) (iv).
- * No comments were noted on clause 57 (1) (d) (v).
- * No comments were noted on clause 57 (1) (e).
- * No comments were noted on clause 57 (1) (f).
- * No comments were noted on clause 57 (1) (g).
- * No comments were noted on clauses 57 (1) (h), (i) and (ii).
- * No comments were noted on clause 57 (1) (i).
- * No comments were noted on clause 57 (1) (j).
- * No comments were noted on clause 57 (1) (k).
- * No comments were noted on clause 57 (1) (l).
- * No comments were noted on clause 57 (1) (m).
- * No comments were noted on clause 57 (1) (n).
- * No comments were noted on clause 57 (1) (o).
- * No comments were noted on clause 57 (1) (p).
- * No comments were noted on clause 57 (1) (q).
- * No comments were noted on clause 57 (1) (r).
- * No comments were noted on clause 57 (1) (s).
- * No comments were noted on clause 57 (1) (t).

* No comments were noted on clause 57 (1) (u).

* No comments were noted on clause 57 (2).

* No comments were noted on clause 57 (3).

5.10 Clause 58 "Regulations" refers:

* No comments were noted on clause 58 (1).

* No comments were noted on clause 58 (1) (a).

* No comments were noted on clause 58 (1) (b).

* No comments were noted on clause 58 (1) (c).

* No comments were noted on clause 58 (1) (d).

* No comments were noted on clause 58 (1) (e).

* No comments were noted on clause 58 (2).

* No comments were noted on clause 58 (3).

5.11 Clause 59 "Repeal of laws" refers:

* No comments were noted on this clause.

5.12 Clause 60 "Short title and commencement" refers:

* No comments were noted on this clause.

5.13 Schedule 1 "Electoral Code of Conduct" refers:

* It was suggested that the unwieldy format of the code be amended so as to enhance its intelligibility.

* It was suggested that reference in the code should be made to the Bill of Fundamental Rights.

* It was suggested that reference in the code should be made with regard to respect for national symbols of the state.

* No comments were noted on clauses 1 (Object), 1.1 and 1.2.

* With regard to clause 2 (The Code), it was suggested that the word "period" should be deleted.

- * With regard to clause 2.1, it was noted that the Technical Committee would reformulate the clause to make it clear that the meetings referred to in the clause are public meetings.
- * No comments were noted on clause 2.2.
- * No comments were noted on clause 2.3.
- * No comments were noted on clause 2.4.
- * No comments were noted on clause 2.5.
- * With regard to clause 2.6, it was suggested that the clause should be qualified by a provision dealing with the usual legal checks (prima facie proof, etc.), as the formulation of the clause was too wide.
- * With regard to clause 2.7, it was suggested that the word "plagiarise" should be deleted.
- * With regard to clause 2.8, it was suggested that the words "so-called" and "displayed" should be deleted.
- * With regard to clause 2.9, it was suggested that the use of the word "patriarchal" was too general.
- * No comments were noted on clause 2.10.
- * With regard to clause 2.11, it was suggested that the clause should end after the word "violence".
- * No comments were noted on clause 2.12.
- * No comments were noted on clause 2.13.
- * No comments were noted on clause 2.14.
- * No comments were noted on clause 2.1.1.
- * No comments were noted on clause 2.1.2.
- * No comments were noted on clause 2.1.3.
- * No comments were noted on clause 2.1.4.
- * With regard to clause 3 (Sanctions and penalties), the South African Government suggested that the following further sanctions should be added:

- Polling stations should not be placed in communities where canvassing by certain parties was not allowed;
- Should persons be intimidated to vote in one or other direction, those votes should not be taken into account for that particular party;
- Where a party was found to have bribed officials, those votes should not be taken into account and votes should be subtracted from the total of that particular party.

After discussion, it was noted that the above proposals of the South African Government should come to the Council in writing.

