

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

**MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 10h00 ON TUESDAY 31 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 The minutes of the meeting of 18 August 1993 were ratified with no amendments.

4.2 The minutes of the meeting of 23 August 1993 were ratified with the following amendments:

- \* Item 5.2.1 refers, the following words should be inserted at the beginning of the item "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."
- \* Item 5.2.2 refers and should read "It was then noted that a letter would be sent to the General Council of the Bar ....."
- \* Item 5.4.1 refers, the reference to paragraph 4 of the sixth report should be deleted.
- \* Item 5.6 Legal Action by the Kwazulu Government to read "It was noted that no date had yet been set for the hearing of the action."

- 4.3 No matters arising were noted out of the minutes of 18 August and 23 August 1993.

5. **Reportback from the Planning Committee**

- 5.1 It was noted that the Planning Committee would report back to the Negotiating Council after lunch.
- 5.2 It was noted that the issue of languages was being dealt with in bilaterals and/or multilaterals.

6. **Substantive Issues**

6.1 **Fifth Working Draft of the Independent Electoral Commission Bill:**

- 6.1.1 The Technical Committee on the IEC was welcomed. Present were D Davis, SK Ndlovu and RB Rosenthal. Apologies were noted from F Ginwala and HR Laubscher.
- 6.1.2 It was noted that the Ad-Hoc Committee would present the report. It was noted that all the members of the Ad-Hoc Committee were in full agreement with the report.
- 6.1.3 It was agreed to take the explanatory memorandum as read. K Andrew, as convenor of the Ad-Hoc Committee, presented the report. The Bill was then put to the Council clause by clause. Discussion and debate followed with questions of clarity put to the Technical Committee and the Ad-Hoc Committee.
- 6.1.4 The contents pages of the Bill were agreed to.
- 6.1.5 The definitions on page 4 of the Draft Bill were agreed to.
- 6.1.6 It was noted that the Chief Electoral Officer would be defined in the Electoral Act.
- 6.1.7 The definitions on page 5 were agreed to.
- 6.1.8 The definitions on page 6 were agreed to with the exception of clause 40. It was agreed that this will be dealt with later.
- 6.1.9 Clause 2 "Application of the Act" refers:
  - \* The clause as formulated was agreed to.



- 6.1.10 Clause 3 "Act binding on State and State President" refers:
- \* The clause as formulated was agreed to.
- 6.1.11 Clause 4 "Establishment and objects of Commission" refers:
- \* The clause as formulated was agreed to.
- 6.1.12 Clause 5 "Constitution of Commission" refers:
- \* The clause as formulated was agreed to.
- 6.1.13 Clause 6 "Conduct required of members" refers:
- \* The clause as formulated was agreed to.
- 6.1.14 Clause 7 "Disclosure of conflicting interests" refers:
- \* The clause as formulated was agreed to.
- 6.1.15 Clause 8 "Independence of Commission" refers:
- \* The clause as formulated was agreed to.
- 6.1.16 Clause 9 "Dissolution of Commission" refers:
- \* The clause as formulated was agreed to.
- 6.1.17 Clause 10 "The conditions of service, etc." refers:
- \* The clause as formulated was agreed to.
- 6.1.18 Clause 11 "Vacation of office, removal from office and filling of vacancies in Commission" refers:
- \* The clause as formulated was agreed to.
- 6.1.19 Clause 12 "Meetings of Commission" refers:
- \* It was agreed to amend clause 12 (4) (b) to read "The Commission shall certify in terms of section 18 (b) that an elections was substantially free and fair, only if at least 75 % of the members present at the meeting of the Commission concur."
  - \* The clause as formulated was agreed to.

- 6.1.20 Clause 13 "Powers, duties and functions of Commission refers:  
\* The clause as formulated was agreed to.
- 6.1.21 Clause 14 "International Advisory Committee" refers:  
\* The clause as formulated was agreed to.
- 6.1.22 Clause 15 "Administration and Staff of Commission" refers:  
\* The clause as formulated was agreed to.
- 6.1.23 Clause 16 "Expenditure of Commission and budget" refers:  
\* The clause as formulated was agreed to.
- 6.1.24 Clause 17 "Accountability and finance" refers:  
\* The clause as formulated was agreed to with the word "Council" being amended to "Commission".
- 6.1.25 Clause 18 "Determination and certification of election results, and declaration" refers:  
\* The clause as formulated was agreed to.  
\* It was noted that the Electoral Act would make provisions for concerns raised around this clause in the course of the discussion. The Technical Committee was requested to take note of the sentiments expressed in the meeting.  
\* It was noted that the AVU reserved its position on this clause.
- 6.1.26 Clause 19 "Establishment of Election Administration Directorate" refers:  
\* The clause as formulated was agreed to.
- 6.1.27 Clause 20 "Constitution of Election Administration Directorate" refers:  
\* The clause as formulated was agreed to.
- 6.1.28 Clause 21 "Powers, duties and functions of Chief Director: Administration" refers:



