

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

MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 14H30 ON MONDAY 28 JUNE 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 It was noted that the minutes of 22 June and 23 June would be distributed at this meeting and dealt with at the next meeting of the Negotiating Council.

4.2 It was noted that Planning Committee Minutes were not yet available to Negotiation Council participants as they had not yet been ratified by the Planning Committee.

5. Substantive Issues

5.1 Report from the Technical Committee on the Independent Electoral Commission - Discussion on the Draft Bill:

5.1.1 The members of the Technical Committee were unable to attend the meeting, due to the fact that they were not initially scheduled to attend this meeting.

- 5.1.2 After a brief background by the Chairperson, it was agreed to proceed with the proposed Draft Bill clause by clause.
- 5.1.3 As this issue was to be revisited at a later stage, this initial discussion and debate would take place to highlight to the Technical Committee the views of participants.
- 5.1.4 It was agreed to deal with the "Definitions" once the rest of the Draft Bill had been dealt with.
- 5.1.5 It was noted that submissions received too late for the drafting of the first draft of the Bill, and therefore not taken into account, would be included in the second draft of the Draft Bill. The sentiments and views expressed in this meeting would be conveyed by the Administration to the Technical Committee to also take into account in the second draft.
- 5.1.6 During the discussion and debate the following was noted:

5.1.6.1 With regard to Clause 2 (Application of this Act):

- * It was suggested that the words "transitional elections" be replaced by "first elections".
- * It was agreed to leave debate around the use of the word "transitional" in abeyance until a clear decision was taken by the Negotiating Council on whether the period referred to will be a transitional one or not. Once this decision has been made, the relevant word could be slotted in. This would apply throughout the Draft Bill.
- * The words "transitional elections" are not grammatically correct and should be reworded if such terminology was to be used.

5.1.6.2 It was suggested that certain aspects of the Draft Bill should rather be contained in the Electoral Bill that the Technical Committee was in the process of drafting. This would be drawn to the attention of the Technical Committee. The Negotiating Council would have a further opportunity to revisit this Draft Bill in the second amended draft.

5.1.6.3 With regard to Clause 3 (Binding on the State):

- * It was agreed that the word "State" should be clearly defined and clarified.

- 5.1.6.4 At this point B Ngubane of the Kwazulu Government joined the meeting and apologised for his late arrival. The Kwazulu Government also took this opportunity to reserve their position with regard to the complete Draft Bill as the form of state had not yet been decided upon.
- 5.1.6.5 With regard to Clause 4 (Establishment of Commission):
- * The language used in this clause was questioned.
- 5.1.6.6 With regard to Clause 5 (Objects of Commission):
- * It was agreed that clarity was needed from the Technical Committee on the wording "plenary executive powers" and exactly what was meant by this terminology.
 - * It was suggested that adjudicating powers should go beyond political parties as such.
 - * It was suggested that after the word "thereof" at the end of the fifth line, all the subsequent words be deleted.
- 5.1.6.7 With regard to Clause 6 (Independence of the Commission):
- * No comments were noted.
- 5.1.6.8 With regard to Clause 7 (Composition of the Commission):
- * The decision of the Negotiating Forum on the composition of the Commission would be binding upon the State President - this should be confirmed or clarified by the Technical Committee.
 - * It was suggested that criteria should be set out for what "suitably qualified" means.
 - * It was agreed that international participants should be non-voting full members of the Commission. The AVU reserved their position in this regard. The SA Government and the Bophuthatswana Government objected to this agreement.
 - * It was suggested that this Item 7.2 should apply to persons holding political or public office. The Technical Committee should clarify if this

- item applied to judicial officers as well.

* Item 7.4 refers; That it was suggested that the Commission appoint its own Chairperson and Vice-Chairperson and that members should keep in mind the fact that the position of Chairperson and Vice-Chairperson would be a full time position when forwarding nominations for the Commission.
- * After further discussion of Item 7.4, it was suggested that the formulation of this item remain as is and therefore the Negotiating Council should recommend the designation of, the Chairperson and the Vice-Chairperson of the Commission. The State President, when appointing the Commission, would be bound by the decision of the Negotiating Council. It was suggested that the Technical Committee should consider to reformulate the item as follows "The State President shall act on the advice of the Council in etc."
- * Item 7.5 refers; It was suggested that after the word "appointment" all be deleted and replaced by "according to 7.1"
- * Item 7.6 refers; It was suggested that to bring this item in line with 7.5 and the suggested amendment, the wording "and the procedures stated in 7.1" should be inserted after the word "7.1" and the subsequent wording deleted.
- * That it was agreed that the principle that the Council makes the decisions and forwards them to the State President to act upon should be carried throughout the Draft Bill.
- * That the Technical Committee should be consistent in its formulation throughout the Draft Bill.

