

2/11/3/14

Box 23

Constitutional Committee  
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Constitutional Committee: 4 August 1995 (cont)

Public Protector (cont)

Pahod

Strong feeling - incorrect to have <sup>provincial</sup> public protectors at nat'l & provincial levels. wd. create tensions. Nat'l office shd be able to create prov. offices, but not sep. provincial public protectors.

Kgoitsile

① Provincial offices wd be needed to allow people access. But shd. not be domain of province - wd. allow creation of different procedures & approaches.

② Deputy Public Protectors - ANC finds this problematic if Public Protector needs assistance, shd. be able to appt them; not as Dep. Public Protector who wd have to be <sup>formally</sup> appt. ed too.

Carver

This differs from ANSC stand on Gender Commission

Support provincial public protectors.

Include enabling provision, allowing prov. govt parli to appt, in consultation w/ nat'l public protector

Sizani

But provinces, w/ own constitutions, could create own offices, irrespective of what being said now.

du Toit

IC says prov. constit. s can be drafted, but must conform to nat'l in this respect.

Real question re prov. public protector can only be answered in terms of resolution of debate on provincial competencies, as a whole.

Institutional (number of agents) (cont)

Public (cont)

strong focus - incentive to have public protection  
at rest & provincial level. No state training.  
No'd after at least 1 week for office,  
but not up provincial public protection.

Public

Government office not be ready to other people access.  
But not be clear of province - not  
allow certain of different procedures & approaches.

Hydrology

Dept Public Protection - not for the public  
of Public Protection into assistance, so be able to  
apply them; not as Dep. Public Protection  
also not have to be applied, so too.

The office for that stand in place  
Commission

Commission

strong provincial public protection  
include enabling provision; allowing gov. of  
public to apply, in consultation of that  
public protection

Tape 8A

But provision of an institution, not state  
own office, irrespective of what level was.

Division

The way gov. work, it can be useful,  
but must conform to what is in the report.

the top

that provision in public protection can be  
be covered in form of institution of state  
provincial commission, a state.

Zolin

Detail here can't be resolved until resolve question of provincial power - exclusion or concurrent.

If provincial gov't strong, w/ own budget, might have a strong case for creating provincial public protectors.

Pahad

This in round about way say we'd have to have provincial public protector. In any case, don't need prov. protectors.

Raises great problem about who we'd complain to whom.

Hofmeyer

Agrees w/ Pahad. This issue doesn't have to do w/ exclusive + concurrent power.

If have ombudsmen for all levels - act in consultation when deal w/ each act: nightmare. Prov. ones end up forming part of nat'l office. W'd allow for cover-ups.

Multiple jurisdictions - raises huge problems re. jurisdiction, sharing of info.

Need for rationalisation, accessibility

Autonomy or indep. we'd create a can of worms. Set up multiplicity of offices, w/ unclear jurisdictions + overlaps.

Issue re reporting at appropriate levels can be discussed. Probably needed.

Wessels

Unless have agreement in principle - cd take a long time. Had same discussions on same issue in same TC.

As go along, set patterns

Finalise when have clearer picture of competencies +

Comparative Picture from:

Comm for Admin.

Judic Comm.

+ then

try + find pattern that runs thru it all.

ANRC has not proposed Judic Commissioners at provincial level.

Other matit.

Agrees w/ Wessels

Pandor

But lay at

Pandor

ANRC - clear view

Public Protector can esta. provincial offices, but indep. autonomous prov. offices shd. not be set up.

Zglin

Matter for further debate,

Report - TC: ANRC agreed to provincially appt. ed public protectors.

Hofmeyr

Provinces where ruling party w/ 80-90% majority, is there confidence that people wd. be appt. ed who wd. oppose ruling party.

At nat'l level, greater balance, + people appt. ed wd. be less susceptible to those pressures.

Ramaphosa

Wessels proposal:

- ① Leave matter in abeyance
- ② Until see how questions like provincial competences wd. be resolved, + <sup>how</sup> other similar structures like Gender Commissions wd. be structured.

