

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

MINUTES OF THE MEETING OF THE NEGOTIATING COUNCIL HELD AT 14H30 ON WEDNESDAY 23 JUNE 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 following amendment:

- * The addition of an Item 5.1 to read "Clarification by the PAC concerning the signing of the Declaration on Cessation/Suspension of Hostilities, Armed Struggle and Violence". The subsequent numbering was amended accordingly.

4. Minutes

4.1 The minutes of the meeting of 17 June 1993 were adopted with the following amendments:

4.1.1 Item 4.2.5 refers: The insertion of the word "was" between the words "Date" and "discussed" in the last sentence of the item;

4.1.2 On page 4 at the top of the page, the second sentence should read "The meeting reconvened after lunch at 14h23".

4.2 The minutes of the meeting of 18 June 1993 were adopted with the following amendments:

- 4.2.1 Page 3, the third asterisk from the top, the last sentence of the paragraph to read "The KP stated emphatically that all points of view should be seen against this background.";
- 4.2.2 Item 4.2.6 refers, the addition of a further asterisk to read "It was suggested that the words "and indigenous people" be inserted after "Traditional Leaders".
- 4.3 No matters arising were noted from the minutes of 17 and 18 June 1993.
- 4.4 Minutes of the meetings of the Planning Committee of 25 May, 28 May, 1 June and 3 June 1993 were noted.

5. Substantive Issues

- 5.1 **Clarification by the PAC concerning the signing of the Declaration on Cessation/Suspension of Hostilities, Armed Struggle and Violence**
 - 5.1.1 The PAC delegation read out their clarificatory statement (see Addendum B).
 - 5.1.2 The PAC stated that they were not prepared to answer any further questions.
 - 5.1.3 The KP again noted that no statement could be made on applauding the PAC for their decision to subscribe to the Declaration by the Chairperson on behalf of the KP or on behalf of the whole meeting.
 - 5.1.4 The National Party gave notice that under Procedural Issues it would move a motion on how this issue could be clarified in the Negotiating Council.
- 5.2 **Reports from the Technical Committee on Constitutional Issues:**
 - 5.2.1 The members of the Technical Committee on Constitutional Issues were welcomed. Present were A Chaskalson, M Olivier, W Olivier, F Venter and M Wiechers. Apologies were noted from GE Devenish, E Moseneke and B Ngoepe.
 - 5.2.2 It was agreed that the Technical Committee table and present the Second Supplementary Report on Constitutional Principles and the Special Report on Confederation. The Negotiating Council would then deal with these reports and the Fourth and Fifth Report of the Technical Committee. It was agreed that the Sixth Report would only be noted in this meeting by the Negotiating Council.

5.2.3 The Technical Committee tabled and presented their reports. The Constitutional Principles were then debated and discussed. Each Constitutional Principle was put to the meeting either for acceptance or referral back to the Technical Committee.

5.2.3.1 **Item 2.1 : The Constitution of South Africa shall provide for the establishment of a single sovereign state with a democratic system of government and a common South African citizenship:**

- * The above reformulated principle was put to the meeting. Discussion and debate followed.
- * After debate it was agreed that the words "non-sexist" and "non-racial" be incorporated into this Constitutional Principle on the understanding that Item 2.11 of the Report be suitably amended to accommodate the addition of these words into Item 2.1.

The meeting adjourned for tea at 16h10.

The meeting reconvened at 16h35.

- * It was agreed that Item 2.1 be reformulated in a positive way. It was agreed by general consensus to amend Item 2.1 to read "The Constitution of South Africa shall provide for the establishment of a single sovereign state with a democratic system of government committed to achieving equality between men and women and people of all races committed to a common South African citizenship."
- * After debate on the word "single", it was agreed to revisit this Constitutional Principle only in respect of the word "single".
- * It was noted that the words "single sovereign state" in the Constitutional Principle can include a federation.
- * The PAC noted that they supported the retention of the word "single" in the Constitutional Principle.

* It was noted that the KP opposed the concept of a single unitary state.

