

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

**MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 09H00 ON TUESDAY 24 AUGUST 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**

It was noted that minutes would be distributed on Wednesday 25 August 1993 for ratification at the next meeting of the Negotiating Council.

**5. Combined Reports of the Technical Committee on Constitutional Issues - 20 August 1993:**

5.1 The Technical Committee on Constitutional Issues was welcomed. Present were A Chaskalson, GE Devenish, E Moseneke, B Ngoepe, W Olivier, F Venter, M Wiechers and M Olivier. The meeting proceeded along the basis of the Proposed Agenda as submitted by the Technical Committee.

5.2 Overview of Reports (Par 1 - 4 of 10th Report):

The Technical Committee presented an overview of the reports which was noted by the Negotiating Council.

5.3 Matters to be dealt with by the Planning Committee/Negotiating Council (Par 5 of 10th Report):

- 5.3.1 It was noted that the Planning Committee had recommended that bilaterals and/or multilaterals take place between participants on the listed items. The Planning Committee would, review the progress of the bilaterals and/or multilaterals on Thursday 26 August 1993. The Administration was requested to distribute a copy of the issues identified by the Planning Committee to be discussed at a bilateral and/or multilateral level.
- 5.3.2 It was noted that a Commission had been set up to deal with Item 5.2. of the Report. Participants were requested to supply the Planning Committee with CV's of their nominees for the Commission. The Planning Committee would submit a recommendation to the Negotiating Council on the composition of the Commission before the end of the week.
- 5.3.3 It was noted that item 5.3 was being dealt with on a bilateral and/or multilateral level.
- 5.4 Further preparatory legislation to be dealt with by the MPNP (Par 6 of the 10th Report):
- 5.4.1 The Technical Committee presented an overview of this item to the meeting. The Technical Committee requested instructions from the Negotiating Council on items 6.2 and 6.3.
- 5.4.2 Discussion followed. It was noted that, in order for Parliament to be able to promulgate the draft legislation on TEC, IEC, IMC and IBA, the latest date for completion of these bills in the Council is the end of the week of 23 August 1993 or at the latest Tuesday 31 August 1993. With regard to the Draft Interim Constitution, the deadline for its submission to the Parliamentary session at the end of October, is the end of September 1993. It was agreed that time was of the essence.
- 5.4.3 It was suggested that the Planning Committee considers the issue of how legislation agreed upon in the negotiating process is put through Parliament (timeously). Furthermore, the full programme should be worked out.
- 5.4.4 It was agreed that the Technical Committee, in consultation with the Planning Committee, was mandated to deal with items 6.2 and 6.3. The Technical Committee was mandated to extend its composition if necessary. The Technical Committee was also mandated to take into consideration the report of the ad-hoc committee on the TBVC States.
- 5.4.5 It was noted that item 6.3 would be revisited when item 7.15 was dealt with.

5.5 The constitutional text:

5.5.1 Chapters 1, 2 and 3 of the Draft (par 7.1, 7.2 and 7.3 of the 10th Report):

5.5.1.1 The Technical Committee presented an overview to the meeting. Questions of clarity were put to the Technical Committee. Discussion followed.

5.5.1.2 The principle that the Constitution is the supreme law of the land was agreed upon.

5.5.1.3 Item 7.1 of the 10th Report was noted by the Council.

5.5.1.4 It was suggested that with regard to section 5 (3) and 34 (1), reconciliation should be effected by the Technical Committee with regard to the limitation of the powers of Parliament.

5.5.1.5 After discussion it was agreed that the Technical Committee on Constitutional Issues and the Technical Committee on Fundamental Human Rights discuss items 5 (3) and 20 and the Technical Committee on Constitutional Issues would report back to the Negotiating Council with a recommendation.

5.5.1.6 It was agreed that the debate on item 7.3 would take place when the Technical Committee on Fundamental Human Rights during the Transition next appeared before the Council.

