

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

MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 10h00 ON TUESDAY 27 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. Minutes

4.1 The minutes of the meeting of 19 July 1993 were adopted with the following amendments:

- * Item 5.1.4.9, the third asterisk refers: The word "considered" should read "consider";
- * Item 5.2.2.1, the second asterisk refers: The words "Bophuthatswana Government and the" should be inserted between the words "The" and "Ciskei".

4.2 The minutes of the meeting of 20 July 1993 were adopted with no amendments.

4.3 No matters arising were noted from the minutes of 19 and 20 July 1993.

4.4 The minutes of the Planning Committee of 28 June through to 1 July 1993 were distributed for noting.

Substantive Issues

5.1 Draft Legislation on the TEC and its Sub-Councils:

5.1.1 The Technical Committee was welcomed. Present were F Haysom (after lunch) and J Heunis. Apologies were noted from Z du Toit, E Mapheto, J Renene and D van Wyk.

5.1.2 The Technical Committee presented its report. It was agreed to deal with the Draft Bill clause by clause. Questions of clarity were addressed to the Technical Committee. The Technical Committee was requested to take note of views expressed in the meeting. It was assisted in this regard by the Secretary of the Technical Committee. During the discussion and debate the following was noted:

5.1.2.1 Item on Definition refers:

- * It was suggested that the definition of "Council" was incomplete.
- * It was suggested that the words "Transitional Authority" should be added with a stroke after the words "Transitional Executive Council" throughout the Draft Bill.
- * It was suggested that an abstract should be added.
- * It was suggested that words clearly defining the relationship between the Transitional Executive Council and the present authority were needed. Furthermore, that the powers of the Transitional Executive Council should be clearly stated.
- * The Bophuthatswana Government and the Ciskei Government stated that they would be unable to recognise this legislation.
- * The question of the role of Traditional Leaders in the Transitional Executive Council was raised for the Technical Committee to consider.
- * The Bophuthatswana Government and the Ciskei Government noted that with regard to the definition of "South Africa" they should not be included in the definition. Lengthy debate followed on this issue after which it was agreed

that the Planning Committee be mandated to look into:

- The issue of the TBVC States and proposed legislation, submitting recommendations with regard to process. Furthermore, it was suggested to identify the appropriate Technical Committee that should deal with the question of how to extend the application of the Bills that the Negotiating Council was dealing with.
- The issue of the future of TBVC States. The possibility of a multi-lateral ad-hoc committee to deal with this issue was suggested.

5.1.2.2 Item 2 "Establishment of the Transitional Executive Council" refers:

- * The Technical Committee was requested to consider the concept of the TEC with executive powers.
- * It was suggested that instead of only performing executive functions the TEC should have the power to stop legislation whenever/wherever necessary.

5.1.2.3 Item 3 "Objects of Council":

- * It was suggested that the word "facilitate" in the first sentence should be replaced by "ensure".
- * It was suggested that the words "regional/provisional" replace the word "regional" in the second line.
- * It was suggested that the words "inter alia" be added after the word "by" at the end of the last sentence in Item 3.
- * It was suggested that the words "creating conditions for" should be inserted after the word "facilitate" in the first sentence

of Item 3.

- * It was suggested that the word "administration" in Item 3 (a) (iv) be deleted.
- * It was suggested that Item 3 (a) (iv) should cover government agencies as well.
- * Greater clarity was requested on the words "prejudice any political party" in Item 3 (a) (iv).
- * The Technical Committee was requested to consider the concept of "private powers" with regard to Item 3 (a) (iv).
- * It was suggested that this Technical Committee should meet with the Technical Committee on the IEC to discuss areas of overlap.
- * It was suggested that Item 3 (b) should be reformulated.
- * It was suggested that a new Item 3 (c) should be added to this section to deal specifically with the levelling of the playing fields. It was suggested that Item 3 (a) (iv) would be more appropriately positioned under the proposed Item 3 (c).

5.1.2.4 Item 4 "Constitution of Council" refers:

- * It was suggested that the words "full-time" and "part-time" should be deleted in item (1). Other participants did not support this view.
- * It was suggested that the word "may" should be replaced with "shall" in Item (1).
- * It was suggested that it should be clearly stated in Item (1) that the State President

was bound by Item (3).

