

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

**MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 11h00 ON WEDNESDAY 25 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**

The minutes were distributed during the course of the day for ratification at the next meeting of the Negotiating Council.

**5. Substantive Issues**

**5.1 Final Report of the Technical Committee on the Independent Media Commission:**

5.1.1 The Technical Committee was welcomed. Present were A Armstrong, D Dison, P Pretorius, M Markowitz (technical support), C Noffke and D van Zyl (State Law Advisor). Apologies were noted from EJ Mabuza.

5.1.2 The Technical Committee presented all the outstanding clauses to the meeting. Discussion and debate followed, with questions of clarity put to the Technical Committee.

5.1.3 Definition "election period" refers:

- \* It was noted that this definition would only be finalised after a joint meeting of the Technical Committees on the IEC, IMC and TEC had occurred.
- 5.1.4 Definition "political party" refers:
- \* It was noted that this definition would only be finalised after a joint meeting of the Technical Committees on the IEC, IMC and TEC had occurred.
- 5.1.5 Clause 5 "Persons qualified to be commissioners" refers:
- \* Sub-clause (1) (a) was agreed to as drafted.
  - \* Sub-clause (1) (b) was agreed to as drafted.
- 5.1.6 Clause 6 "Persons disqualified from being commissioners" refers:
- \* It was noted that the period as referred to in sub-clause (1) (d) could not be decided in isolation and should be dealt with after the joint meeting of the Technical Committees on the TEC, IEC and IMC.
  - \* It was agreed to accept sub-clause (1) (g) as reformulated.
- 5.1.7 Clause 11 "Meetings of Commission" refers:
- \* It was agreed to accept sub-clause (7) (b) as drafted.
- 5.1.8 Clause 19 "Party election broadcasts on sound broadcasting services during election period" refers:
- \* Sub-clause (1) was agreed to as drafted.
- 5.1.9 Clause 24 "Orders and recommendations of Commission" refers:
- \* It was agreed to delete the word "successively" in sub-clause (1) (c). The DP noted its objection to this decision.
  - \* It was agreed to reformulate the proviso in clause 24 (1) (c) as follows "Provided that such a prohibition shall not extend beyond the date of dissolution of the Media Commission".

\* It was agreed to accept sub-clause (2) as drafted.

5.1.10 Clause 27 "Offenses and penalties" refers:

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

5.1.11 Clause 31 of the 10th Draft refers:

\* It was noted that clause 31 as previously contained in the 10th Draft has been entirely deleted from the 11th draft.

\* Various participants did not agree with the deletion.

\* After lengthy discussion it was agreed to defer the decision on this issue until Tuesday 31 August 1993 when the Draft Bill would have to be finalised. The South African Government, the Bophuthatswana Government, the Technical Committee and other interested participants were requested to resolve this issue for finalisation in the Negotiating Council on Tuesday 31 August 1993.

\* The Technical Committee was requested to reinstate clause 31 as previously contained in the 10th Draft. The subsequent number of clauses contained in the 11th Draft would be amended accordingly. Discussion would occur around these issues on Tuesday 31 August 1993 as stated above.

5.1.11 Clause 33 "Dissolution of Commission" refers:

\* It was noted that this clause would only be finalised after a joint meeting of the Technical Committees on the IEC, IMC and TEC had occurred.

5.1.12 The debate was concluded on this Draft Bill. The meeting then proceeded to deal with the Final Report of the Technical Committee on the IBA.

## 5.2 **Final Report of the Technical Committee on the IBA:**

5.2.1 The Technical Committee presented all the outstanding clauses to the meeting. Discussion and debate followed, with questions of clarity put to the Technical Committee.

