

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

MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 09h45 ON TUESDAY 3 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 the no amendments.

4. Minutes

4.1 The minutes of 27 and 28 July 1993 were adopted with no amendments.

4.2 No matters arising were noted out of the minutes of 27 and 28 July 1993.

5. Substantive Issues

5.1 Seventh Progress Report of the Technical Committee on Fundamental Human Rights during the Transition:

5.1.1 The Technical Committee on Fundamental Human Rights during the Transition was welcomed. Present were H Corder, LM du Plessis, G Grove, S Nene and Z Yacoob.

5.1.2 Debate then proceeded on the report, commencing at Clause 20 "Eviction" where the debate was concluded at the last meeting of the Negotiating Council on 2 August 1993. Questions of clarity were addressed to the Technical Committee throughout

the debate.

5.1.3 Clause 20 "Eviction" refers:

- * Lengthy debate ensued around this clause with various points of views expressed.
- * It was suggested that the clause should be redrafted to apply vertically and horizontally. Other participants expressed the view that the clause should be deleted.
- * After the debate had been exhausted, it was agreed to instruct the Technical Committee to provide a short analysis of various arguments before the Negotiating Council. The Technical Committee was requested to take note of the debate and discussion in the meeting. This would facilitate the Negotiating Council to making an advised decision on this clause.

5.1.4 Clause 21 "Economic Activity" refers:

- * After discussion and the putting forward of various amendments and suggestions, it was agreed to leave Clause 21 (1) and (2) as is.
- * The Ciskei Government and the DP reserved its position on Clause 21 (2).

5.1.5 Clause 22 "Labour Relations" refers:

- * No comments were noted. The clause was accepted.

5.1.6 Clause 23 "Property" refers:

- * The Ciskei Government reserved its position with regard to this clause.
- * It was suggested that Clause 23 (1) be reformulated, taking into account views expressed in the meeting and the explanation of the Technical Committee.
- * It was suggested that the issue for compensation and reparation should be reconsidered by the Technical Committee, taking into account the views expressed in the meeting.
- * It was suggested that the Technical Committee

reconsiders the issue of expropriation and the element of prompt payment of a fair market compensation as determined by a court.

- * It was suggested that the words "subject to the proper payment of equitable compensation which in the event of a dispute shall be determined by an ordinary court of law" should be inserted after the word "interest" in Clause 23 (2).
- * The issue of communal lands was raised.

The meeting adjourned for tea at 10h50.

The meeting reconvened at 11h15.

- * It was agreed that clause 23 (2) and (3) be referred to the ad-hoc committee. Participants were requested to make submissions on these issues to the ad-hoc committee.
- * It was suggested that the Planning Committee should consider expanding the ad-hoc committee to ensure balanced representation politically and to encompass academic advisors.

5.1.7 Clause 24 "Environment" refers:

- * No comments were noted. The clause was accepted.

5.1.8 Clause 25 "Children" refers:

- * After a lengthy discussion on this clause, it was agreed that the Technical Committee should reformulate this clause, taking into account the views expressed in the meeting.

5.1.9 Clause 26 "Language and Culture" refers:

- * No comments were noted. The clause was accepted.

5.1.10 Clause 27 "Education" refers:

- * It was suggested this clause should be reconsidered by the Technical Committee with regard to the issue of

horizontal and verticality. It was further suggested that this should be applied horizontally.

- * It was suggested that the words "where practical", "based on a common culture, language or religion" and "on the ground of race or colour" should be deleted in Clause 27 (3).
- * It was agreed that this clause, at this point, remains as is.

5.1.11 Clause 28 "Limitation" refers:

- * Concerns were expressed by the Traditional Leaders with regard to this clause.
- * The principle of Clause 28 was generally agreed to by all participants.
- * It was suggested that Clause 28 (1) should be reformulated to read as follows "The rights entrenched in this Chapter may be limited only by a law applying to persons generally".
- * It was suggested that the limitation should not be generally applied to all rights in this chapter and that some rights should be exempt. Submissions had previously been requested by the Technical Committee on this issue.
- * It was agreed that the implicit approach of the Technical Committee with regard to this clause was acceptable.
- * It was suggested that the words "open and democratic society" be deleted in clause 28 (1) (a) (ii).
- * It was suggested that clause 28 (1) (a) (ii) be reformulated to read as follows "justifiable in an open and democratic society based on the principles of liberty and equality". This suggestion was based on the argument that the concepts of liberty and equality should be on an equal footing.
- * After discussion the principle as referred to in clause 28 (1) (a) (ii) was agreed to, but the Technical Committee should reconsider the wording and, if necessary, reformulate the clause.

