

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

MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 10h20 ON TUESDAY 20 JULY 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. Substantive Issues

4.1 Draft Bill on the IEC:

4.1.1 The Technical Committee on the IEC was welcomed. Present were D Davis, F Ginwala, SK Ndlovu and RB Rosenthal. Apologies were noted from HR Laubscher.

4.1.2 It was agreed to discuss the Draft Bill clause by clause. Questions of clarity were put to the Technical Committee. During the discussion and debate the following was noted:

4.1.2.1 The Title of the Draft Bill:

- * It was suggested that the words "organisation" and "administration" be inserted after the word "conduct" in the second line.
- * It was suggested that the wording throughout the Draft Bill should be consistent with the title.

- * Clause 1, Item 1.3 "Elections" refers: The SA Government was opposed to the inclusion of "Referenda" and was of the view that it should be deleted. This was not the common view of the Negotiating Council. It was agreed that the Technical Committee reconsiders the definitions, taking into account the views expressed in the Negotiating Council.
- * Clause 1 refers: It was suggested that the Technical Committee considers a definition of "Referenda". It was stated that the Negotiating Council needs to be clear about how such a referenda would work.
- * Clause 1, Item 1.4 "The Electoral Code of Conduct" refers: It was suggested that the Electoral Code of Conduct should form part of the Electoral Act and would therefore be defined differently in this Draft Bill.
- * Clause 1, Item 1.9 "International Members" refers: It was agreed that the reference to "11.2" in the item should read "11.1". It was further suggested that the issue of the participation of international members would have to be reconsidered.
- * Clause 1, Item 1.10 "National Parliament" refers:
 - It was suggested that this definition was too prescriptive about the future and should rather be replaced with "Constitution-Making Body".
 - It was suggested that the word "National" should be deleted.
- * Clause 1, Item 1.11 "Political Office" refers:
 - It was suggested that the words "or Organisation" be added after the words "political party" in the second line.
 - It was suggested that the last three lines be deleted.

- It was suggested that this definition was too embracing and that the Technical Committee should reformulate this item, taking into account the views expressed in the meeting.
- It was suggested that the term "public profile in political activity" be used to accommodate the concerns expressed with regard to this item.
- It was suggested that the Technical Committee investigate the feasibility of restricting this issue to office bearers and that a cut-off point be debated in the Negotiating Council.

It was agreed that the Technical Committee should reconsider this entire item, taking into account all the views expressed in the Negotiating Council.

* Clause 1, Item 1.12 "Political Party" refers:

- It was noted that the SA Government had strong reservations with regard to this item.
- It was suggested that the words "or movement" be inserted after the word "organisation" in both instances.
- It was suggested that the sentence should end after the word "Elections".
- It was suggested that the same rules should apply to all participants in the election.

It was agreed that the Technical Committee reconsiders Item 1.12, taking into account the views expressed in the Negotiating Council.

* Clause 1, Item 1.13 "Public Office" refers: It was suggested that a clear divide needs to be made between political office bearers and employees of the state.

* Clause 1, Item 1.22 "This Act" refers: It was suggested that the word "prescribed" be replaced with "published".

- * Clause 1 refers: It was agreed that the Technical Committee considers the addition of a further definition dealing with the differentiation between monitors and observers.
- * Clause 2 "Application of this Act" refers:
 - Previous comments about referenda were referred to.
 - The PAC referred to footnote 22 and stated that this was too prescriptive.
- * Clause 3 "Binding on the State and State President" refers:
 - It was suggested that this clause was superfluous.
 - It was suggested that the last line in Item 3.1 should be deleted.
 - It was suggested that in Item 3.2 the word "advice" should be replaced by "instructions".

