

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

MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 09h15 ON TUESDAY 17 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 Ratification of Minutes:

4.1.1 The minutes of the meeting of 4 August 1993 were ratified with no amendments.

4.1.2 The minutes of the meeting of 12 August 1993 were ratified with the following amendment:

- * Item 6.3.5, the third asterisk refers : The word "of" should be inserted after the word "some".

4.2 Matters arising out of the Minutes:

4.2.1 Matters arising out of the minutes of 4 August 1993:

- * Item 5.1.2 the second asterisk refers : It was noted that the Negotiating Council was awaiting a reportback from the Planning Committee in this regard.

4.2.2 No matters arising were noted from the minutes of the meeting of 12 August 1993.

5. **Reportback from the Planning Committee**

5.1 **Draft Programme:**

It was noted that the schedule distributed at the Negotiating Council meeting of 16 August 1993 was a tentative one. The Planning Committee was scheduled to meet at 13h00 today and a further report would be received after lunch.

5.2 **Couriering of Documents:**

It was noted that participants who were experiencing problems with the receipt of couriered documents on a Saturday, should liaise with T Eloff.

5.3 **Participation of Women:**

A recommendation on this issue has been placed before the Planning Committee for its consideration. The Planning Committee noted that it will report back on this issue before lunch.

5.4 **Visit to the East Rand:**

It was noted that the Planning Committee would report back on this issue after lunch. It was further noted that the Sub-Committee of the Planning Committee was considering the logistical arrangements for the visit.

5.5 **Peace-Keeping Force:**

It was noted that this issue had been covered by the Technical Committee of the TEC and its Sub-Councils and should therefore be raised when dealing with the reports of the TEC and its Subcouncils.

6. **Substantive Issues**

6.1 **Eighth Working Draft of the Bill on the TEC and its Subcouncils:**

6.1.1 The Technical Committee was welcomed. Present were Z du Toit, F Haysom, CJ Heunis and D van Wyk. Apologies were noted from E Mapheto and J Renene. The debate then continued from clause 14 sub-clause (7).

6.1.2 Clause 11 "General Powers of Subcouncils" refers:

- * The SACP suggested an additional sub-clause (1) (e). It was noted that a submission would be made in writing to the Technical Committee in this regard.

6.1.3 Clause 14 "Powers and duties in regard to defence" refers:

- * Questions of clarity were put to the Technical Committee.
- * With regard to sub-clause (13) it was suggested that the role of the peace-keeping force was for policing and not a military role and should fall under the subcouncil of law and order and not defence. Participants were requested to consider this issue and lengthy debate occurred around this issue. It was suggested that clarity is needed on exactly how the force will look and under which government department it is envisaged to be run. This clarity would assist in arriving at a decision. Participants were requested to make, if they so wish, written submissions to the Technical Committee on this issue.
- * The Technical Committee requested guidance from the Negotiating Council with regard to the responsibility for the national peace keeping force. It was suggested that the TEC should be given a more prominent role with the national peace keeping force vis a vis the Subcouncil.
- * It was agreed that the words "Command Centre" in sub-clause (14) should read "Command Council".
- * It was noted that the NPP would make a written submission to the Technical Committee on the introductory line of clause (15).
- * It was suggested that in clause 15 the roles provided for should be reversed, i.e. "the National Peace-Keeping Force Command Council in consultation with the Subcouncil shall".
- * It was suggested that the Technical Committee should consider international involvement with regard to sub-clause (14) and (15).
- * Various participants supported the introductory line of clause (15) as drafted.