- 5.2.2 Definition "election period" refers:
- \* It was noted that this definition would only be finalised after a joint meeting of the Technical Committees on the IEC, IBA and TEC had occurred.
- 5.2.3 Definition "political party" refers:
- \* It was noted that this definition would only be finalised after a joint meeting of the Technical Committees on the IEC, IBA and TEC had occurred.
- 5.2.4 Clause 2 "Primary Objects of Act" refers:
- \* The recommendation of the Technical Committee was agreed to and therefore the clause as drafted was accepted.
- 5.2.5 Clause 4 "Constitution of Council" read with Schedule 1 refers:
- \* It was agreed that the discussion on this clause be deferred and that the issue should be dealt with on a bilateral and/or multilateral basis. The South African Government, the AVU and the Ciskei noted that they reserved their positions on Clause 4 as drafted. It was agreed that the issue would be finalised on Tuesday 31 August 1993. The relevant participants were requested to resolve the issues timeously to meet the deadline.
  - \* The South African Government reserved its position on Schedule 1 as drafted.
- 5.2.6 Clause 5 (1) (d) "Persons disqualified from being or remaining councillors" refers:
- \* It was noted that this period cannot be decided in isolation and will be dealt with after the abovementioned joint meeting of the Technical Committees (see 5.2.2 above).
- 5.2.7 Clause 6 (2) "Terms of office of councillors" refers:
- \* The recommendation of the Technical Committee was agreed to.

- 5.2.8 Clause 19 "Accounting and auditing" refers:
- \* The recommendation of the Technical Committee was agreed to.
- 5.2.9 Clause 26 (2) "Remuneration and allowances of committee members" refers:
- \* The recommendation of the Technical Committee was agreed to.
- 5.2.10 Clause 46 (2) "Community broadcasting licences" refers:
- \* The recommendation of the Technical Committee was agreed to. It was noted that the final text would be before the Negotiating Council for approval on Tuesday 31 August 1993.
- 5.2.11 Clause 49 (6) "Limitations on control of private broadcasting services" refers:
- \* It was noted that the Technical Committee would reconsider this clause so as to make the intention of the Negotiating Council absolutely clear.
- 5.2.12 Clause 50 (1) "Limitations on cross-media control of private broadcasting services" refers:
- \* The reformulation as suggested by the Ad-Hoc Committee was agreed to.
  - \* During the discussion on this clause, clause 28 (8) (b) was referred to. It was suggested that clause 28 (8) (b) should be strengthened. Various other participants were of the view that clause 28 (8) (b) should be deleted. After discussion, the Technical Committee was requested to supply a number of alternatives to the Negotiating Council and this be dealt with when the Bill was finalised on Tuesday 31 August 1993. When considering this issue the Technical Committee should consider all the views expressed in the meeting.
- 5.2.13 Clause 51 "Prohibition on granting of broadcasting licences to political parties" refers:
- \* The Technical Committee was requested to reformulate this clause taking into account the views expressed in

the meeting.

- \* It was suggested that the word "primary" should be substituted by some other word which would put across the meaning that the Authority in its discretion can determine whether an application for a licence constitutes a front for a political party. Organs of civil society would not be excluded. The Technical Committee was requested to reformulate the clause taking into account the views expressed in the meeting.

5.2.14 Clause 59 "Party election broadcasts on sound broadcasting services during an election period" refers:

- \* The clause was agreed to as drafted.

5.2.15 Clause 66 (6) "Powers of Authority in cases of proven non-compliance with or non-adherence to Act, licence conditions or certain codes of conduct" refers:

- \* The clause as drafted was agreed to with the deletion of the word "successively" (see Addendum B).

5.2.16 Clause 82 "Short title and date of commencement" refers:

- \* It was agreed to insert the following words in clause (1) (a) "on a date to be determined by the TEC and made known by the State President by proclamation". The Technical Committee was requested to reformulate the clause.

5.2.17 The debate was then concluded. The Technical Committee was thanked for its work so far completed.

The meeting adjourned for tea at 15h45.

The meeting reconvened at 16h00.

### 5.3 **Fourth Draft of the Independent Electoral Commission Act:**

5.3.1 The Technical Committee on the IEC was welcomed. Present were D Davis, SK Ndlovu, RB Rosenthal and J Bruwe (state law adviser). Apologies were noted from HR Laubscher and F Ginwala.