- \* The clause as formulated was agreed to.
- 6.1.29 Clause 22 "Establishment of Election Monitoring Directorate" refers:
  - \* The clause as formulated was agreed to.
- 6.1.30 Clause 23 "Constitution of Election Monitoring Directorate" refers:
  - \* The clause as formulated was agreed to.
- 6.1.31 Clause 24 "Powers, duties and functions of Chief Director: Monitoring" refers:
  - \* The clause as formulated was agreed to.
- 6.1.32 Clause 25 "Establishment of Election Adjudication Secretariat" refers:
  - \* The clause as formulated was agreed to.
- 6.1.33 Clause 26 "Constitution of Election Adjudication Secretariat" refers:
  - \* The clause as formulated was agreed to.
- 6.1.34 Clause 27 "Powers, duties and functions of Secretary" refers:
  - \* The clause as formulated was agreed to.
- 6.1.35 Clause 28 "Establishment and constitution of Electoral Tribunals" refers:
  - \* The clause as formulated was agreed to.
- 6.1.36 Clause 29 "Powers, duties and functions of Electoral Tribunals" refers:
  - \* The clause as formulated was agreed to.
- 6.1.37 Clause 30 "Establishment and constitution of Electoral Appeal Tribunals" refers:
  - \* The clause as formulated was agreed to.
- 6.1.38 Clause 31 "Powers, duties and functions of Electoral Appeal

Tribunals" refers:

\* The clause as formulated was agreed to.

6.1.39 Clause 32 "Establishment and constitution of Special Electoral Court" refers:

\* Several amendments were suggested to this clause and it was therefore agreed to return to this clause once some informal discussion had taken place.

\* After the entire Bill had been dealt with the meeting returned to this clause. After discussion it was agreed to amend clause 32 (2) to read "The Special Electoral Court shall be appointed by the Transitional Council and consist of:" Furthermore the reference to the "Transitional Council" at the end of clause (2) (b) (ii) should be deleted.

\* The clause as amended was agreed to.

6.1.40 Clause 33 "Powers, duties and functions of Special Electoral Court" refers:

\* It was noted that the reference in clause 33 (1) (a) and in clause 33 (2) (a) should read 36 (6) (a) (ii).

\* The clause as formulated was agreed to.

6.1.41 Clause 34 "Application of Act in event of conflict with other laws" refers:

\* The clause as formulated was agreed to.

6.1.42 Clause 35 "Dissolution of directorates, Secretariat and tribunals" refers:

\* The clause as formulated was agreed to.

6.1.43 Clause 36 "Appeal and review" refers:

\* The clause as formulated was agreed to.

6.1.44 Clause 37 "Remuneration and allowances of members of Tribunals and Special Electoral Court" refers:

\* The clause as formulated was agreed to.



- 6.1.45 Clause 38 "Secrecy" refers:
- \* The clause as formulated was agreed to.
- 6.1.46 Clause 39 "Offences and penalties" refers:
- \* It was agreed that the word "himself" be deleted from clause 39 (b).
  - \* The clause as amended was agreed to.
- 6.1.47 Clause 40 "Legal proceedings" refers:
- \* The clause as formulated was agreed to.
- 6.1.48 Clause 41 "Regulations" refers:
- \* The clause as formulated was agreed to.
- 6.1.49 Clause 42 "Short title" refers:
- \* The clause as formulated was agreed to.
- 6.1.50 The Draft Bill on the Independent Electoral Commission was then adopted by general consensus.
- 6.1.51 It was noted that the AVU reserved its position with regard to all the references in the Draft Bill to the Electoral Act as well as the Constitution and the powers, duties and functions this Commission will incur due to that legislation.
- 6.1.52 It was noted that the Explanatory Memorandum as adopted by the Negotiating Council on 30 April 1993 clearly differentiated between agreement on the one hand and implementation on the other. It was further noted that participants should use the Explanatory Memorandum as a constant point of reference.
- 6.1.53 It was noted that the Planning Committee was currently looking into the question of the implementation of all the legislation under consideration in the Multi-Party Negotiating Process and one of the issues that had arisen is the wording to be used for the last section of each of the Bills is concerned. The Explanatory Memorandum would be used as a basis for any suggested draft.
- 6.1.54 The Technical Committee was thanked for its work completed. The ad-hoc committee and the task group was thanked for

facilitating the process and for their work.

The meeting adjourned for tea at 11h50.

The meeting reconvened at 12h15.

## 6.2 Final Draft of the Independent Media Commission Bill:

- 6.2.1 The Technical Committee on the IMC was welcomed. Present were D Dison, P Pretorius, M Markowitz (technical support) and C Noffke. Apologies were noted from A Armstrong, J Bruwer (state law advisor) and EJ Mabuza. The Technical Committee presented its report. Discussion and debate followed with questions of clarity put to the Technical Committee.
- 6.2.2 Definition "election" refers:
- \* The clause as formulated was agreed to.
- 6.2.3 Definition "election period" refers:
- \* The clause as formulated was agreed to.
- 6.2.4 Definition "political party" refers:
- \* The clause as formulated was agreed to.
- 6.2.5 Subclause 4 (2) (a) "Constitution of Commission and appointment of commissioners" refers:
- \* It was agreed that after the words "appointed by" the words "the State President on the advice of" be inserted.
- 6.2.6 Subclause 6 (1) (d) "Persons disqualified from being commissioners" refers:
- \* It was agreed that the preceding twelve months as referred to in (d) should apply to sub-clauses (b) and (c).
  - \* It was agreed to accept sub-clauses (b), (c) and (d) as amended.