5.2.3.2 It was noted that **Items 2.2, 2.3, 2.4, 2.5, 2.6 and 2.7 of the Report** had already been dealt with and accepted by the Negotiating Council at the meeting of 3 June 1993.

5.2.3.3 The Kwazulu Government noted that they are not yet agreeing on any of the Constitutional Principles, as the Form of State had not yet been decided. In this regard it was noted that all the Constitutional Principles would be revisited as a package as per the Explanatory Memorandum.

5.2.3.4 **Item 2.8 : The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged:**

* After a request by the Technical Committee for a decision as to whether specific reference to fundamental rights was required in this Constitutional Principle, discussion followed.

* It was agreed to leave this principle in abeyance to allow participants further opportunity for consideration. The principle would be revisited later on in the meeting.

5.2.3.5 **Item 2.9 : Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected:**

The KP requested that this Constitutional Principle stand over and be dealt with at a more appropriate time. This was agreed to.

5.2.3.6 It was noted that **Item 2.10** had been dealt with and accepted by the Negotiating Council at the meeting of 3 June 1993.

5.2.3.7 It was agreed that **Item 2.11** be reformulated by the Technical Committee to accommodate the decision on Item 2.1.

5.2.3.8

Item 2.12 : The status according to indigenous law of traditional leadership shall be recognised in the Constitution. Indigenous law shall be recognised and applied by the courts subject to the provisions of the fundamental rights contained in the Constitution (and to legislation dealing specifically therewith):

* The above principle was put to the meeting. A decision was required from the Negotiating Council with regard to the inclusion or exclusion of the words in brackets. After lengthy debate it was agreed that the Traditional Leaders should submit a written suggested reformulated principle.

* The following proposed amendment was noted:

"The institution, status and role of Traditional Leaders shall be acknowledged and recognised in the Constitution. Indigenous law shall be applied to the extent that it is compatible with the provisions of the fundamental human rights contained in the Constitution.

* It was agreed to leave this matter in abeyance to allow for further informal exchanges on this issue.

5.2.3.9

It was noted that **Items 2.13 and 2.14** had already been dealt with and accepted at a previous meeting of the Negotiating Council.

5.2.3.10

It was noted that the IFP reserved the right to revisit the Constitutional Principles relating to SPR's as a result of their full delegation not being present at this meeting. Furthermore, the IFP noted that they would not be able to offer their consensus to any of these Principles at this stage.

5.2.3.11

The Kwazulu Government reminded the house of the previous decision of the Negotiating Council not to take a decision on the Constitutional Principles relating to SPR's until alternative models are on the table. Furthermore, that the Kwazulu Government would hold back their consensus on any of the Principles at this stage.

5.2.3.12 It was agreed to note the amendments that had been incorporated/made with regard to the Constitutional Principles relating to SPR's. Discussion would proceed along the lines of the amendments, but no final decision would be taken on the Principles. This would allow for feedback to the Technical Committee.

5.2.3.13 **Item 2.15 : Government shall be structured at national, SPR and local levels:**

The following amendment was proposed as an addition:

"Notwithstanding the provision of any other clause the right of employers and employees to join and form employer organisations and trade unions and to engage in collective bargaining shall be recognised and protected."

It was agreed that this issue be referred to the Technical Committee for reformulation.

5.2.3.14 **Item 2.16 : At each level of government there shall be democratic representation:**

The following suggested amendment to the above Principle was noted and referred to the Technical Committee for a recommendation:

"At each level of government there shall be democratic representation with appropriate provisions for Traditional Leadership at each level where applicable".

5.2.3.15 **Item 2.17 : Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. The allocation of powers between different levels of government shall be made on a basis which is conducive to financial viability at each level of government and to effective public administration, and which promotes national unity, legitimate regional autonomy and cultural diversity:**

Questions of clarity were put forward to the Technical Committee on this item which indicated that no dissent existed.

