

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

**MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 14h00 ON TUESDAY 2 NOVEMBER 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:

\* It was agreed that item 5.1 becomes item 5.2 and vice versa.

**4. Minutes**

4.1 It was noted that minutes would be distributed during the course of the meeting and would be ratified at the next meeting of the Negotiating Council.

4.2 The Planning Committee minutes of 6 September 1993 were distributed for notification by the Negotiating Council.

**5. Substantive Issues**

**5.1 Nineteenth Report of the Technical Committee on Constitutional Issues:**

5.1.1 The Technical Committee on Constitutional Issues was welcomed. Present were A Chaskalson, GE Devenish, E Moseneke, B Ngoepe, M Olivier, W Olivier and F Venter. Apologies were noted from M Wiechers. The Technical Committee then presented its 19th Report to the meeting.

Discussion and debate followed on Transfer of Assets and Liabilities. Questions of clarity were put to the Technical Committee during the course of the entire debate and discussion.

5.1.2 It was noted that in drafting this report, the Technical Committee had been instructed to take into account all submissions and to draft in accordance with the submissions. This instruction had been carried out by the Technical Committee (see Addendum B for transcription relevant to the debate).

5.1.3 Clause 70 "Executive Power" refers:

\* The clause as formulated was agreed to.

5.1.4 Clause 71 "Head of State" refers:

\* It was suggested that it should be spelt out that the Head of State was the commander in chief of the armed forces. It was agreed that this provision should be placed elsewhere in the Chapter.

\* The clause as formulated was agreed to.

5.1.5 Clause 72 "Election of President" refers:

\* It was agreed to refer clause 72 (1) and 72 (2) to the Technical Committee for reformulation, taking into account the debate in the Negotiating Council.

\* Clause 72 (3) as formulated was agreed to.

\* Clause 73 (4) as formulated was agreed to.

\* Clause 73 (5) as formulated was agreed to.

\* Clause 73 (6) as formulated was agreed to.

\* Clause 73 (7) as formulated was agreed to.

5.1.6 Clause 73 "Oath or affirmation" refers:

\* The clause as formulated was agreed to.

5.1.7 Clause 74 "Tenure of office" refers:

\* It was suggested that the term of office should be limited to two terms. If it was not provided for in this clause, it should be provided for elsewhere. Other participants suggested that this was not necessary as this constitution was for the transition.

\* The clause as formulated was agreed to.

5.1.8 Clause 75 "Responsibility of the President" refers:

\* Clause 75 (1) as formulated was agreed to.

\* With regard to clause 75 (2) participants were requested to make submissions to the Technical Committee. The Technical Committee was requested to reconsider the clause.

5.1.9 Clause 76 "Powers and functions of the President" refers:

\* Clause 76 (1) (a) as formulated was agreed to.

\* Clause 76 (1) (b) as formulated was agreed to.

\* Clause 76 (1) (c) as formulated was agreed to.

\* Clause 76 (1) (d) as formulated was agreed to.

\* Clause 76 (1) (e) as formulated was agreed to.

\* Clause 76 (1) (f) as formulated was agreed to.

\* Clause 76 (1) (g) as formulated was agreed to.

\* Clause 76 (1) (h) as formulated was agreed to.

\* Clause 76 (1) (i) as formulated was agreed to.

\* Clause 76 (1) (j) as formulated was agreed to.

\* Clause 76 (1) (k) as formulated was agreed to.

\* The Technical Committee was instructed to provide, in the appropriate place, for the Head of State as the Commander in Chief of the armed forces. Participants were requested to make submissions on this issue to the Technical Committee.

- \* It was agreed that the concept of "after consultation" should apply in the opening line of clause (2).
- \* With regard to clause 76 (2) (a) it was agreed that the words " and execution" be deleted.
- \* It was agreed that clause 76 (2) (b) be reconsidered by the Technical Committee taking into account the debate in the Council.
- \* It was agreed that clause 76 (2) (c) be reconsidered by the Technical Committee taking into account the debate in the Council.
- \* Clause 76 (2) (d) as formulated was agreed to.
- \* Clause 76 (2) (e) as formulated was agreed to.
- \* With regard to clause 76 (3), it was agreed to defer decision on this clause until a decision had been arrived at in terms of clause 81 (2). It was suggested that the term "consultation" should be defined in the Constitution.

5.1.10 Clause 77 "Executive Deputy Presidents" refers:

- \* The principle of "Executive Deputy Presidents" was debated and discussed.
- \* The principle of an Interim Government of National Unity was agreed to by sufficient consensus. The PAC opposed the principle and the AVU reserved its position.
- \* The concept of Executive Deputy President was agreed to by sufficient consensus. The PAC opposed the concept and the AVU reserved its position.
- \* The concept of a Multi-Party Cabinet was agreed to by sufficient consensus. The PAC opposed the concept and the AVU reserved its position.
- \* Clause 77 (1) as formulated was agreed to.
- \* Clause 77 (2) as formulated was agreed to.
- \* With regard to clause 77 (3), it was noted that

participants were free to make submissions if they so wished, but the clause as formulated was agreed to.

