

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 18 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

It was noted that the minutes of 16 August 1993 would be distributed during the course of the day for ratification at a future meeting of the Negotiating Council.

5. Planning Committee Reportback

5.1 A written report was submitted to the meeting (see Addendum B).

5.2 Appointment of Women to the Planning Committee and the Panel of Chairpersons:

The recommendation of the Planning Committee was agreed to.

5.3 Recommendation embodied in paragraph 4 of the Seventh Report of the Technical Committee on Fundamental Rights during the Transition:

5.3.1 The recommendations of the Planning Committee were agreed to.

5.3.2 It was agreed that the Law Commission should also be sent the report.

5.4 Referral of Equality Clause to Experts:

5.4.1 The recommendation of the Planning Committee was agreed to.

5.4.2 Concerns were raised that there may be other aspects of the Draft Bill that should be referred. It was agreed that if the Traditional Leaders felt that any other clauses should be referred to the experts, the Planning Committee should be advised thereof.

5.5 The chapter in the Constitution for the Transitional Period dealing with the Administration of Justice:

5.5.1 The recommendation of the Planning Committee was agreed to.

5.5.2 It was agreed that the list should be extended to include the National Association of Democratic Lawyers, the Black Lawyers Association and the Law Commission.

5.5.3 Concerns were expressed with regard to time frames. It was noted that the Sub-Committee should, together with the Technical Committee on Fundamental Human Rights, ensure that the recommendation is carried out expeditiously.

5.6 Other Constitutional Issues referred to the Planning Committee:

5.6.1 The recommendation of the Planning Committee as contained in item 5.1 of the Report was agreed to.

5.6.2 Items 5.2 and 5.3 of the Report were noted.

5.7 Action Instituted by the Kwazulu Government against Two Chairpersons:

The report was noted and the procedure of the handling of this issue was agreed to.

5.8 Visit to Tembisa:

The recommendation of the Planning Committee was agreed to.

5.9 Ceremonial handing over of a "Peace Cake" by the Kempton Park Town Council Mayor and other : 25 August 1993:

It was agreed that the Planning Committee should nominate a few members from the Negotiating Council to receive the cake. The cake would be available for participants during a tea break.

5.10 Presentation of Posters depicting Peace Theme 6 September 1993:

The recommendation of the Planning Committee was agreed to.

5.11 Draft Meetings Schedule and Programme:

- 5.11.1 It was noted that the Negotiating Council would receive the updated meetings schedule and programme at its meeting of 19 August 1993.
- 5.11.2 It was noted that the Planning Committee was meeting on 19 August 1993 to finalise all its outstanding matters.
- 5.11.3 Participants with problems regarding delivery of documents on Saturday were requested to liaise with Dr T Eloff.
- 5.11.4 It was agreed that time frames should be set for the work of the ad-hoc committees.

5.12 Commission on National Symbols:

- 5.12.1 Just before the meeting adjourned the Planning Committee requested an opportunity to report back to the meeting on this issue.
- 5.12.2 It was noted that only four participants had made submissions on this issue.
- 5.12.3 It was agreed that any participants who still wished to make submissions, should do so before the meeting of the Planning Committee scheduled for 09h00 on Thursday 19 August 1993. It was noted that the Planning Committee would make a recommendation to the Council on the composition of the Commission at the meeting of the Negotiating Council on 19 August 1993.

6. **Substantive Issues**

6.1 **Third Draft of the Independent Electoral Commission Act:**

- 6.1.1 The Technical Committee on the IEC was welcomed. Present were D Davis, F Ginwala, HR Laubscher, SK Ndlovu and RB Rosenthal. The debate was resumed around clause 7.2.4 of the report.

- 6.1.2 Clause 7.2.4 refers:
- * After discussion it was agreed that this clause should be referred back to the ad-hoc committee for its attention, taking into account the views expressed in the meeting. It was agreed that the period considered by the ad-hoc committee should be restricted to eighteen months and below.
- 6.1.3 Clause 7.4 refers:
- * It was suggested that the restriction should also apply to the spouse or partner in the sub-clauses.
 - * Clause 7.4 was agreed to.
- 6.1.4 Clause 7.5 refers:
- * It was suggested that the Technical Committee should consider the possibility of extending 7.5 to provide for a declaration of any benefits that may be received by a Commissioner during the course of her/his duties as a commissioner.
 - * It was suggested that benefits should also be disclosed and this should be clearly stated in this clause.
 - * The clause was agreed to.
- 6.1.5 Clause 7.6 refers:
- * It was agreed that judges and/or persons who hold judicial office are excluded.
 - * It was suggested that the period of eighteen months was too long.
 - * After discussion it was agreed that clause 7.6.1 should be referred back to the ad-hoc committee for its attention, taking into account the views expressed in the meeting. It was agreed that the period considered by the ad-hoc committee should be restricted to eighteen months and below.
- 6.1.6 Clause 7.7 refers:
- * It was agreed that the words "or Co-Chairpersons"