- * With regard to clause 3.1, the Technical Committee was requested to take note of the debate in the Council around clause 51.
- * The Technical Committee requested guidance with regard to clause 3.2 and the amount that should be stipulated. After discussion, it was noted that no consensus could be reached and it was agreed to defer discussion on this issue until a future meeting of the Negotiating Council.
- * No comments were noted on clause 3.3.
- * No comments were noted on clause 3.4.
- * No comments were noted on clause 3.5.
- * No comments were noted on clause 3.6.
- * No comments were noted on clause 3.7.
- * No comments were noted on clause 3.8.
- * No comments were noted on clause 3.9.
- * No comments were noted on clause 3.10.
- * No comments were noted on clause 3.11.
- * It was agreed that the Code of Conduct be formulated in a more accessible and popular format. It was noted that a certain amount of legal precision was required in defining the offences contained in the Code of Conduct. It was further noted that the Technical Committee would strike the necessary balance.

5.14 Definitions:

- * It was agreed to deal with the definitions once the draft bill was finalised.

5.15 Clause 2 "Application of Act" refers:

- * The clause as formulated was agreed upon.

5.16 Clause 3 "Act binding on State and State President" refers:

- * The clause as formulated was agreed upon.

5.17 Clause 4 "Administration of Act" refers:

- * The clause as formulated was agreed to.

5.18 Clause 5 "Party liaison committee" refers:

- * It was suggested that the purpose of the party liaison committee should be defined.
- * It was suggested that official members of the Commission should serve on the party liaison committee at a national, regional and local level.
- * Clause 5 (1) was agreed as formulated.
- * No comments were noted on clause 5 (2) (a).
- * No comments were noted on clause 5 (2) (b).
- * With regard to Clause 5 (2) (c), it was suggested that the Act should specify procedures.

5.19 Clause 6 "Interim party liaison committee" refers:

- * No comments were noted on clause 6 (1).
- * No comments were noted on clause 6 (2).

5.20 Clause 7 "Regional and local party liaison committees" refers:

- * No comments were noted on clause 7 (1).
- * It was noted that the reference in clause 7 (2) should read "section 5 (2) (b) and (c)".

- 5.21 Clause 8 "Appointment and control of electoral officers and staff" refers:
- * Clause 8 (1), the opening paragraph was agreed to as formulated.
 - * No comments were noted on clause 8 (1) (a).
 - * Clause 8 (1) (b) (i), (ii) and (iii) was agreed to as formulated.
 - * No comments were noted on clause 8 (1) (c).
 - * No comments were noted on clause 8 (2).
 - * No comments were noted on clause 8 (3).
 - * With regard to clause 8 (4), it was suggested that the reference to women should be removed as women formed part of the broad cross-section of the population.
 - * No comments were noted on clause 8 (5).
 - * No comments were noted on clause 8 (6).
 - * No comments were noted on clause 8 (7).
 - * No comments were noted on clause 8 (8).
- 5.22 Clause 9 "Powers, duties and functions of regional electoral officers" refers:
- * No comments were noted on clause 9 (1).
 - * No comments were noted on clause 9 (2).
- 5.23 Clause 10 "Powers, duties and functions of district electoral officers" refers:
- * No comments were noted on clause 10 (1).
 - * No comments were noted on clause 10 (2).
- 5.24 Clause 11 "Powers, duties and functions of presiding officers at voting stations" refers:
- * No comments were noted on clause 11 (1) (a).
 - * No comments were noted on clause 11 (1) (b) (i), (ii), (iii), (iv) and (v).
 - * With regard to clause 11 (2), it was suggested that the provision that

should be made in clause 11.1 or 11.2 of the code was that no person other than those referred to should be allowed unless permitted by the presiding officer. Other participants did not agree with this view. It was noted that the Technical Committee would consider the points raised.

* No comments were noted on clause 11 (3).

* No comments were noted on clause 11 (4).

* No comments were noted on clause 11 (5).

5.25 Clause 12 "Powers, duties and functions of voting officers at voting stations" refers:

* No comments were noted on clause 12 (1).

* No comments were noted on clause 12 (2).

5.26 Clause 13 "Powers, duties and functions of counting officers" refers:

* No comments were noted on clause 13 (1).

* No comments were noted on clause 13 (2).

5.27 Clause 14 "Appointment and powers, duties and functions of agents of registered parties" refers:

* With regard to clause 14 (1) (a) and (b), it was suggested that where reference was made to the election, the words "in all regions" should be inserted.

* No comments were noted on clause 14 (1) (c).

* No comments were noted on clause 14 (2).

* No comments were noted on clause 14 (3) (a).

* No comments were noted on clause 14 (3) (b).