- Play the issue  
 - Refer to CC  
 sub-comm. to take matter further -  
 relevant diff. views - parties

Not to leave in air, send to <sup>CC</sup> sub-comm. to deal w/ matter further.

Pandor

Saw earlier, negotiating forum in CC.

Parties in TC bring preliminary submissions. Can change Dem.

Manzini

Covered. Not contradictions - harmonising views.

Gender Comms. <sup>already</sup> in <sup>Premiers Office</sup> provinces different from hup.

Gender Comms. to be set up

de Lange

Agnes birds eye views.

Organs of state outside of executive, judiciary + legis. - so doesn't relate to provincial competences.

did not

Wessels

Amendment: only in sense of Jizani's question, the competencies debate relevant.

Pahed

Cut this issue from provincial competencies -

Ramaphosa

Agreed.

Kgositse

Jizani's question wd be answered: no provincial constit. to stand in conflict w/ nat'l here.

v. Heerden:

What if province needs office, & nat'l funding disallows it. Why can't set up own.

Ginwala

Can't have situation where citizen of one province has different remedy than citizen in another. Provinces can supplement national office, & create its own ombudsmen. This, however, setting up basic system.

Camever

Very confused now.

Let sub-comm continue to find modus vivendi.

Ramaphosa

Use same procedure b/t this report as other

- 1) Sent for comparative analysis - Bird's eye view
- 2) Forwarded to CC Sub-Comm to discuss matters w/ some finality.
- 3) Sub-comm to report back to CC.

AK /

... in some of ...  
... the ...

What

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John

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what happened at sub-comm. in line w/ what Zylins saying,  
but transcript ~~shows~~ ~~minutes~~ ~~was~~ ~~right~~ doesn't support Zylins'  
view



Constitutional  
Management Committee Meeting

5

11 August 1995

1. Opening

09h12

Agenda:

Adopted w/ 1 addition:

AOB 11.6 Recommend. from MC for CA meeting  
scheduled for 18 Aug.

Apologies:

Goodhan, Skwuyiza, Meshoe ⇒ Green,  
Asmal, de Laage, Rujinga

Silje ⇒ Andrew

Vitjoen ⇒ Mulder

Toussaint ⇒ Cameron

Kenj ⇒ van Dierckx

Makhanya ⇒ Kadure

Meyer ⇒ de Beer

Robri ⇒ Pistorius

E. Pehad

2. Minutes

Eglin

p. 7. 5.8. "Regarding para. 3"  
"It was agreed that ..."

Flagged to be referred to Hans Adrians.  
They dealt w/ in different way:  
adjusted not omitted.

Ramaphosa

Get advice. Transcript available.

But take into account what was said at



sub-committee, where that kind of agreement (Eglin proposed) made.

Eglin

Further develop. at sub-comm. Take it from here

Rame

Put that part in a block, b/c) sub-comm. <sup>further develop at</sup> changed situation slightly.

Pardov

P.4 p.5.2.ii "areas that need further attention"

P.12 7.ii.

it wd be looked at again once birds' eye view available reformulate.

Cemerer

Her pt., too 7.ii :

P.10 - 6.1.3 ii

Says: Omnibus clause =>

Birds' eye view

But intended to deal w/ that section in same way as Public Prot.

Fourie

P.13. 9.2 : Wd be deferred for further discussion. Not a final formulation.

Eglin

Transcript. Let Secretariat think of some slight adjustment :

Decision of attitude: taking into account what was said at meeting.

Panda

p.10 item 6

Concern that Panelists not attending + should be attending.

Morais

P.2: Morais not an alternate - Full member

Adopted

3. AOB

4. CC Sub-Comm. Report

Ramaphosa

Spoke to

Report p.14 Pt. 1:

i. Complete Bill of Rights early sep.

ii. Public Admin.

de Beer

Referring to changes made

1.(1)(h) Affirmative action

"Ability" to replace "competency."

1(2) = (3)

2(1) This formulation accepted.

2(3) "safeguard" ~~protect~~ → promote.

2(5) 5d stand. ~~At~~

Memorandum tabled at Meeting read.