- 6.2.7 Clause 11 (3) "Meetings of Commission" refers:
- \* It was agreed to accept the clause as formulated.
- 6.2.8 Clause 32 "Application of this Act in respect of certain private broadcasters licensed elsewhere" refers:
- \* It was agreed to accept the clause as formulated.
  - \* It was noted that the Bophuthatswana Government had made a submission to the Technical Committee setting out the position of the Bophuthatswana Government with regard to Radio 702. This did not influence the acceptance of the clause.
- 6.2.9 The meeting then proceeded to formally adopt the Draft Bill clause by clause. During this process the following was noted:
- \* It was noted that there may possibly be an addition to the definition of "Transitional Executive Council" at a later stage, but this did not affect its formal acceptance.
  - \* Clause 5 (1) (b) refers: It was agreed by sufficient consensus to amend the word "ten" to read "five". The AVU noted its opposition to this decision.
  - \* Clause 35 refers: It was agreed to add to this clause the following sub-clause:  
  
"(2) This Act shall be binding upon the State President in so far as he shall be obliged to act in accordance with the advice of the Transitional Council wherever so provided for in this Act".
- 6.2.10 The complete Draft Bill was then put forward to the meeting for its formal adoption. The Draft Bill was agreed upon by general consensus.
- 6.2.11 The Technical Committee was thanked for its work completed.

The meeting adjourned for lunch at 12h40.

The meeting reconvened at 16h00.

● 6.3 **Seventh Working Draft of the Independent Broadcasting Authority Bill:**

- 6.3.1 The Technical Committee on the IMC was again welcomed. Present were D Dison, C Noffke and M Markowitz (technical support) and J Bruwer (state law advisor). Apologies were noted from A Armstrong, EJ Mabuza and P Pretorius. It was noted that, due to time constraints, there still existed various typographical errors which would be corrected.
- 6.3.2 It was noted that the report on meetings held with the Postmaster-General was for participants' information and was noted.
- 6.3.3 The Chairperson outlined the procedure for dealing with this Draft Bill, noting that participants had only just received the Bill.
- 6.3.4 The Bophuthatswana Government noted that it would like sufficient time to read through the Bill properly. It was noted that issues which required more time to deal with, could be dealt with at the next meeting of the Negotiating Council on Wednesday 1 September.
- 6.3.5 Definition "broadcasting" refers:
- \* The definition as formulated was agreed to.
- 6.3.6 Definition "broadcasting licence" refers:
- \* The definition as formulated was agreed to.
- 6.3.7 Definition "broadcasting signal distribution" refers:
- \* The definition as formulated was agreed to.
- 6.3.8 Definition "broadcasting signal distribution licence" refers:
- \* The definition as formulated was agreed to.
- 6.3.9 Definition "community broadcasting service" refers:
- \* The definition as formulated was agreed to.
- 6.3.10 Definition "election" refers:
- \* The definition was agreed to as formulated.



- 6.3.11 Definition "election period" refers:
- \* The definition was agreed to as formulated.
- 6.3.12 Definition "political party" refers:
- \* The definition as formulated was agreed to.
- 6.3.13 Definitions "sound broadcasting service", "sound radio set", "telecommunications", "television broadcasting service" and "television set" refer:
- \* The definitions as formulated were agreed to.
- 6.3.14 Clause 2 "Primary objects of Act" refers:
- \* Clause 2 (3) (a) refers: It was agreed by sufficient consensus to add the words "and regional" after "national". The PAC objected to this agreement.
  - \* Clause 2 (5) (b) refers: It was agreed to deal with this section at the next meeting of the Negotiating Council.
- 6.3.15 Clause 3 (1) "Establishment of Independent Broadcasting Authority" refers:
- \* The clause as formulated was agreed to.
- 6.3.16 Clause 5 "Persons disqualified from being or remaining councillors" refers:
- \* It was agreed that with regard to clause 5 (1) (d) the preceding twelve months should apply to (b) and (c) as well.
- 6.3.17 Clause 6 "Terms of office of councillors" refers:
- \* Clause 6 (2) (c) as formulated was agreed to.
- 6.3.18 Clause 13 "General or ancillary powers of Authority" refers:
- \* It was agreed by request of the Technical Committee to discuss this section at the next meeting.
- 6.3.19 Clause 17 "Banking Account" refers:
- \* It was agreed to accept the clause as formulated.

- 6.3.20 Clause 18 "Investment of surplus monies" refers:
- \* It was agreed to accept the clause as formulated.
- 6.3.21 Clause 19 "Accounting and auditing" refers:
- \* It was agreed to accept clause 19 (4) as formulated.
- 6.3.22 Clause 26 "Remuneration and allowances of committee members" refers:
- \* Clause 26 (2) as formulated was agreed to.
- 6.3.23 Clause 28 "Inquiries by Authorities" refers:
- \* It was agreed to leave clause 28 (8) (b) in abeyance until the next meeting of the Negotiating Council and accept the remainder of clause 28 (8).
  - \* Clause 28 (9) was agreed to as formulated.
- 6.3.24 Clause 29 "Authority vested with exclusive powers in relation to administration management and planning of broadcasting services frequency bands" refers:
- \* Clause 29 (1) was agreed to as formulated (see Addendum B). It was noted that the SA Government might come back to this clause at the next meeting of the Negotiating Council.
  - \* Clauses 29 (2), 29 (3) (see report) and 29 (4) (see Addendum B) as formulated were agreed to.
- 6.3.25 Clause 30 "Broadcasting Technical Committee" refers:
- \* It was agreed to delete the words "be responsible for" from clause 30 (g).
  - \* It was agreed to refer clause 30 (h) back to the Technical Committee for reformulation. The South African Government noted its objection to this instruction.
  - \* It was agreed to accept clause 30 (i) as formulated.
- 6.3.26 Clause 40 "Categories of broadcasting licences" refers:



