

THESE ARE DRAFT MINUTES. THEY ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS IN THE TRANSITIONAL EXECUTIVE COUNCIL IN THE MULTI-PARTY FORUM.

**DRAFT MINUTES OF THE THIRD MEETING OF THE TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS HELD ON 18 MAY 1993 AT THE WORLD TRADE CENTRE.**

**PRESENT:** Lourens du Plessis (Convenor)  
Hugh Corder  
Gerhard Grove  
Sibongile Nene  
Zac Yacoob

**MINUTES:** Miriam Cleary (Administration)

**1. Agenda:**

As the meeting was held to discuss the submission of the First Interim Report at the Negotiating Council meeting, **it was agreed that** the meeting would be held on an informal basis.

**2. Submissions:**

2.1. Each committee member was provided with a pack of submissions.  
**Addendum "A".**

**3. Documents for Submission:**

3.1. Gerhard Grove handed out a document from the Minister of Justice together with a covering letter from Judge P. J. J. Olivier. However, as this was an extremely confidential document, only one copy was made available to the Sub-Committee. At this stage copies could not be given to the Planning Committee for submission to the Negotiating Council. **Addendum "B".**

#### 4. Preparation and Submission of Second Progress Report:

After discussion the committee agreed that:

- 4.1. The Negotiating Council Delegates would have to agree on which types of rights and freedoms should be included during the transition. The committee would propose a method for this in their Report.
- 4.2. As certain Negotiating Council Delegates had expressed concern about the apparent omission of certain rights, e.g. gender rights, explanatory notes would be included in their Report.
- 4.3. It would refine the previous categorisations made in the First Interim Report, but would emphasise that the categories were not to be regarded as a prioritisation of rights and freedoms.
- 4.4. It was not up to the committee to eventually write up a Bill of Rights, however clarity should be obtained on the term "Transition" i.e. how many years after elections have taken place. The **Inkatha Freedom Party** stated in their Submission that they did not believe in the need for fundamental rights during the transition. **Addendum "C"**.

#### 5. Next Meetings:

- 5.1. The committee would meet on Wednesday and Thursday, 19 and 20 May, 1993, to prepare the Second Progress Report in time to meet the 21 May 1993 deadline.
- 5.2. The next committee meeting was scheduled for Tuesday, 25 May 1993, at the World Trade Centre.
- 5.3. Subsequent meeting would be on 26 May 1993 to prepare and finalise the Third Progress Report. The deadline for this submission is Wednesday, 26 May 1993.

#### 6. Closure.

**SUBMISSIONS TO TECHNICAL COMMITTEE ON FUNDAMENTAL RIGHTS**

**I N D E X**

- NATAL INDIAN CONGRESS - 13 May 1993**
- XIMOKO PROGRESSIVE PARTY - 16 May 1993**
- VENDA GOVERNMENT - 14 May 1993**
- NATIONAL CHILDREN'S RIGHTS COMMITTEE - 18 May 1993**
- GENDER ADVISORY COMMITTEE - May 1993**
- DEMOCRATIC PARTY - Draft Bill of Rights - 12 May 1993**
- CISKEI GOVERNMENT - 13 May 1993**
- TRANSKEI GOVERNMENT - May 1993**
- M. A. McLOUGHLIN (Attorney) - Constitution and Bill of Rights - 26 March 1993 and Request for reply dated 18 May 1993.**
- PROSPECTS - South Africa in the Nineties - Vol.2. No.1 - March/April 1993.**

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MINISTERIE  
VAN JUSTISIE



MINISTRY  
OF JUSTICE

REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

Prof L M du Plessis  
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STELLENBOSCH

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1993-05-17

Verwysing/Reference

Geagte professor Du Plessis

Hierdie skrywe geskied uit hoofde van my administratiewe verantwoordelikheid teenoor die Suid-Afrikaanse Regskommissie en gaan vergesel van 11 kopieë van 'n dokument getitel "SUID-AFRIKANE BESPREKINGSTUK : PROJEK 58 : GROEPS- EN MENSEREGTE : KONSEPVERSLAG, MEI 1993".

Die konsepverslag word aan u Komitee beskikbaar gestel as 'n Regskommissie perspektief. 'n Kopie van 'n brief vanaf regter P J J Olivier aan uself word ook aangeheg en verduidelik die omstandighede waaronder die stuk aan u beskikbaar gestel word.