3(2) Cond. of service

"Public Admin" ⇒ "Public Service"

"Pension" ⇒ "Pension Scheme"

This moved from 1(2) to 3(2)

Ramaphosa

Revised changes

Raised discussion: clause by clause.

1. (a) - (h)

scratched competency out in 1(h)

(2)

Eglin

As formulated prior, but 1 issue:  
appears "limited" (# of persons) has fallen out of  
text. Wants it reinstated.

Ramaphosa

Reminder

Love

Is this advisable. Simplification of text  
motivated by fact wd. be less const. debate —  
given lack of specificity w/ "limited".  
"limited" wd. suggest a qualification.

Eglin

Introducing poli. factors into appt.s, shouldn't  
become the norm. Sh. be limited.

de Beer

<sup>TC</sup>  
During discussions, always stated wd. be  
limited. Keeping in wd. be in line

Ramaphosa

Eglin & de Beer correct: always there & no  
decision at CC level to remove it.

Must in what Miss Love said

Proposed: leave in abeyance. Discuss & raise  
in CA.

leave it as it was, "limited #," & Ms. Love et al  
cd. raise proposal to remove it.

2(3)

2(1)

Pandor

2(1) "To nominate a rep. for  
appt. to the commission"

Rama.

No difficulty accepting that

2(3) noted safeguard => promote

N. Pandor

2(3) <sup>unless say</sup> Doesn't make sense / "such functions" - as shall promote"

du Toit

" Shall promote the basic values - ... "

Ramaphosa

But want to say its functions wd be to promote...

du Toit

There's no difference. You can't promote w/o functions

Add: " Shall be prescribed by "

Hofmeyr

Semantic problems

" Public Admin. Commission's function shall be to promote the basic values + principles and shall be prescribed by nat'l law "

Leave to drafters

Ramaphosa

Yes Can raise changes on CA floor

2(4) ✓

2(5) Set out in news received.

du Toit

Syntax needs to be looked at again, "such as" etc.

Ramaphosa Report:

3(1) ✓

3(2)

MJ Mchlangeni

Concludes discussion.

Notes Memo. from Forum of Service Commissions

Abraham

Forum said wanted to comment on 19 May draft. Refer us to submission already considered by TC.

MC agreed Forum to be given an oppor. when everyone else will be completed draft text.

Ramaphosa

That will be communicated to them. Latest draft to be sent to them, & can comment on final when comes out in complete draft

Thanked TC esp. de Beers & Louw.

Nessels

Can we agree - so we will start the pot in CA.

Ramaphosa

Adds excitement.

Back to sub-Comm. Report.

Pts. 3 on TC3

4 on Aud-Gen. Memo needed on birds' eye view on all offices

5

4

discussed by sub-comm. & still at sub-comm level. Will come back to CC when finished work there.

# 5. TC 2 Report:

MJ Mahleagu

Parliament:

Tech Advisors: v. Wyk & Hayler there.

Draft formulations pp. 24

(1) Assembly

Contentions:

2) Senate

3 Size of National Assembly

5<sup>(1)</sup> Duration: 4 or 5 yrs.

6(2) Who sd chair during election of speaker -  
Chief Justice or President of Const. Court.

7(2)(c) Disqualification for 5 years or  
for life?

7(2)(e) Raise question of paid leaders.  
so wd get 2 salaries, one from State  
President, 1 from Nat'l Assembly.

7(3) How long should disqualification be?

(8) Should people cross the floor or not.

Absences.

10(1) Who should give oath

11(1) Chief Justice to summons sitting 10 days  
after election may be impracticable -  
summon 10 days after declaration of results.



MT Maloney

Reference: v. W. v. Hoffm. H. H. H.

Group foundation pp. 21  
(c) 1997

Question:

is there

a gift of marital trust

(c) Question: 4 or 5 yrs.

(c) What is the basis of the gift? Chief Justice & Justice of the Court.

(c) 7 (c) Disposition for 5 years for life?

(c) 7 (c) Same question of the basis as out of a release, or from state provisions, 1 for MT's trust.

(c) 7 (c) How long should disposition be?

(c) 7 (c) Should people over the floor or not? Answer.

