



SOUTH AFRICA MULTI-PARTY NEGOTIATING COUNCIL,
PROCESS NEGOTIATING CONSENSUS AND HOC
COMMITTEE: SUPPLEMENT REPORT Nos. 1 20 JUL 1993

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***FIRST REPORT
OF THE
AD HOC COMMITTEE
ON SUFFICIENT CONSENSUS***

20 JULY 1993

STILL TO BE CONSIDERED BY BOTH
THE PLANNING COMMITTEE AND THE NEGOTIATING COUNCIL

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**FIRST REPORT
OF THE
AD HOC COMMITTEE ON SUFFICIENT CONSENSUS**

20 JULY 1993

1. Introduction

- 1.1 The issue of sufficient consensus (SC) was discussed in the Negotiating Council on 18 June, 1993. The matter was referred to the Planning Committee for consideration. On the recommendation of the Planning Committee the Negotiating Council established an Ad Hoc Committee on Sufficient Consensus consisting of:

PJ Gordhan (Convenor)
K Gouws
B Kgositsile
F Le Roux
M Webb

Assisted by the Sub-Committee of the Planning Committee:

M Maharaj
B Ngubane
SS van der Merwe

2. The Standing Rules

- 2.1 The Negotiating Forum adopted Standing Rules for Procedure to apply at Plenary meetings of the Negotiating Forum and the Negotiating Council. A copy is attached (see Addendum A).
- 2.2 The manner in which agreements are arrived at and decisions taken are described in paragraph 4 of the Standing Rules: by general consensus but if that cannot be achieved, then by what is called sufficient consensus.
- 2.3 Decisions taken by general consensus create no problems. A number of parties have however, expressed dissatisfaction with either the concept of sufficient consensus or the way in which paragraph 4 of the Standing Rules has been applied in general or in specific cases.
- 2.4 Apart from general consensus, decisions in other bodies are normally taken by way of majority votes. This would be inappropriate in a case like the MPNP because:

- * Of the very fact that negotiating bodies meeting with a view to reaching agreements between the participating parties are involved and not statutory or informal bodies meeting to produce decisions of a management or governing nature;
- * The size of the support bases of participating parties are not known, but is generally accepted that they differ greatly; and
- * The purpose of the exercise is to reach agreements on fundamental political issues that will have the support of all, or as many as possible of the parties, and of the vast majority of the people of South Africa.

2.5 It was against this background that the concept of sufficient consensus was developed. In essence it means that the resolution has sufficient support for the process to move forward. Obviously many factors will influence the decision on whether sufficient consensus to move forward exists or not. Amongst them will be the following:

- * The nature of the issue. Thus cases of unimportant, formal or administrative issues may very well require no discussion, but merely an aye or nay indication from the meeting before sufficient consensus is declared. On the other hand when final agreement on a constitution is in question, no effort and time will be spared trying to get agreement by general consensus.
- * The parties for and against. If a single party whose support is essential for the execution of the decision or who has a particular material interest, opposes it, sufficient consensus will not as readily be declared than where those opposing have no real interest in the issue or will not be required to contribute to implementation.
- * The gravity of the opposition or support. If one party's objection on a fundamental final issue is so grave that there is a real risk of it withholding its support, then more time and effort ought to be spent on trying to find general consensus before sufficient consensus is declared.
- * When support is withheld in an evident effort merely to delay or obstruct progress, sufficient consensus to move forward may be declared in spite of such opposition.

3. Perceptions and Difficulties

In the debate in the Negotiating Council of 18 June 1993 the following, among other, issues were raised by participants:

- 3.1 In certain cases sufficient consensus was declared while in fact there was not sufficient consensus;
- 3.2 Disagreeing parties were not given sufficient time to enable them to consult their principals;
- 3.3 Disagreeing parties have not been given sufficient opportunity to use available mechanisms in order to reach the widest possible consensus, before it was ruled that there was sufficient consensus;
- 3.4 Parties in favour of a proposed resolution were not given sufficient opportunity to promote their case before it was ruled that sufficient consensus did not exist (that there was "insufficient consensus" for an agreement to be arrived at);
- 3.5 The Clause 4.4. of the Standing Rules is being incorrectly and injudiciously applied, particularly in relation to "head counting";
- 3.6 The existing rules do not indicate clear procedures to guide the Chair;
- 3.7 Concerns were raised about filibustering or delaying tactics;
- 3.8 No participant should be able to exercise a veto on the process;
- 3.9 Sufficient Consensus did offer a mechanism to ensure progress in the negotiating process notwithstanding differences which might exist;
- 3.10 The major problem was the application of the rules rather than the rules themselves;
- 3.11 Finally, there was consensus that the above concerns should be looked into and the Planning Committee was asked to do so.

