

THESE DRAFT MINUTES ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE NEGOTIATING COUNCIL. THE MINUTES ARE STILL TO BE RATIFIED AT THE NEXT MEETING OF THE NEGOTIATING COUNCIL.

DRAFT MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 11h00 ON TUESDAY 28 SEPTEMBER 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

3.1 The agenda was ratified with the following amendments:

- * Item 6.1 to read "A discussion on the Explanatory Memorandum on progress for the Constitution for the Transition".
- * Item 6.2 to read "13th Report of the Technical Committee on Constitutional Issues".
- * Item 6.3 to read "Discussion on the 4th Supplementary Report of Constitutional Principles".

3.2 The NPP requested that the following item be added to the agenda to read "Aspects of hasty actions with regard to amalgamation of local governments which might have an effect on the levelling of the playing fields". After discussion it was agreed that this issue be referred to the Planning Committee to be dealt with initially.

4. Minutes

4.1 The minutes of the meeting of 30 August 1993 were ratified with no amendments.

- 4.2 The minutes of the meeting of 31 August 1993 were ratified with no amendments.
- 4.3 The minutes of the meeting of 1 September 1993 were ratified with no amendments.
- 4.4 The minutes of the meeting of 2 September were ratified with no amendments.
- 4.5 The minutes of the meeting of 7 September 1993 were ratified with the following amendments:
- * Item 6.1.50, the tenth asterisk refers: The words "policing forces" should read "military forces and policing agencies".
 - * Item 6.1.53, the third asterisk refers: "66.6%" should read "two-thirds".
- 4.6 No matters arising were noted out of the minutes of 30 August 1993, 31 August 1993, 1 September 1993, 2 September 1993 and 7 September 1993.

5. **Planning Committee Reportback**

5.1 **Presentation of Bibles:**

M Webb, the current Planning Committee Chairperson, reported that an organisation distributing Bibles had made a number of Bibles available to delegates.

5.2 **Kwazulu Government Court Action:**

It was noted that the written judgement had been distributed and that the matter was, therefore, now finalised.

5.3 **Constitutional Issues:**

5.3.1 It was noted that in future submissions received will again be distributed to delegates.

5.3.2 It was further noted that the Planning Committee had agreed to encourage participants to focus their bilateral meetings on SPR issues for completion within a week.

5.3.3 An Ad-Hoc Committee consisting of R Cronje, PJ Gordhan and Z Titus would meet with a delegation of the National Electrification Forum.

5.3.4 Various issues related to Section 119 of the Draft Constitution will be dealt with at a later stage.

5.4 Task Group on the Delimitation/Demarcation of Regions:

It was noted that this Task Group was scheduled to have completed its work by 15 October 1993.

5.5 Implementation of the Four Draft Bills:

It was noted that a report was being prepared and would be presented to the Negotiating Council at a later stage.

5.6 Report on the Processing of Draft Bills through Parliament:

Z Titus, on behalf of the Task Group, gave a report. It was noted that all Draft Bills had been approved and only technical amendments were made by the State Law Advisors. A written report would be given to the Negotiating Council concerning the monitoring of other proposed legislation to serve before the November session of Parliament.

5.7 Commission on National Symbols:

It was noted that the deadline for submissions was 13 October 1993, with the report of the Commission submitted to the Negotiating Council on 20 October 1993.

5.8 Task Group on the Repeal or Amendment of Discriminatory Legislation:

This Task Group was at present proceeding with its work. The TBVC States were requested to submit names of Department of Justice representatives to assist in this regard.

5.10 Technical Committee on Violence:

It was noted that this Technical Committee was proceeding with a further report.

6. Substantive Issues

6.1 Discussion on the Explanatory Memorandum on progress on the Constitution for the Transition:

6.1.1 The Technical Committee on Constitutional Issues was welcomed. Present were A Chaskalson, E Moseneke, B Ngoepe, M Olivier, W Olivier, F Venter and M Wiechers.