[ PAGE 2A ]

(c) 7 (c) What should you do?

(c) 7 (c) Chief Justice & Justice of the Court after their may be important - answer 10 days after distribution of trust.

Mahlangu

11(2) "State President" distinctly set out.

NP says a certain % of members should be able to call sitting.

11(3) what to call extraordinary sitting.

12 Quorum: in Const? or Rules of Parlia.

13

14

15 Ad. committees be prescribed by const. or dealt w/ in rules + procedures in Parlia.

17 } Need to resolve issue of senate

18 }

17 }

20 Block 7 must be dealt w/ to complete this.

21 Relates to TCS : b/c of potential refers to TCS.

22 (1) Where sd. safekeeping of docs be: Supreme or Const. Court.

(2) TC1 to deal w/

Nat'l Assembly texts 1st - Nat'l Exec later.

Questions of clarity called for.

None.

Then look at draft. To exchange views & ideas.

Clause by Clause

1

1/2

Competencies dealt w/ TCS

Ramaphosa

11 (2) "State practice" distinct error.

11 (2) "What is a contract?" of number of states that have  
written contract law.

12. Common: in contract or law of tort.

13

14

15

15. All committees be provided by contract to state  
of in case + procedure in tort.

17 } Law to resolve cases of contract  
18 }  
19 }

### Deferral of issue

20. State of contract to be left up to contract law.

21. Place to TSC : d/c of parties  
refers to TSC.

22. (2) Where ad. responsibility of doc. be  
determined in contract law.

(2) TSC to deal w/

### Transfer

Not a transfer of tort - Not a contract  
Question of contract called for.  
Nov.

Then look at brief. To exchange view  
or ideas.

Class of class

11/2/20

du Toit

This type of formulation shdnt be read exclusively.

Parliament only has power at nat'l level.

Quercid No.

Lamphosa

Flag it.

- 2 TC still dealing w/ issue of Senate.
  - 3 TC still dealing w/ it
- } Leave in abeyance for now.

4

Zylin

Footnote indicates party preferences. Should that be inserted here.

Clause amendment } <sup>class</sup> "based on a common vote" <sup>& generally proportional</sup> <sup>up.</sup>  
+ "resulting in proportional representation" rather than "generally..."

v. Breda

Leave discussion until deal w/ later part of item 5 on Electoral Systems.

Pandor

Doesnt need much discussion; the idea is in the schematic analysis.

v. Breda

But electoral systems wd affect the phrasing of the clause.

Roma.

Formulation in electoral systems stat.

Vol 2 pp. 8 + 9

Draft prov. to be included in draft on Nat'l Assembly as section 4...

word results, here, catered for there.

"resulting"

Andrew

Ramaphosa

Eglin proposes add "resulting in"

du Toit

The principle or objective of this clause; "resulting" ad. be inaccurate.

Ramaphosa

Concept being put forward. Drafters wd look at how.

(5) Duration 4 or 5 yrs.

Andrew

Asked: in terms of nat & loc. elections & prov legis. elections, has discussion occurred on whether wd occur on same day or not, same year or not cycle in mind when discuss formulation.

Mablangu

Not yet discussed.

du Toit

Asked why DP wants 4 yrs.

Eglin

Why ANC wants 5 years?

(1) Accountability to voters. 4 yrs. more accountable than 5 yrs.

(2) Prime Minister who wd assist Pres. run cabinet. Wd rearrange Cabinet. Less elections - Parliament coming from vote of no confidence.

Cd. give vote of no confidence for Prime Minister, that wd. not require elections as a result of no confidence b/c President cd. reshuffle cabinet.

suggest Nat'l Elections every 4 yrs. + Provincial every 2 yrs., or every 4 yrs. w/ b/t nat'l elections.

du Toit

Artho may have shorter periods b/t elections, programmes in this country need 5 yrs. to implement. country needs feeling of stability; accountability, too, but 1 yr. won't make a difference to stability, For stability & to continue big contribution

Zylin

Take issues back to their principle & reassess. Asked ANC to do same.