- * It was suggested that Item 4 (1) and (3) should form one item.
- * It was suggested that the wording of Item (1) should be reformulated to cover the concerns expressed in the meeting with regard to the State President and the appointment of members of the Council.
- * It was agreed that in Item (3) the word "recommendation" should be replaced by "advise". It was further suggested that this Item should be reformulated in such a way that the advice as referred to would be binding and obligatory.
- * It was suggested that in Item 2 the following words be added after the word "which" : "intends to participate in the election in its own name". Various other participants did not support this view.
- * It was suggested that the Technical Committee looks into the issue of binding members by the decisions of the council.
- * It was suggested that the Technical Committee reconsiders the wording of 4 (2) (b) and (c), taking into account the views and concerns expressed in the meeting.
- * Concerns were expressed with regard to the possible non-compliance by members of the Council. It was suggested that this issue may fall within the ambit of the Draft Bill on the Independent Electoral Commission.
- * It was agreed that Traditional Leaders should be fully represented on the Transitional Executive Council as would all other participants of the Negotiating Council. This should be clearly stated in

the definitions. Item (2) should then be reformulated.

- * It was suggested that the reference to "(2)" in Item (4) (a) should read "(2) (a)".
- * It was suggested that in Item (4) (a) the words "on good cause" be replaced by "with good reason".
- * With regard to Item (5) (a) the Technical Committee was requested to consider the concept of an alternative member instead of a substitute member.
- * It was agreed that the word "which" in Item (6) should read "who".
- * Various concerns were expressed by some participants with regard to Item (6). Other participants did not agree.

The meeting adjourned for lunch at 12h50.

The meeting reconvened at 14h00.

5.1.2.5 Item 5 "Vacation of office, removal from office and filling of vacancies in Council":

- * The Technical Committee was requested to consider the criteria for consideration, taking into account the discussion in the meeting.
- * Questions of clarity were addressed to the Technical Committee.
- * It was suggested that Item 5 (1) should be reformulated to state that the advice comes from the Council and not from the government or the political party concerned.
- * It was suggested that the Technical

Committee should consider if any provision for substitutes should be made in this section.

5.1.2.6 Item 6 "Remuneration, allowances and conditions of service of members of Council and Subcouncils" refers:

- * It was suggested that the words "Transitional Executive Council" be inserted after the word "Process" in the third line.

5.1.2.7 Item 7 "Powers of Council":

- * It was suggested that the compulsion for disclosure should be stated in this item. The item should contain the words "to demand and obtain all such information, including records". It was further suggested that instead of the word "demand" being used the word "request" should be used.
- * It was suggested that a further sub item should be added dealing with the performance of other functions which may be entrusted to the TEC.
- * The questions of the TEC's powers of enforceability and its actual powers were raised. This issue should be considered by the Technical Committee in its entirety, taking into account the views expressed in the meeting.
- * It was agreed that in dealing with the full effective powers of the TEC, the Sub-Council powers should first be reconsidered and then the issue of the powers of the TEC be revisited.

5.1.2.8 Item 8 "Establishment of Subcouncils":

- * It was suggested that the words "Provincial Government" be inserted after the words "Regional" in Item 8 (a).

* It was suggested that "Regional Governments" and "Homeland Governments" should be clearly defined.

* A Subcouncil on Traditional Law was suggested. It was further suggested that the Subcouncil on Regional and Local Government should be expanded to include areas where traditional law exists and its terms of reference also be expanded to level the playing fields in these areas. This issue was referred to the Technical Committee for consideration, taking into account the views expressed in the meeting.

5.1.2.9 Item 9 "Constitution of Subcouncils":

* It was suggested that the State President should appoint the members of the Subcouncil on the advice of the Council and not only on the recommendation of the Council (Item 9 (2) refers). The binding effect of the advice of the Council on the State President should be clearly stated.

* The Technical Committee gave notice that it would revisit the issue of the appointment of members to Subcouncils.

* It was suggested that Item 9 (1) (a) and (c) be merged into one item.

* It was suggested that the Technical Committee revisits the issue of substitution as referred to in Item (4).

* It was suggested that Item 9 (2) should be reformulated to read "The members of a subcouncil shall be appointed by the State President by proclamation in the Gazette and he shall be bound by the recommendation of the Council".

5.1.2.10 Item 10 "Vacation of office, removal from office and filling of vacancies in subcouncils"

refers":

No comments were noted.

5.1.2.11 Item 11 "Remuneration and allowances and conditions of service of members of subcouncils":

No comments were noted.

5.1.2.12 Item 12 "Powers of Subcouncils" refers:

* It was suggested that Item 12 be reformulated to clearly state the intention.

* It was suggested that the question of the powers of the Council and the status of decisions of the Council should be dealt with in an introductory paragraph under this item.

* "Powers and functions in regard to Regional and Local Government" refers:

○ It was suggested that the Technical Committee amends the phraseology with regard to the introductory paragraphs dealing with the powers subcouncils exercise. It should be clear that the TEC has the final say in respect of the powers.

○ Extensive clarificatory questions were put to the Technical Committee on this Item.

○ It was suggested that the words "inter alia" be added in Item 12A (d) in the second line after the word "including".