Apologies were noted from GE Devenish.

6.1.2 The Administration gave an overview of the document. The Technical Committee then proceeded to deal with the document in depth. During the course of the presentation by the Technical Committee the following was noted:

6.1.2.1 It was noted that the outstanding Constitutional Principle relating to Self-Determination should be included in Addendum A of the report.

6.1.2.2 Clause 6 refers : The political question around the TBVC States still had to be dealt with by the Negotiating Council.

6.1.2.3 Schedule 5 refers : The Technical Committee suggested that Schedule 5 would have to be revisited in relation to the Draft Electoral Bill.

6.1.3 After the presentation of the document, questions of clarity were put to the Technical Committee.

6.1.4 The question of citizens of the TBVC States and the upcoming election was raised. It was noted that the present legal position was that citizens of the TBVC States would not be able to vote in a South African election unless South African citizenship was restored. It was suggested that if the TBVC States were not incorporated into the Republic of South Africa at the time of the upcoming election, a provision should be made in the Constitution to allow citizens of the TBVC States to vote if they so wish.

6.1.5 It was noted that the Planning Committee would be meeting with representatives of the Traditional Leaders to deal with concerns expressed by the Traditional Leaders.

6.1.6 The Technical Committee and the Administration was thanked for this report. It was noted that the report would be updated as progress was achieved.

6.2 **13th Report of the Technical Committee on Constitutional Issues:**

6.2.1 The Technical Committee presented its 13th Report to the meeting.

6.2.2 It was noted that the draft text provided was to facilitate the debate and to provide a broad framework for discussion.

6.2.3

The meeting proceeded to deal with the Addendum and to seek clarity on each clause.

- * It was suggested that clause 140 (2) should make provision for the prohibiting of re-arrangement of local government boundaries outside the LGNF.
- * It was suggested that one of the functions of Commission on SPR government should be to consider local government boundaries and the issues relating to sub-section (3).
- * It was noted that metropolitan government was part of third tier government and should be treated as such.
- * It was noted that local government authorities should promote the well-being of residents within the areas of their competence allocated by the Constitution and other laws.
- * Sub-section (8) refers: It was suggested that the regional interest should also be taken into account.
- * Sub-section (9) refers: It was suggested that, instead of a local authority going directly to the Constitutional Court, it should have mechanisms available to approach regional or national government.
- * Sub-section (9) refers: The Technical Committee was requested to consider whether the word "competences" is sufficiently broad and whether it should not include the concept of rights. Furthermore, the Technical Committee was requested to consider making provision for the competences concerned.

The meeting adjourned at 13h15.

The meeting reconvened at 14h35.

6.2.4

It was agreed that, having completed questions of clarification, the Addendum would now be discussed and debated clause by clause. It was noted that this was an initial debate and that the clauses would be revisited at a future meeting of the Negotiating Council.

- 6.2.5 Until the role of Traditional Leaders had been resolved, it was noted that the Cape Traditional Leaders reserved its position.
- 6.2.6 It was suggested that broader input, specifically from the Local Government Negotiating Forum (LGNF), should be obtained for this chapter. It was noted that the liaison committee would be meeting with the LGNF the following day and that a report would then be submitted to the Negotiating Council. It was further suggested that a mechanism was needed to link the LGNF process into the Transitional Constitution. It was, finally, suggested that all structures dealing with local government should be encouraged to make submissions on this issue.
- 6.2.7 It was suggested that the South African Government should, through the Ministry of Local Government halt all unilateral amalgamation of any local government bodies. It was further suggested that a resolution should be drafted by the Planning Committee in this regard.
- 6.2.8 It was suggested that as some of the issues had been raised in the LGNF, discussion should be deferred and interaction between the Technical Committee and the LGNF allowed to take place first.
- 6.2.9 It was noted that this chapter on local government should be seen as an enabling one, which would provide a framework for any eventuality and that there should be a distinction between the provisions of this chapter on the one hand and what might be necessary between now and the elections, on the other. It was, therefore, necessary to find some link between the Subcouncil on Local Government and the LGNF in order to prevent a void occurring.
- 6.2.10 It was suggested that SPR Legislatures should do the bulk of work with regard to local government and that, therefore, interim measures should not encroach upon the authority of SPR's to determine the local government dispensation after the election.
- 6.2.11 Clause 140 (4) refers: It was agreed that the word "income" should be changed to "finance".
- 6.2.12 Clause 140 (5) refers: It was noted that there was no possibility that this clause could entrench apartheid at local government level, because that would be against the Constitutional Principles and the Bill of Rights.