Ramaphosa

Might be need for bilateral

Zylin

Wish to have bilateral, but ANC too busy to arrange it.

Ramaphosa

Perhaps debate this in CA.

Mablangu

5(3) Way worded, if/expire <sup>term</sup> Better: members function until newly elected members take up seats - other wise cd. have situation of dissolved parlia. & contested elections.

Hojmeyr

5(2) Queried: ① Wd. President only dissolve Nat'l Assembly w/ vote of no confidence. no power to call early election.

Rama

② duplication <sup>of clauses</sup> elsewhere  
Tech Experts to look at ②

Eglin

Agrees

add  
5(1) "unless dissolved", cd. omit 5(2)

Ramaphosa

Could tighten up.

Pandor

5(1) "The Nat'l Assembly wd serve (not continue)"

Ramaphosa

5(3): Madlangu's amendment: asked for ideas

Eglin

Cd have hiatus if members cease to be members,  
no statutory body w/ cd. be called in emergency.

Members to be members until replaced by others.

Wessels:

When Parlia. dissolved on part. date, has functions.

Not function to oversee election; executive does.

Let executive stay in power until replaced, not parliament.

du Toit

Internat'l position needs to be looked at.

If Parlia. cont.s, a problems like declaring  
elections invalid, cd. be dangerous, too.

(Chair) Wessels

Wiss suggestion. Ask Tech advsions for clarity here.

Steyler

If outgoing parlia. sees itself being an election,  
cd. legislate to make elections null & void.Will seriously consider internat'l examples,  
how deal w/ it.

Hofmeyr

Can only contemplate extending parlia beyond  
elections if some safeguards included

du Toit

Interim period needs bodies, as in Germany,  
like Senate.

Chabane

5(2) to effect of this delays the Nat'l Assembly  
from passing motion of no confidence.

Wissels

Chabane's concern  
Wd. be called for.

6(1) agreed

6(2): fn: Agreed to

Hofmeyr

President of Const. Court - before looking at other  
judges, look at President.

v. Breda

Why?

Hofmeyr

Motivation: use most senior judge, w/ greatest stature.  
Const. Court will be above Appeal Court;  
ANC w/ no view about whether sd be Pres. of  
C Court or chief justice, but prefer 1st.

Aepfermann  
Kadane

Only applies to Constitutional cases. Prefer  
Chief Justice.

du Toit

Unwise to press the pt. of seniority of chief justice  
or Pres. of Const. Court. Rather to go of  
Reserve Bank or King of KwaZulu.

Implication of seniority - further thought needed.  
Let one do Speaker - other do Dep. Speaker, -  
let them decide among selves.

Ramaphosa

Sel. we hassle over this. Full time of sensitivity



over who is senior.

Resolve in private discussion amongst parties.

du Toit

Make clause general: "a senior judge..."

Rana

Don't resolve it. Don't want to generate competition amongst judges.

When come back to clause next time around, sd be able to resolve it.

6(3) Queried footnote.

Hofmeyr

Keep constt. as to gt. as much as possible.

If motivation to keep this procedure in, what mischief is it meant to prevent.

Ramaphosa

Procedures here for election of President in IC:  
~~but a~~

Grové

But mutatis mutandis for speaker as well  
Wd need to be set out in some schedule procedure for electing speaker.

Hofmeyr

Not problem if same procedure for election of president + speaker.

Ramaphosa

Leave as is, people read schedule for election of pres. + see how applies to speaker.

6(4) queried "have" or "shall have"

Steyler

"have" simpler language.

Ramaphosa

Okay.

6(5) ✓

7(1)

Mahlangu

Issue of franchise, referred to TC2 by TC1. Deliberated on it but feel it doesn't fall w/in TC2's mandate. Need to be told: who votes.

Marais

Matter raised in Minutes. At pt. ct take up the matter again in sub-comm.

Ramaphosa

Proposed-Sub.-comm to deal w/ matter of franchise.

Leave it as is for now

~~7(2)(a)(b) ✓ ✓~~

7(2)(c)

Tech Comm  
Proposal for reformulation in fn. 13

Mahlangu

"judgements" => gravity of offense, given differences in sentencing by different magistrates.

