

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

**MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 13h45 ON WEDNESDAY 6 OCTOBER 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 The minutes of the meeting of 14 September 1993 were ratified with the following amendments:

- \* Item 5.13.2 refers : The word "November" should read "September".
- \* Item 6.1.5.5 refers : The word "discussion" in the first sentence should read "discuss".
- \* Item 6.2.3.1 refers : The word "of" should be inserted between the words "direction" and "the" in the second sentence.

**5. Substantive Issues - 14th Report of the Technical Committee on Constitutional Issues**

5.1 The Technical Committee on Constitutional Issues was welcomed. Present were A Chaskalson, GE Devenish, E Moseneke, B Ngoepe, M Olivier, W Olivier and F Venter. Apologies were noted from M Wiechers.

5.2 The Technical Committee presented its 14th Report to the meeting. The meeting proceeded to discuss and debate the report paragraph by paragraph.

5.3 Term "Ombudsman":

5.3.1 It was suggested that the words "Public Defender", "Public Advocate" or "Defender of the People" should be used instead of the term "Ombudsman".

5.3.2 Other participants supported the retention of the term "Ombudsman".

5.3.3 It was agreed to defer a decision on this issue and to have informal discussions to resolve the matter.

5.3.4 Before the meeting adjourned this issue was revisited. It was agreed that there was no consensus on this issue. It was agreed to refer this issue to the Planning Committee for attention.

5.4 Clause 1 "Establishment and appointment" refers:

5.4.1 Clause 1 (1) refers:

\* It was noted that the Negotiating Council was required to make a decision on the structural and functional relationship between the national Ombudsman and SPR Ombudsmen. In this regard, three possible models were suggested by the Technical Committee. Discussion proceeded around the three suggested models.

\* It was noted that there was general agreement on the first model (see item 6.1.1 of the fourteenth report). Therefore, there would be a national Ombudsman office and SPR Ombudsmen appointed in consultation with the SPR legislatures. The detail of how the reporting was done with regard to the regional legislatures and the national office of the Ombudsman was still to be determined.

\* The Bophuthatswana Government noted its objection to the agreement.

\* The AVU noted that it was not party to the agreement on this issue.

\* It was suggested that the points in the second model should be included in the first model.

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

5.4.2 Clause 1 (2) refers:

- \* It was noted that the meeting had not yet agreed on the appointment of judges, and therefore no agreement could be finalised on this clause yet.

5.4.3 Clause 1 (3) refers:

- \* It was noted that the Council had not yet agreed upon the appointment of judges, and therefore no agreement could be finalised on this clause yet.
- \* It was agreed to add the words "or public finance" to the end of clause (3) (c).
- \* It was agreed that whatever cumulative period was agreed to in (3) (b), this should also be applicable to (3) (c). The cumulative period was still to be agreed upon.
- \* It was suggested that clause 1 (3) (c) was vague and should be linked to a period of time.

5.4.4 Clause 1 (4) refers:

- \* It was suggested that there should be provision for a maximum of two terms of office. Various participants supported this viewpoint.
- \* Various participants were in favour of a limited tenure.
- \* Other participants were supportive of the clause as formulated.

5.4.5 Clause 1 (5) refers:

- \* Questions of clarity were put to the Technical Committee.
- \* No comments were noted.

5.4.6 Clause 1 (6) refers:

- \* No comments were noted and the clause as formulated was agreed to.

5.4.7 Clause 1 (7) refers:

- \* Questions of clarity were put to the Technical Committee.
- \* No comments were noted.

5.4.8 Clause 1 (8) refers:

- \* No comments were noted.

5.5 Clause 2 "Independence and Impartiality" refers:

5.5.1 Clause 2 (1) refers:

- \* No comments were noted.

5.5.2 Clause 2 (2) refers:

- \* No comments were noted.

5.5.3 Clause 2 (3) refers:

- \* Questions of clarity were put to the Technical Committee.
- \* No comments were noted.

5.5.4 Clause 2 (4) refers:

- \* No comments were noted and the clause as formulated was agreed to.

5.6 Clause 3 "Powers, Functions and Duties" refers:

5.6.1 Clause 3 (1) refers:

- \* Questions of clarity were put to the Technical Committee.
- \* It was noted that there would be one Ombud office at a national level and representatives of this office at SPR level. The Ombudsmen at SPR levels would be appointed in consultation with the SPR legislatures. Again the disagreement of the AVU in this regard was noted.
- \* It was noted that the office of the Ombudsman had jurisdiction throughout the country, and at all levels of government.
- \* It was noted that the South African Government would make a

written submission to the Technical Committee suggesting a reformulation with regard to clause 3 (1) (a) (ii).