- \* Clause 40 (2) was agreed to as formulated.
- 6.3.27 Clause 41 "Application procedure in relation to broadcasting licences" refers:
  - \* Clause 41 (9) was agreed to as formulated.
- 6.3.28 Clause 43 "Entitlements under and conditions pertaining to broadcasting licences" refers:
  - \* It was agreed to accept clause 43 as formulated.
- 6.3.29 Clause 45 "Public broadcasting licences" refers:
  - \* Clause 45 (1) was agreed to as formulated.
- 6.3.30 Clause 46 (2) "Private broadcasting licences" refers:
  - \* The clause as formulated was agreed to. It was noted that the PAC had reserved its right to revisit this clause at the next meeting of the Negotiating Council.
- 6.3.31 Clause 48 "Limitations on foreign control of private broadcasting services" refers:
  - \* Clause 48 (3) as formulated was agreed to.
- 6.3.32 Clause 49 "Limitations on control of private broadcasting services" refers:
  - \* It was agreed to deal with clause 49 (6) at the next meeting of the Negotiating Council.
- 6.3.33 Clause 50 "Limitations on cross-media control of private broadcasting services" refers:
  - \* It was agreed that clause 50 in its entirety should be dealt with at the next meeting of the Negotiating Council.
- 6.3.34 Clause 51 "Prohibition on granting of broadcasting licences to private entities" refers:
  - \* It was agreed to deal with this issue at the next meeting of the Negotiating Council.
- 6.3.35 Clause 53 "Imposition of specific broadcasting licence

conditions regarding local television content and South African music" refers:

- \* Clause 53 (5) was agreed to as formulated. It was noted that the Bophuthatswana Government reserved its position.

- \* Clause 53 (6) was agreed to as formulated.

6.3.36 Clause 66 "Powers of Authority in cases of proven non-compliance with Act licence conditions on certain codes of conduct and, in limited circumstances, with Independent Media Commission Act 1993" refers:

- \* Clause 66 (5) was agreed to as formulated.

6.3.37 Clause 77 "Confidentiality" refers:

- \* Clause was agreed to as formulated.

6.3.38 It was agreed to deal with Schedules 1, 2, 4 and 6 at the next meeting of the Negotiating Council.

6.3.39 It was agreed to accept the recommendation of the Technical Committee with regard to Entrenchment of the fundamental principles in the Constitution (see Addendum C). This would therefore be referred to the Technical Committee on Constitutional Issues as a recommendation with the support of the Negotiating Council.

6.3.40 Amendments to existing legislation (see Addendum C):

- \* It was agreed that all references to schedule 5 should be removed.

- \* It was agreed that the state law advisor and the Technical Committee should work on the repeals.

- \* It was agreed that this should not form part of the IBA Bill.

- \* It was agreed that the Planning Committee should establish how to process this issue.

6.3.41 It was suggested that the Technical Committee on Constitutional Issues should be requested to remove SPR media control from the exclusive powers of the SPR's. It was further



suggested that this power was a concurrent one. The Technical Committee was requested to interact with the Constitutional Issues Technical Committee on this issue and report back to the Negotiating Council.

6.3.42 It was noted that informal discussions should be held on outstanding issues to facilitate the process.

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

**7. Draft Meetings Schedule and Proposed Programme**

7.1 The draft meetings schedule and the proposed programme were accepted by the Negotiating Council (see Addendum B).

**8. Closure**

8.1 The Chairperson was thanked for the way the day's proceedings were handled.

8.2 The meeting was adjourned at 17h50.

These minutes were ratified at the meeting of the Negotiating Council of 28 September 1993 and the amended version signed by the Chairperson of the original meeting on 29/9/1993.....

  
.....  
CHAIRPERSON

**Addendum A**

The following delegates and advisers were present at the meeting of the Negotiating Council on Tuesday 31 August 1993:

PJ Gordhan : Chairperson  
R Cronje : Assistant Chairperson

<b>Organisation</b>	<b>Delegates</b>	<b>Advisers</b>
ANC	P Maduna B Kgositsile	J Netshintenshe M Manzini
AVU	C Pienaar C Kruger	A Beyers AJJ van Rensburg
Bophuthatswana	BE Keikelame R Mangope	SG Mothibe
Cape Trad. Leaders	M Nonkonyana SN Sigcau	GD Gwadiso DM Jongilanga
Ciskei	TM Bulube VT Gqiba	AC Cilliers IJ Smuts
DP	C Eglin M Finnemore	PG Soal
Dikwankwetla	JSS Phatang	K Ngwenya
IFP		
IYP	NJ Mahlangu NS Mtsweni	AP Laka Q Vilankulu
KP		
INM	SS Ripinga ND Mokoena	MS Gininda GG Zama
Kwazulu		
Labour Party	L Landers CC August	CJG Leander PAC Hendrickse
NIC/TIC	K Mayet E Gandhi	
NP	D de Villiers TJ King	L Wessels
NPP	A Rajbansi S Naidoo	O Ganie H Pithambar



● Trad. Leaders	RH Mopeli MT Moroke	
PAC	P de Lille B Desai	L Makhanda E Sibeko
Solidarity	DS Rajah	T Palan B Govender
SACP	J Slovo L Jacobus	S Shilowa E Pahad
SA Government	RP Meyer LR Brink	DPA Schutte
Transkei	Z Titus N Jajula	R Nogumla
TVL Trad. Leaders	MA Netshimbupfe	NE Ngomane
UPF	A Chabalala	
Venda	SE Moeti	GM Ligege S Makhuvha
XPP	ST Mona MH Matjokana	GNK Hetisani EE Ngobeni

