

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

MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 09H30 ON THURSDAY 2 SEPTEMBER 1993 AT THE WORLD TRADE CENTRE

PRESENT: See Addendum A

1. Moment of Prayer/Meditation

A moment of prayer/meditation was observed by all members.

2. Welcome and Attendance

The participants were welcomed

3. Ratification of the Agenda

The agenda was ratified with the following amendment:

- * The addition of a new item 5.2 to read "Adoption of the resolution on the processing of the three accepted bills". The subsequent numbering was amended accordingly.

4. Minutes

It was noted that minutes would be distributed during the course of the day for ratification at the next meeting of the Negotiating Council.

5. Substantive Issues

5.1 Final Draft of the Independent Broadcasting Authority Bill:

- 5.1.1 The Technical Committee on the IBA was welcomed. Present were D Dison, P Pretorius, M Markowitz (technical support), C Noffke and D van Zyl (state law advisor). Apologies were noted from A Armstrong and EJ Mabuza. It was noted that the meeting would only deal with the outstanding clauses. Discussion and debate followed.

- 5.1.2 Definition "broadcasting signal distribution" refers:
- * The clause as formulated was agreed to.
- 5.1.3 Definition "chairperson" refers:
- * The clause as formulated was agreed to.
- 5.1.4 Clause 2 (5) (b) "Primary objects of the act" refers:
- * The clause as formulated was agreed to.
- 5.1.5 Clause 4 (1) "Constitution of Council" refers:
- * It was agreed that Schedule 1 as contained in previous drafts should be deleted.
 - * It was agreed that the word "shortlists" in clause 1 (b) (iii) should read "shortlist".
 - * The clause as amended was agreed to.
- 5.1.6 Clause 4 (3) "Constitution of Council" refers:
- * The clause as formulated was agreed to.
- 5.1.7 Clause 5 (1) (c) "Persons disqualified from being or remaining councillors" refers:
- * It was agreed to insert the following words at the beginning of the clause "is or during the preceding twelve months".
- 5.1.8 Clause 13 "General powers of Authority" refers:
- * The clause as formulated was agreed to.
- 5.1.9 Clause 23 "Establishment, appointment and constitution of special committees of Council including Regional Broadcasting Committees" refers:
- * The clause and heading as formulated was agreed to (see Addendum B).
- 5.1.10 Clause 28 (8) (b) "Inquiries by Authority" refers:
- * The clause as formulated was agreed to.

- 5.1.11 The heading of clause 29 "Authority principally vested with powers in relation to administration, management and planning of broadcasting services frequency bands" refers:
- * The heading as formulated was agreed to.
- 5.1.12 Clause 29 (2) "Authority principally vested with powers in relation to administration, management and planning of broadcasting services frequency bands" refers:
- * The clause as formulated was agreed to.
- 5.1.13 Clause 29 (3) "Authority principally vested with powers in relation to administration, management and planning of broadcasting services frequency bands" refers:
- * It was agreed that the words "is kept to a minimum and" be deleted in the clause.
 - * The clause as amended was agreed to.
- 5.1.14 Clause 29 (4) (c) "Authority principally vested with powers in relation to administration, management and planning of broadcasting services frequency bands" refers:
- * It was agreed to add the following words to the beginning of the clause "Frequencies within the".
 - * The clause as amended was agreed to.
- 5.1.15 Clause 29 (5) "Authority principally vested with powers in relation to administration, management and planning of broadcasting services frequency bands" refers:
- * The clause as formulated was agreed to.
- 5.1.16 Clause 46 (2) (a) "Private broadcasting licences" refers:
- * It was agreed that the words "eight" and "six" should be transposed.
- 5.1.17 Clause 46 (2) (b) (ii) "Private broadcasting licences" refers:
- * It was agreed that the following proviso should be included at the end of the sub-clause : "Provided that the licence which may be deemed to be held in terms of this sub-clause shall in no way derogate from the

validity of the licence held under Bophuthatswana law, and the authority of the Bophuthatswana Government to enforce the terms and conditions of their licence as currently enforced under Bophuthatswana law".