5.2.3.16 **Item 2.18 : The powers and functions of national and**

SPR governments shall be defined in the Constitution. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of SPR's shall, in addition to any other procedures specified in the Constitution for constitutional amendments, also require the approval of a specified majority of the legislatures of the SPR's, alternatively, if there is such a chamber, a specified majority of a chamber of parliament composed of regional representatives, and if the amendment concerns specific SPR's only, the approval of the legislatures of such SPR's will also be needed:

It was agreed that there was no need for debate or comment on the principle.

- 5.2.3.17 **Item 2.19 : A framework for local government powers, duties, functions and structures, shall be set out in the Constitution. The comprehensive powers, duties, functions and other features of local government shall be set out in parliamentary statutes and/or SPR legislation:**

It was agreed that there was no need for debate or comment on the principle.

- 5.2.3.18 **Item 2.20 : The powers and functions of the national and SPR levels of government shall include exclusive and concurrent powers as well as the power to perform functions for other levels of government on an agency or delegation basis:**

It was noted that Item 2.20 as amended by the Technical Committee was in line with the debate around the principle and there was no need for further debate or comment on this principle.

- 5.2.3.19 **Item 2.21 : National and SPR governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in paragraph 2.19 shall make provision for appropriate fiscal powers and functions for different categories of local government:**

Items 2.21, 2.22 and 2.23 were dealt with together as they are related. Questions of clarity were dealt with.

5.2.3.20 **Item 2.22 : Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure the SPR's and local governments are able to provide basic services and execute the functions allocated to them in the Constitution:**

Items 2.21, 2.22 and 2.23 were dealt with together as they are related. Questions of clarity were dealt with.

5.2.3.21 **Item 2.23 : A Financial and Fiscal Commission, representing inter alia each of the SPR's, shall recommend equitable fiscal and financial allocations to the SPR governments after taking into account the national interest, disparities within the SPR's as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the SPR's:**

* Items 2.21, 2.22 and 2.23 were dealt with together as they are related. Questions of clarity were dealt with.

* It was suggested that Item 2.23 be amended by:

Inserting "from revenue collected nationally" after the word "allocations".

The meeting adjourned for dinner at 18h55.

The meeting reconvened at 20h20 (see Item 5.3).

The meeting adjourned at 20h25 (see Item 5.3).

The meeting reconvened at 21h00 (see Item 5.3).

5.2.3.22 **Item 2.24.1 : The level at which there is most control over the quality and delivery of services, should be the level responsible and accountable for the execution of the programme or the delivery of the services:**

It was agreed that no debate was necessary on this principle.

5.2.3.23 **Item 2.24.2 : The national government shall not**

exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the SPR's:

It was agreed that no debate was necessary on this principle.

5.2.3.24 **Item 2.24.3 : Where it is necessary for the maintenance of national standards, the maintenance of economic unity, the maintenance of national security or the prevention of action taken by one SPR which is prejudicial to the interest of another SPR or the country as whole, the constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the constitution:**

The following suggested amendments were noted and referred to the Technical Committee:

* In the first line insert the word "essential" before "national";

* In the fourth line before the word "prejudicial" to insert the word "unreasonably".

5.2.3.25 **Item 2.24.4 : The essential principles of the constitution including the fundamental rights contained therein shall apply to all organs of the state at all levels of government:**

It was agreed that no discussion or debate was necessary on this principle.

5.2.3.26 **Item 2.25.1 : Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government:**

It was agreed that no discussion was necessary on this principle.

5.2.3.27 **Item 2.25.2 : Where uniformity across the nation is required for a particular function, then power over that function should be allocated predominantly, if not wholly, to the national government:**

The following suggested amendment was noted and referred to the Technical Committee:

- * To insert the word "legislative" before the word "power".

5.2.3.28 **Item 2.25.3 : Where minimum standards across the nation are important for the delivery of public services, the power to set such standards should be allocated to the national government:**

The following suggested amendments were noted:

- * That the word "delivery" be substituted for "implementation";
- * That in the first line the word "required" be substituted for the word "important";
- * That in the third line the words "predominantly if not wholly " be added before the words "to the".