4. Discussion in the Ad Hoc Committee

- 4.1 The Ad Hoc Committee has had two discussions to date. On the first occasion (24 June, 1993) all the members of the Committee were present except Dr Ngubane. On the second occasion (20 July, 1993) the following members were absent:

- * Mrs Gouws
- * Mr Le Roux
- * Dr Ngubane

- 4.2 In addition to the issues raised in the Negotiating Council discussion on 18 June, 1993, the Ad Hoc Committee identified the following:

- * The application of sufficient consensus as opposed to the formulation of the Standing Rules;
- * The concept of insufficient consensus to be explored;
- * "Constructive filibustering" was a concern;
- * The need for systematic procedures/guidelines for Chairpersons.

5. Recommendations of the Ad Hoc Committee

5.1 Amendment of the Standing Rules

- 5.1.1 The only real indication from the Negotiating Council for possible amendment of the Standing rules, was that attention should be given to the inclusion of the concept "insufficient consensus". This involved those cases where the proposers of a motion could not muster enough support for the motion to be carried. The notion appears to be that in such cases various mechanisms for the seeking of consensus should also be available to the proposers of the motion;
- 5.1.2 An analysis of paragraph 4.4 seems to indicate that this is already the case. In the second sentence of the paragraph it is said that "before ruling that there is sufficient consensus or not, the chair shall ensure ...". This seems to be a clear injunction to the Chair to also grant the opportunity to use the mechanisms to those who favour a motion for which they cannot get sufficient support. Obviously the Chair will also in this case bear in mind the factors referred to in paragraph 5 above.
- 5.1.3 We are consequently recommending that the Standing Rules remain as they are and that a set of guidelines are formulated to facilitate the application of the Standing Rules.

5.2 Systematic Procedure to guide the Chairperson

- 5.2.1 The Ad Hoc Committee is of the view that many of the concerns in 3 above can be addressed by formulating a flexible procedure to guide the Chairperson.
- 5.2.2 The recommendation in this regard is set out in 6 below. These guidelines are offered for discussion in the NC and a final set of guidelines can be formulated after the discussion has taken place.
- 5.2.3 The Ad Hoc Committee is also of the view that even this procedural guide will be inadequate unless two other issues are addressed at the same time. These are set out in 5.3 and 5.4 below.

5.2.4 Status of Guidelines : It is recommended that if the following guidelines are finally adopted by resolution in the Negotiating Council, they shall serve as a set of guidelines for the application of the Standing Rules.

5.3 Constructive Negotiating Spirit

5.3.1 It should be noted that the Negotiating Council is involved in a sensitive and complex political process. Many differences exist among participants on substantive issues.

5.3.2 Notwithstanding these differences the main object of negotiations is to find a "bridge" or "equilibrium" between different views.

5.3.3 Participants must give attention to creating a constructive negotiating spirit which is a precondition for the successful search for a "bridge" or "equilibrium".

5.4 Avoiding "Filibustering" or "Majoritarianism"

There are quite clearly strong perceptions and concerns about both of the above. A constructive negotiating spirit and the guidelines in 6 below will go a long way to addressing these concerns.

5.5 Time Frames

In view of the need to make good progress in the negotiating process and at the same time allow sufficient time to implement the guidelines below, it is vital that well defined time frames are incorporated into the guidelines.

6. Recommendation on Procedural Guidelines for the Chairperson

6.1 Paragraph 4.4 of the Standing Rules serves as a basis for the Guidelines below:

"4.4 The ruling that there is consensus/sufficient consensus or not, shall be taken by the Chair in his/her discretion. However, before ruling that there is sufficient consensus or not, the Chair shall ensure that the disagreeing parties, especially those who consider themselves materially affected, as well as the meeting, shall have had sufficient opportunity to utilise a variety of mechanisms in order to reach the widest possible consensus.