- * It was suggested that, in sub-clause (15) (c), a mechanism to address the role that women can play should be introduced.
- * It was suggested that the words "which will be gender sensitive" are inserted after the word "criteria" in sub-clause (15) (c).
- * It was suggested that all the Subcouncils, and not only the Subcouncil on Women, should take into account gender interests.
- * It was noted that the function of the National Peace-Keeping Force would be more of a unique policing one.
- * It was suggested that consultation should also occur with the SADF in sub-clause (16).
- * It was suggested that, with regard to sub-clause (16), the SADF as well as other "armies" should form a joint command structure.
- * Concerns were expressed with regard to the responsibility given to the SADF in sub-clause (16) and the implications thereof. The implications should be clearly spelt out. It was suggested that the Technical Committee should tighten up this sub-clause to allay fears and concerns expressed in the meeting.
- * It was suggested that in sub-clause (16) there should be a formulation which provides for the relationship between the Subcouncil and the Minister being responsible for the resolving of issues.
- * The Technical Committee suggested that the whole issue of the National Peace-Keeping Force should be given urgent attention by the Negotiating Council.
- * It was suggested that a definition of the National Peace Keeping Force should be provided for.

The meeting adjourned for tea at 10h45.

The meeting reconvened at 11h05.

6.1.4

Clause 15 "Powers and duties in regard to finance" refers:

- * It was suggested that the words "and investigate" be inserted after the word "monitor" in sub-section (1) (j).
- * It was suggested that regional and local governments should be catered for in clause 15 (2) (a).
- * It was suggested that the concept of confidentiality should apply to clause 15 (2) (a).
- * It was noted that the AVU would make a written submission to the Technical Committee suggesting further organisations to be added into clause 15 (2) (a).
- * It was suggested that within clause 15 (2) (a), provision should be made for access to all relevant information in terms of parastatals and that clause 15 (1) (j) and 15 (2) (a) should be read together and if necessary reformulated to meet the principle. The Technical Committee was requested to consider this issue.
- * It was agreed that the words "and its approval sought" be inserted after the word "informed" in clause 15 (4). No objections were noted.
- * It was suggested that with regard to clause 15 (4) a mechanism should be found to address the issue of how the continuous growth of the public service could be restricted in the run up to the election and how to restructure the top categories of the civil service.
- * It was suggested that in clause 15 (4) the level of director should be dropped to the level of assistant-director. It was suggested that clarity should be received on the number of posts that this would involve.
- * After discussion it was agreed that the TEC should decide, with regard to clause 15 (4), on the level of approval.
- * It was suggested that the word "laws" should be included in clause 15 (4) between the words "the" and "rules".
- * It was suggested that clause 15 (5) should read similarly as clause 15 (5) with regard to the addition of the words

"and its approval sought". After discussion it was agreed to refer this clause to an Ad-Hoc Committee for its attention.

- * The Technical Committee was instructed to formulate proposals with regard to sub-clause 6 and 7 and the notes therein. All participants were urged to make written submissions on these issues. It was noted that the Council would discuss this issue once the Technical Committee's suggested formulations had been received.

6.1.5 Clause 16 "Powers and duties in regard to foreign affairs" refers:

- * It was suggested that some kind of monitoring as far as the liaison between participants in the Negotiating Council and the international community should occur. It was noted that the AVU would make a submission to the Technical Committee in this regard.
- * It was agreed to replace the word "after" in sub-clause (c) with "in".
- * It was suggested that an additional item should be created to read "That no post at a level to be determined by the Subcouncil shall be approved by the Department both locally and overseas without the approval by the Subcouncil and this includes the appointment of all foreign diplomats." It was noted that the NPP would make a written submission to the Technical Committee in this regard.

6.1.6 Clause 17 "Powers and duties in regard to the status of women" refers:

- * It was again suggested that full and equal participation of women should occur throughout the whole of the TEC. It was noted that the DP would make a written submission to the Technical Committee to amend the Objects of the Council to cater for this issue.
- * It was suggested that an enforcing mechanism was necessary to overcome the sidelining of women by creating a separate structure.
- * It was agreed that the participants in the TEC should be included in the list of parties in sub-clause (a).

- * It was suggested that an additional sub-clause should be inserted between sub-clauses (f) and (g). It was noted that the DP would make a written submission in this regard.