Ramaphosa

Rephrased.

Sizani

Pass

V. Breda

Not just 12 mon sentence w/ option of fine, surely wouldn't be given for minor offense.

Wessels

Mahlangu's concern  
Hes taking for this sub-clause, but agrees w/ ✓ Breda, wd. not be for petty offense. Suggests leave as stands.

(2) ✓

(1)

Need to be told: who votes.  
in the last full of account full of in  
[Page 3A] SST of transfer, interest of well

Mohamed

Matter raised in 11 points. At pt. of take up the  
matter again in sub-committee.

Mans

Sub-committee to deal with matter of procedure  
- proposed -

Ramphras

leave it as is for now

✓ (2) (2) ✓

(2) (2)

Proposal for reformulation in 10

Mohamed

"Judgment" → quality of offense  
Clear difference in sentencing by different  
magistrates.

Ramphras

Rephras.

for

Zisari

Not just 12 more sentences who obtain 1 fine  
surely wouldn't begin for more after.

V. Broder

His failed for the sub-committee, but agreed to  
V. Broder, not be for petty offense.  
Suggest leave as stands.

Mans

Andrews

Queried, when appropriate.

Last election, numerous practical problems prisoners authors had in distinguishing categories of prisoners.

Mahlangu

~~Details in constit. or electoral act?~~

Not sure if understands this. This about qualifications of members of Nat'l Assembly

Sizani

why  
Cut off date 27 April 1994. Who protected by that date?

Mahlangu

Wasn't discussed in depth. Looked at IC.

Hofmeyr

Share lack of certainty about why this here. Many were unfairly sentenced, but an amnesty process is underway + existing motivation now won't apply 4 or 5 yrs. down return.

v. Durrant

Is appropriate for someone in jail <sup>(even for less than 12 mo)</sup> to make self available to run for parliament.

Mahlangu

That concern dealt w/ in sub(3)  
fn(13)

(1) Re April 27, want to speak to commencement of this constit.

v. Durrant

7(3) completely diff.

Ramaphosa: Proposed formulation of Tech Comm.

→ T EA ←

Ramaphosa

7(2)(c)

21

Mahlangu

Proposed

Tech advisors to redraft

v. Wyk

1) Ref. to date taken out

2) "pardon," <sup>add words</sup> to this effect "or an amnesty in terms of the law"

Ramaphosa

v. Wyk

Delete "after 27 April 1994"

Pandor

Clarity on what experts responding to: fr.?  
+ query on gravity of offence?

v. Deventer

Not only applicable to poli. prisoners, but all prisoners.  
Disagrees that person serving a sentence ed.  
run for parlia.

Green

"more than 12 months" - remove, to make  
"imprisonment w/o option of a fine". Person elected  
sd ensure lives a good life.

Ackermann

Don't have all facts. Proposed

Consult w/ Dept. of Justice + Correctional Services +  
take back to TC.

Ramaphosa.

Let Tech Comm Hg  
~~Let consultation~~ w/ Law advisors draft  
something that takes into account +  
accommodate concerns expressed here.

Not yet to "suitable comm"

Ramaphosa

7(2)(d) stand over

7(2)(e)

du Toit

Changed present IC to accommodate ministerial advisors, parliamentary counsils.

Then, debates on "office of profit" not incorporated here. Using same system we developed in Bri. Experts sd. read those debates.

Zylin

Parlia. councillors office bearers of Parlia. receive extra stipend from Parlia., not the exec.

Ramaphosa

That covers it.

(3) Lapse time.

Pandor

Queried - 7(3)

Quiet w/ 6(4): have/shall have.

Occurs here, need to say "it shall lapse" - be consistent w/ auxiliaries.

(4) shall perform the function

Ramaphosa

Will be looked into

(8)

Pandor

In 15 p. 28: traditional leaders. Needs to be dealt w/.

Mablangu

Wd. this disqualify traditional leaders.

Let traditional leaders decide whether to become rep. or stay trad. leaders.

Maqre.