\* No comments were noted on clauses 3 (1) (a) (iii), 3 (1) (a) (iv), 3 (1) (b) (i), 3 (1) (b) (ii), 3 (1) (b) (iii) and 3 (1) (c) (i).

\* With regard to clause 3 (1) (c) (ii), it was noted that there was only reference to an appropriate recommendation to be made in the case of maladministration. It was suggested that appropriate recommendations should also be made in connection with some of the areas indicated in clause 3 (1) (a).

\* No comments were noted on clause 3 (1) (d).

#### 5.6.2 Clause 3 (2) refers:

\* Questions of clarity were put to the Technical Committee.

\* No comments were noted on clauses 3 (2) (a) and 3 (2) (b).

#### 5.6.3 Clause 3 (3) refers:

\* It was generally agreed that the Ombudsman should be competent but not compellable to testify in a court of law. Furthermore, the Ombudsman should have the exercise of discretion in this regard.

#### 5.6.4 Clause 3 (4) refers:

\* No comments were noted.

#### 5.6.5 Clause 3 (5) refers:

\* No comments were noted and the clause was agreed to as formulated.

#### 5.7 Clause 4 "Staff and expenditure" refers:

##### 5.7.1 Clause 4 (1) refers:

\* It was noted that the concept of a secondment would be provided for in this clause.

##### 5.7.2 Clause 4 (2) refers:

\* No comments were noted and the clause as formulated was agreed to.

5.7.3 Clause 4 (3) refers:

- \* No comments were noted and the clause as formulated was agreed to.

5.8 Clause 5 "SPR Ombudsman offices" refers:

It was agreed that this issue had been extensively debated during the course of the meeting and, that the Council would revisit this issue at a future meeting when the next report on this issue was received.

5.9 Clause 6 "Human Rights Commission - Establishment and appointment" refers:

5.9.1 Clause 6 (1) refers:

- \* Questions of clarity were put to the Technical Committee.
- \* It was suggested that it should be stated in this clause that the Commission shall consist of people who are broadly representative, people who have a standing in the community, people of integrity, etc. It was further suggested that the term "fit and proper" in the clause did provide for this suggestion.
- \* In connection with the number of Commissioners, it was suggested that the number of 11 should read "shall consist of 7 but not more than 11".
- \* The Technical Committee requested submissions for criteria from participants. It was agreed that participants would make written submissions to the Technical Committee on this issue.

5.9.2 Clause 6 (2) refers:

- \* It was suggested that the Technical Committee should reconsider this clause in the light of the discussion on clause 6 (1). Submissions were requested from participants with regard to this clause.

5.9.3 Clause 6 (3) refers:

- \* Questions of clarity were put to the Technical Committee.
- \* It was noted that the functions of the Human Rights Commission and the functions of the Constitutional Court should be seen as complementary.

- \* It was suggested that there should be an enabling provision in this clause to give effect to the provisions of clause 6 (5). It was agreed that the Technical Committee should consider an additional paragraph to this clause. The Technical Committee acknowledged the omission and noted that it would give the issue its attention.
- \* No comments were noted on clause 6 (3) (a).
- \* No comments were noted on clause 6 (3) (b).
- \* No comments were noted on clause 6 (3) (c) and the clause as formulated was agreed to.
- \* No comments were noted on clause 6 (3) (d) and the clause as formulated was agreed to.
- \* No comments were noted on clause 6 (3) (e) and the clause as formulated was agreed to.

5.9.4 Clause 6 (4) refers:

- \* Questions of clarity were put to the Technical Committee.
- \* No comments were noted on this clause.

5.9.5 Clause 6 (5) refers:

- \* Questions of clarity were put to the Technical Committee.
- \* It was agreed that the word "may" should be replaced by "shall" in this clause.
- \* It was suggested that the criteria for the discretion of the Commission should be clearly stipulated.

5.10 Clause 7 "Staff of the Human Rights Commission" refers:

5.10.1 Clause 7 (1) refers:

- \* Questions of clarity were put to the Technical Committee.
- \* It was agreed that the word "principal" should be replaced by the word "chief".

5.10.2 Clause 7 (2) refers:

- \* No comments were noted.

5.10.3 Clause 7 (3) refers:

- \* Questions of clarity were put to the Technical Committee.
- \* It was suggested that the Commission should report directly to Parliament. It was agreed that participants should submit written submissions to the Technical Committee on this issue.
- \* It was agreed that the heading of this clause should read "Staff and expenditure of the Human Rights Commission".
- \* It was suggested that the tenure of office of Commissioners, the termination of appointments, remuneration, etc. should be addressed. The Technical Committee took note of this suggestion.