should be inserted after the words "Vice-Chairperson". The concept of Co-Chairpersons was revisited at a later stage during the meeting (see Item 6.1.11 below).

- 6.1.7 Clause 8 "Term of the Commission" refers:
- * It was agreed to deal with this clause once the Council had dealt with clause 21.4.
- 6.1.8 Clause 9 "Termination of Employment" refers:
- * It was agreed that in sub-clause 9.1.2.4 the number of eligible voters should be increased to 1000.
 - * It was agreed that issues of dispute as referred to in this clause should be referred to the mechanism of an elections appeal tribunal and not to the Appellate Division. It was suggested that the elections appeal tribunal should be independent.
- 6.1.9 Clause 10 "Conditions of Appointment" refers:
- * The clause was agreed to as formulated.
- 6.1.10 Clause 11 "Reconstitution of the Commission" refers:
- * It was agreed that the issue of the required majority and the tribunal be referred to the ad-hoc committee for its attention, taking into account the views expressed in the meeting.
- 6.1.11 Clause 12 "Procedural Matters" refers:
- * It was agreed that the quorum should be 75% of Commissioners eligible to vote.
 - * It was suggested that sub-clause 12.2 also deal with the concept of the refusal of a member to be present. The Technical Committee was requested to reconsider this sub-clause along these lines, taking into account the views expressed in the meeting.
 - * A lengthy debate proceeded on the issue of the simple majority and the concept of two Chairpersons. No agreement could be reached (clause 12.3 refers).

meeting adjourned for lunch at 13h00.

The meeting reconvened at 14h10.

- * After lunch the debate proceeded on sub-clause 12.3 and no agreement could be reached. It was agreed that the issue of Co-Chairpersons be referred to the ad-hoc committee for its attention.

- * After discussion it was agreed by sufficient consensus not to include the concept of an advisory committee in this clause.

6.1.12 Clause 13 "Accountability and Finance" refers:

- * Sub-clause 13.3.2 refers : It was noted that this clause was still under consideration by the Technical Committee in the light of further submissions received.

6.1.13 Clause 15 "Administration" refers:

- * This clause was agreed to as formulated.

6.1.14 Clause 16 "Powers, Duties and Functions of the Commission" refers:

- * The Technical Committee presented a report illustrating its viewpoint on this clause.

- * The Chairperson of the ad-hoc committee then presented its viewpoint on this clause.

- * It was agreed to deal with this clause, sub-clause by sub-clause and where divergent views exist, an attempt should be made by the Council to reconcile the views.

- * Discussion and debate proceeded on clause 16.1 and the two viewpoints that had emerged from the ad-hoc committee and the Technical Committee. It was agreed that the ad-hoc committee and the Technical Committee should meet and report back with a concrete recommendation on the outstanding issues. It was further agreed that the issues were urgent and the two committees should come back to the Negotiating Council meeting of 18 August 1993 with a single reportback. It was, therefore, agreed to adjourn this

debate at this point.

The meeting adjourned for tea at 15h35.

The meeting reconvened at 15h50.

6.2 Tenth Draft of the IMC Bill:

- 6.2.1 The Technical Committee was welcomed. Present were A Armstrong, D Dison, P Pretorius, M Markowitz (technical advisor), C Noffke and D van Zyl (legal advisor). Apologies were noted from EJ Mabuza. Discussion and debate followed during the course of which questions of clarity were put to the Technical Committee.
- 6.2.2 Definition "broadcasting licence" refers:
- * The definition as formulated was approved.
- 6.2.3 Definition "election period" refers:
- * The definition as formulated was approved.
- 6.2.4 Definition "party election broadcast" refers:
- * It was agreed to deal with this definition under the substantive section dealing with this issue.
- 6.2.5 Definition "political advertisement" refers:
- * It was agreed to deal with this definition under the substantive section dealing with this issue.
- 6.2.6 Definition "political party" refers:
- * It was suggested that this definition should be as per the definition in the proposed electoral act.
 - * It was suggested that only parties that were going to participate in the elections should be provided for in the definition.
 - * It was suggested that the discussion on this definition should be deferred until the definition on the IEC had been finalised.