- 6.2.19 Clause 140 (6) refers: It was noted that this clause constitutionalises or entrenches procedural justice in ordinary administrative law and that this clause was necessary because there was no pre-existing right in this regard. After lengthy discussion it was agreed that the question of empowering somebody or some structure to limit the capacity of anyone to amend the status of a local authority, should be kept in abeyance until the report was discussed at a future meeting of the Negotiating Council.
- 6.2.20 No comments were noted on clause 140 (7).
- 6.2.21 Clause 140 (8) refers: The Technical Committee was requested to reconsider the use of the word "conduct" in the last line.
- 6.2.22 No comments were noted on clause 140 (9).
- 6.2.23 Clause 141 (1) refers: The Technical Committee was requested to reconsider this clause taking into account the views expressed in the meeting.
- 6.2.24 Clause 141 (2) refers: It was noted that the words "equitable allocation" refer to the use of own sources. It was further noted that a distinction should be made between the principle of equitable allocation on the one hand and the purpose for which it might be used on the other.
- 6.2.25 Clause 142 refers: It was noted that the words "subject to any changes lawfully made by a competent authority" are ambiguous. The Technical Committee was requested to investigate this. It was further suggested that the clause should include some reference to sub-sections (5), (6) and (8).
- 6.2.26 In response to a query that Chapter 10 did not address the question of Tribal Authorities, the Technical Committee pointed out that recommendations from the Planning Committee were awaited in this regard.
- 6.2.27 It was agreed that the Planning Committee should look into a holistic mechanism which would cater in the first instance, for transitional measures between the present and the coming election, and in the second instance, for provisions in the transitional constitution and submit recommendations to the Negotiating Council, which recommendations might also facilitate the work of the LGNF. It was suggested that, as the LGNF does not represent all local structures, other bodies should also be contacted in this regard.

6.2.28 It was agreed that the Planning Committee furthermore looks into the issue of unilateral restructuring or amalgamation at local government level. A draft resolution in this regard was submitted by the NPP (see Addendum B).

6.3 Fourth Supplementary Report on Constitutional Principles:

It was agreed that, since clause 118 of the Draft Constitution and certain Constitutional Principles overlap, the Council would discuss this report at a later stage.

6.4 With regard to the partial implementation of the Draft Constitution prior to elections, it was noted that this was possible and a matter of legal technicality. This would have to be addressed in a way that covered the needs of participants with regard to the participation of citizens in the election.

6.5 The Technical Committee was requested to consider the need to amend certain existing legislation (for example privileges and immunities legislation) in this regard.

7. Meetings Schedule and Draft Programme

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

8. Closure

The meeting adjourned at 16h15.

These minutes were ratified at the meeting of the Negotiating Council of 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 28 September 1993:

PJ Gordhan : Chairperson
L Landers : Assistant Chairperson

Organisation	Delegates	Advisers
ANC	C Ramaphosa	M Manzini MV Moosa
AVU	A Pienaar C Kruger	AJ Horn S Burger
Bophuthatswana	R Mangope R Cronje	BE Keikelame SG Mothibe
Cape Trad. Leaders	M Nonkonyana	GD Gwadiso DM Jongilanga
Ciskei	M Webb VT Gqiba	TM Bulube AC Cilliers
DP	C Eglin D Smuts	KM Andrew AJ Leon
Dikwankwetla	SOM Moji	TJ Mohapi
IFP		
IYP	NJ Mahlangu NS Mtsweni	AP Laka
KP		
INM	SS Ripinga ND Mokoena	MS Gininda GG Zama
Kwazulu		
Labour Party	CC August I Richards	J Douw
NIC/TIC	B Pillay	K Mayet
NP	D de Villiers TJ King	L Wessels
NPP	A Rajbansi L Singh	B Singh G Chetty
OFS Trad. Leaders	MA Molefe RH Mopeli	MB Mota