6.1.7 Clause 19 "Duties of Governments, political parties and organisations" refers:

- * It was agreed that clause 19 should be extended to include non-participatory governments in the TEC.
- * It was noted that the Bophuthatswana Government reserved its position on this Bill.
- * It was noted that sub-clause (2) (a) would include the concept of any executive action.
- * It was suggested that the term government should be expanded to cover the other government entities and sub-structures in sub-clause (2) (a).
- * It was suggested that the restriction should not only apply to action but to decision as well (sub-clause (2) (a) refers).
- * It was suggested that organisations not participating in the TEC should not be bound by or party to the decisions of the TEC (sub-clause (2) (a) refers). The Technical Committee stated that a political decision is needed on this issue.
- * It was suggested that the words "and give effect to" be inserted after the word "with" in the last line of sub-clause (2) (b).
- * It was suggested that sub-clause (2) (b) should form a separate clause.

The meeting adjourned for lunch at 13h00.

The meeting reconvened at 14h00.

6.1.8 Clause 20 "Procurement of information at request of member of Council or Subcouncil" refers:

* It was agreed to defer discussion on this clause until the full section was before the meeting.

* The Technical Committee was requested to consider the possibility of the TEC having the right to declassify information.

6.1.9 Clause 21 "Resolution of disputes" refers:

* It was suggested that discussions on the Independent Electoral Commission Bill should be completed before the body to deal with disputes was decided upon.

* It was noted that, in the light of the Technical Committee's note at the end of this clause, the discussion on this clause be deferred.

6.1.10 Clause 22 "Meetings and office-bearers" refers:

* It was agreed that the Secretary should not be appointed from amongst the TEC members. Flexibility should be catered for (sub-clause (3) (a) refers).

* It was agreed that a further sub-clause should be added within sub-clause (4) to deal with the provision that the TEC had the right to delegate certain powers to the Management Committee.

* It was suggested that sub-clause (5) should be expanded to include the attendance of meetings by other functionaries such as administrators of provinces.

* It was suggested that in sub-clause five the reference should not be to functions but to the matter in dispute.

* It was noted that the word "person" in sub-clause (6) should also cover organisations.

* It was suggested that in sub-clause (6) the invitation to attend a meeting did not give one the right to address the meeting. It was, therefore, suggested that "on such invitation" should read "if so invited to do so".

6.1.11 Clause 23 "Decisions" refers:

* After a lengthy discussion it was agreed to refer the issue of the percentage to the Planning Committee to

suggest a mechanism to resolve this issue.

- 6.1.12 Clause 24 "Accounting records and auditing" refers:
- * It was suggested that the Chief Executive Officer should also be the Accounting Officer.
 - * The Technical Committee noted that it was, in due course, going to furnish further sections dealing with the Administration.
- 6.1.13 Clause 26 "Amendment of Act" refers:
- * It was suggested that the initiative as referred to should not be left to the State President. The Technical Committee was requested to reconsider this issue.
- 6.1.14 An appeal was made to all Technical Committees to indicate in their reports all amendments, omissions and additions to clauses.
- 6.1.15 It was agreed that when the Draft Bill was next debated the new or amended formulations would be dealt with.
- 6.1.16 It was agreed that all participants should attempt to have all submissions in to the Technical Committee by 10h00 on Wednesday 18 August 1993 but the submissions on the defence Subcouncil were expected in only by 17h00 on Wednesday 18 August 1993.
- 6.1.17 The Technical Committee was thanked for its work so far completed.

The meeting adjourned for tea at 15h15.

The meeting reconvened at 16h10.

6.2 Third Draft of the Independent Electoral Commission Act:

- 6.2.1 The Technical Committee on the IEC was welcomed. Present were D Davis, SK Ndlovu, RB Rosenthal and F Ginwala. Apologies were noted from HR Laubscher.
- 6.2.2 The meeting then proceeded along the structured lines of the Summary of Clause Changes. The clauses which had been

substantially changed were dealt with.