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

## 6. Meetings Schedule and Draft Programme

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

## 7. Closure

The meeting adjourned at 18h10.

These minutes were ratified at the meeting of the Negotiating Council of 20 October 1993 and the amended version signed by the Chairperson of the original meeting on ... 1/11/1993

  
.....  
CHAIRPERSON



**Addendum A**

The following delegates and advisers were present at the meeting of the Negotiating Council on Wednesday 6 October 1993:

B Kgosisile : Chairperson  
 DJ de Villiers : Assistant Chairperson

<b>Organisation</b>	<b>Delegates</b>	<b>Advisers</b>
ANC	MV Moosa M Manzini	
AVU	AJ Horn C Kruger	
Bophuthatswana	R Mangope SG Mothibe	BE Keikelame JJ Ferreira
Cape Trad. Leaders	M Nonkonyana SN Sigcau	GD Gwadiso DM Jongilanga
Ciskei	M Webb VT Gqiba	TM Bulube IJ Smuts
DP	C Eglin D Smuts	KM Andrew
Dikwankwetla	RT Ramasia JSS Phatang	K Ngwenya TJ Mohapi
IFP		
IYP	NS Mtsweni	AP Laka
KP		
INM	SS Ripinga ND Mokoena	GG Zama
Kwazulu		
Labour Party	L Landers CC August	T Abrahams PA Hendrickse
NIC/TIC	PJ Gordhan RB Adam	C Saloojee B Pillay
NP	L Wessels TJ King	SJ Schoeman
NPP	O Gany L Singh	K Pithambar J Bachu

● Trad. Leaders	MB Mota MT Moroke	MA Molefe BS Rajuili
PAC	P de Lille B Desai	L Makhanda ER Sibeko
Solidarity	DS Rajah	TL Geunden P Naidoo
SACP	J Slovo L Jacobus	E Pahad
SA Government	RP Meyer LR Brink	T Schutte
Transkei	Z Titus N Jajula	R Nogumla
TVL Trad. Leaders	LM Mokoena	NE Ngomane
UPF	A Chabalala J Maake	MJ Mahlangu RJ Dombo
Venda	SE Moeti	S Makhuvha GM Ligege
XPP	PT Shilubana	GNK Hetisani

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

**UPDATED****DRAFT PROGRAMME FOR MEETINGS**

7 OCTOBER 1993

Thursday 7 October 1993	Discussion:	*	Fundamental Rights: 10th Report
Monday 11 October 1993	Discussion:	*	Bilaterals
Tuesday 12 October 1993		*	Bilaterals
Wednesday 13 October 1993	Discussion:	*	Fundamental Human Rights (11h00-13h00)
		*	Constitutional Issues (14h00-20h00)
Thursday 14 October 1993	Discussion:	*	Constitutional Issues (morning)
	Distributed & Presented	*	Report from the Task Group on the Delimitation Demarcation of Regions (afternoon)
Friday 15 October 1993	Discussion:	*	Draft Electoral Bill
Monday 18 October 1993	Discussion:	*	Delimitation/Demarcation of Regions
Tuesday 19 October 1993	Discussion:	*	Constitutional Issues
Wednesday 20 October 1993	Discussion:	*	Constitutional Issues
	Distributed:	*	Report of Commission on National Symbols
Thursday 21 October 1993	Discussion:	*	Constitutional Issues (morning)
		*	Report of the Commission on National Symbols (afternoon)
Friday 22 October 1993	Discussion:	*	Report of the Commission on National Symbols
		*	Draft Electoral Bill

**UPDATED****REVISED PROPOSED SCHEDULE OF MEETINGS**

7 OCTOBER 1993

Planning Committee	Thursday 7 October 1993	08h30-11h00
Negotiating Council	Thursday 7 October 1993	11h00-18h00

Bilateral Meetings	Monday 11 October 1993	
Bilateral Meetings	Tuesday 12 October 1993	
Planning Committee	Wednesday 13 October 1993	08h30-11h00
Negotiating Council	Wednesday 13 October 1993	11h00-20h00
Negotiating Council	Thursday 14 October 1993	09h00-20h00
Negotiating Council	Friday 15 October 1993	08h30-14h00

Planning Committee	Monday 18 October 1993	11h30-14h00
Negotiating Council	Monday 18 October 1993	14h00-20h00
Planning Committee	Tuesday 19 October 1993	09h00-10h30
Negotiating Council	Tuesday 19 October 1993	10h30-20h00
Negotiating Council	Wednesday 20 October 1993	13h00-20h00
Negotiating Council	Thursday 21 October 1993	09h00-20h00
Negotiating Council	Friday 22 October 1993	08h30-14h00

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.**