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

**DRAFT PROGRAMME FOR MEETINGS**

31 AUGUST 1993

Tuesday 31 August 1993	Discussion:	* IMC (finalise & formal adoption) * IEC (finalise & formal adoption) * IBA
Wednesday 1 September 1993	Discussion:	* TEC * IBA (finalise) * Formal adoption of the Draft Bill on the IBA
Thursday 2 September 1993	Discussion:	* TEC (finalise & formal adoption) * Interim Constitution
Monday 6 September 1993	Discussion:	* Interim Constitution
Tuesday 7 September 1993	Discussion:	* Interim Constitution
Wednesday 8 September 1993	Discussion:	* Draft Electoral Act
Thursday 9 September 1993	Discussion:	* Draft Electoral Act



## REVISED PROPOSED SCHEDULE OF MEETINGS

31 AUGUST 1993

Planning Committee	Wednesday 1 September 1993	11h00-12h00
Negotiating Council	Wednesday 1 September 1993	12h00-20h00
Negotiating Council	Thursday 2 September 1993	09h00-18h00

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	Wednesday 8 September 1993	11h00-19h00
Negotiating Council	Thursday 9 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.**

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 10h00 ON TUESDAY 31 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 The minutes of the meeting of 18 August 1993 were ratified with no amendments.

4.2 The minutes of the meeting of 23 August 1993 were ratified with the following amendments:

- \* Item 5.2.1 refers, the following words should be inserted at the beginning of the item "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."
- \* Item 5.2.2 refers and should read "It was then noted that a letter would be sent to the General Council of the Bar ....."
- \* Item 5.4.1 refers, the reference to paragraph 4 of the sixth report should be deleted.
- \* Item 5.6 Legal Action by the Kwazulu Government to read "It was noted that no date had yet been set for the hearing of the action."



- 4.3 No matters arising were noted out of the minutes of 18 August and 23 August 1993.

## 5. **Reportback from the Planning Committee**

- 5.1 It was noted that the Planning Committee would report back to the Negotiating Council after lunch.
- 5.2 It was noted that the issue of languages was being dealt with in bilaterals and/or multilaterals.

## 6. **Substantive Issues**

### 6.1 **Fifth Working Draft of the Independent Electoral Commission Bill:**

- 6.1.1 The Technical Committee on the IEC was welcomed. Present were D Davis, SK Ndlovu and RB Rosenthal. Apologies were noted from F Ginwala and HR Laubscher.
- 6.1.2 It was noted that the Ad-Hoc Committee would present the report. It was noted that all the members of the Ad-Hoc Committee were in full agreement with the report.
- 6.1.3 It was agreed to take the explanatory memorandum as read. K Andrew, as convenor of the Ad-Hoc Committee, presented the report. The Bill was then put to the Council clause by clause. Discussion and debate followed with questions of clarity put to the Technical Committee and the Ad-Hoc Committee.
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- 6.1.6 It was noted that the Chief Electoral Officer would be defined in the Electoral Act.
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- \* It was agreed to amend clause 12 (4) (b) to read "The Commission shall certify in terms of section 18 (b) that an elections was substantially free and fair, only if at least 75% of the members present at the meeting of the Commission concur."
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- 6.1.27 Clause 20 "Constitution of Election Administration Directorate" refers:  
\* The clause as formulated was agreed to.
- 6.1.28 Clause 21 "Powers, duties and functions of Chief Director: Administration" refers:



- \* The clause as formulated was agreed to.
- 6.1.29 Clause 22 "Establishment of Election Monitoring Directorate" refers:
  - \* The clause as formulated was agreed to.
- 6.1.30 Clause 23 "Constitution of Election Monitoring Directorate" refers:
  - \* The clause as formulated was agreed to.
- 6.1.31 Clause 24 "Powers, duties and functions of Chief Director: Monitoring" refers:
  - \* The clause as formulated was agreed to.
- 6.1.32 Clause 25 "Establishment of Election Adjudication Secretariat" refers:
  - \* The clause as formulated was agreed to.
- 6.1.33 Clause 26 "Constitution of Election Adjudication Secretariat" refers:
  - \* The clause as formulated was agreed to.
- 6.1.34 Clause 27 "Powers, duties and functions of Secretary" refers:
  - \* The clause as formulated was agreed to.
- 6.1.35 Clause 28 "Establishment and constitution of Electoral Tribunals" refers:
  - \* The clause as formulated was agreed to.
- 6.1.36 Clause 29 "Powers, duties and functions of Electoral Tribunals" refers:
  - \* The clause as formulated was agreed to.
- 6.1.37 Clause 30 "Establishment and constitution of Electoral Appeal Tribunals" refers:
  - \* The clause as formulated was agreed to.
- 6.1.38 Clause 31 "Powers, duties and functions of Electoral Appeal



Tribunals" refers:

\* The clause as formulated was agreed to.

6.1.39 Clause 32 "Establishment and constitution of Special Electoral Court" refers:

\* Several amendments were suggested to this clause and it was therefore agreed to return to this clause once some informal discussion had taken place.