5.5.2 The legislature and the constitution-making process (par 7.4 - 7.9 of the 10th Report):

5.5.2.1 Delegation by Parliament (section 38 (2) of the Draft)

\* The Technical Committee presented an overview of this item to the meeting. Questions of clarity were put to the Technical Committee. Discussion followed.

\* It was suggested that an Act of Parliament should provide for delegation of powers.

\* It was agreed that the provision in sec. 38 (2) not be deleted.

5.5.2.2

The electoral system (par 7.22 of the 10th Report and Schedule 5 of the Draft):

- \* The Technical Committee presented an overview of this item to the meeting. Questions of clarity were put to the Technical Committee. Discussion followed.
- \* It was suggested that the Electoral Act would take its cue from the Constitution which is the supreme law.
- \* It was noted that this section had been referred to the Technical Committee on the Independent Electoral Commission. The Technical Committee on the Independent Electoral Commission would liaise with the Technical Committee on Constitutional Issues with regard to this item. When a further report had been received from the Technical Committee on the Independent Electoral Commission this item would be revisited.
- \* The PAC reserved its position on regional lists.
- \* It was suggested that the word "registered" should be inserted after the word "such" in item 6 of Schedule 5.
- \* It was suggested that Negotiating Council participants should canvas the question of a single vote or more than one vote.
- \* It was suggested that the 50 000 referred to in item 11 of schedule 5 should be 30 000.
- \* It was suggested that item 13 of schedule five violated the secrecy of the ballot. The PAC reserved its position on this item.

The meeting adjourned for lunch at 13h15.

The meeting reconvened at 13h25.

- \* It was suggested that the Technical Committee

should consider a system where the rights of the individual are catered for when voting.

- \* It was suggested that item 13 of schedule 5 should be reformulated taking into account the views expressed in the meeting.
- \* It was also suggested that item 13 should be deleted.
- \* It was further suggested that with reference to item 13 schedule 5, the system of voting for the first election should be as simple as possible.
- \* It was noted that the PAC reserved its position on item 40 and that the DP opposed section 40.
- \* After lengthy debate it was agreed to refer schedule 5 back to the Technical Committee. The Technical Committee should liaise with the Technical Committee on the Independent Electoral Commission with regard to schedule 5 and in particular item 13. The Technical Committee was requested to take note of all the views expressed in the meeting.
- \* It was suggested that participants should consult with their principals on this issue.
- \* It was suggested that bilateral discussions should occur with regard to schedule 5.

5.5.2.3 "ordinarily resident" (par 7.5 of the 10th Report):

- \* The Technical Committee presented an overview of this item to the meeting. Questions of clarity were put to the Technical Committee. Discussion followed.
- \* It was agreed to accept the recommendation of the Technical Committee on this issue.
- \* The AVU agreed with the recommendation on the condition that clarification of the process in the Electoral Act was received.

5.5.2.4 "anti-defection" (par 7.6 of 10th Report and Tenth

Schedule of the Indian Constitution {attached to 10th Report}):

- \* The Technical Committee presented an overview of this item to the meeting. Questions of clarity were put to the Technical Committee. Discussion followed.
- \* It was suggested that the anti-defection clause was too rigid and that, as both stability and flexibility were needed, the clause should be reformulated.
- \* Various participants supported the view that the clause should be deleted while various participants supported the view that the clause should be retained.
- \* It was agreed to retain clause 43 (1) (b) without qualifications and safeguards. The AVU and the DP noted their objections to this decision.

5.5.2.5 Filling of vacancies in a PR system (par 7.7 of 10th Report):

- \* The Technical Committee presented an overview of this item to the meeting. Questions of clarity were put to the Technical Committee. Discussion followed.
- \* It was agreed to accept clause 43 (2).

5.5.2.6 Single transferable vote (par 7.8 of the 10th Report):

- \* The Technical Committee presented an overview of this item to the meeting. Questions of clarity were put to the Technical Committee. Discussion followed.
- \* It was agreed to accept clause 47 (2) as amended by the Technical Committee and to refer the relevant issue to the Technical Committee on the Independent Electoral Commission.