- 5.1.18 Clause 49 (6) "Limitations on control of private broadcasting services" refers:
- * The clause as formulated was agreed to.
- 5.1.19 Clause 50 (1) "Limitations on cross-media control of private broadcasting services" refers:
- * It was agreed that the words "so acting" should be deleted and replaced with "in accordance with the constitution act".
 - * The clause as amended was agreed to.
- 5.1.20 Clause 50 (3), (4) and (5) "Limitations on cross-media control of private broadcasting services" refers:
- * Clause 50 (3) was agreed to as formulated. A typographical error was amended.
 - * Clause 50 (4) was agreed to as formulated.
 - * Clause 50 (5) was agreed to as formulated.
- 5.1.21 Clause 51 "Prohibition on granting of broadcasting licences to political parties" refers:
- * It was agreed to amend this clause to read "No broadcasting licence shall be granted to any party, movement, organisation, body or any alliance of a party political nature".
 - * The clause as amended was agreed to.
- 5.1.22 Clause 53 (2) "Imposition of specific broadcasting licence conditions regarding local television content and South African music" refers:
- * The clause as formulated was agreed to.
- 5.1.23 Clause 53 (6) "Imposition of specific broadcasting licence conditions regarding local television content and South African

music" refers:

- * The clause as formulated was agreed to.

5.1.24 Clause 79 (b) "Extraterritorial extension of Authority's jurisdiction by agreement between Republic and any state or territory previously part of Republic" refers:

- * The clause as formulated was agreed to.
- * The Transkei Government pointed out that they were interested not only in the extension of the authority of the IBA to Transkei but in the application of the whole bill to the Transkei. They pointed in particular to clause 80 of the bill as an example.

5.1.25 Clause 83 (1) (b) "Short title and date of commencement" refers:

- * The clause as formulated was agreed to.

5.1.26 The Schedules refers:

- * The schedules 1 and 5 as contained in previous drafts had been deleted. The new Schedule 1 on pensions had been checked, as had been Schedule 3.
- * It was agreed that the order of the schedules be amended as follows:
 - * Schedule 1 becomes 3;
 - * Schedule 2 becomes 1; and
 - * Schedule 3 becomes 2.

The Technical Committee was requested to make any technical amendments that were necessary as a result of this decision.

5.1.27 It was noted that the Technical Committee would raise with the Technical Committee on Constitutional Issues issues relating to the entrenchment of independent broadcasting regulation and matters affecting freedom of expression.

5.1.28 The IBA Bill was formally adopted by general consensus as formulated. The Technical Committee was thanked for its work completed.

The meeting adjourned at 12h00.

The meeting reconvened at 13h05.

5.2 Adoption of the resolution on the processing of the three accepted bills:

5.2.1 The amended draft resolution was put to the Negotiating Council for adoption. Discussion followed during which amendments were put forward.

5.2.2 The amended resolution was adopted by sufficient consensus (see Addendum C).

5.2.3 It was noted that the Bophuthatswana Government and the PAC was opposed to the resolution.

5.2.4 It was noted that the Ciskei Government reserved its position on the resolution.

6. Draft Programme and Schedule of Meetings:

The draft programme and schedule of meetings was accepted (see Addendum D).

7. Closure

The meeting was closed at 14h05.

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 on7/10/93.....


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CHAIRPERSON

Addendum A

The following delegates and advisers were present at the meeting of the Negotiating Council on Thursday 2 September 1993:

B Kgositsile : Chairperson
L Landers : Assistant Chairperson

Organisation	Delegates	Advisers
ANC	C Ramaphosa M Manzini	J Netshintshe
AVU	C Pienaar C Kruger	A Beyers AJJ van Rensburg
Bophuthatswana	R Cronje R Mangope	BE Keikelame SG Mothibe
Cape Trad. Leaders	M Nonkonyana SN Sigcau	GD Gwadiso
Ciskei	M Webb VT Gqiba	TM Bulube IJ Smuts
DP	CW Eglin M Finnemore	KM Andrew PG Soal
Dikwankwetla	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	PJ Gordhan F Cuohan	IC Meer
NP	D de Villiers TJ King	L Wessels
NPP	A Rajbansi L Singh	G Chetty R Reddy

Q Trad. Leaders	RH Mopeli MT Moroke	MB Mota MA Molefe
PAC	P de Lille B Desai	
Solidarity	K Moodley	AS Razak
SACP	J Slovo L Jacobus	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 J Maake	NM Tsheole
Venda	SE Moeti	GM Ligege S Makhuvha
XPP	PT Shilubana MH Matjokana	GNK Hetisani

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

23. **Establishment, appointment and constitution of special committees of Council, including regional broadcasting committees**