5.3.2 It was suggested that the Electoral Act should only be finalised after agreement had been reached on the Interim Constitution. Other participants did not agree with this view.

5.3.3 It was suggested that the Planning Committee should consider the linkages between the various Draft Bills.

5.3.4 The Technical Committee then proceeded to give an overview of its report. Discussion and debate followed with question of clarity put to the Technical Committee.

5.3.5 Definition "Republic" refers:

\* It was suggested that this definition should be uniform throughout all the Draft Bills. It was noted, however, that the definitions might differ with regard to the actual purpose of the various Draft Bills.

\* The Technical Committee was requested to consider the concerns raised around the inclusion of the words "which formally adopted the provisions of this Act and the Electoral Act as part of its municipal law" as contained in the definition.

\* It was noted that a joint meeting of all the Technical Committees was scheduled for Monday 30 August 1993 to resolve definitions and matters that overlap. Participants were requested to draw the attention of the Technical Committee to the definitions that should receive attention.

\* The Bophuthatswana Government and the Ciskei Government noted that until a decision or an agreement is reached on reincorporation, any legislation passed in South Africa could not apply to Bophuthatswana or the Ciskei.

5.3.6 Definition "international member" refers:

\* It was suggested that the definition should be extended to include the international persons referred to in clause 8 (3) (a).

5.3.7 Definition "Forum" refers:

\* It was noted that the Forum had been disbanded in terms of its decision on 2 June 1993 and its powers

delegated to the Negotiating Council.

5.3.8 Definition "election" refers:

- \* It was suggested that the reference to the referendum in the definition should include the referendum as referred to in clause 2 (2).

5.3.9 Definition "party" refers:

- \* It was suggested that it was difficult for participants to approve of this definition until the Electoral Act had been debated and approved of by the Council.
- \* It was noted that the Technical Committee was attempting to table the Electoral Act in the Council during the course of the week commencing 30 August 1993.

5.3.10 Suggested additional definitions:

- \* It was suggested that the words "high political profile" should be defined.
- \* It was suggested that a definition of Constitutional Assembly was needed. The Technical Committee noted that the election was for a national assembly and the constitutional assembly was not applicable to this Draft Bill.

5.3.11 Various participants noted that they would return to specific definitions during the course of the debate within the context of the relevant clause.

5.3.12 Clause 2 "Application of Act" refers:

- \* It was suggested that the references to a referendum should be deleted.
- \* It was suggested that the terminology "Constitutional Assembly" should replace "National Assembly" throughout the Draft Bill.
- \* It was suggested that the reference to the legislature in 2 (2) should be deleted.
- \* The Technical Committee stated that it would "clean-



up" the definition of "legislature" taking into account the views expressed in the meeting.

- \* The Technical Committee suggested that in the definition of "National Assembly" it should be stated that the National Assembly is the portion of the Constitutional Assembly that required election. The National Assembly was a sub-part of the Constitutional Assembly and the one for which the IEC was responsible. It was agreed that the definition of the "National Assembly" should be reformulated taking into account the views expressed in the meeting.
- \* It was suggested that there existed a potential conflict between the SPR Legislatures and the Forum in clause 2. The Technical Committee stated that it would deal with this concern accordingly.

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

- \* It was suggested that the powers of this Commission are too wide. Lengthy discussion and debate proceeded on this issue.
- \* It was suggested that the State President was bound as far as the matters specified in the Act were concerned and that this should be specified in clause 3 (2). The Technical Committee stated that it would reconsider the wording.
- \* It was suggested that this clause should have a limitation or a qualification.

5.3.14 Clause 4 "Establishment and objects of Commission" refers:

- \* It was suggested that a reference to clause 17 (3) should be inserted in clause 4 (2) (d).
- \* It was suggested that the results of the election should be certified before the results became public knowledge. Furthermore, that this issue should be harmonised with the provisions of the Electoral Act.
- \* It was suggested that the Commission should not evaluate itself. Other participants did not agree with this view.

\* It was noted that the certification procedure would be revisited.