6.2.3 Clause 1.12 "International Observers" refers:

* It was agreed to accept the clause as drafted.

6.2.4 Clause 1.13 "Judicial Office" refers:

* It was agreed to accept the clause as drafted.

6.2.5 Clause 1.14 "Monitors" refers:

* It was agreed to accept the clause as drafted.

6.2.6 Clause 1.15 "National Assembly/Constitutional Assembly" refers:

* It was suggested that "National Assembly" needs to be defined and that Constitutional Assembly does not need to be defined in this document.

* The Technical Committee was requested to reconsider this clause taking into account the views expressed in the meeting.

6.2.7 Clause 1.16 "NGO Observers" refers:

* It was agreed to accept the clause as drafted.

6.2.8 Clause 1.18 "Political Office" refers:

* It was agreed to amend the clause as follows : "Political Office means any executive appointment, elected office or paid official in the service of a party, whether involving remuneration or not and including any elected or nominated public representative of a party".

6.2.9 Clause 1.19 "Party" refers:

* It was suggested that this definition should be uniform amongst all the Technical Committees.

* It was agreed that the words "as such in terms of Section of the Electoral Act" be deleted.

* It was noted that the clause was acceptable to participants but the Technical Committee was requested

to liaise with the other Technical Committees on this definition.

6.2.10 Clause 1.20 "Public Office" refers:

- * It was agreed to accept the clause as drafted.

6.2.11 Clause 1.21 "Referenda" refers:

- * After discussion the Technical Committee was requested to reconsider this clause.

6.2.12 Clause 3 "Binding on the State and State President" refers:

- * It was noted that the South African Government would make a written submission with regard to sub-clause 3.1 to the Technical Committee.

6.2.13 Clause 5 "Objects of the Commission" refers:

- * It was agreed that the Technical Committee should look at the Interim Constitution so as to utilise the correct terminology throughout the Draft Bill.
- * After discussion, it was agreed to defer discussion on this clause until the debate on the whole of the Draft Bill had been concluded.
- * The Administration was requested to make the report of the Ad-Hoc Committee available to participants.
- * It was noted that where disagreement existed between the Technical Committee and the Ad-Hoc Committee, the Negotiating Council would take the decision in that regard.

6.2.14 Clause 7 "Composition of the Commission" refers:

- * It was noted that this clause was in dispute between the Technical Committee and the Ad-Hoc Committee.
- * After a lengthy debate, with various viewpoints being put forward, it was agreed to accept sub-clause 7.1 by sufficient consensus.
- * The South African Government noted its objection to the acceptance of the clause and challenged the

sufficient consensus ruling.

- * It was therefore agreed, in terms of the report from the Ad-Hoc Committee on Sufficient Consensus as adopted by the Negotiating Council, to adjourn the meeting for ten minutes.

The meeting adjourned at 18h10.

The meeting reconvened at 18h20.

- * Further discussion followed in an attempt to reach the widest possible consensus.
- * It was suggested that the concerns expressed by the South African Government could be addressed by the option that exists in 7.1, 12.5 and 16,8. It was noted that these persons will be members but without having a vote and without being able to determine a quorum, that therefore they are in effect advisors. So the option did exist for international non-South African advisors to be either part or not of the Commission and advisory committees as well and, therefore, flexibility was provided for.
- * It was agreed to accept sub-clause 7.1 by general consensus. The South African noted that it would be submitting certain amendments to the text.
- * It was agreed to accept sub-clause 7.2.1 as drafted.
- * It was agreed to accept sub-clause 7.2.2 as drafted. The South African Government noted its objection to the words "full-time" remaining in the sub-clause.
- * It was agreed to accept sub-clause 7.2.3 as drafted.

6.2.15 It was agreed, due to time constraints, to suspend debate at sub-clause 7.2.4.

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

● Draft Schedule of Meetings and Proposed Programme

The attention of the meeting was drawn to the draft schedule of meetings and the proposed programme (see Addendum B).