- 5.1.12 Due to time constraints, it was agreed to conclude this debate on clause 28.
- 5.1.13 It was agreed that Clause 4 under "Additional Matters" be referred to the Planning Committee to submit a recommendation on this issue to the Negotiating Council.
- 5.1.14 The Technical Committee was thanked for its work so far completed.
- 5.2 Special Report on the Ninth Draft of the Independent Media Commission Bill:**
- 5.2.1 The Technical Committee was welcomed. Present were A Armstrong, D Dison, P Pretorius, EJ Mabuza and C Noffke. The Technical Committee presented its report. In the Report the Technical Committee identified clauses within this Draft Bill that are identical to in the Draft Bill on the IBA. Three issues were highlighted in the Report, requiring a decision from Negotiating Council:
- * The definition of "Political Party"
 - * The definition of "Republic"
 - * The question of mechanisms which provide for Ministerial consultation or concurrence with the TEC.
- 5.2.2 It was agreed to deal with the contentious issues as contained in clauses 17, 18 and 19, with the proviso that participants could revisit the other clauses at a later stage if they so wished.
- 5.2.4 Clause 17 "Party election broadcasts on sound broadcasting services during the election" refers:
- * Questions of clarity were put to the Technical Committee. The issue of the definition of "Political Party" was debated. It was suggested that this definition should only be debated once the Negotiating Council had received the report of the Technical Committee on the Independent Electoral Commission.
 - * It was further suggested that an alliance of political parties should be treated as one party and should therefore be considered as one entity for party political broadcasts.
 - * It was agreed that party election broadcasts be excluded from sub-clause (2).
 - * It was suggested that the Technical Committee should reformulate sub-clause (6) so that the programme produced by

a political party is not subject to a veto by the Commission. It was noted that the sub-clause related to technical quality and not substance.

- * The other sub-clauses of this clause were accepted as is.

5.2.5 Clause 18 "Political advertising on sound broadcasting services during the election" refers:

- * The Bophuthatswana Government noted that it would only agree to sub-clause (3) on the condition that political parties that are part of an alliance are given one slot only.
- * It was suggested that the Technical Committee reconsiders sub-clause 3 with regard to the question as to whether parties are treated equally.
- * The other sub-clauses of this clause were accepted.

5.2.6 Clause 19 "Prohibition of party election broadcasts and the broadcasting of political advertisements except in certain circumstances" refers:

- * Questions of clarity were put to the Technical Committee.
- * Discussion followed on this issue. Various participants supported the broadcasting of party political broadcasting on television.
- * It was suggested that the SABC and M-Net be requested to advise the Technical Committee as to whether election broadcasts could be accommodated in its services. The Negotiating Council should receive a report in this regard.
- * It was agreed that no party political advertisements be broadcasted on television.

5.2.7 Clause 20 "Equitable treatment of political parties by all broadcasting services during an election Period" refers:

- * The sub-clauses of this clause were all accepted.

5.2.8 Clause 21 "State-financed publications and state information services" refers:

- * It was suggested that the Technical Committee considers reducing the 5 day provision in sub-clause 4 to 2 days.

5.2.9 It was suggested that the Technical Committee addresses the question of violence and the elections and the broadcasters' responsibility to help create conditions conducive to free and fair elections.

5.2.10 Clause 4 "Constitution and appointment of Commission" refers:

- * It was suggested that the Technical Committee considers the option of not more than two Co-Chairpersons for the Commission.
- * It was suggested that the TEC should play a role determining expenses/remuneration and the appointment of staff.
- * It was suggested that the principle of an open process should apply when appointing staff to the Commission. Reference was made to sub-clause (2).
- * It was suggested that the following words should be accommodated in the clause : "shall be selected and appointed by the appointing body according to a procedure agreed to by the appointing body".

5.2.11 Clause 23 "Orders, Penalties and Recommendations" refers:

- * It was suggested that not enough provision was made for with regard to order, recommendations or penalties.

5.2.12 Clause 6 "Persons disqualified from being members of the Commission" refers:

- * It was suggested that the words "in the service of" replace the word "under" in sub-clause (1) (a).
- * It was suggested that the Technical Committee uses the same definition of an office bearer as the Technical Committee on the IEC.
- * It was suggested that the word "spouse" should be included in sub-clause (1) (e).