\* It was noted that if a need arose to amend other clauses and the objects of the Commission were affected, this clause would then have to be revisited.

5.3.15 Clause 5 "Constitution of Commission" refers:

\* Sub-clause 5 (1) was agreed to.

\* It was agreed that in sub-clause 5 (2) the word "may" should read "shall". After discussion it was agreed to accept the clause as amended.

5.3.16 Concerns were expressed about the work of and the consensus in the ad-hoc committee. After lengthy discussion, it was agreed that the Planning Committee should consider this issue.

## 6. Meetings Schedule and Draft Programme

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

## 7. Closure

The meeting adjourned at 19h30.

These minutes were ratified at the meeting of the Negotiating Council of 6 September 1993 and the amended version signed by the Chairperson of the original meeting on ...7/9/1993.....

  
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CHAIRPERSON

**Addendum A**

The following delegates and advisers were present at the meeting of the Negotiating Council on Wednesday 25 August 1993:

D de Villiers : Chairperson  
B Kgosisile : Assistant Chairperson

<b>Organisation</b>	<b>Delegates</b>	<b>Advisers</b>
ANC	C Ramaphosa M Manzini	J Netshintenshe PM Maduna
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
DP	KM Andrew M Finnemore	M Smuts PG Soal
Dikwankwetla	SOM Moji JSS Phatang	K Ngwenya
IFP		
IYP	NJ Mahlangu NS Mtsweni	AP Laka
KP		
INM	SS Ripinga ND Mokoena	MS Gininda GG Zama
Kwazulu		
Labour Party	L Landers CC August	R O'Reilly
NIC/TIC	C Salojee R Adam	K Mayet
NP	D de Villiers TJ King	L Wessels
NPP	A Rajbansi	M Govender S Bhagirathee

● Trad. Leaders	MB Mota MT Moroke	RH Mopeli
PAC	P de Lille	L Makhanda B Desai
Solidarity	N Singh	T Palan
SACP	J Slovo L Jacobus	S Shilowa
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	ST Mona	GNK Hetisani

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

**NEW SUBSECTION 66(6) PROPOSED FOR INSERTION IN IBA BILL**

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66(6)

Where the Independent Media Commission established by section 2 of the Independent Media Commission Act, 1993, after due adjudication in terms of section 23 of that Act -

- (a) has found a broadcasting licensee to have successively contravened the provisions of that Act;
- (b) has made an order in terms of section 24(1)(c) of that Act; and
- (c) has forwarded a certified copy of the said order and of the record of the adjudication proceedings relevant thereto to the Authority in accordance with the provisions of section 24(2) of that Act,

the Authority may, in relation to such broadcasting licensee make an order contemplated in subsection (1)(f) of this section as if such order were made pursuant to a finding of the Broadcasting Monitoring and Complaints Committee in terms of section 63(7) of this Act.

**DRAFT PROGRAMME FOR MEETINGS**

25 AUGUST 1993

Wednesday 25 August 1993	Discussion:	*	11h00 - IMC and IBA (finalise)
		*	15h00 - IEC
	(Distribution : TEC)		

Thursday 26 August 1993	Discussion:	*	IEC
		*	TEC

Monday 30 August 1993	Discussion:	*	IBA (finalise)
		*	TEC (finalise)
		*	IEC (finalise)

Tuesday 31 August 1993	Discussion:	*	Any outstanding matters on the draft Bills
		*	Formal adoption of the Draft Bills on the TEC, IEC, IMC and IBA

Wednesday 1 September 1993	Discussion:	*	Constitutional Issues
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Thursday 2 September 1993	Discussion:	*	Constitutional Issues
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## REVISED PROPOSED SCHEDULE OF MEETINGS

25 AUGUST 1993

Negotiating Council	Thursday 26 August 1993	09h00-18h00
Planning Committee	Monday 30 August 1993	09h30-13h00
Negotiating Council	Monday 30 August 1993	14h00-19h00
Negotiating Council	Tuesday 31 August 1993	09h00-19h00
Negotiating Council	Wednesday 1 September 1993	11h00-19h00
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.**