8. Commission on National Symbols

It was noted that the deadline for submissions on the composition of the above Commission had been extended to 17h00 on Wednesday 18 August 1993.

9. Closure

The meeting was closed at 19h05.

These minutes were ratified at the meeting of the Negotiating Council of 26/8/..... 1993 and the amended version signed by the Chairperson of the original meeting on 26/8/93.....


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CHAIRPERSON

The following delegates and advisers were present at the meeting of the Negotiating Council on Tuesday 17 August 1993:

L Landers : Chairperson
 D de Villiers : Assistant Chairperson

| Organisation | Delegates | Advisers |
|---------------------|-----------------------------|------------------------------|
| ANC | C Ramaphosa B Kgosisile | M Manzini |
| AVU | C Pienaar C Kruger | A Beyers AJJ van Rensburg |
| Bophuthatswana | R Mangope SG Mothibe | BE Keikelame |
| Cape Trad. Leaders | M Nonkonyana SN Sigcau | GD Gwadiso |
| Ciskei | TM Bulube VT Gquiba | |
| DP | C Eglin M Finnemore | KM Andrew PG Soal |
| Dikwankwetla | SOM Moji 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 | PAC Hendrickse CC August | SS Oosthuizen |
| NIC/TIC | B Pillay E David | K Mayet |
| NP | D de Villiers AC Routier | SJ Schoeman L Wessels |
| NPP | A Rajbansi S Naidoo | HV Padayachi MF Adam |

● Trad. Leaders

PAC

Solidarity

SACP

SA Government

Transkei

TVL Trad. Leaders

UPF

Venda

XPP

RH Mopeli

P de Lille
B Alexander

DS Rajah

S Shilowa
L Jacobus

RP Meyer
LR Brink

Z Titus
N Jajula

MF Mngomezulu

A Chabalala

SE Moeti

MH Matjokana
PT Shiluvana

MB Mota

L Makhanda
B Desai

K Moodley

E Pahad

SS van der Merwe
DPA Schutte

MA Netshimbupfe
NE Ngomane

J Maake

GM Ligege
S Makhuvha

GNK Hetisani

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

DRAFT PROGRAMME FOR MEETINGS

17 AUGUST 1993

| | | | |
|--------------------------|---|---|-----------------------|
| Tuesday 17 August 1993 | Discussion: | * | TEC |
| | | * | IEC |
| Wednesday 18 August 1993 | Discussion: | * | IEC |
| | | * | IMC |
| Thursday 19 August 1993 | Discussion: | * | IMC (if necessary) |
| Friday 20 August 1993 | (Courier : Constitutional Issues and IBA) | | |
| Monday 23 August 1993 | Discussion: | * | IEC (finalise) |
| | | * | IBA (finalise) |
| Tuesday 24 August 1993 | Discussion: | * | Constitutional Issues |
| Wednesday 25 August 1993 | Discussion: | * | Constitutional Issues |
| | (Distribution : TEC) | | |
| Thursday 26 August 1993 | Discussion: | * | TEC (finalise) |

REVISED PROPOSED SCHEDULE OF MEETINGS

17 AUGUST 1993

| | | |
|---------------------|--------------------------|-------------|
| Negotiating Council | Wednesday 18 August 1993 | 11h00-19h00 |
| Negotiating Council | Thursday 19 August 1993 | 09h00-19h00 |

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|---------------------|--------------------------|-------------|
| Planning Committee | Monday 23 August 1993 | 09h30-13h00 |
| Negotiating Council | Monday 23 August 1993 | 14h00-19h00 |
| Negotiating Council | Tuesday 24 August 1993 | 09h00-19h00 |
| Negotiating Council | Wednesday 25 August 1993 | 11h00-19h00 |
| Negotiating Council | Thursday 26 August 1993 | 09h00-19h00 |

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.