○ It was suggested that the Technical Committee finds a way of dealing with the issue of Traditional Law together with

Roman Dutch Law in Item 12A (b) if applicable to the levelling of the playing fields.

- It was suggested that Item 12A (c) overlapped with the powers of the IEC.
- It was suggested that in Item 12A (e), the word "initiate" should be deleted and replaced by "make".
- It was suggested that in Item 12A (e) that the word "initiate" be deleted and replaced with "make".
- It was suggested that throughout the Bill where the word "regional" appeared the words "provincial government" should be added.
- It was suggested that the words "interim provincial executive structures" be inserted after the words "local government structures".
- It was suggested that an additional paragraph be added to deal with the issue of domestic or international borrowing by the SPR's.
- It was suggested that with regard to Item 12A (f), this should be done in consultation or with approval of the Council.
- It was suggested that for clarity a definition should be included for "regional government" and it should be stated that this definition includes provinces, TBVC States and Self-governing territories.

5.1.2.13

12B "Powers and functions in regard to Law and Order, Stability and Security" refers:

- * It was suggested that this sub-council should be able to specifically request and receive information regarding the work it has to do. This should be clearly stated.
- * It was suggested that the word "reasonable" in Item 12B (b) should be deleted.
- * It was suggested that the words "inter alia" be inserted after the word "authority" in Item 12B (1) (b).
- * It was suggested that the Technical Committee considers rewording the last two lines of Item 12B (1) (b) so that it is clear that the "documents" relate only to the objects of the Council.
- * It was suggested that the concept of full disclosure should be applicable to Item 12B (1) (d).
- * It was suggested that a single command structure was essential to this sub-council. The ANC made a submission to the Technical Committee in this regard.
- * It was suggested that the words "full pay" be deleted in Item 12B (l).
- * It was suggested that the words "and other appropriate structures of the National Peace Accord" be inserted after the word "Secretariat" in Item 12B (m).
- * It was suggested that with regard to Item 12B (2) the determination should be within a prescribed period.
- * It was suggested that the word "civilian" should be inserted between the words "the" and "Members" with regard to Item 12B (3).

- * It was suggested that the Technical Committee revisit the issue of how the relationship between the sub-council and the TEC would function in terms of decision-making and the receiving of information (Item 12B (7) referred).
- * It was suggested that the following should be added as a new subsection of section 12B to read "Notwithstanding any other law the police forces shall be bound (by any regulation governing police conduct issued by the Independent Electoral Commission, by any directive regulation or order issued by the appropriate authority governing the operation of the National Peace-keeping force and) in regard to the conduct or deployment of their members in any capacity relating to paragraph 1 (c) [of the committee's first report] to any order or directives issued by the sub-council."
- * With regard to the whole of 12B, clarity was requested with regard to the decision making process.

5.1.2.14

12D "Powers and functions with regard to Finance" refers:

- * Item 12D (1) (a) refers: It was suggested that the Sub-Council should be informed about recent economic development and not have to acquaint itself.
- * It was suggested that the words "and to monitor and to investigate any expenditure of public funds, either itself or through appropriate forensic accountants" be added to the end of Item 12D (1) (c).
- * It was suggested that with regard to Item 12D (1) (e) the sub-council should not only recommend.

- * It was suggested that the words "and initiate" be inserted between the words "require" and "an" in Item 12D (1) (f).
- * It was suggested that an additional item be added under Item 12D (3) to read "Including any matter relating to the preparation of the budget".
- * It was suggested that Item 12D (4) should be reworded to accommodate the concept that any posts that there are to be filled should be done with the TEC.
- * It was suggested that there should be no change to the regulations of retirement and the offering of retirement packages in terms of the changed rules without that information being given to the sub-council. It was suggested that the Technical Committee should build this into Item 12D (4).
- * It was suggested that the level of the director as referred to in Item 12D (4) should be reconsidered to be assistant director.
- * It was suggested that the Technical Committee should find a way to ensure that the Government is not able to enter into any agreements which may benefit it in the electoral process, so therefore the TEC should have a say with regard to Item 12D (5).
- * Clarity was requested on the relationship between the Government and the TEC with regard to the decision making process (Item 12D (5) refers).
- * It was suggested that the following words be added under Item 12D as (6) to read "The Sub-Council shall scrutinize and approve the transfers of public funds as between the South African Government, the self-governing territories, and the

TBVC States, regardless of the department from which transfers are made."

- * It was suggested that the following words be added under Item 12D as (7) "The Sub-Councils shall be provided with full details regarding domestic borrowing, including borrowing by para-statal organisations."

5.1.2.15 12E "Powers and Functions in regard to Foreign Affairs" refers:

- * It was suggested that the words "and with the agreement of the sub-council on Finance" be added to the end of Item 12E (c).