\* After the entire Bill had been dealt with the meeting returned to this clause. After discussion it was agreed to amend clause 32 (2) to read "The Special Electoral Court shall be appointed by the Transitional Council and consist of:" Furthermore the reference to the "Transitional Council" at the end of clause (2) (b) (ii) should be deleted.

\* The clause as amended was agreed to.

6.1.40 Clause 33 "Powers, duties and functions of Special Electoral Court" refers:

\* It was noted that the reference in clause 33 (1) (a) and in clause 33 (2) (a) should read 36 (6) (a) (ii).

\* The clause as formulated was agreed to.

6.1.41 Clause 34 "Application of Act in event of conflict with other laws" refers:

\* The clause as formulated was agreed to.

6.1.42 Clause 35 "Dissolution of directorates, Secretariat and tribunals" refers:

\* The clause as formulated was agreed to.

6.1.43 Clause 36 "Appeal and review" refers:

\* The clause as formulated was agreed to.

6.1.44 Clause 37 "Remuneration and allowances of members of Tribunals and Special Electoral Court" refers:

\* The clause as formulated was agreed to.

- 6.1.45 Clause 38 "Secrecy" refers:
- \* The clause as formulated was agreed to.
- 6.1.46 Clause 39 "Offences and penalties" refers:
- \* It was agreed that the word "himself" be deleted from clause 39 (b).
  - \* The clause as amended was agreed to.
- 6.1.47 Clause 40 "Legal proceedings" refers:
- \* The clause as formulated was agreed to.
- 6.1.48 Clause 41 "Regulations" refers:
- \* The clause as formulated was agreed to.
- 6.1.49 Clause 42 "Short title" refers:
- \* The clause as formulated was agreed to.
- 6.1.50 The Draft Bill on the Independent Electoral Commission was then adopted by general consensus.
- 6.1.51 It was noted that the AVU reserved its position with regard to all the references in the Draft Bill to the Electoral Act as well as the Constitution and the powers, duties and functions this Commission will incur due to that legislation.
- 6.1.52 It was noted that the Explanatory Memorandum as adopted by the Negotiating Council on 30 April 1993 clearly differentiated between agreement on the one hand and implementation on the other. It was further noted that participants should use the Explanatory Memorandum as a constant point of reference.
- 6.1.53 It was noted that the Planning Committee was currently looking into the question of the implementation of all the legislation under consideration in the Multi-Party Negotiating Process and one of the issues that had arisen is the wording to be used for the last section of each of the Bills is concerned. The Explanatory Memorandum would be used as a basis for any suggested draft.
- 6.1.54 The Technical Committee was thanked for its work completed. The ad-hoc committee and the task group was thanked for



facilitating the process and for their work.

The meeting adjourned for tea at 11h50.

The meeting reconvened at 12h15.

## 6.2 Final Draft of the Independent Media Commission Bill:

- 6.2.1 The Technical Committee on the IMC was welcomed. Present were D Dison, P Pretorius, M Markowitz (technical support) and C Noffke. Apologies were noted from A Armstrong, J Bruwer (state law advisor) and EJ Mabuza. The Technical Committee presented its report. Discussion and debate followed with questions of clarity put to the Technical Committee.
- 6.2.2 Definition "election" refers:
- \* The clause as formulated was agreed to.
- 6.2.3 Definition "election period" refers:
- \* The clause as formulated was agreed to.
- 6.2.4 Definition "political party" refers:
- \* The clause as formulated was agreed to.
- 6.2.5 Subclause 4 (2) (a) "Constitution of Commission and appointment of commissioners" refers:
- \* It was agreed that after the words "appointed by" the words "the State President on the advice of" be inserted.
- 6.2.6 Subclause 6 (1) (d) "Persons disqualified from being commissioners" refers:
- \* It was agreed that the preceding twelve months as referred to in (d) should apply to sub-clauses (b) and (c).
  - \* It was agreed to accept sub-clauses (b), (c) and (d) as amended.



- 6.2.7 Clause 11 (3) "Meetings of Commission" refers:
- \* It was agreed to accept the clause as formulated.
- 6.2.8 Clause 32 "Application of this Act in respect of certain private broadcasters licensed elsewhere" refers:
- \* It was agreed to accept the clause as formulated.
  - \* It was noted that the Bophuthatswana Government had made a submission to the Technical Committee setting out the position of the Bophuthatswana Government with regard to Radio 702. This did not influence the acceptance of the clause.
- 6.2.9 The meeting then proceeded to formally adopt the Draft Bill clause by clause. During this process the following was noted:
- \* It was noted that there may possibly be an addition to the definition of "Transitional Executive Council" at a later stage, but this did not affect its formal acceptance.
  - \* Clause 5 (1) (b) refers: It was agreed by sufficient consensus to amend the word "ten" to read "five". The AVU noted its opposition to this decision.
  - \* Clause 35 refers: It was agreed to add to this clause the following sub-clause:  
  
"(2) This Act shall be binding upon the State President in so far as he shall be obliged to act in accordance with the advice of the Transitional Council wherever so provided for in this Act".
- 6.2.10 The complete Draft Bill was then put forward to the meeting for its formal adoption. The Draft Bill was agreed upon by general consensus.
- 6.2.11 The Technical Committee was thanked for its work completed.

The meeting adjourned for lunch at 12h40.

The meeting reconvened at 16h00.