4.1.2.3 Chapter 2 - Establishment of Commission:

- * Clause 5 "Objects of the Commission" refers:
 - It was suggested that contained this clause should contain a reference to the fact that various activities as listed are subject to the provisions of the Electoral Act.
 - It was suggested that the TEC was responsible for the creation of conditions conducive to free and fair elections and not the Commission. The Technical Committee was requested to consider this.
 - It was suggested that the purpose of the Commission should be clearly set out in the objects.
 - It was suggested that between the three Directorates of the election and some independence between the Commission and the three structures of the election. This should be clearly reflected in this clause and elsewhere in the Bill.

- It was suggested that the objects should be itemised in this clause.
- It was suggested that the Technical Committee considers the use of the words "organise" and "organisation" under this clause.

* Clause 6 "Independence of the Commission" refers:

- It was agreed that a semi-colon be inserted after the word bias in the first line of Item 6.1.
- It was suggested that the words "such of" in the sixth sentence of Item 6.2 be deleted. After discussion it was agreed that the Technical Committee considers a reformulation of this item.
- It was agreed that the word "effect" in the last line of Item 6.2 should read "affect".
- It was suggested that a further item be inserted in this clause, dealing with the independence of the directorates within this Commission.
- It was suggested that Item 6.3 should be reformulated.
- It was suggested that the words "the Transitional Council and Parliament" be deleted in this clause and wherever they appear in the Draft Bill.
- It was suggested that the Technical Committee reconsiders the usage of the word "simultaneously" in Item 6.3.

* Clause 7 "Composition of the Commission" refers:

- It was suggested that the heading should read "The Appointment of the Commission", as all legislation should be consistent.
- The issue of whether members of the International Community should or should not vote was raised. After lengthy discussion and debate no agreement could be reached on this

issue. It was agreed that all participants consider the implications, consult with principals and that this issue be revisited at a later stage.

- It was noted that the advice of the Council as referred to in Item 7.1 was binding on the State President.
- A question was raised with regard to the words "including women" in Item 7.1. It was suggested that these be deleted and replaced with "including equitable representation in terms of gender".
- It was suggested that the Technical Committee reconsiders the inclusion of the words "full-time" in Item 7.2.2. Other participants did not agree with this view and stated that the formulation should remain as is. It was suggested that the full time should be qualified by the duration of the period.
- It was suggested that Item 7.2.3 was too restrictive and that the Technical Committee should reconsider this item, taking into account the views expressed in the Negotiating Council.
- It was suggested that the words "or Public Office" should be inserted after the words "Political Office".
- It was suggested that the period of 18 months as referred to in Item 7.4.1 should be 36 months.
- It was suggested that the same criteria should apply in Item 7.5 as per the IMC.
- The Technical Committee requested guidance on the issue of Public and Political Office.

* Clause 8 - Term of the Commission refers:

- It was suggested that the term of the Commission should end after certification and verification of the election results.
- It was suggested that with regard to Item 8.1, reference should only be made to the first election.

- * Clause 9 - Termination of Appointment refers:
 - Concerns were raised with regard to the involvement of the courts on this issue.
 - It was suggested that the body responsible for appointing members of the Commission should also be responsible for termination of appointments.
 - It was suggested that the number of 100 eligible voters as referred to in Item 9.1.2.4 was too low and should possibly be 1000.
 - It was agreed that the word "only" be deleted in Item 9.2.

- * Clause 10 "Conditions of Appointment" refers:
 - It was suggested that the "Minister of Finance" be replaced by the "Minister of State Expenditure".
 - It was suggested that the words "upon the advice of" be replaced by "in consultation with".
 - The decision of the Council was binding on the relevant Minister.

The meeting adjourned at 13h05 for lunch.

The meeting reconvened at 15h20.

4.1.2.4 Chapter 3 - Reconstitution of the Commission:

- * Clause 11 "Reconstitution of the Commission" refers:
 - It was suggested that if the Commission was to disband when its task was completed, this clause was not necessary.
 - It was suggested that the clause should end after the word "Parliament".
 - It was suggested that the courts should not be involved in this issue.
 - It was suggested that Parliament should be able to reconstitute the Commission

- with a four fifths majority.
- It was suggested that the whole question of the possible reconstitution of the Commission should be reconsidered, taking into account the views expressed in the meeting.
- It was suggested that a deadlock breaking mechanism was necessary in this instance.
- The words "stipulated in section 11.1" had been omitted from the end of Item 11.2 and should be added.