PAC

P de Lille
B Desai

L Makhanda
M Shinnars

Solidarity

DS Rajah
K Moodley

AS Razak

SACP

J Slovo
L Jacobus

E Pahad

SA Government

RP Meyer
LR Brink

JT Delpont

Transkei

Z Titus
N Jajula

R Nogumla

TVL Trad. Leaders

LM Mokoena

NE Ngomane
MA Netshimbupfe

UPF

A Chabalala
MJ Mahlangu

J Maake
RJ Dombo

Venda

SE Moeti

S Makhuvha
GM Ligege

XPP

PT Shilubana

GNK Hetisani
EE Ngobeni

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

DRAFT RESOLUTION

**UNILATERAL RESTRUCTURING/AMALGAMATION
AT LOCAL GOVERNMENT LEVEL**

The Multi-Party Negotiating Council;

Having noted:

the progress made in respect of proposed establishment of Democratic Local Government at this Council and also at the Local Government Negotiating Forum

and

Believing:

that any unilateral restructuring/amalgamation of local authorities would be detrimental to the negotiation process and can have a negative impact on the levelling of playing fields

Therefore resolves:

that the South African Government, through its Provincial Executive Committee immediately halts all unilateral restructuring/amalgamation of local authorities such as what is happening in respect of the proposed amalgamation of the borough of Unhlanga, the area of Town Board of Umhloti Beach and Glen Anil (all so-called White Areas) to the detriment of the adjacent areas such as Verulam, Amontama, Amoaxi, Osindisweni in Natal (all so-called Non-White Areas).

DRAFT PROGRAMME FOR MEETINGS

28 SEPTEMBER 1993

Tuesday 28 September 1993	Discussion:	*	Constitutional Issues
Wednesday 29 September 1993	Discussion:	*	Electoral Act
Tuesday 5 October 1993	Discussion:	*	Constitutional Issues
Wednesday 6 October 1993	Discussion:	*	Electoral Act
Thursday 7 October 1993	Discussion:	*	Constitutional Issues
Tuesday 12 October 1993	Discussion:	*	Constitutional Issues
Wednesday 13 October 1993	Discussion:	*	Electoral Act
Thursday 14 October 1993	Discussion:	*	Constitutional Issues

REVISED PROPOSED SCHEDULE OF MEETINGS

28 SEPTEMBER 1993

Planning Committee	Tuesday 28 September 1993	08h30-10h00
Negotiating Council	Tuesday 28 September 1993	10h00-20h00
Negotiating Council	Wednesday 29 September 1993	11h00-18h00
Planning Committee	Wednesday 29 September 1993	18h00-19h00

Bilateral Meetings	Thursday 30 September 1993	08h30-16h30
Bilateral Meetings	Friday 1 October 1993	
Bilateral Meetings	Saturday 2 October 1993	
Bilateral Meetings	Monday 4 October 1993	

Planning Committee	Tuesday 5 October 1993	08h30-11h00
Negotiating Council	Tuesday 5 October 1993	11h00-20h00
Negotiating Council	Wednesday 6 October 1993	11h00-20h00
Negotiating Council	Thursday 7 October 1993	08h30-18h00

Planning Committee	Tuesday 12 October 1993	08h30-10h00
Negotiating Council	Tuesday 12 October 1993	10h00-20h00
Negotiating Council	Wednesday 13 October 1993	11h00-20h00
Negotiating Council	Thursday 14 October 1993	08h30-18h00

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.