6 ● Closure

6.1 The Chairperson was thanked for the way the day's proceedings were handled.

6.2 The meeting was closed at 18h55.

These minutes were ratified at the meeting of the Negotiating Council of 12 August 1993 and the amended version signed by the Chairperson of the original meeting on ...26/8/93.....



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CHAIRPERSON

Addendum A

The following delegates and advisers were present at the meeting of the Negotiating Council on Tuesday 3 August 1993:

MJ Mahlangu : Chairperson
 PJ Gordhan : Assistant to the Chairperson

Organisation	Delegates	Advisers
ANC	B Kgositsile	PM Maduna M Manzini
AVU	M Mentz	ASJ van Rensburg
Bophuthatswana	R Cronje R Mangope	SG Mothibe BE Keikelame
Cape Trad. Leaders	M Nonkonyana SN Sigcau	GD Gwadiso DM Jongilanga
Ciskei	M Webb VT Gqiba	TM Bulube
DP	AJ Leon M Finnemore	KM Andrew D Gibson
Dikwankwetla	K Ngwenya	SOM Moji JSS Phatang
IFP		
IYP	NJ Mahlangu NS Mtsweni	AP Laka
KP		
INM	SS Ripinga ND Mokoena	GG Zama MS Gininda
Kwazulu		
Labour Party	L Landers CC August	A Delport
NIC/TIC	B Pillay	NG Patel R Adam
NP	L Wessels	SJ Schoeman
NPP	A Rajbansi	H Pituaawbar S Naidoo
OFS Trad. Leaders	MB Mota	RH Mopeli

P	P de Lille R Sizani	B Desai LS Makhanda
Solidarity	DS Rajah	T Palan AS Razak
SACP	L Jacobus	H Cheadle
SA Government	RP Meyer LR Brink	DPA Schutte
Transkei	Z Titus N Jajula	
TVL Trad. Leaders	LM Mokoena FF Kekana	MA Netshimbupfe NE Ngomane
UPF	MJ Mahlangu A Chabalala	J Maake
Venda	SE Moeti TJ Tshivhase	GM Ligege S Makhuvha
XPP	PT Shiluvana TB Shibambu	MH Matjokana GNK Hetisani

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

NEGOTIATING COUNCIL DEBATE ON THE FIFTH DRAFT OF THE INDEPENDENT BROADCASTING AUTHORITY BILL

DRAFT AGENDA

EXPLANATORY NOTE

The Technical Committee has prepared a draft agenda for the Negotiating Council's debate on the Fifth Draft of the IBA Bill. The matters listed below include significant amendments to the Bill and matters which have not yet been resolved.

SECTION 1 : DEFINITIONS (Pages 7 - 12)

As noted in the Special Report, the definitions of **political party** and **Republic** cannot be resolved by the Technical Committee.

There have been minor amendments to a number of the definitions and the Technical Committee is of the view that the Negotiating Council should only deal with particular problems raised by members of the Negotiating Council.

CHAPTER TWO : PRIMARY OBJECTS OF ACT (page 13)

Footnote 3 (page 13):

The Technical Committee has noted that it was unable to incorporate the SA Government's proposal that religion should be expressly catered for in section 2. The prevailing view in the Committee is that religion is sufficiently provided for under "culture".

Section 2(6) and 2(7) (page 14)

As noted in the Special Report, the Technical Committee resolved the issues of empowerment and equal opportunity employment practices by the insertion of these as two primary objects. Consequently, section 43(2)(h), as it appeared in the 4th Draft, has been dropped.

CHAPTER THREE : INDEPENDENT BROADCASTING AUTHORITY (page 16)

Section 3(3) (page 16)

This new subsection has been included to strengthen the Authority's status as an **independent** regulatory authority.

Section 4(1) on the Constitution of the Council (pages 16-17) and Schedule 1 on the Appointment Procedure for councillors (pages 71-74)

As noted in the Special Report, the appointment procedure outlined in Schedule 1 has been opposed by the South African Government and the matter is being dealt with by an **ad hoc** committee.

Section 4(2) on qualificatory provisions (page 17)

The Technical Committee has taken into account the comments of the Negotiating Council in this regard and the subsection has been amended accordingly.

Section 5 Persons Disqualified from being members of the Council (page 17)

The Technical Committee has taken into account the comments of the Negotiating Council in this regard and section 5 has been amended accordingly.