5.1.6.9 With regard to Clause 8 (Terms of the Commission):

- * It was suggested that the word "Council" be deleted.
- * It was suggested that the words "by-elections" be deleted.
- * It was agreed that this Clause be reformulated.

5.1.6.10 With regard to Clause 9 (Termination of Appointment):

- * Item 9.1.1 refers; The words "and the Council"

be inserted "after the State President".

- * Item 9.1.2 refers; It was suggested that this would only be applicable if there are international participants.
- * Item 9.1.3; It was suggested that all the words after the word "division" should be deleted.
- * Item 9.1.3 and 9.1.3.1; These items be reformulated for consistency; Where ever reference is made to the State President, the principle that the State President only acts on the advice of the Council should be incorporated.
- * With regard the issue of the intervention of the courts, this should be revisited at a later stage.
- * Item 9.1.3.4 refers; It was suggested that the words "or any 100 eligible voters" be deleted.

5.1.6.11 With regard to Clause 10 (Conditions of Appointment):

- * It was suggested that the words "with the concurrence of" be deleted and the following words be inserted after the word "Council", "after consultation with".
- * This item stands in abeyance as per Item 5.1.6.1 above.

5.1.6.12 With regard to Clause 11 (Reconstitution of the Commission):

- * It was agreed that the Technical Committee considers whether this clause is really necessary.

5.1.6.13 With regard to Clause 12 (Procedural Matters):

- * The Technical Committee should recommend to the Negotiating Council a percentage of members that should have a vote and not state a specific number.
- * It was suggested that the words "by-elections" be deleted.

5.1.6.14 With regard to Clause 13 (Accountability and Finance):

- * Item 13.3 refers; The Technical Committee should clarify and reconsider the word "Statutes".

5.1.6.15 With regard to Clause 14 (Guarantee by State):

- * The Technical Committee should reconsider whether this clause was necessary, and if so, it should be reformulated.

5.1.6.16 With regard to Clause 15 (Administration):

- * It was suggested that this clause be reconsidered in the light of the proposed reformulation of clause 14.

5.1.6.17 With regard to Clause 16 (Powers, duties and functions of the Commission):

- * It was suggested that this clause would be subject to the Electoral Act.
- * It was suggested that after Item 16.1 the following be inserted : "The IEC is responsible to formulate and submit to the Council draft legislation for the execution of functions and duties in respect of elections."
- * It was suggested that more consultation and inter-linkage was necessary between the Technical Committees and that whenever a Technical Committee recommends that a particular function or power should be assigned to a particular body, the Technical Committee dealing with the proposed body (the TEC and its Sub-Councils) should be accordingly advised. Technical Committees should also consult amongst one another where overlaps occur.
- * It was suggested that the Technical Committee was requested to, with regard to Item 16.4, reconsider the real need for the independence of the sub-structure for adjudication. The implications of this Item should be reconsidered by the Technical Committee.

The meeting adjourned for tea at 16h35.

The meeting reconvened at 17h10.

5.1.6.18 With regard to Clause 17 (Responsibilities of the Election Administration Directorate):

- * Sub sections 17,2, 17.3, 17.4, 17.9, 17.10 and

17.13 should be contained in the Electoral Act and therefore the entire Clause should be redrafted by the Technical Committee.

5.1.6.19 With regard to Clause 18 (Responsibilities of the Election Monitoring Directorate):

- * A distinction should be made between observers, scrutineers and monitors and therefore, Clause 18.1 should be redrafted.
- * Item 18.2 refers:
 - It was suggested that instead of referring to an Electoral Code of Conduct, an Electoral Act should be referred to.
 - It was suggested that an Electoral Code of Conduct is necessary.
 - It was suggested that the Electoral Code of Conduct should be set out in the Electoral Act.
 - The following question was put to the Technical Committee "If there is a transgression of the ethical Code of Conduct by a political party, what are the legal implications for such a transgression for an election to be free and fair according to Clause 21?".
 - It was suggested that the monitoring directorate has the right to observe and they ought to report to the adjudicating directorate who would have the authority to execute their decisions. That it was further suggested that this point was applicable to Item 18.4 as well.
- * The Technical Committee should take note of the debate around Clause 18.
- * The Technical Committee should clarify the responsibility of the monitoring and adjudicating directorates.
- * The Technical Committee should clarify the role of the Peace Committee Monitoring, how would it fit in with this monitoring and the problem of possible overlapping.

5.1.6.20 With regard to Clause 19 (Responsibilities of the Election Adjudication Directorate):

- * The Technical Committee should consider

whether there is still a role for the courts.