Reformulation Agreed to:

16(1) Members of the  
National Assembly  
shall have freedom  
of speech and  
debate in the  
National Assembly  
and its committees  
subject to the rules  
and orders of the  
National Assembly.

This freedom ~~is~~ may  
not be limited by  
or questioned in the  
courts.

Holsmia

Not sure. Needs advice on what motivations are.

23

Structure supposed to be advising & not get set up.  
When it is set up, such questions wd be attended to.

Personal view: had. leaders understanding & not can't do both.

Eglin

7(2) "disqualified as being members" - doesn't mean can't run. Wd. stand down, wd vacate positions.

Ramaphosa

Addresses it fully there.

Hofmeyr

E(v): queried intention.

Mablangu

Can't be an MP and be employed again doing supplementary work

Marais

What is position of MP who is also member of Regional Services Council

Mablangu

Wd be disqualified.

Marais

7(e)(v):

Hofmeyr

Similar provision in present K:

A member of any council, board, or commission  
... or Committee of Nat'l Assembly"

du Toit

What if you receive a larger salary than Nat'l Assembly. Disqualified.  
So if under, not disqualified.



Steyler

Civil servants don't b/c MPs, unless resign.

Whilst in parlia, the other duty shdnt b/c more time or take more of your time than as legislator.

Otherwise, wd allow some outside activity.

du Toit

Follow up: referring to salary of one public function, or all bodies to which person belongs, their sum ~~totally~~ totaling less

One or total salary

Steyler

Sh. be total not in excess of your salary as MP

Zylin

links issue to parlia. salary. Real principle - no office of profit - Not related to salary, but so if hold office in parlia, shd not hold exec. office.

Ramaphosa

Capture this principle, & formulate it in draft.

v. Breda

Practically, if person chairman as Standing Com of Tourism & on Tourism Board, wd be conflict w/ no remuneration involved.

Slant

Or where MP also chairperson as leg. services Council, both full time, but wdnt be disqualified if received smaller salary in 2nd.

du Toit

Developed w/ Cabinet, where king gave jobs to influence MPs. Was originally "office of profit under the crown"

Ramaphosa

Reformulated by Tech Com + Law Advisors to follow the draft here.

Mabenge

7(3) Disqualification: TC's view, 5 years.

de Beer

off aff: if someone fulfilled punishment, should not be punished afterwards.

Hofmeyr

what if someone killed girlfriend, once released cd be MP.

5

Link clause to more serious offense - 10 yrs. or more.

Murders + rapists, otherwise, cd be MPs. Uphold dignity of Parliament.

v. Deventer

Support 5 yrs.

Ibrahim

1 term of Parliament: 5 years.

Pandor

Maybe helpful to have comparative view of how dealt w/ elsewhere.

Zifun

"after his or her release" - after completion of sentence.

5 yrs.



Ask Tech Comm how dealt w/ in other dispensations

Ramaphosa

7(4) ✓

8 ✓

Cd insert Senate if agreed upon to have.

9) "national law" => "national law"

fn 18

Ramaphosa

Jan 18.

Mahlaogane

Debate is that sd sec. 43<sup>(b)</sup> + 43(d) be added in Constitution + strong arguments for + against in TC.

V. Dorender

Let stand over until have more clarity. 43(b) an assault to integrity of MPs + not in interests of country.

Hojmeyer

Agrees for diff. reasons. Needs further discussion by sub-comm, but also in discussion in connection w/ kind of electoral system will have.

Zoflin

Let it stand over: ~~use~~   
 See if can reach common ground, get more insight into electoral system, debate again.

du Toit

~~Needs to be at diff~~

Ramaphosa.

Agreed to let matter stand over, to be taken further by sub-comm-

(9) ✓

(10)(1) ✓

10(2) fn: <sup>self</sup> ~~revised~~ ✓

Holomisa

Who decides which judge? but dealt w/ in Sect 10(2)

Ramaphosa

11(1)

Mahlaogane

TC said Chief Justice wd call w/in 10 days of elections, but perhaps change

Langmuir  
Muller

Jan 18

There is not a lot of work in the field of electron optics. The only equipment for electron optics is T.S.