- (1) The Council may establish and appoint such special committees as it may deem necessary with a view to assisting it in the effective exercise and performance of its powers, functions and duties, and such committees shall sit on an **ad hoc** basis.
- (2) The Council may, if deemed necessary, establish and appoint regional broadcasting committees after consultation with the executive of any constituent region of the Republic contemplated in the Constitution Act, for such purposes as it may deem necessary with a view to assisting the Council in the effective exercise and performance of its powers, functions and duties in the region in question.
- (3) The provisions of section 22(1) and (2) shall apply **mutatis mutandis** in relation to any committee established under subsection (1) or (2) of this section.
- (4) The Council shall from its number designate a chairperson for any such committee.
- (5) The Council may at any time extend, limit or dissolve any such committee.

**RESOLUTION ON THE PROCESSING OF THE
THREE ACCEPTED BILLS
ADOPTED BY THE NEGOTIATING COUNCIL
ON 2 SEPTEMBER 1993**

This Negotiating Council meeting on Thursday 2 September 1993 at the World Trade Centre in Kempton Park:

Notes with acclaim

1. That the Independent Media Commission Bill, Independent Electoral Commission Bill and the Independent Broadcasting Authority Bill have been adopted by general consensus by this Council.

Noting further

1. That the following are the steps that are to be followed:
 - 1.1 Agreement on Bill in the Negotiating Council
 - 1.2 Passage of Bill through Parliament
 - 1.3 Promulgation of the Act in Gazette
 - 1.4 Putting into operation of the Act
2. That the Bills passed through Parliament will not be put into operation until an explicit decision to that effect has been taken by the Plenary of the Multi-Party Negotiating Process having approved the total package of agreements, that is the Independent Electoral Commission, the Independent Media Commission, the Independent Broadcasting Authority, the Transitional Executive Council and the Constitution for the transitional period including fundamental rights and the constitutional principles.

Believing

That these Bills must now be introduced in Parliament as soon as possible and that an agreement in the Negotiating Council to this effect will boost confidence in the negotiating process.

Therefore resolves

That this Negotiating Council requests the South African Government to introduce these Bills in Parliament for attention during the Parliamentary session starting on 13 September 1993.

And further resolves

1. That, in terms of clause 6 of the Explanatory Memorandum adopted by the Negotiating Council on 30 April 1993 and quoted hereunder, the Council will expressly determine the date when each agreement arrived at by the Council and passed by Parliament and after their passage through Parliament will be implemented; and
 - "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."
2. That the Planning Committee shall plan for the implementation and practical application of the three Bills, including informal preparations for the operation of the structures provided for in the Bills, in order to facilitate their implementation.

DRAFT PROGRAMME FOR MEETINGS

2 SEPTEMBER 1993

Thursday 2 September 1993	Discussion:	*	IBA (finalise & formal adoption)
		*	Interim Constitution
Monday 6 September 1993	Discussion:	*	TEC (finalise & adoption)
		*	Interim Constitution
Tuesday 7 September 1993	Discussion:	*	Interim Constitution
Thursday 9 September 1993	Discussion:	*	Interim Constitution
Tuesday 14 September 1993	Discussion:	*	Interim Constitution
Wednesday 15 September 1993	Discussion:	*	Interim Constitution
Thursday 16 September 1993	Discussion:	*	Electoral Act

REVISED PROPOSED SCHEDULE OF MEETINGS

2 SEPTEMBER 1993

Negotiating Council	Thursday 2 September 1993	09h00-16h00
Planning Committee	Monday 6 September 1993	09h30-13h00
Negotiating Council	Monday 6 September 1993	14h00-19h00
Negotiating Council	Tuesday 7 September 1993	09h00-19h00
Negotiating Council	Thursday 9 September 1993	09h00-18h00
Negotiating Council	Tuesday 14 September 1993	09h00-19h00
Negotiating Council	Wednesday 15 September 1993	09h00-19h00
Negotiating Council	Thursday 16 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.

Customary Rights:

32 (1) Every person who:

- (a) in pursuance of the right entrenched in section 31 belongs to a community which observes cultural rights; or
- (b) of free and informed choice observes the rules and practices of such cultural rights;

Shall have the right to the recognition of his or her cultural rights.

(2) Nothing in this section shall preclude measures, through legislation, designed to assist the development of customary law in accordance with the values embodied in the provisions of this Chapter.