5.1.6.21 With regard to Clause 20 (Adjudication of Election Results):

- * The SA Government stated that if there was a problem in a region of the elections not being free and fair, that this would affect the elections overall.
- * Item 20.1 refers; It was agreed that the Technical Committee should reconsider the period to determine and certify the final results of the elections, as it was generally felt that 21 days is too long a period.
- * Item 20.2 refers; The Technical Committee should recommend to the Negotiating Council a percentage of members and not state a specific number.
- * Item 20.3 refers; It was suggested that the following words be deleted "as may deem appropriate" and replace with "as may be prescribed in the electoral act".
- * Item 20.4 refers; This item be referred back to the Technical Committee to consider its implications.

5.1.6.22 With regard to Clause 21 (Jurisdiction):

- * It was suggested that this issue be referred back to the Technical Committee as various concerns were expressed about this clause. Serious debate should be held on this clause at a future meeting of the Negotiating Council.
- * It was suggested that the Technical Committee identify the "grounds" for review.
- * It was suggested that this Clause should only be redrafted by the Technical Committee once the Constitutional Principles and the Bill of Rights had been drafted and agreed upon.

5.1.6.23 With regard to Clause 22 (Successors to the Forum):

- * It was suggested that this issue should be dealt with in the Constitution.
- * The Technical Committee on the IEC and the Technical Committee on Constitutional Issues should be aware of the debate on this issue.

- 5.1.6.24 With regard to Clause 23 (Delegation):
- * It was suggested that the Technical Committee defines the "any person or other body".
 - * The Technical Committee should redraft this clause.
- 5.1.6.25 With regard to Clause 24 - 31:
- * Clauses 24 - 31 should be accommodated within the Electoral Act and therefore referred back to the Technical Committee.
 - * The KP reserved its position on this decision.
- 5.1.6.26 With regard to Clause 32 (Regulations):
- * The Technical Committee clarifies what is meant by the last sentence of this Clause.
- 5.1.6.27 With regard to Clause 33 (Application of the Act to a Referendum):
- * It was agreed that the word "may" in the first and third sentence should read "shall".
- 5.1.6.28 With regard to Clause 1 (Definitions):
- * 1.1 refers, the word "British" should be deleted before Commonwealth.
 - * 1.4 refers, the use of the word "CODESA" is obsolete.
- 5.1.7 The Bophuthatswana Government reserved its position in respect of the IEC, pending the decision on the form of State and the implementation of the agreed Constitutional Principles.
- 5.1.8 The KP opposed the entire draft.
- 5.1.9 It was noted that none of the above clauses had been adopted. Only a general discussion had taken place and the Clauses were being referred back to the Technical Committee.
- 5.1.10 The Ciskei Government reserved its position on Items 1.15 and 1.16 of the definitions.
- 5.1.11 The Technical Committee was requested to clarify whether it was entirely within the discretion of the Commission to decide

whether the election is free and fair.

5.1.12 The Technical Committee would be requested to take note of all views expressed in the debate.

5.2 Report from the Technical Committee on the Independent Media Commission - Discussion on the Draft Bill:

5.2.1 A brief background given by the Chairperson.

5.2.2 It was agreed to discuss the Draft Bill clause by clause.

5.2.3 The IFP registered a protest at the haste with which this item was being dealt with and noted that it could not abide by any decisions reached on this issue in the Negotiating Council. A proposal by the IFP to adjourn for twenty minutes was not agreed to by the meeting.

5.2.4 It was agreed to discuss the definitions after the discussion on the Draft Bill.

5.2.5 The meeting then proceeded to discuss the Draft Bill clause by clause and the following was noted:

5.2.5.1 With regard to Clause 3 (Objects):

- * The Technical Committee should give clarity as to whether the terms "broadcasting services" includes privately owned broadcasting media.
- * It was suggested that privately owned broadcasting services should comply with the Code of Conduct.
- * It was suggested that, as privately owned print media was excluded, the same principle should apply to privately owned broadcasting services.

5.2.5.2 With regard to Clause 4 (Appointment of Members of the Commission):

- * That it was suggested that the following words be added at the end of 4.2 "on the advice of the TEC or the Multi-Party Forum".

5.2.5.3 With regard to Clause 5 (Persons Qualified to be Members of the Commission):

- * This clause be referred back to the Technical Committee and that the Technical Committee

should reconsider the qualifications of those proposed.

- * The Technical Committee was requested to consider the desirability or necessity of Item 4 (c).
- * It was suggested that criteria would be needed by the TEC/Multi-Party Forum when appointing members of the Commission.

5.2.5.4 With regard to Clause 6 (Persons Disqualified from being Members of Independent Media Commission):

- * That it was suggested that Item i of the Clause should be reformulated by the Technical Committee, taking into account the unjust laws of the past.