In particular, such mechanisms shall include adjournments to enable informal discussions between participants, setting up technical committees composed as the meeting deems appropriate for the

particular matter under consideration, as well as allowing participants to consult their principals.

The Chair and the meeting shall decide upon the specific mechanism/s on the basis of the nature of the issues around which the disagreement exists, with the view to arriving at consensus/sufficient consensus. These mechanisms are intended for resolving substantive issues and not for formal and administrative decisions."

6.2 The procedural guidelines shall consist of three elements

6.2.1 An overall process for managing the Negotiating Council meetings;

6.2.2 Mechanisms for maximising consensus;

6.2.3 Possible time frames for mechanisms;

6.3 Overall Process for Managing Negotiating Council Meetings

The following steps are suggested to assist the Negotiating Council in managing the processing of draft legislation over the next few weeks:

6.3.1 Draft legislation prepared by Technical Committee;

6.3.2 Draft legislation discussed in the Negotiating Council;

6.3.3 Differences, if any, on substantive issues identified;

6.3.4 Alternate formulations must be proposed;

6.3.5 In the first instance, the Technical Committee to be given an opportunity to bridge differences;

6.3.6 When the above is not possible, the mechanism/s indicated in 6.4 below could be deployed;

6.3.7 The fact that there is an issue in dispute or under discussion in terms of 6.3.6 above, shall not delay or stop the processes in the Negotiating Council;

6.3.8 The Negotiating Council takes the final decision.

6.4 Mechanisms to maximise consensus

6.4.1 In line with 6.3.3 and 6.3.4 above the Chair should clearly identify an or a set of issues on which differences exist. These differences should ideally be grouped in such a way as to expedite the resolution of the

difference.

6.4.2 The following mechanisms could then be employed by the chair if necessary on the advice of the Planning Committee:

6.4.2.1 The provisions of paragraph 2 of 4.4 of Standing Rules:

"In particular, such mechanisms shall include adjournments to enable informal discussions between participants, setting up technical committees composed as the meeting deems appropriate for the particular matter under consideration, as well as allowing participants to consult their principals."

6.4.2.2 An Ad-hoc Committee could be entrusted with the responsibility of bridging differences.

6.4.2.3 Bilateral discussions could be held under the guidance of the Planning Committee where the difference is among 2 or 3 participants. One or more representative(s) of the relevant Technical Committee could participate in such a bilateral meeting for the purpose of clarifying issues.

6.4.2.4 Multi-lateral discussions could be held under the guidance of the Planning Committee in instances where more than 2 or 3 persons need to be involved. One or more representative(s) of the relevant Technical Committee could participate in such a multi-lateral meeting for the purpose of clarifying issues.

6.4.3 The Planning Committee will provide the Negotiating Council with comprehensive reports on the progress made and outcome of the above mechanisms.

6.4.4 It must be understood that the above mechanisms should be employed in a flexible and creative way bearing in mind the nature of the issue, the nature of the difference and the context in which the difference arose.

6.5 Time Frames

In order to ensure that good progress is made in the negotiating process and allow for sufficient time for the above mechanisms to yield optimum results, clear time frames must be stipulated by the Negotiating Council in respect of any option employed.

7. **Conclusion**

The Negotiating Council is requested to give consideration to this First Report of the Ad Hoc Committee and indicate whether the Ad Hoc Committee is required to present a further/final report on the basis of the views expressed in the Negotiating Council.

STANDING RULES OF PROCEDURE

1. Application

These Rules of Procedure apply at Plenary meetings and at meetings of the Negotiating Forum and the Negotiating Council.

2. Participants

The participating parties entitled to be represented at meetings are those listed in the List of Participating Parties annexed hereto. The Negotiating Forum can add parties to or delete parties from the list, on the recommendation of the Negotiating Council. Observers can be admitted as decided.

3. Delegates

3.1 Each participating party shall be entitled to be represented by:

3.1.1 Ten delegates (women must be included in the delegation) at Plenary meetings;

3.1.2 Four delegates (at least one of whom would be a woman) and two advisers at meetings of the Negotiating Forum;

3.1.3 Two delegates (at least one of whom would be a woman) and two advisers at meetings of the Negotiating Council; the leader of the delegation can appoint an adviser to take his/her place as an alternate if necessary.

3.2 Each participating party shall submit and register the names of its delegates and advisers with the [name of the forum] Administration.