4.1.2.5 Chapter 4 - Procedure and Administration:

* Clause 12 "Procedural Matters" refers:

- It was suggested that the word "voting" be inserted between "the" and "members" in the second line of Item 12.2.
- It was suggested that instead of all members forming the necessary quorum in Item 12.2, the necessary quorum should be 75%.
- It was suggested that Item 12.2 should end after the word "time".
- With regard to Item 12.4 the Technical Committee was requested to give consideration as to whether the members of the Committees would have to meet the same qualifications as the Commissioners.
- The Technical Committee was requested to reconsider Item 12.6, taking into account views expressed in the meeting on this issue.

* Clause 13 "Accountability and Finance" refers:

- It was noted that the SA Government will obtain expert advice on this issue and make a submission in this regard to the Technical Committee.
- It was suggested that the Technical Committee reconsiders Item 13.2, taking into account the views expressed in the

meeting.

* Clause 15 "Administration" refers:

- It was suggested that the remuneration should be done in consultation with either the TEC or the Minister of State Expenditure.
- It was suggested that the words "with the approval of the Reserve Bank" be inserted between the words "or" and "other" in Item 15.5.

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

- Concerns were expressed with regard to the issue of sole responsibility as referred to in Item 16.1.
- Various points of view were expressed around the functional sub-structures and the Technical Committee was requested to take note of these views.
- It was suggested that the following words should be inserted between the words "the" and "Commission" in Item 16.4 "Chief Executive Office and the".
- The Technical Committee was requested to reconsider Item 16.4, taking into account the views expressed in the meeting.

4.1.2.6 Chapter 5 - The Election Administration Directorate:

* Clause 17 "Responsibilities of the Election Administration Directorate" refers:

- It was suggested that "and varying levels of education of the population" should be added to the end of Item 17.1.
- It was suggested that the Technical Committee should elaborate on the issue of voter education.
- It was suggested that Item 17.2 falls within the ambit of the Electoral Act.
- It was suggested that elements within Item 17.3 and Item 17.4 should be

- contained in the Electoral Act.
- It was suggested that the registration of political parties should be dealt with by the Commission itself.
- It was suggested that the Electoral Code of Conduct should be part of the Electoral Act.
- It was suggested that clarity should be given on the type of penalties required. The Technical Committee was in the processing of considering this issue.
- It was suggested that monitors and observers should be included in the list of people who are going to be protected from intimidation in Item 17.7.
- It was suggested that Item 17.8 should be deleted as it was perceived to be meaningless. Furthermore, it was suggested that if this clause is necessary, it should be contained within the Electoral Act. Other participants supported the inclusion of this Item and suggested that the starting point of the amount involved should be higher.
- It was suggested that the Technical Committee should consider the question of the necessity of disclosure with regard to state funds.
- Concerns were expressed with the provisions of Item 17.10. It was suggested that these were more suited to be contained in the Electoral Act. This was agreed to.

4.1.2.7 Chapter 6 - Election Monitoring Directorate:

- * Clause 18 "Responsibilities of the Election Monitoring Directorate: refers:
 - It was suggested that "which shall include a significant representation of women" be inserted between "monitors" and "to".
 - It was suggested that question of monitoring should be dealt with by the Peace Secretariat. This point of view was not generally supported in the

meeting.

- It was suggested that certain powers as referred to in Item 18.3 should be given to the Adjudication Commission.
- It was suggested that the role of the police should be clearly defined. It was further suggested that the function of the monitors should be expanded.
- It was suggested that the phrase starting with "before" and ending with "established" be deleted from Item 18.5.