5.2.5.5 With regard to Clause 8 (Vacation of Office of Members of Independent Media Commission and the Filling of such Vacancy):

- * It was suggested that the words "/Multi-Party Forum" be inserted after the word "Council" and that the Technical Committee maintain consistency throughout the draft.
- * The Technical Committee gives a more explicit formulation for the word "incompetent".
- * It was suggested that a code of conduct should be formulated so that it would be clear when a person was guilty of misconduct.

The meeting adjourned for dinner at 19h00.

The meeting reconvened at 20h05.

5.2.5.6 D Dyson on behalf of the Technical Committee joined the meeting. He was welcomed.

5.2.5.7 During the ensuing discussion, questions of clarity and items to be referred back to the Technical Committee were put directly to D Dyson. D Dyson was requested to note on behalf of the Technical Committee all the views and observations expressed.

5.2.5.8 With regard to Clause 15 (Party Election Broadcasts on

Public Sound Broadcasting Services):

- * The SACP reserved its right to revisit the question as to what extent commercial broadcasters can be part of this if the Multi-Party Negotiating Process agrees to party political broadcasting and party political advertising.

5.2.5.9 With regard to Clause 18 (Equitable Treatment of Political Parties by all Broadcasting Services):

- * The Negotiating Council should return to the question of whether or not it wants to make a distinction between sound broadcasting and television with respect to party political broadcasts and political advertising.

5.2.5.10 With regard to Clause 25 (Regulations):

- * It was suggested that provision should be made in this clause for recommendations to also come from the TEC/Multi-Party Forum.

5.2.5.11 With regard to Clause 26 (Offences and Penalties):

- * It was suggested that the Technical Committee reconsiders the necessity of Item (a).
- * It was suggested that this Clause be re-examined by the Technical Committee in the light of the specific functions of this Commission.

5.2.5.12 It was suggested that the Planning Committee should give consideration to the fact that members of the Technical Committees were appointed in terms of their expertise and not as experts in drafting legislation. It was suggested that a gap existed in the Technical Committees with regard to expertise in drafting legislation.

5.2.5.13 With regard to Clause 29 (Short Title and Commencement):

- * It was suggested that the words "/Multi-Party Forum" be inserted after the word "Council".

5.2.6 The Bophuthatswana Government reserved its position with regard to any reference made to the Transitional Executive Council in the Draft Bill.

5.2.7 The Ciskei Government rejected the terms of the Act and did not support it.

5.2.8 It was noted that clauses were approved of and the whole issue would be revisited once redrafting had taken place.

6. Proposed Draft Agenda for the meeting of the Negotiating Council to be held on Tuesday 29 June 1993

6.1 A proposed draft agenda as put to the meeting was agreed upon (see Addendum B).

6.2 It was noted that adequate time would be given to participants to study the Seventh Report of the Technical Committee on Constitutional Issues.

6.3 It was noted that the meeting of the Negotiating Council on 29 June 1993 would commence at 10h00.

7. Closure

7.1 The Chairperson was thanked for the way the proceedings were conducted.

7.2 The meeting was closed at 21h00.

These minutes were ratified at the meeting of the Negotiating Council of 19 July 1993 and the amended version signed by the Chairperson of the original meeting on

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CHAIRPERSON

Addendum A

The following delegates and advisers were present at the meeting of the Negotiating Council on Monday 28 June 1993:

R Cronje : Chairperson

Organisation	Delegates	Advisers
ANC	C Ramaphosa B Kgosisile	PM Maduna M Manzini
AVU	CD de Jager J Gouws	MJ Mentz
Bophuthatswana	SG Mothibe R Mangope	
Cape Trad. Leaders	M Nonkonyana	DM Jongilanga GD Gwadiso
Ciskei	M Webb	TM Bulube IJ Smuts
DP	C Eglin M Finnemore	K Andrew AJ Leon
Dikwankwetla		
IFP	VJ Matthews FX Gasa	WS Felgate
IYP	NJ Mahlangu N Mtsweni	AP Laka Q Vilankulu
KP	SC Jacobs	C Uys CP Mulder
INM	MS Gininda	PMH Maduna GG Zama
Kwazulu		
Labour Party	L Landers C August	D Lockey
NIC/TIC	PJ Gordhan	K Mayet
NP	L Wessels TJ King	SJ Schoeman C Fisser
NPF	A Rajbansi	D Chetty J Bachu

Q77 Trad. Leaders	MB Mota	
PAC	E Sibeko	J Makhanda
Solidarity	K Moodley	
SACP	J Slovo L Jacobus	E Pahad S Shilowa
SA Government	RP Meyer	T Delpont AF Tredoux
Transkei	Z Titus N Jajula	
TVL Trad. Leaders	LM Mokoena	
UPF	MJ Mahlangu A Chabalala	RJ Dombo J Maake
Venda	SE Moeti	GM Ligege
XPP	MH Matjokana	

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