- * After discussion it was agreed to accept the definition as formulated, with the proviso that once the definition had been finalised in the IEC Draft Bill, the issue could be revisited in terms of this Draft Bill.
- 6.2.7 Definition "Republic" refers:
- * The definition was accepted as formulated.
- 6.2.8 Clause 2 "Establishment of Independent Media Commission" refers:
- * The clause as formulated was agreed to.
- 6.2.9 Clause 4 "Constitution of Commission and appointment of commissioners" refers:
- * The concept of one Chairperson was agreed to.
 - * The clause as formulated was agreed to.
- 6.2.10 Clause 5 "Persons qualified to be commissioners" refers:
- * It was suggested that magistrates with ten years experience should be catered for in this clause.
 - * It was suggested that experience in the relevant field should be part of the criteria for the choice of a chairperson.
 - * After discussion the Technical Committee was requested to redraft the clause in such a way that at least one of the members and/or the Chairperson would have the necessary legal experience.
- 6.2.11 Clause 6 "Persons disqualified from being commissioners" refers:
- * Sub-clause (d) refers : After discussion of the time period, it was agreed this issue should be kept in abeyance pending the outcome of the deliberations from the ad-hoc committee on the IEC on this issue.
 - * Sub-clauses (e) and (f) were agreed to as formulated.
 - * It was suggested that the words "or has entered into a compromise with his or her creditors" be deleted. This

was agreed and the clause was accepted as amended.

- * Sub-clause (j) was agreed to as formulated.

6.2.12 Clause 10 "Remuneration and allowances" refers:

- * The clause as formulated was agreed to.

6.2.13 Clause 11 "Meetings of Commission" refers:

- * It was suggested that sub-clause 6 should be reformulated as follows "All meetings will be in public unless the Commission decides in its discretion that there is a need to hold meetings in private".
- * After discussion it was agreed to accept sub-clause 6 as formulated.
- * It was agreed that the Technical Committee should redraft sub-clause (7) to state clearly the intention that the minutes should be available to the public.
- * It was agreed that the reference to evidence should be amended to read "conclusive evidence".

6.2.14 Clause 15 "Establishment of committees of Commission" refers:

- * Sub-clause (4) (a) was agreed to as formulated.

6.2.15 Clause 18 "Prohibition on broadcasting of party election broadcast and political advertisements except in certain circumstances" refers:

- * It was noted the Technical Committee had met with representatives of the SABC Board and its executive on this issue. Furthermore, written submissions had been received from the SABC and M-Net on this issue. It was noted that copies of these submissions could be obtained through the Administration should any participant so wish. The Technical Committee gave a reportback on the viewpoints of the two organisations.
- * It was suggested that the State should cover the losses incurred by the SABC with regard to party election broadcasts should they occur.

- * It was suggested that there should be a law compelling private broadcasters to broadcast party election broadcasts at the same time as the public broadcasting medium.
- * It was suggested that political viewpoints should be catered for on a subsidised basis but political advertising should be excluded.
- * It was agreed to defer discussion on this issue until the Technical Committee had completed its deliberations on submissions received from broadcasters. It was further agreed that the Technical Committee should provide participants with copies of the submissions received from broadcasters.

6.2.16 Clause 19 "Party election broadcasts on sound broadcasting services" refers:

- * It was suggested that the words "who are listed on the ballot paper" should be inserted after the word "parties" in sub-clause (2).
- * It was suggested that the Technical Committee should consider the sanctions that should be applied in the case of a contravention with regard to sub-clause (7) and sub-clause 20 (6).
- * It was suggested that with regard to sub-clause (8) the relationship between the private radio services and the public radio services with regard to the elections should be discussed fully.
- * It was noted that the AVU, the PAC and the SACP reserved its position on sub-clause (8).
- * It was agreed that this clause should be further discussed when the submissions referred to in item 6.2.15 had been studied.

6.2.17 Clause 20 "Political advertising on sound broadcasting services" refers:

- * It was agreed to revisit the paragraphs referring to party political broadcasting as a package when the Draft Bill was next debated by the Council.