4.1.2.7 Chapter 7 - The Election Adjudication Directorate:

* Clause 19 "Responsibilities of the Election Adjudication Directorate" refers:

- It was suggested that clear suggestions and more details were needed from the Technical Committee with regard to the issue of Electoral Tribunals. The Technical Committee was requested to take note of all the views expressed in the meeting on this issue.
- It was suggested that the word "final" be deleted in the first sentence of Item 19.1.
- It was suggested that the wording of Item 19.2 was very vague.
- It was suggested that the words "of political parties" be added after the word "access" in line four of Item 19.3.

4.1.2.8 Chapter 8 - Adjudication of Election Results:

* Clause 20 "Adjudication of Election Results" refers:

- It was suggested that the Technical Committee should reconsider Item 20.2 and provide the Negotiating Council with a clearer formulation, taking into account views expressed in the meeting on this item.
- It was suggested that the words "voting members" in Item 20.3 be replaced by "members eligible to vote".
- It was suggested that the certification

should be final.

- It was suggested that the phrase commencing with "or non-compliance" and ending with "Code of Conduct" should be deleted. Other participants disagreed with this view.

4.1.2.9 Chapter 9 - Miscellaneous Provisions:

* Clause 21 "Jurisdiction" refers:

- The ANC requested that its reservations with regard to the role of the courts should be borne in mind throughout the Draft Bill.
- It was suggested that the TEC should conduct the review.

* Clause 22 "Delegation" refers:

- It was suggested the persons/structures to which tasks be delegated to, should be verified in the legislation. It was further suggested that the Commission should not be given the power to delegate its responsibility. It was suggested that the Negotiating Council adopts the formulation which was applicable in respect of the Draft Bill on the IMC. The Technical Committee should take note of all the views expressed on this issue.

* Clause 25 "Infringement of Security" refers: It was agreed that the heading of this clause should read "Infringement of Secrecy".

* Clause 26 "Prohibition of the Publication of Opinion Polls during Elections" refers: It was agreed that this clause should be provided for in the Electoral Act.

* Clause 28 "Regulations" refers, It was agreed that this clause vested too much power in the Commission.

* Clause 29 "The Electoral Code of Conduct"

refers:

- It was suggested that this should form part of the Electoral Act and should not only be applicable to the parties participating in the election but to all parties/organisations, whether participating in the election or not. The Technical Committee was requested to give attention to this issue.
- It was suggested that consideration could only be given to this clause once the Electoral Act had been received by the Negotiating Council.

* Clause 30 "Application of the Act to a Referendum" refers: It was suggested that this Act had no relevance to a referendum.

4.1.3 It was agreed that the Planning Committee considers the way forward with regard to this Draft Bill and the following outstanding issues and submit a recommendation to the Negotiating Council on 21 July 1993:

- * Clause 7
- * Clause 16
- * Clause 17
- * Clause 18.3
- * Clause 21

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

5. Procedural Issues

5.1 Sufficient Consensus:

5.1.1 M Webb, on behalf of the Planning Committee, gave a reportback on this issue to the Negotiating Council.

5.1.2 The following was noted:

5.1.2.1 The first draft report of the ad-hoc committee dealing with the issue of sufficient consensus was tabled in the meeting (again available on request).

5.1.2.2 The report had not yet been considered by the Planning Committee or the Negotiating Council.

5.1.2.3 The report had been tabled in the meeting to allow participants adequate time for consultation with principals on this issue.

5.1.2.4 It was agreed that the report would be considered by the Negotiating Council at its meeting on Monday 26 July 1993.

5.1.3 It was noted that the report would be distributed to all participants not present at the Negotiating Council meeting.

5.2 **Commission of Inquiry, Goldstone and Security:**

5.2.1 Z Titus, on behalf of the Planning Committee gave a reportback on this issue to the Negotiating Council. A written report in this regard was distributed to the meeting (see Addendum B).

5.2.2 The recommendations of the Planning Committee as contained in the report were agreed to.

5.2.3 It was agreed that the Sub-Committee should also consider the security of delegations after the adjournment of meetings late in the evenings. Attention should be given to the road between the relevant hotels and the premises of the World Trade Centre.