6.3 **Seventh Working Draft of the Independent Broadcasting Authority Bill:**

- 6.3.1 The Technical Committee on the IMC was again welcomed. Present were D Dison, C Noffke and M Markowitz (technical support) and J Bruwer (state law advisor). Apologies were noted from A Armstrong, EJ Mabuza and P Pretorius. It was noted that, due to time constraints, there still existed various typographical errors which would be corrected.
- 6.3.2 It was noted that the report on meetings held with the Postmaster-General was for participants' information and was noted.
- 6.3.3 The Chairperson outlined the procedure for dealing with this Draft Bill, noting that participants had only just received the Bill.
- 6.3.4 The Bophuthatswana Government noted that it would like sufficient time to read through the Bill properly. It was noted that issues which required more time to deal with, could be dealt with at the next meeting of the Negotiating Council on Wednesday 1 September.
- 6.3.5 Definition "broadcasting" refers:
- \* The definition as formulated was agreed to.
- 6.3.6 Definition "broadcasting licence" refers:
- \* The definition as formulated was agreed to.
- 6.3.7 Definition "broadcasting signal distribution" refers:
- \* The definition as formulated was agreed to.
- 6.3.8 Definition "broadcasting signal distribution licence" refers:
- \* The definition as formulated was agreed to.
- 6.3.9 Definition "community broadcasting service" refers:
- \* The definition as formulated was agreed to.
- 6.3.10 Definition "election" refers:
- \* The definition was agreed to as formulated.



- 6.3.11 Definition "election period" refers:
- \* The definition was agreed to as formulated.
- 6.3.12 Definition "political party" refers:
- \* The definition as formulated was agreed to.
- 6.3.13 Definitions "sound broadcasting service", "sound radio set", "telecommunications", "television broadcasting service" and "television set" refer:
- \* The definitions as formulated were agreed to.
- 6.3.14 Clause 2 "Primary objects of Act" refers:
- \* Clause 2 (3) (a) refers: It was agreed by sufficient consensus to add the words "and regional" after "national". The PAC objected to this agreement.
  - \* Clause 2 (5) (b) refers: It was agreed to deal with this section at the next meeting of the Negotiating Council.
- 6.3.15 Clause 3 (1) "Establishment of Independent Broadcasting Authority" refers:
- \* The clause as formulated was agreed to.
- 6.3.16 Clause 5 "Persons disqualified from being or remaining councillors" refers:
- \* It was agreed that with regard to clause 5 (1) (d) the preceding twelve months should apply to (b) and (c) as well.
- 6.3.17 Clause 6 "Terms of office of councillors" refers:
- \* Clause 6 (2) (c) as formulated was agreed to.
- 6.3.18 Clause 13 "General or ancillary powers of Authority" refers:
- \* It was agreed by request of the Technical Committee to discuss this section at the next meeting.
- 6.3.19 Clause 17 "Banking Account" refers:
- \* It was agreed to accept the clause as formulated.



- 6.3.20 Clause 18 "Investment of surplus monies" refers:
- \* It was agreed to accept the clause as formulated.
- 6.3.21 Clause 19 "Accounting and auditing" refers:
- \* It was agreed to accept clause 19 (4) as formulated.
- 6.3.22 Clause 26 "Remuneration and allowances of committee members" refers:
- \* Clause 26 (2) as formulated was agreed to.
- 6.3.23 Clause 28 "Inquiries by Authorities" refers:
- \* It was agreed to leave clause 28 (8) (b) in abeyance until the next meeting of the Negotiating Council and accept the remainder of clause 28 (8).
  - \* Clause 28 (9) was agreed to as formulated.
- 6.3.24 Clause 29 "Authority vested with exclusive powers in relation to administration management and planning of broadcasting services frequency bands" refers:
- \* Clause 29 (1) was agreed to as formulated (see Addendum B). It was noted that the SA Government might come back to this clause at the next meeting of the Negotiating Council.
  - \* Clauses 29 (2), 29 (3) (see report) and 29 (4) (see Addendum B) as formulated were agreed to.
- 6.3.25 Clause 30 "Broadcasting Technical Committee" refers:
- \* It was agreed to delete the words "be responsible for" from clause 30 (g).
  - \* It was agreed to refer clause 30 (h) back to the Technical Committee for reformulation. The South African Government noted its objection to this instruction.
  - \* It was agreed to accept clause 30 (i) as formulated.
- 6.3.26 Clause 40 "Categories of broadcasting licences" refers:

- \* Clause 40 (2) was agreed to as formulated.
- 6.3.27 Clause 41 "Application procedure in relation to broadcasting licences" refers:
  - \* Clause 41 (9) was agreed to as formulated.
- 6.3.28 Clause 43 "Entitlements under and conditions pertaining to broadcasting licences" refers:
  - \* It was agreed to accept clause 43 as formulated.
- 6.3.29 Clause 45 "Public broadcasting licences" refers:
  - \* Clause 45 (1) was agreed to as formulated.
- 6.3.30 Clause 46 (2) "Private broadcasting licences" refers:
  - \* The clause as formulated was agreed to. It was noted that the PAC had reserved its right to revisit this clause at the next meeting of the Negotiating Council.
- 6.3.31 Clause 48 "Limitations on foreign control of private broadcasting services" refers:
  - \* Clause 48 (3) as formulated was agreed to.
- 6.3.32 Clause 49 "Limitations on control of private broadcasting services" refers:
  - \* It was agreed to deal with clause 49 (6) at the next meeting of the Negotiating Council.
- 6.3.33 Clause 50 "Limitations on cross-media control of private broadcasting services" refers:
  - \* It was agreed that clause 50 in its entirety should be dealt with at the next meeting of the Negotiating Council.
- 6.3.34 Clause 51 "Prohibition on granting of broadcasting licences to private entities" refers:
  - \* It was agreed to deal with this issue at the next meeting of the Negotiating Council.
- 6.3.35 Clause 53 "Imposition of specific broadcasting licence



conditions regarding local television content and South African music" refers:

\* Clause 53 (5) was agreed to as formulated. It was noted that the Bophuthatswana Government reserved its position.