- 6.2.18 Clause 21 "Equitable treatment of political parties by all broadcasting licensees" refers:
- * It was agreed that sub-clause (4) should read "The preceding provisions of this section shall not apply in relation to the contents of any party election broadcast in the circumstances contemplated in clause 19 and any political advertisement in the circumstances contemplated in clause 20".
- 6.2.19 Clause 22 "State-financed publications and state information services" refers:
- * It was agreed that sub-clause (2) should be formulated as per sub-clause (1) for consistency in terminology.
 - * The clause was agreed to.
- 6.2.20 Clause 26 "Reporting responsibility of Commission" refers:
- * It was agreed that the reference to the Independent Electoral Commission should be deleted. The clause was agreed to as amended.
- 6.2.21 Clause 27 "Offences and penalties" refers:
- * It was suggested the amount of R2000 in sub-clause (b) was inadequate and should be higher.
 - * It was suggested that a court of law should adjudicate and not the Commission itself.
 - * It was suggested that the Electoral Tribunal should adjudicate and not the Commission itself.
 - * The Technical Committee was requested to reconsider sub-clause (a) and (b) with regard to the adjudication, the amount and the offense.
- 6.2.22 Clause 31 "Application of this Act in respect of certain private broadcasters licensed elsewhere" refers:
- * It was suggested that the Bophuthatswana Government and any other participants could make submissions to the Technical Committee with regard to mechanisms to deal with the concerns expressed in the meeting on the issue of the TBVC States and the levelling of the

playing fields for free and fair elections. The Bophuthatswana Government noted that it would be making submissions.

- * It was agreed to defer discussion on the whole issue of re-incorporation until the issue of the TBVC States had been resolved.

6.2.23 Clause 32 "Extraterritorial extension of Commission's jurisdiction by agreement between Republic and any state or territory previously part of Republic" refers:

- * It was suggested that the Bophuthatswana Government and any other participants could make submissions to the Technical Committee with regard to mechanisms to deal with the concerns expressed in the meeting on the issue of the TBVC States and the levelling of the playing fields for free and fair elections. The Bophuthatswana Government noted that it would be making submissions.
- * It was agreed to defer discussion on the whole issue of re-incorporation until the issue of the TBVC States had been resolved.
- * It was noted that this provision would be synchronised as per the provision in the TEC Draft Bill.

6.2.24 Clause 33 "Application of Act in event of conflict with other laws" refers:

- * The clause as formulated was agreed to.

6.2.25 Clause 34 "Dissolution of Commission" refers:

- * The clause as formulated was agreed to.

6.2.26 Clause 35 "Short title and date of commencement" refers:

- * The clause as formulated was agreed to.

6.2.27 It was agreed that the Administration should distribute to participants the submissions from the SABC and M-Net as referred to during the course of the debate on this Draft Bill.

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

7. **Future Meetings**

- 7.1 It was noted that Planning Committee was scheduled to meet at 09h00 until 13h00 on Thursday 19 August 1993.
- 7.2 It was noted that meeting of the Negotiating Council would commence at 14h00 on Thursday 19 August 1993.

8. **Closure**

The meeting adjourned at 18h30.

These minutes were ratified at the meeting of the Negotiating Council of 31 August 1993 and the amended version signed by the Chairperson of the original meeting on 2/9/93.....


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CHAIRPERSON

Addendum A

The following delegates and advisers were present at the meeting of the Negotiating Council on Wednesday 18 August 1993:

D de Villiers : Chairperson
R Cronje : Assistant Chairperson

Organisation	Delegates	Advisers
ANC	C Ramaphosa B Kgosisile	M Manzini PM Maduna
AVU	C Pienaar C Kruger	A Beyers
Bophuthatswana	R Mangope R Cronje	BE Keikelame SG Mothibe
Cape Trad. Leaders	M Nonkonyana SN Sigcau	GD Gwadiso DM Jongilanga
Ciskei	T Bulube VT Gquiba	
DP	C Eglin M Finnemore	KM Andrew 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	PAC Hendrickse SS Oosthuizen
NIC/TIC	K Mayet F Hajaij	
NP	D de Villiers TJ King	L Wessels SJ Schoeman
NPP	A Rajbansi S Naidoo	O Ganie G Singh