- \* Clause 77 (4) was agreed to as formulated.
- \* Clause 77 (5) as formulated was agreed to.
- \* After discussion it was agreed to defer discussion on clause 77 (6), and therefore, the clause would stand over.

5.1.11 Clause 78 "Salaries of the President and Executive Deputy Presidents" refers:

- \* Clause 78 (1) as formulated was agreed to.
- \* Clause 78 (2) as formulated was agreed to.

5.1.12 Clause 79 "Removal from office of the President and filling of the vacancy" refers:

- \* Clause 79 (1) as formulated was agreed to.
- \* Clause 79 (2) as formulated was agreed to.
- \* Clause 79 (3) as formulated was agreed to.
- \* Clause 79 (4) as formulated was agreed to.

5.1.13 Clause 80 "The Cabinet" refers:

- \* It was agreed that clause 80 (1) should stand over.
- \* Clause 80 (2) was agreed to in principle but would have to be refined.
- \* It was agreed that clause 80 (3) should stand over.
- \* Clause 80 (4) as formulated was agreed to.
- \* Clause 80 (5) as formulated was agreed to.
- \* Clause 80 (6) as formulated was agreed to.
- \* Clause 80 (7) as formulated was agreed to.
- \* Clause 80 (8) as formulated was agreed to. It was

agreed that the observance of confidentiality by Ministers of the Cabinet should be provided for in the appropriate place in the Constitution.

- 5.1.14 Clause 81 "Procedure in the Cabinet" refers:
- \* It was agreed that clause 81 (1) should stand over.
  - \* It was agreed that clause 81 (2) should stand over.
- 5.1.15 Clause 82 "Accountability of Ministers and the Cabinet" refers:
- \* Clause 82 (1) as formulated was agreed to.
  - \* Clause 82 (2) as formulated was agreed to.
  - \* Clause 82 (3) as formulated was agreed to.
- 5.1.16 Clause 83 "Vote of non confidence" refers:
- \* Clause 83 (1) as formulated was agreed to.
  - \* Clause 83 (2) as formulated was agreed to.
  - \* With regard to clause 83 (3), it was agreed that the word "may" should read "shall". The clause was agreed to.
  - \* Clause 83 (3) (a) as formulated was agreed to.
  - \* Clause 83 (3) (b) as formulated was agreed to.
  - \* It was noted that clause 83 (4) was referred back to the Technical Committee for reconsideration, taking into account the debate in the Council.
- 5.1.17 Clause 84 "Appointment of Deputy Ministers" refers:
- \* Clause 84 (1) as formulated was agreed to.
  - \* Clause 84 (2) as formulated was agreed to.
  - \* Clause 84 (3) as formulated was agreed to.
  - \* Clause 84 (4) as formulated was agreed to.
  - \* Clause 84 (5) as formulated was agreed to.

- \* Clause 84 (6) as formulated was agreed to.
  - \* Clause 84 (7) as formulated was agreed to.
- 5.1.18 Clause 85 "Composition and functioning of Cabinet in the event of non-participation by parties" refers:
- \* Clause 85 (1) as formulated was agreed to.
  - \* Clause 85 (2) as formulated was agreed to.
  - \* Clause 85 (3) as formulated was agreed to.
- 5.1.19 Provision to be inserted into Chapter 4 "Rights and duties of president, the deputy President and Ministers in Parliament" refers:
- \* Clause (1) as formulated was agreed to.
  - \* Clause (2) as formulated was agreed to.
- 5.1.20 The following suggested additional item should be added to the Constitutional Principles contained in Schedule 7:
- \* "The Constitution shall provide that until 30 April 1999 the national executive shall be composed and shall function substantially in the manner provided for in Chapter 6 of this Constitution."
  - \* It was agreed that this would be debated when the Constitutional Principles were debated as there was no agreement on this additional principle at this point.
  - \* The PAC noted that it was totally opposed to this suggested additional principle.
- 5.1.21 Request to the Negotiating Council for instructions required for the Chapter on Transitional Provisions (see Addendum C):
- \* It was agreed that participants should make submissions. The issue would be debated at a future meeting of the Negotiating Council.

The meeting adjourned for dinner at 19h30.

The meeting reconvened at 20h50.