* No comments were noted on clause 14 (3) (c).

* No comments were noted on clause 14 (4).

* No comments were noted on clause 14 (5).

* No comments were noted on clause 14 (6).

● 5.28 Clause 15 "Declaration of secrecy" refers:

- * The clause as formulated was agreed upon.

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

6. Planning Committee Report

Z Titus, on behalf of the Planning Committee, noted the following:

- * The Negotiating Council would deal with the 16th Report at its meeting of 28 October 1993. Furthermore, the Planning Committee would submit a report to the Council with regard to its deliberations from its meeting scheduled for 10h00 on 28 October 1993;
- * Bilateral meetings were taking place and at that point it was impossible to establish what else could be considered during the meeting of the Negotiating Council on 28 October 1993.
- * A report would be given to Council at its meeting of 28 October 1993 on what had emerged from the bilateral meetings.

7. Draft Programme and Schedule of Meetings

The draft programme and schedule of meetings were noted by Council (see Addendum B and C).

8. Closure

The meeting adjourned at 16h35.



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

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CHAIRPERSON

Addendum A

The following delegates and advisers were present at the meeting of the Negotiating Council on Wednesday 27 October 1993:

MJ Mahlangu : Chairperson
L Landers : Assistant Chairperson

Organisation	Delegates	Advisers
ANC	P Molefe N Mokonyane	M Manzini
AVU	C Kruger S Burger	AJ Horn
Bophuthatswana		
Cape Trad. Leaders	GD Gwadiso SN Sigcau	SM Burns-Ncamoshe
Ciskei		
DP	C Eglin D Smuts	K Andrew P Soal
Dikwankwetla	JSS Phatang MC Noge	K Ngwenya TJ Mohapi
IFP		
IYP	NJ Mahlangu NS Mtsweni	AP Laka Q Vilankulu
KP		
INM	SS Ripinga ND Mokoena	KK Mahlaba
Kwazulu		
Labour Party	A Delport MYK Bassier	DWN Josephs
NIC/TIC	C Salojee F Hajaij	PS Govender
NP	OAW van Zyl TJ King	
NPP	A Rajbansi T Gunpath	I Bachu ST Sitlu
OFS Trad. Leaders	MB Mota	BS Rajuili



PAC

LS Makhanda
P de Lille

ER Sibeko
B Desai

Solidarity

DS Rajah

P Naidoo

SACP

L Jacobus

SA Government

DPA Schutte
LR Brink

AF Tredoux
NW du Plessis

Transkei

Z Titus
N Jajula

R Nogumla

TVL Trad. Leaders

LM Mokoena
MA Netshimbupfe

NE Ngomane

UPF

A Chabalala
RJ Dombo

J Maake

Venda

SE Moeti

S Makhuvha
GM Ligege

XPP

GNK Hetisani

PT Shilubana
RB Mabumloa

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

DRAFT PROGRAMME FOR MEETINGS

27 OCTOBER 1993

Wednesday 27 October 1993	Discussion:	*	Draft Electoral Bill and Electoral Code of Conduct
Thursday 28 October 1993	Discussion:	*	Constitutional Issues
Friday 29 October 1993	Discussion:	*	Constitutional Issues
	Distribution :		Report of Task Group on Identification of Discriminatory Legislation

REVISED PROPOSED SCHEDULE OF MEETINGS

27 OCTOBER 1993

Negotiating Council	Wednesday 27 October 1993	11h00-20h00
Planning Committee	Thursday 28 October 1993	10h00-13h00
Negotiating Council	Thursday 28 October 1993	14h00-20h00
Negotiating Council	Friday 29 October 1993	08h30-18h00
Planning Committee	Monday 1 November 1993	09h30-13h00
Negotiating Council	Monday 1 November 1993	14h00-20h00
Bilateral Meetings	Tuesday 2 November 1993	08h30-13h00
Negotiating Council	Tuesday 2 November 1993	14h00-20h00
Bilateral Meetings	Wednesday 3 November 1993	08h30-13h00
Negotiating Council	Wednesday 3 November 1993	14h00-20h00
Bilateral Meetings	Thursday 4 November 1993	08h30-13h00
Negotiating Council	Thursday 4 November 1993	14h00-20h00
Negotiating Council	Friday 5 November 1993	08h30-14h00

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.