5.2.3.29 **Item 2.25.4 : The determination of national economic policies, and the power to promote inter-SPR commerce and protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government:**

It was agreed that no discussion was necessary on this principle.

5.2.3.30 **Item 2.26 : SPR governments shall have such powers, either exclusively or concurrently with the national government, as may be necessary, inter alia, for the purpose of regional planning and development, and the delivery of services and aspects of health, welfare and education, within their boundaries:**

The following suggested amendments were noted and referred to the Technical Committee:

- * In the second line to delete all the words after the word "as" and substitute with "defined in the constitution";

- * To insert the word "administration" after the word "regional" in the third line.

5.2.3.31 **Item 2.27 : Where mutual co-operation is essential or desirable or where it is important to guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the SPR governments:**

The following suggested amendment was noted and referred to the Technical Committee:

- * In the second line replace the word "important" with "required".

It was suggested that Items 2.27 and 2.28 should be read together.

5.2.3.32 **Item 2.28 : In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national and SPR government, precedence shall be given to the legislative powers of the national government:**

The following suggested amendments were noted and referred to the Technical Committee:

- * After the word "dispute" insert "which cannot be resolved by the court in terms of these Constitutional Principles then";
- * After the word "shall" in the third line insert "where this is in the national interest " and the rest of the sentence remain the same.

5.2.3.33 **Item 2.29 : The Constitution shall specify how powers which are not specifically allocated in the constitution to the national government or to an SPR government, shall be dealt with:**

It was agreed that no debate was necessary on this principle.

5.2.3.34 It was suggested that the opening paragraph on Item 2.24 should also apply to Item 2.25, 2.26 and 2.27.

- 5.2.3.35 It was noted that the DP would be submitting a written suggestion to the Technical Committee for an additional paragraph.
- 5.2.3.36 It was noted that the SA Government would submit a written recommendation to the Technical Committee for two additional Constitutional Principles, one dealing with the impartiality of the security forces and the other dealing with the impartiality of the civil service. The Technical Committee was requested to consider and make a recommendation to the Negotiating Council on the contents of the proposed principles and where they should fit into in the Constitutional Principles.
- 5.2.3.37 It was noted that the AVU submitted in writing to the Technical Committee a proposed amendment on Item 2.9 - the Self Determination Clause - of the General Constitutional Principles for consideration and reportback by the Technical Committee.
- 5.2.3.38 It was agreed that the issues outstanding on the agenda be dealt with at the next meeting of the Negotiating Council on 24 June 1993.

5.3 **Proposal of the Planning Committee:**

- 5.3.1 It was agreed that in keeping with a previous decision of the Negotiating Council that when a Planning Committee meeting was held a report would be conveyed to the Negotiating Council by the current Planning Committee Chairperson.
- 5.3.2 PJ Gordhan requested an adjournment of 15 minutes to allow all participants to be properly briefed with regard to a proposal of the Planning Committee. When the meeting reconvened after the adjournment, the proposal would be formally tabled in the Negotiating Council. This was agreed to.
- 5.3.3 A proposal from the Planning Committee was formally tabled before the Negotiating Council (see Addendum C).
- 5.3.4 It was agreed that:
- * The proposal as put forward by the Planning Committee be accepted;
 - * The Planning Committee meet at 09h00 on Thursday 24 June 1993 at 09h00 followed by the meeting of the Negotiating Council at 10h00;

* The Negotiating Council meet on Friday 25 June 1993 at 08h30 until 18h00.

5.3.5 The debate then returned to the Constitutional Principles.

6. **Closure**

The meeting was closed at 22h15.

These minutes were ratified at the meeting of the Negotiating Council of 30 June 1993 and the amended version signed by the Chairperson of the original meeting on 30/6/1993.....