6. **Meetings Schedule and Programme**

6.1 It was noted that the Planning Committee would meet at 09h00 on 21 July 1993.

6.2 It was noted that the Negotiating Council meeting would commence at 10h00 on 21 July 1993.

6.3 It was agreed that the Planning Committee reconsiders the time of adjournment for meetings on Fridays and submit a recommendation to the Negotiating Council in this regard.

6.4 The schedule of meetings and draft programme were accepted (see Addendum C).



Closure

- 7.1 The Chairperson was thanked for the way the days proceedings were handled.
- 7.2 The meeting was closed at 17h45.

These minutes were ratified at the meeting of the Negotiating Council of 27 July 1993 and the amended version signed by the Chairperson of the original meeting on


.....
CHAIRPERSON

Addendum A

The following delegates and advisers were present at the meeting of the Negotiating Council on Tuesday 20 July 1993:

R Cronje : Chairperson

Organisation	Delegates	Advisers
ANC	C Ramaphosa M Manzini	B Kgosisile P Maduna
AVU	M Mentz	AS Beyers JR de Ville
Bophuthatswana	SG Mothibe R Mangope	BE Keikelame
Cape Trad. Leaders	M Nonkonyana SN Sigcau	DM Jongilanga GD Gwadiso
Ciskei	M Webb VT Gqiba	TM Bulube IJ Smuts
DP	KM Andrew M Finnemore	PG Soal
Dikwankwetla	JSS Phatang K Ngwenya	SOM Moji
IFP		
IYP	NJ Mahlangu N Mtsweni	AP Laka Q Vilankulu
KP		
INM	SS Ripinga ND Mokoena	PMH Maduna MS Gininda
Kwazulu		
Labour Party	L Landers CC August	D Lockey J Douw
NIC/TIC	F Hajaij B Pillay	K Mayet
NP	D de Villiers TJ King	SJ Schoeman L Wessels
NPP	A Rajbansi A Rambarran	B Singh S Singh

FS Trad. Leaders	M Moroke MB Mota	RH Mopeli MA Molefe
PAC	P de Lille B Alexander	B Desai L Makhanda
Solidarity	P Naidoo	AS Razak T Pallan
SACP	J Slovo L Jacobus	E Pahad
SA Government	RP Meyer LR Brink	DPA Schutte A Tredoux
Transkei	Z Titus N Jajula	
TVL Trad. Leaders	LM Mokoena	MA Netshimbupfe NE Ngomane
UPF	A Chabalala	RJ Dombo J Maake
Venda	SE Moeti TJ Tshivhase	GM Ligege S Makhuvha
XPP	NB Hlasi EE Ngobeni	RW Nyambi MH Matjokana

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

**REPORT TO THE NEGOTIATING COUNCIL
ON THE AVF DEMONSTRATION
OF 25 JUNE 1993**

BACKGROUND INFORMATION

1. On 19 July 1993, members of the Negotiating Council were provided with copies of the report on the inquiry conducted by Mr Justice Goldstone into the events at the World Trade Centre on 25 June 1993. At Page 20 of that report Judge Goldstone lists certain questions which were referred to his commission by the Planning Committee. The Planning Committee took this step after having come to the conclusion that any commission appointed by it would have certain limitations in that it could not be endowed with statutory authority, for example, to enforce subpoenas.
2. Before one deals with the action steps which need to be taken in this matter, it would be apposite to outline the history thereof:
 - 2.1 The incident occurred at a time when negotiators were preparing for a meeting of the Negotiating Forum and therefore had a very tight work schedule;
 - 2.2 The incident was considered by the Negotiating Council in the afternoon of 25 June;
 - 2.3 The Planning Committee was, in terms of the resolution of the Council, mandated to appoint members of a commission of inquiry which was to investigate and enquire into the incident, and also to formulate more detailed terms of reference for the commission;
 - 2.4 After this Council's resolution and before the Planning Committee could attend to the matters set out in 2.3, the Goldstone Commission was authorised to investigate the incident;
 - 2.5 In the light of the development in 2.4 the Planning Committee resolved to consider matters pertaining to security first before finalising those matters in respect of which an investigation was required; and
 - 2.6 The more detailed terms of reference were subsequently drafted and on a reading of the Goldstone Report it appears that everything mentioned in the terms of reference which the Planning Committee was mandated to draft has by and large been covered by the Goldstone Commission.