\* Clause 53 (6) was agreed to as formulated.

6.3.36 Clause 66 "Powers of Authority in cases of proven non-compliance with Act licence conditions on certain codes of conduct and, in limited circumstances, with Independent Media Commission Act 1993" refers:

\* Clause 66 (5) was agreed to as formulated.

6.3.37 Clause 77 "Confidentiality" refers:

\* Clause was agreed to as formulated.

6.3.38 It was agreed to deal with Schedules 1, 2, 4 and 6 at the next meeting of the Negotiating Council.

6.3.39 It was agreed to accept the recommendation of the Technical Committee with regard to Entrenchment of the fundamental principles in the Constitution (see Addendum C). This would therefore be referred to the Technical Committee on Constitutional Issues as a recommendation with the support of the Negotiating Council.

6.3.40 Amendments to existing legislation (see Addendum C):

\* It was agreed that all references to schedule 5 should be removed.

\* It was agreed that the state law advisor and the Technical Committee should work on the repeals.

\* It was agreed that this should not form part of the IBA Bill.

\* It was agreed that the Planning Committee should establish how to process this issue.

6.3.41 It was suggested that the Technical Committee on Constitutional Issues should be requested to remove SPR media control from the exclusive powers of the SPR's. It was further

suggested that this power was a concurrent one. The Technical Committee was requested to interact with the Constitutional Issues Technical Committee on this issue and report back to the Negotiating Council.

6.3.42 It was noted that informal discussions should be held on outstanding issues to facilitate the process.

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

**7. Draft Meetings Schedule and Proposed Programme**

7.1 The draft meetings schedule and the proposed programme were accepted by the Negotiating Council (see Addendum B).

**8. Closure**

8.1 The Chairperson was thanked for the way the day's proceedings were handled.

8.2 The meeting was adjourned at 17h50.

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 .....

.....  
CHAIRPERSON



**Addendum A**

The following delegates and advisers were present at the meeting of the Negotiating Council on Tuesday 31 August 1993:

PJ Gordhan : Chairperson  
R Cronje : Assistant Chairperson

<b>Organisation</b>	<b>Delegates</b>	<b>Advisers</b>
ANC	P Maduna B Kgositsile	J Netshintenshe M Manzini
AVU	C Pienaar C Kruger	A Beyers AJJ van Rensburg
Bophuthatswana	BE Keikelame R Mangope	SG Mothibe
Cape Trad. Leaders	M Nonkonyana SN Sigcau	GD Gwadiso DM Jongilanga
Ciskei	TM Bulube VT Gqiba	AC Cilliers IJ Smuts
DP	C Eglin M Finnemore	PG Soal
Dikwankwetla	JSS Phatang	K Ngwenya
IFP		
IYP	NJ Mahlangu NS Mtsweni	AP Laka Q Vilankulu
KP		
INM	SS Ripinga ND Mokoena	MS Gininda GG Zama
Kwazulu		
Labour Party	L Landers CC August	CJG Leander PAC Hendrickse
NIC/TIC	K Mayet E Gandhi	
NP	D de Villiers TJ King	L Wessels
NPP	A Rajbansi S Naidoo	O Ganie H Pithambar

● Trad. Leaders	RH Mopeli MT Moroke	
PAC	P de Lille B Desai	L Makhanda E Sibeko
Solidarity	DS Rajah	T Palan B Govender
SACP	J Slovo L Jacobus	S Shilowa E Pahad
SA Government	RP Meyer LR Brink	DPA Schutte
Transkei	Z Titus N Jajula	R Nogumla
TVL Trad. Leaders	MA Netshimbupfe	NE Ngomane
UPF	A Chabalala	
Venda	SE Moeti	GM Ligege S Makhuvha
XPP	ST Mona MH Matjokana	GNK Hetisani EE Ngobeni

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



**DRAFT PROGRAMME FOR MEETINGS**

31 AUGUST 1993

Tuesday 31 August 1993	Discussion:	* IMC (finalise & formal adoption)
		* IEC (finalise & formal adoption)
		* IBA
Wednesday 1 September 1993	Discussion:	* TEC
		* IBA (finalise)
		* Formal adoption of the Draft Bill on the IBA
Thursday 2 September 1993	Discussion:	* TEC (finalise & formal adoption)
		* Interim Constitution
Monday 6 September 1993	Discussion:	* Interim Constitution
Tuesday 7 September 1993	Discussion:	* Interim Constitution
Wednesday 8 September 1993	Discussion:	* Draft Electoral Act
Thursday 9 September 1993	Discussion:	* Draft Electoral Act

## REVISED PROPOSED SCHEDULE OF MEETINGS

31 AUGUST 1993

Planning Committee	Wednesday 1 September 1993	11h00-12h00
Negotiating Council	Wednesday 1 September 1993	12h00-20h00
Negotiating Council	Thursday 2 September 1993	09h00-18h00

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	Wednesday 8 September 1993	11h00-19h00
Negotiating Council	Thursday 9 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.**