5.5.2.7 Conflict between the Houses of Parliament (par 7.9 of the 10th Report):

\* The Technical Committee presented an overview of this item to the meeting. Questions of clarity were put to the Technical Committee. Discussion followed.

\* It was agreed to accept clause 58 (3) as drafted.

5.5.2.8 Oaths and Affirmations of Office (Schedule 6 of the Draft):

\* The Technical Committee presented an overview of this item to the meeting. Questions of clarity were put to the Technical Committee. Discussion followed.

\* With regard to the oath of affirmation by members of Parliament or SPR Legislatures, it was suggested that the Technical Committee include the concept of respecting and upholding the constitution and all the laws of the Republic of South Africa as is contained in the case of the State President. The Technical Committee noted that it will make provision for this point in the next draft.

\* It was agreed to accept schedule 6 with the inclusion of the above suggestion.

5.5.2.9 Proposed amendments to sections 39, 42, 43, 46, 48, 53, 54 and 60:

\* The Technical Committee presented an overview of this item to the meeting. Questions of clarity were put to the Technical Committee. Discussion followed.

\* It was agreed to accept section 39 as amended.

\* It was suggested that a further qualification should be added in item 42 along the lines of "No person may become a member of the national assembly if or unless he/she does not qualify as a voter as set out in clause 6".

\* It was agreed that in clause 42 (1) (a) the words "nomination or" should be deleted.

- \* The Technical Committee was requested to reconsider clause 42 (1) (a) taking into account the views expressed in the meeting. Participants should make submissions on this issue to the Technical Committee.
- \* The amendments as suggested by the Technical Committee in clause 42 were agreed upon.
- \* The amendments as suggested by the Technical Committee in clause 43 (1) (d) were agreed upon.
- \* The amendments as suggested by the Technical Committee in clause 43 (2) were agreed upon. It was further agreed to amend the word "eligible" to read "qualify".
- \* The amendments as suggested by the Technical Committee in clause 46 were agreed upon.
- \* All the amendments as suggested by the Technical Committee in clause 48 were agreed upon.
- \* The amendment as suggested by the Technical Committee in clause 53 (1) (a) was agreed upon.
- \* It was suggested that in 53 (c) the number of sitting days should be 15 and not 30. This was agreed to.
- \* The Technical Committee was requested to reconsider the issue of who from the SPR's were eligible to become Senators.
- \* The amendment as suggested by the Technical Committee in clause 54 (1) (a) was agreed upon.
- \* The amendments as suggested by the Technical Committee in clause 60 (1) were agreed upon.
- \* It was noted that the South African Government would make a written submission to the Technical Committee on clause 60, raising the possibility that the senate should approve of bills with a two thirds majority and not with an



ordinary majority. Furthermore, that the required majority should be specified in the clause.

- \* It was noted that the Bophuthatswana Government would also make a submission to the Technical Committee on clause 60.

### 5.5.3 Adoption of a new Constitution (Chapter 5 of the Draft):

#### 5.5.3.1 Panel of constitutional experts (section 67):

- \* The Technical Committee presented an overview of this item to the meeting. Questions of clarity were put to the Technical Committee. Discussion followed.
- \* After discussion it was agreed to accept the section as drafted.

#### 5.5.3.2 Deadlock-breaking mechanisms (section 68):

- \* The Technical Committee presented an overview of this item to the meeting. It was noted that this issue had been referred to the Planning Committee for its attention.
- \* The Ciskei noted its disapproval of this section.

### 5.6 SPR's:

#### 5.6.1 Law-making competence of SPR legislatures (par 7.10 of 10th Report, section 101 of Draft):

- \* The Technical Committee presented an overview of this item to the meeting. Questions of clarity were put to the Technical Committee. Discussion followed.
- \* At this point it was agreed to curtail the debate due to time constraints.

5.7 It was noted that the 11th Report of the Technical Committee would be dealt with on Thursday 26 August 1993.

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

● **Meetings Schedule and Draft Programme**

The proposed meetings schedule and draft programme was accepted (see Addendum B).