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CHAIRPERSON

Addendum A

The following delegates and advisers were present at the meeting of the Negotiating Council on Wednesday 23 June 1993:

L Landers : Chairperson
 PJ Gordhan : Assistant to the Chairperson

Organisation	Delegates	Advisers
ANC	MV Moosa M Manzini	M Maharaj B Kgositsile
AVU	CD de Jager J Gouws	JJC Botha MJ Mentz
Bophuthatswana	R Cronje R Mangope	SG Mothibe BE Keikelame
Cape Trad. Leaders	M Nonkonyana SN Sigcau	DM Jongilanga GD Gwadiso
Ciskei	M Webb VT Gqiba	TM Bulube SM Faku
DP	C Eglin D Smuts	K Andrew
Dikwankwetla	K Ngwenya	SOM Moji JSS Phatang
IFP	FX Gasa	
IYP	NJ Mahlangu N Mtsweni	AP Laka Q Vilankulu
KP	A Budd	F le Roux
INM	SS Ripinga FS Baloi	GG Zama PMH Maduna
Kwazulu	H Ngubane	SH Gumede
Labour Party	C August	J Douw D Lockey
NIC/TIC	F Hajaij	K Mayet B Pillay
NP	DJ de Villiers TJ King	L Wessels
NPP	A Rajbansi A Rambarran	O Gany M Govender

TS Trad. Leaders	AM Molefe RH Mopeli	MB Mota M Moroke
PAC	P de Lille M Molete	E Sibeko LS Makhanda
Solidarity	DS Rajah	AS Razak
SACP	J Slovo L Jacobus	E Pahad S Shilowa
SA Government	RP Meyer D Govender	
Transkei	Z Titus N Jajula	LL Mtshizana
TVL Trad. Leaders	MA Netshimbupfe	LM Mokoena NE Ngomane
UPF	MJ Mahlangu A Chabalala	RJ Dombo J Maake
Venda	SE Moeti AK Masehela	GM Ligege S Makhuvha
XPP	BBR Shiluvani PT Shiluvana	MH Matjokana TB Shibambu

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

STATEMENT BY THE PAC

The PAC is willing to accept the Declaration on Cessation/Suspension of Hostilities in principle and subscribes to it. It is our understanding that this Declaration satisfies our requirement for a mutual cessation of hostilities between the PAC and the Regime.

We will have a bi-lateral meeting with the regime on 24 June 1993 to:

1. Agree on the outstanding matters that need to be resolved in relation to the Resolution of 27 May 1993;
2. Agree on the implementation of the Declaration on Cessation/Suspension in accordance with paragraph 7 of the Resolution on Conditions that should be Created to Eliminate Violence of 22 June 1993, which states:

"A series of phased confidence-building measures which would include the future of all armed formations, their personnel and arsenals, be adopted leading to the creation of impartial, legitimate and effective security forces with the consequent dissolution of all other armed formations. A distinction be drawn between statutory and non-statutory armies on the one hand and police forces on the other hand. The Technical Committee on the TEC and its sub-councils to make proposals on precise mechanisms to be adopted."

We wish to clarify that the PAC advocates a Transitional Authority and not a Transitional Executive Council.

**PROPOSAL ON THE NEGOTIATING FORUM OF
25 JUNE 1993
ACCEPTED BY THE NEGOTIATING COUNCIL ON 23 JUNE 1993**

The Negotiating Council has carefully reviewed the progress in the negotiating process. The Negotiating Council recognises that some progress has been made in processing the reports of the Technical Committees.

It is the view of the Negotiating Council that significant time has been lost in the process of discussions which did not enable the optimum usage of the time available.

It is firmly believed, however, that South Africans are eagerly awaiting news of concrete and constructive progress in the negotiating process.

With a view to ensuring an optimum and constructive conclusion to this phase of the negotiation process it was agreed that the Negotiating Forum be postponed until Friday 2 July 1993.

We believe that if all participants commit themselves to the process and to endeavour to make constructive and sufficient progress, a Forum meeting on Friday 2 July will be able to produce tangible results which would enhance the negotiating process and reassure South Africans of the viability of this process.

It was agreed that the Negotiating Council meets on Friday and a schedule of Negotiating Council meetings for next week will be proposed at tomorrow's Council meeting.