FURTHER ACTION STEPS

3. It is assumed that members of the Negotiating Council have read the Goldstone Report. In the opinion of the Planning Committee the following matters still warrant further action. These are -
 - 3.1 Monitoring of progress on prosecutions arising from the incident;
 - 3.2 Enquiries on success achieved with regard to the tracing of missing or stolen articles which were in the Council chamber at the time;
 - 3.3 Ensuring that recommendations and findings of the Goldstone Commission (including those specifically dealing with the South African Police), are implemented; and
 - 3.4 Ensuring that the World Trade Centre is secured properly, that the security of delegates generally is addressed and that the Guidelines for Demonstrations are updated to deal with all the potential threats or situations.

RECOMMENDATIONS

4. In the light of the work done so far by the Goldstone Commission, the Planning Committee recommends as follows:
 - 4.1 The Negotiating Council should not pursue the setting up of its own Commission of Inquiry regarding the factual aspects of the incident of 25 June;
 - 4.2 That all the matters referred to in paragraph 3 be entrusted to the Planning Committee for further action and that the Planning Committee be mandated to instruct the three-man Sub-Committee to take whatever steps are required to give effect to these matters;
 - 4.3 That the three-man Sub-Committee be empowered to engage in discussion with the Police investigators on pending and outstanding criminal prosecutions or investigations, including any other matter connected therewith, and also to call for information from the Police thereanent; and
 - 4.4 That the Planning Committee should report to the Negotiating Council on the results on a periodic basis.

CONCLUSION

5. In conclusion it must be recorded that matters pertaining to security are currently under discussion by the three-man Sub-Committee, Multi-Party Security and the South African Police.

REVISED PROPOSED SCHEDULE OF MEETINGS

20 JULY 1993

Negotiating Council	Tuesday 20 July 1993	09h30 - 19h00
Negotiating Council	Wednesday 21 July 1993	09h30 - 17h00
Planning Committee	Monday 26 July 1993	08h30 - 10h30
Negotiating Council	Monday 26 July 1993	10h30 - 19h00
Negotiating Council	Tuesday 27 July 1993	09h30 - 19h00
Negotiating Council	Wednesday 28 July 1993	12h00 - 19h00
Negotiating Council	Thursday 29 July 1993	09h30 - 19h00
Negotiating Council	Friday 30 July 1993	09h30 - 17h00
Planning Committee	Monday 2 August 1993	08h30-10h30
Negotiating Council	Monday 2 August 1993	10h30-19h00
Negotiating Council	Tuesday 3 August 1993	09h30-19h00
Negotiating Council	Wednesday 4 August 1993	12h00-19h00
Negotiating Council	Thursday 5 August 1993	09h30-19h00
Negotiating Council	Friday 6 August 1993	09h30-17h00
Negotiating Council	Monday 9 August and following days	Finalisation of Constitution

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.

DRAFT PROGRAMME FOR MEETINGS

20 JULY 1993

Negotiating Council	Tuesday 20 July 1993	IEC
Negotiating Council	Wednesday 21 July 1993	FHR & Disc Leg
Negotiating Council	Monday 26 July 1993	Const. Issues
Negotiating Council	Tuesday 27 July 1993	Const. Issues
Negotiating Council	Wednesday 28 July 1993	Disc Leg & FHR (finalise) Constitutional Issues
Negotiating Council	Thursday 29 July 1993	TEC IMC (finalise) IBA (finalise)
Negotiating Council	Friday 30 July 1993	TEC Constitutional Issues