Section 6 Terms of Office of Councillors (page 19)

The section has been amended substantially in order to provide for staggered terms office and continuity on the Council. The new section now makes it impossible for any one political party to decide on the total composition of the Council.

CHAPTER 4 : COMMITTEES, APPOINTMENT OF EXPERTS AND INQUIRIES

Section 20(1)(a) (page 28)

The Technical Committee has changed the name of one of the standing committees from the Broadcasting Frequency Spectrum Management Committee to the **Broadcasting Technical Committee**.

● Section 26(6) - Inquiries into three critical policy and regulatory issues (page 32)

As noted in the Special Report, the inquiry mechanism has been extended for a number of reasons.

Section 26(6) now provides that the Authority shall, as soon as may be reasonably practicable after the commencement of this Act and before any new broadcasting licences are granted, conduct a single inquiry into:

- a) the matters referred to in section 39(1), that is the protection and viability of public broadcasting services in the Republic, with particular reference to the financing, control and accountability of such services;
- b) the matters referred to in section 44(2), namely the the exact nature of the regulations on cross-media ownership which must be prescribed by the Authority;
- c) the matters referred to in section 48(5), namely local television content and South African music minimum percentages or conditions which must be prescribed by the Authority.

CHAPTER 6 : BROADCASTING SIGNAL DISTRIBUTION LICENCES (pages 35-37)

The Technical Committee has made a number of amendments to this chapter which can be addressed should any specific questions or suggested amendments be proposed by members of the Negotiating Council.

CHAPTER 7 : BROADCASTING LICENCES

The Authority will no longer predetermine licence areas. A licence area will now simply mean the chosen geographical target area of the broadcasting licensee.

Security will no longer be required from applicants for broadcasting licences.

Section 38(13) on the levying of fees (pages 41-42):

In response to comments of the Negotiating Council and submissions from the public, this subsection now gives the Authority the power to prescribe different fees for different licence categories. Section 38(13) also contains an important proviso that the fees "shall not

●nstitute payment in consideration for the granting of the licence". In other words, it lays to rest notions of 'franchising off' frequencies and licences.

Section 39(3) and footnote 12 on the grandfathering of public broadcasting licensees (pages 42-43)

The Technical Committee refers here to the problem of grandfathering public broadcasters who have been licensed in the TBVC states.

Section 40(2) and footnote 13 on the grandfathering of private broadcasting licensees (page 44)

The Technical Committee refers here to the problem of grandfathering private broadcasters who have been licensed in the TBVC states.

Section 41(1)(b) and footnote 14 on the mechanisms to ascertain whether an applicant for a community broadcasting licence has the support of the relevant community (page 44)

The Technical Committee now proposes that a uniform standard/test should be prescribed by the Authority.

Section 42 and footnote 15 on the definition of "control" (page 45)

Footnote 15 refers succinctly to the problem of defining "control" in relation to sections 42, 43 and 44 and Schedule 4.

Section 43(6) and footnote 16 on the amendment of the limitations on the control of private broadcasting services (pages 45 and 47)

This new subsection provides that the Authority may make recommendations on the amendment of the limitations should this be necessitated in certain circumstances.

Section 44 and footnote 17 - Limitations on the cross-media control of private broadcasting services (pages 47-48)

This section has been entirely reworked. Reference has already been made to the section 26 inquiry that must be held on the setting of cross-ownership limitations. Section 44(2) lists some of the factors which the Authority must take into account in that inquiry.

Section 45 and footnote 18 on the prohibition of political parties being granted broadcasting licences (page 48)

The Technical Committee has already noted the problems it has had relating to the definition of political party.

Section 48(1)(c) on South African music (pages 52-53)

A new qualifying definition of South African music has been added. The Technical Committee has been assisted in this regard by the highly successful mechanisms applied in Australia and Canada.

Section 49 Term of Broadcasting Licence (page 54)

The Technical Committee has resolved this issue. The licence terms are now definitively set out in section 49.

Section 50 Transfer of Licence (page 55)

This section will also apply to any privatisation of public broadcasting services.

CHAPTER 10 : GENERAL PROVISIONS

Section 70 Regulations (page 68)

The Technical Committee has now provided that the Council will make regulations.

**AREAS OF THE BILL WHICH REQUIRE MORE TECHNICALLY PRECISE
DRAFTING**

Sections 14, 15, 16, 17, 18, 33, 36, 39(3), 40(2), 42, 43, 44, 54, 63(1)(e), 64, 65 and 68.

Schedule 5 on Amendment of Laws