8. **General Issues**

8.1 It was noted that the Planning Committee minutes of 2 August, 3 August and 4 August 1993 were distributed for noting by the meeting.

8.2 When the Negotiating Council reconvened after lunch, the Planning Committee noted that the Panel of Chairpersons were scheduled to meet at 16h00 today.

9. **Closure**

The meeting was closed at 16h00.

These minutes were ratified at the meeting of the Negotiating Council of 1 September 1993 and the amended version signed by the Chairperson of the original meeting on 2/9/93.....

  
.....  
CHAIRPERSON

**Addendum A**

The following delegates and advisers were present at the meeting of the Negotiating Council on Monday 16 August 1993:

L Landers : Chairperson  
 B Kgositse : Assistant Chairperson

<b>Organisation</b>	<b>Delegates</b>	<b>Advisers</b>
ANC	C Ramaphosa M Manzini	MV Moosa
AVU	C Pienaar C Kruger	AJ Horn AJJ van Rensburg
Bophuthatswana	R Mangope R Cronje	BE Keikelame SG Mothibe
Cape Trad. Leaders	M Nonkonyana SN Sigcau	GD Gwadiso
Ciskei	M Webb VT Gquiba	TM Bulube
DP	C Eglin M Finnemore	KM Andrew PG Soal
Dikwankwetla	TJ Mohapi K Ngwenya	SOM Moji
IFP		
IYP	NJ Mahlangu NS Mtsweni	AP Laka Q Vilankulu
KP		
INM	SS Ripinga ND Mokoena	MS Gininda GG Zama
Kwazulu		
Labour Party	PAC Hendrickse CC August	R O'Reilly
NIC/TIC	PJ Gordhan	K Mayet B Pillay
NP	D de Villiers TJ King	L Wessels SJ Schoeman
NPP	A Rajbansi S Naidoo	H Pithambar R Ramnarain

● Trad. Leaders	RH Mopeli MT Moroke	MB Mota MA Molefe
PAC	P de Lille B Alexander	RK Sizani B Desai
Solidarity	DS Rajah	
SACP	J Slovo L Jacobus	E Pahad S Shilowa
SA Government	RP Meyer LR Brink	
Transkei	Z Titus N Jajula	R Nogumla
TVL Trad. Leaders	MF Mngomezulu	MA Netshimbupfe NE Ngomane
UPF	A Chabalala RJ Dombo	J Maake NM Tsheole
Venda	SE Moeti	GM Ligege S Makhuvha
XPP	MH Matjokana ST Mona	GNK Hetisani

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

**DRAFT PROGRAMME FOR MEETINGS**

24 AUGUST 1993

Tuesday 24 August 1993	Discussion (Distribution : IEC)	*	Constitutional Issues
Wednesday 25 August 1993	Discussion:  (Distribution : TEC)	*  *	11h00 - IMC and IBA (finalise) 15h00 - IEC (finalise)
Thursday 26 August 1993	Discussion:	* *	09h00 - TEC 15h00 - Constitutional Issues (11th Report)
Monday 30 August 1993	Discussion:	* *	TEC (finalise) Constitutional Issues
Tuesday 31 August 1993	Discussion:	* * *	Any outstanding matters on the draft Bills Formal adoption of the Draft Bills on the TEC, IEC, IMC and IBA Constitutional Issues (if time allows)
Wednesday 1 September 1993	Discussion:	*	Constitutional Issues
Thursday 2 September 1993	Discussion:	*	Constitutional Issues

## REVISED PROPOSED SCHEDULE OF MEETINGS

24 AUGUST 1993

Negotiating Council	Wednesday 25 August 1993	11h00-19h00
Negotiating Council	Thursday 26 August 1993	09h00-18h00
Planning Committee	Monday 30 August 1993	09h30-13h00
Negotiating Council	Monday 30 August 1993	14h00-19h00
Negotiating Council	Tuesday 31 August 1993	09h00-19h00
Negotiating Council	Wednesday 1 September 1993	11h00-19h00
Negotiating Council	Thursday 2 September 1993	09h00-18h00

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.**