5.2 **The participation of Traditional Leaders at different levels of government:**

5.2.1 Discussion and debate proceeded on this issue.

5.2.2 It was noted that, notwithstanding the apparent agreement reached on the participation of traditional leaders at regional level, differences remained in relation to the said participation at local level and at national level. It was agreed that further bilateral meetings on this issue were necessary and the proposals that had emerged during the course of the debate required further consideration by participants. It was further agreed that no decision on this issue should be taken at this point. It was noted that this issue would be taken further at a future meeting of the Negotiating Council.

6. **Draft Programme and Schedule of Meetings**

6.1 The draft programme and schedule of meetings were noted (see Addendum D and E).


6.2 Members were requested to be arrive promptly for the commencement of the Negotiating Council meeting of 3 November 1993.

6.3 It was noted that all members of Ad-Hoc Committees on Demarcation/Delimitation of Regions were scheduled to meet on Thursday 4 November 1993 at 08h00 to 10h00.

7. **Closure**

The meeting adjourned at 22h10.

These minutes were ratified at the meeting of the Negotiating Council of 11 November 1993 and the amended version signed by the Chairperson of the original meeting on 17/11/1993

  
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CHAIRPERSON



**Addendum A**

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

L Landers : Chairperson  
 MJ Mahlangu : Assistant Chairperson

<b>Organisation</b>	<b>Delegates</b>	<b>Advisers</b>
ANC	C Ramaphosa B Kgosisile	M Manzini MV Moosa
AVU	S Burger C Kruger	AJ Horn
Bophuthatswana		
Cape Trad. Leaders	M Nonkonyana SN Sigcau	GD Gwadiso DM Jongilanga
Ciskei		
DP	C Eglin D Smuts	K Andrew E Trent
Dikwankwetla	JSS Phatang	SOM Moji MC Noge
IFP		
IYP	NJ Mahlangu NS Mtsweni	AP Laka Q Vilankulu
KP		
INM	SS Ripinga ND Mokoena	GG Zama
Kwazulu		
Labour Party	CJG Leander	D Lockey
NIC/TIC	PJ Gordhan	B Pillay
NP	D de Villiers TJ King	L Wessels
NPP	A Rajbansi T Gunpath	J Bachu H Pithambar
OFS Trad. Leaders	MB Mota R Mopeli	B Rajuili MA Molefe

P	B Alexander P de Lille	B Desai LS Makhanda
Solidarity	DS Rajah	K Chetty TL Gounden
SACP	J Slovo L Jacobus	
SA Government	RP Meyer LR Brink	A Donkers
Transkei	Z Titus N Jajula	R Nogumla
TVL Trad. Leaders	LM Mokoena MA Netshimbupfe	NE Ngomane NE Mgonezulu
UPF	A Chabalala	RJ Dombo JS Maake
Venda	SE Moeti	GM Ligege
XPP	GNK Hetisani EE Ngobeni	PT Shilubana DMD Mahlangu

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

Excerpt from a transcription of the Negotiating Council Meeting held on 28 October 1993

Mr Eglin: An informal report was given to the Planning Committee from people engaged in bilaterals in which they indicated considerable progress has been made in certain areas, to the extent that an input can be made to the technical committee on behalf of the bilateral negotiating participants. It made quite clear from the Planning Committee, that what goes to the technical committee has got no more status than any other input made by any other organisation or participant to the technical committee. However the stage has been reached that a significant number of proposals for amendments will be put into the Constitutional Technical Committee with a view to then processing both those proposals in that input and any other proposals that would be made, so hopefully by Monday they in that particular area, can come back with an amended on their constitutional proposals. These proposals in the main area, in the area of SPR's, that is their powers, functions, financial rights, fiscal commission and to an extent on the issue of local government. Progress of sufficient nature has been made for input to be made to the technical committee. So on those areas the parties involved in the bilaterals will be making an input and if there are any other participants who have not yet made inputs to the technical committee, they should do so immediately, although there was a cut-off date earlier and I think most other participants have made their inputs. So those will be going into the technical committee. Secondly on the issue of constitutional principles, you will recall that there were lengthy debates that in the main there has been overall agreement, but Report 4 has not yet been discussed, and there are certain participants who wish that certain further extension of principles should be considered. Once again if anybody has any recommendations to make on the editing, reshaping or the revising of constitutional principles, that input should be made to the technical committee on the constitution. Because those bodies involved in the bilaterals are now in the position to make recommendations of their own to the technical committee. So on the question of the constitutional principles and on a range of issues largely affecting SPR's, an input will be made and it should be possible for the Technical Committee on the Constitution to amend their constitutional proposals in the light of all those matters. You will see from agenda that bilaterals are continuing, in fact, the good news for Councillors will be that there will not be a meeting of the Council tomorrow, unless this Council decides otherwise, but there will be bilaterals tomorrow and if you look at the agenda before you for next week, you will see that there are planned bilaterals on Tuesday morning, on Wednesday and Thursday morning. So the whole issues of bilaterals on a range of matters will be continued and the Planning Committee has said in order to get this matter to the Technical Committee as soon as possible, should anybody have had bilaterals and have anything more constructive on any of the items that are outstanding they must