● S Trad. Leaders	MB Mota MA Molefe	RH Mopeli TE Phoofolo
PAC	P de Lille	L Makhanda B Desai
Solidarity	K Moodley	T Palan AS Razak
SACP	J Slovo L Jacobus	E Pahad
SA Government	RP Meyer LR Brink	AF Tredoux DPA Schutte
Transkei	Z Titus N Jajula	
TVL Trad. Leaders	MA Netshimbupfe	NE Ngomane
UPF	A Chabalala J Maake	OBM Mamabolo NM Tsheole
Venda	SE Moeti	GM Ligege S Makhuvha
XPP	MH Matjokana ST Mona	

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

**REPORT PRESENTED BY THE PLANNING
COMMITTEE TO THE NEGOTIATING COUNCIL
ON 18 AUGUST 1993**

1. Appointment of women to the Planning Committee and the Panel of Chairpersons

1.1 Planning Committee

1.1.1 Mrs Kruger; and

1.1.2 Ms Sigcau

1.2 Panel of Chairpersons

1.2.1 Mrs Kgositsile; and

1.2.2 Mrs Finnemore

2. Recommendation embodied in paragraph 4 of the Seventh Report of the Technical Committee on Fundamental Rights during the Transition

2.1 The Planning Committee recommends that the ninth report of the said Technical Committee be sent for comment to :-

2.1.1 the Association of Law Societies;

2.1.2 the General Council of the Bar of South Africa;

2.1.3 the National Democratic Lawyers' Association; and

2.1.4 the Black Lawyers' Association,

who will provide the Technical Committee with their written comments within a week of the receipt of such comments.

The Planning Committee also recommends that the Technical Committee be authorised to engage in discussions with any of these bodies if such a need has been identified or there is a request to that effect.

3. Referral of equality clause to experts

The Planning Committee recommends that the equality clause appearing in the seventh report on fundamental rights be referred to the following experts for comment:-

3.1 Judge P. Olivier;

3.2 Professor C. Dlamini;

3.3 Professor R.B. Mqoke;

3.4 Dr C. Albertyn; and

3.5 Miss T. Madonsela,

who will provide the Technical Committee concerned with their written comments within a week after being notified of their brief.

The experts will comment on the impact and effect which the equality clause will have on the following areas of customary law:

- * law of succession and inheritance;
- * marriage / customary unions; and
- * succession to chieftainship, institution of chieftainship and the allocation of communal land and rights to property by chiefs and other traditional functions discharged by chiefs.

4. Chapter in Constitution for the Transitional Period dealing with Administration of Justice

The Planning Committee recommends that the Technical Committee drafting this chapter be authorised to receive inputs from, and to engage in discussions with, inter alia :-

4.1 the judges; and

4.2 representative associations of the Bar and Side-Bar,

regarding the content of, and other proposals relating to, the chapter referred to.

5. Other constitutional issues referred to the Planning Committee

5.1 The Planning Committee recommends that the Technical Committee on Constitutional Issues be mandated to present the Negotiating Council with alternative drafts of a preamble taking into account the different approaches normally adopted in the drafting of preambles to constitutional provisions.

5.2 The Planning Committee reports that only the AVU has so far provided it with written comments on the proposed exclusive and concurrent powers of SPRs.

5.3 Other constitutional issues are still being considered and will be finalised tomorrow.

Action instituted by the Kwazulu Government against two Chairpersons

The latest details on this matter appear in a letter dated 17 August 1993 and written by the attorneys handling this matter. The matter is being defended in accordance with a decision taken by the Negotiating Council earlier and the lawyers have been advised to expedite the hearing of the matter.

7. Visit to Tembisa

After having taken into account a number of factors relating primarily to security, the Planning Committee recommends that the Negotiating Council as such should not visit the area but that individual parties or groups of parties should on their own and in terms of their own arrangements visit the area should they so wish.

8. Ceremonial handing over of a "Peace Cake" by the Kempton Park Town Council Mayor and others : 25 August 1993

The Planning Committee refers you to the letter distributed to you and recommends that the cake be received by the administration on behalf of the Negotiating Council.

9. Presentation of posters depicting Peace Theme : 6 September 1993

The Planning Committee recommends that authority be given for this presentation.

10. Draft Meetings Schedule and Programme

(Delivery of documents on Saturdays)

11. Next Planning Committee Meeting

This is scheduled for Thursday the 19th of August.

N.B: Statement on further handling of each of the bills under consideration.