Met vriendelike groete

H J COETSEE LP  
MINISTER VAN JUSTISIE  
EN VAN VERDEDIGING

13 Mei 1993

Prof L M du Plessis  
Universiteit van Stellenbosch  
STELLENBOSCH

Geagte professor Du Plessis

#### INTERIM-AKTE

Ek bevestig dat u my versoek het om behulpsaam te wees met die werksaamhede van u komitee insake 'n (interim) handves van menseregte. Ek het die aangeleentheid met Minister Coetsee bespreek en hy het geen beswaar om die konsepverslag aan u komitee beskikbaar te stel nie, en hy wil dit self doen. U kry dus die konsep van hom af. Hy het onderneem om die afskrifte van die verslag, wat ek Sondag 16 Mei aan hom lewer, Maandag 17 Mei aan u beskikbaar te stel. Intussen stuur ek hierdie verduidelikende brief aan u.

Ek maak graag die volgende opmerkings:

- (i) Die stukke is vertroulik en slegs vir die oë van die komiteelede.
- (ii) Die stukke is nog nie deur die Kommissie gesien nie en is nog nie deur die Kommissie goedgekeur nie en mag dus in uiteindelijke vorm 'n ander inhoud hê.

- (iii) Ek wag nog op 'n navorsers om 'n hoofstuk oor minderheidsregte te voltooi, maar soos tans gerade gaan daar nie in die Akte 'n klousule daarvoor wees nie.
- (iv) Ek moet nog aan die einde van Hoofstuk 6 'n stukkie skryf oor die plek van die Konstitusionele Hof in die hofstelsel. Ek meen die Kommissie sal by sy standpunt in die Interimverslag bly, te meer waar die Hoofregter dié oplossing steun.
- (v) U sal sien dat my benadering was om al die Aktes wat tans op die tafel is, te ontleed en om uit te maak oor welke beginsels daar wesenlike ooreenstemming is, en oor welkes nie.
- (vi) Daar is wesenlike ooreenstemming (minstens tussen die Aktes van die politieke partye en groepe) oor die volgende klousules in die konsep-akte wat u voor in die konsepverslag aantref: 3(1); 5-30; 32; 33 en, by verstek, 34.
- (vii) My benadering was om ten aansien van die beginsels waaroor daar wesenlike ooreenstemming is, die beste formulering te probeer vind vir daardie ooreenstemming.
- (viii) Ten aansien van die beginsels waaroor daar nie wesenlike ooreenstemming bestaan nie, het ek die verskille probeer versoen. Die klousules in my konsep wat hiermee handel is 1, 2, 4 (doodvonnis - sien my nuwe voorstel par. 6.42); 3(2) en 31.
- (ix) Nuut in ons konsep is die kwessie van die gelding van die internasionale reg - klousule 34.
- (x) Die konsep maak nou ook voorsiening vir horisontale werking - sien klousule 2(10).
- (xi) Ek persoonlik meen dat 'n interim-akte nodig is, maar dan moet dit 'n redelik volledig en eksplisiete een wees, sodat almal weet presies waar ons staan. 'n Oppervlakkige, kriptiese dokument gaan enorme onsekerheid en wantroue skep.

- (xii) Ek hoop ons bydrae sal vir u komitee van nut wees en verneem graag mettertyd van u.

Met beste wense

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REGTER P J J OLIVIER

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MULTIPARTY NEGOTIATION PROCESS  
TECHNICAL SUBCOMMITTEE #2  
ON FUNDAMENTAL RIGHTS DURING THE TRANSITION

HEADS OF ARGUMENTS AND POSITIONS  
OF THE INKATHA FREEDOM PARTY  
SUBMITTED IN CONJUNCTION WITH  
THE KWAZULU GOVERNMENT

FULL SUBMISSION WILL BE MADE TO THIS TECHNICAL SUBCOMMITTEE WITHIN THE DEADLINE LAID. THE FOLLOWING IS MERELY AN ABRIDGED STATEMENT TO BE ELABORATED IN THE FINAL DOCUMENT.

The IFP believes that South Africa can and must go for a straight run to democracy adopting a final federal constitution by the end of 1994. Therefore the IFP does not believe in the need for a transitional constitution or for fundamental rights during the transition.

However, political and personal freedoms during the period leading to election should be addressed through the work of subcommittee #7 on the amendment and repeal of discriminatory and restricting legislation, as well as through the activities of the TECs and the work of the structures established under the National Peace Accord.

The IFP has submitted the foregoing heads of arguments to indicate its general positions and perspective on the issues before this Technical Sub-Committees. The IFP reserves the right to submit a more comprehensive and detailed position paper on each of the foregoing subject matters.