submit those as soon as they can to the Technical Committee. And as the Technical Committee receives inputs they will once again amend their reports taking into account the inputs they have received. So those that have already been agreed or decided upon will be going in and should any others emerge from the bilaterals they will automatically be sent into the Technical Committee on the Constitution. But the Planning Committee wants to emphasise that those agreements at bilaterals are not binding agreements, not necessarily on those parties and they are not binding agreements on this Council. It is for this Council to evaluate the report of the Technical Committee it receives and reach their own decision on this matter. So that a considerable progress has been made on constitutional issues, and it is being pursued at bilaterals, tomorrow, Tuesday morning, Wednesday and Thursday morning.

## TECHNICAL COMMITTEE ON CONSTITUTIONAL ISSUES

### REQUEST TO THE NEGOTIATING COUNCIL FOR INSTRUCTIONS REQUIRED FOR THE CHAPTER ON TRANSITIONAL PROVISIONS

1. We still have to draft a Chapter of the Constitution which will deal with transitional provisions.
2. Provision needs to be made for legal continuity. This presents no major problem; a transitional provision can be included to the effect that all existing laws will remain in force until repealed or declared unconstitutional by a competent court.
3. A problem does, however, exist in relation to continuity of executive and legislative power. If the existing executive and parliamentary structures are dissolved when the new Constitution comes into force, there will be no body with executive and legislative power over the Republic until the new legislatures and new executives assume office. That will give rise to a constitutional vacuum, unless bridging provisions are included in the Constitution. The bridging provisions will be of particular importance if, for any reason, the elections are not declared to be free and fair by the Independent Electoral Commission, either throughout the Republic or in any Province or Provinces.
4. The bridging provision must either make provision for existing legislative and executive structures to remain in place until new legislatures and executives are elected, or some other provision must be made for the exercise of legislative and executive power until elected structures take office.
5. It may also be necessary to make specific provision for bridging structures, if in any particular part of the country the election has not been fair and free, though in the country as a whole, the elections were substantially fair and free, and certified as such by the Independent Electoral Commission.
6. Finalisation of the formulation of section 119 is also required to enable us to complete the drafting of various parts of the Constitution.
7. We require instructions from the Negotiating Council to enable us to draft these provisions.

**REVISED DRAFT PROGRAMME FOR MEETINGS**

2 NOVEMBER 1993

Tuesday 2 November 1993	Discussion:	* Traditional Leaders: Participation at various levels of government
		* Constitutional Issues (Chapter 6)
	Distribution :	Partial Third Draft of the Electoral Bill
Wednesday 3 November 1993	Discussion:	* Third Draft of the Electoral Bill
Thursday 4 November 1993	Discussion:	* Fundamental Rights during the Transition
		* Demarcation/Delimitation of Regions
		* Constitutional Issues (clause 118)
Friday 5 November 1993	Discussion:	* Constitutional Issues (clause 121)
Monday 8 November 1993	Discussion:	* Constitutional Issues
		* Fourth Draft of the Electoral Bill
Tuesday 9 November 1993	Internal Consultation	
Wednesday 10 November 1993	Discussion:	* Constitutional Issues
		* Identification of Discriminatory Legislation
Thursday 11 November 1993	Discussion:	* Constitutional Issues
		* Any outstanding Issues (finalisation)
Friday 12 November 1993	Discussion:	* Constitutional Issues (finalisation)

**REVISED PROPOSED SCHEDULE OF MEETINGS**

2 NOVEMBER 1993

Bilateral Meetings	Tuesday 2 November 1993	08h30-13h00
Negotiating Council	Tuesday 2 November 1993	14h00-22h00
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	12h00-14h00
Planning Committee	Thursday 4 November 1993	14h00-16h00
Negotiating Council	Thursday 4 November 1993	16h00-22h00
Negotiating Council	Friday 5 November 1993	08h30-18h00
Planning Committee	Monday 8 November 1993	09h30-13h00
Negotiating Council	Monday 8 November 1993	13h00-21h00
Internal Consultation	Tuesday 9 November 1993	
Bilateral Meetings	Wednesday 10 November 1993	08h30-13h00
Negotiating Council	Wednesday 10 November 1993	13h00-21h00
Bilateral Meetings	Thursday 11 November 1993	08h30-13h00
Negotiating Council	Thursday 11 November 1993	13h00-21h00
Negotiating Council	Friday 12 November 1993	09h30-finalisation

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.**