5.1.2.16 12F "Powers and functions in regard to the Status of Women" refers:

- * The formation of this sub-council was supported by various participants.
- * It was suggested that every sub-council considers the status of women within the ambit of its functions and objects.

5.1.2.17 13 "Application of the Act" refers:

- * No comments were noted.
- * Questions of clarity were addressed to the Technical Committee with regard to the TBVC states.

5.1.2.18 14 "Duties of governments and political parties" refers:

- * It was suggested that the scope of the objects of the Council should be expanded (Item 14 (1) (a) refers).
- * It was suggested that objects and functions should be covered in Item 14

(2) (a) and (b).

- * The Technical Committee was requested to look into the issue of sanctions. The ANC was specifically requested to make submissions to the Technical Committee on this issue.

5.1.2.19 15 "Duties of Council and Sub-Councils" refers:

- * It was suggested that all accounts, secret or otherwise, should be open to the TEC and its sub-councils.

5.1.2.20 16 "Resolution of disputes" refers:

- * It was suggested that the TEC should not refer issues for adjudication to the IEC. It was further suggested that another body should be considered such as an election tribunal. Other participants did not support this view. The Technical Committee was requested to reconsider this issue, taking into account the different points of view expressed in the meeting.

5.1.2.21 17 "Meetings of the Council" refers:

- * It was suggested that the Multi-Party Negotiating Process should convene the first meeting of the Council.
- * It was suggested that the procedure with regard to a proclamation be revisited by the Technical Committee.
- * Item 17 (4) (a) refers: With regard to the election of a secretary, it was suggested that the TEC be given discretion and flexibility in this regard.
- * It was suggested that instead of a secretary as referred to in Item 17 (4) (a) that a Daily Management Committee be utilised.

- * It was suggested that Item 17 (6) should be reformulated by the Technical Committee, taking into account the views expressed in the meeting.

5.1.2.22 18 "Decisions" refers:

- * It was suggested that instead of 80% as referred to in Item 18 (1) (b), the percentage should be 66.6%.
- * It was further suggested that the figure should be higher rather than lower.
- * It was suggested that the words "present and voting" should be accommodated in Item 18 (1) (b).
- * It was suggested that the words "absent without prior leave" should be accommodated in Item 18 (2). It was further suggested that the words "without good cause" be added into the formulation.

5.1.2.23 19 "Amendment of Act" refers:

- * It was again noted that the State President would not be able to introduce any amendments with relation to this act without the authorisation of the TEC.

5.1.2.24 20 "Short title and commencement" refers:

- * It was suggested that the words "upon the advice of the Negotiating Council" to be inserted after the word "President".

5.1.3 The Bophuthatswana Government reserved its position with regard to the whole report.

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

● **Meetings Schedule**

The meetings schedule as proposed was agreed to (see Addendum B).

7. **Closure**

- 7.1 The Chairperson was thanked for the way the days proceedings were handled.
- 7.2 The meeting was closed at 18h15.

These minutes were ratified at the meeting of the Negotiating Council of 3 August 1993 and the amended version signed by the Chairperson of the original meeting on ...*4 August 1993*.....



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CHAIRPERSON

Addendum A

The following delegates and advisers were present at the meeting of the Negotiating Council on Tuesday 27 July 1993:

MJ Mahlangu : Chairperson
R Cronje : Assistant to the Chairperson

Organisation	Delegates	Advisers
ANC	C Ramaphosa B Kgosisile	M Manzini S Nyanda
AVU	M Mentz C Kruger	AJJ van Rensburg JR de Ville
Bophuthatswana	BE Keikelame R Mangope	SG Mothibe
Cape Trad. Leaders	GD Gwadiso SN Sigcau	DM Jongilanga
Ciskei	M Webb VT Gqiba	TM Bulube IJ Smuts
DP	C Eglin D Smuts	K Andrew
Dikwankwetla	SOM Moji K Ngwenya	JSS Phatang
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	J Douw PAC Hendrickse
NIC/TIC	PJ Gordhan	K Mayet C Saloojee
NP	D de Villiers TJ King	JA Rabie

PP

	A Rajbansi S Naidoo	BP Jaglal
OFS Trad. Leaders	M Moroke MB Mota	RH Mopeli MA Molefe
PAC	P de Lille B Alexander	B Desai R Sizani
Solidarity	DS Rajah	JV Iyman P Naidoo
SACP	J Slovo L Jacobus	E Pahad
SA Government	RP Meyer LR Brink	
Transkei	Z Titus N Jajula	
TVL Trad. Leaders	LM Mokoena FF Kekana	MA Netshimbupfe NE Ngomane
UPF	A Chabalala	RJ Dombo
Venda	SE Moeti AK Masehela	GM Ligege S Makhuvha
XPP	PT Shiluvana EE Ngobeni	

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