3.3 Advisers can be substituted at any time provided that the substituting advisers are registered with the Administration in advance and that the leaders of the delegations notify the Chairpersons whenever an adviser is substituted during the course of a meeting.

3.4 In the event of a dispute concerning the credentials of a delegate or an adviser, the issue will be decided by the meeting itself upon the receipt of a factual report and recommendation of the Planning Committee.

4. **Agreements and Decisions**

- 4.1 All agreements are to be arrived at and decisions taken by general consensus.
- 4.2 If general consensus cannot be achieved, the method of sufficient consensus will be used.
- 4.3 Sufficient consensus means that:
 - 4.3.1 There is a lack of general consensus;
 - 4.3.2 There is enough agreement from enough participating parties to enable the process to move forward;
 - 4.3.3 Parties who disagree can record their objections or rejections formally, but will, in the spirit of cooperation, not hinder the process from going forward.
- 4.4 The ruling that there is consensus/sufficient consensus or not, shall be taken by the Chair in his/her discretion. However, before ruling that there is sufficient consensus or not, the Chair shall ensure that the disagreeing parties, especially those who consider themselves materially affected, as well as the meeting, shall have had sufficient opportunity to utilise a variety of mechanisms in order to reach the widest possible consensus.

In particular, such mechanisms shall include adjournments to enable informal discussions between participants, setting up technical committees composed as the meeting deems appropriate for the particular matter under consideration, as well as allowing participants to consult their principals.

The Chair and the meeting shall decide upon the specific mechanism/s on the basis of the nature of the issues around which the disagreement exists, with the view to arriving at consensus/sufficient consensus. These mechanisms are intended for resolving substantive issues and not for formal and administrative decisions.

- 4.5 The ruling that there is consensus/sufficient consensus or not can however be challenged by any party who disagrees. The meeting will then deal with it as is appropriate.

5. **Quorum**

The Chair may declare a meeting open and permit the debate to proceed when delegates of at least two-thirds of the participating parties are present.

6. Speeches and interventions

- 6.1 Every delegate shall be entitled to speak.
- 6.2 If a speaking order has been agreed upon, the Chair shall call the speakers in that order.
- 6.3 In general, the Chair shall call on speakers in that order in which they signify their desire to speak. The Chair however, shall ensure that each delegation is afforded a reasonable opportunity to speak.
- 6.4 The Chair shall apply the standard rules applicable to meetings, except as otherwise stipulated herein.

7. Chairing of meetings

- 7.1 Plenary meetings shall be chaired by an independent Chairperson/s to be decided upon by the Negotiating Council.
- 7.2 The Negotiating Forum and the Negotiating Council shall be chaired by a core panel of Chairpersons (assisted by two persons from within the Negotiating Council), appointed on merit and capability by the Negotiating Council from its own ranks and serving on a rotating basis. This principle of rotation should be applied from time to time as decided by the Negotiating Council, bearing in mind the principle of continuity.

8. Minutes and Documentation

- 8.1 The proceedings of Plenary meetings shall be recorded and transcribed and copies of the transcript made available to all delegates.
- 8.2 The proceedings of meetings of the Negotiating Forum and Negotiating Council shall be recorded in full, but only agreements and decisions shall be minuted.
- 8.3 Where a member or members specifically request that their objection is noted, their objection will be so minuted.

9. Media

All meetings of the Plenary, The Negotiating Forum and The Negotiating Council shall be open to the media, with the proviso that the Negotiating Council may, in terms of its own procedures, decide on which part of its meetings should be closed to the media

10. **Amendment of the Rules of Procedure**

10.1 These Rules of Procedure can be amended by the Negotiating Forum.

LIST OF PARTICIPATING PARTIES

African National Congress
Afrikaner Volksunie
Bophuthatswana Government
Cape Traditional Leaders
Ciskei Government
Democratic Party
Dikwankwetla Party
Inkatha Freedom Party
Intando Yesizwe Party
Konserwatiewe Party
Inyandza National Movement
Kwazulu Government
Labour Party
Natal/Transvaal Indian Congress
National Party
National People's Party
Orange Free State Traditional Leaders
Pan Africanist Congress
Solidarity Party
South African Communist Party
South African Government
Transkei Government
Transvaal Traditional Leaders
United Peoples' Front
Venda Government
Ximoko Progressive Party

GOVERNMENT PUBLICATIONS



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