V. Brans

It should not be too hard to build a simple electron microscope. The only difficulty is the lack of a suitable electron source.

Langmuir

There is a lot of work in the field of electron optics. The only equipment for electron optics is T.S.

Langmuir

There is a lot of work in the field of electron optics. The only equipment for electron optics is T.S.

Langmuir

There is a lot of work in the field of electron optics. The only equipment for electron optics is T.S.

Langmuir. There is a lot of work in the field of electron optics. The only equipment for electron optics is T.S.

(1) ✓

(10) ✓

(10) ✓ for: <sup>ref</sup> ~~reference~~

Langmuir

There is a lot of work in the field of electron optics. The only equipment for electron optics is T.S.

(1) ✓

Langmuir

Muller

T.S. and Chief Justice are not all what they seem to be. There is a lot of work in the field of electron optics. The only equipment for electron optics is T.S.

Tape 4A

to declaration of results.

Eglin

let it read:  
"Not more than 10 days after"

Ramaphosa

sounds reasonable ✓

10(2)

du Toit

During Botha era, used term "State President". Cd. <sup>The "President"</sup> ~~be~~ not be confused w/ "The Pres. of the Senate", "The President of the Rugby Union" "The President" works well.

Cd otherwise say "Chief Exec. State President"

Rama

Defer discussion for later discussion (when deal w/ that text)

fn. 28: % of Nat'l Ass. to call sitting

Akermann

NP: more democratic; if say 25% of members of Assembly at their written request cd reconvene.

Manzini

Problematic. Wd be urgent. Ridiculous if use 25%.

Chabane

Difficulties: during recess, cd. be party not members calling for sitting.

~~Abraham Hofmeyr~~

Let matter be dealt w/ by rules of Parliament rather than Constt.

Ngwenya

Defer matter until deal w/ Emergency Provisions.

Ackermann

Agrees

Ramaphosa

Agreed Obedience until look at Emergency Provisions.

11(3) <sup>Seat of Parliament:</sup> To be dealt w/ later

12 Quorum: fn. 30

Kgositsile

Not a constitutional matter. Deal w/ in Rules.

Ramaphosa

Agreed.

13(1) ✓

13(2) ✓

Note ✓

14

Alant

Use of State President or President here.

Ramaphosa

Left in obedience until ~~decide~~ later

14 ✓

15(1) + fn 34.

Panxton

13 on decisions: rule? If so, 15(1) implies 13 should not be in const.

Ramaphosa

13 should be in

v. Breda

Sd be majority rule

Ramaphosa

15(2) ✓

~~Wessels~~

16(1) Says right thing, but not elegant ✓

16(2)

Hofmeyr

16(1) "in" + "before" Nat'l Cd be read to say  
 the people who come before the Nat'l assembly to  
 give evidence get some privileges.  
 This isn't the intention.

Andrew

This relates to next 2 sub-para.s too.

Parliar Committee, & Joint Standing Comm. on Public Accounts,  
 both to give all information have, because for wd. be ~~seen~~  
 sued.

This needs to be borne in mind. People giving evidence

Ramaphosa

Covered by internat'l practice

Wessels

Deal w/ it when dealing in legislation w/  
 Commissions & Committees when dealing w/ people  
 outside parliament.

Hofmeyr

MPs in Constit; members of Public in legislation.  
 Wessels solution: if want to extend protection to  
~~Accepting Andrew's~~ public wd do so in  
 legislation.

Ramaphosa

Yes.

Hofmeyr.

For 16(1) &amp; 16(2)

Grove

then delete "and before"

Stuyler

Amend 10(1)

Members of the Nat'l Assembly shall have freedom of speech & debate in the Nat'l Assembly & its Committees "

Ramaphosa

Agreed

10(2) ✓

10(3) ✓

17 } In abeyance until know more of details.  
18 }  
19 }

20 TC still working on

21

Randor

What is "forthwith" : immediately? What allow for referral to Constt Court

Stuyler

Means w/o delay. President otherwise cd execute a kind of veto by sitting on it. Referrals sd. also be done in reasonable time period.

Pakar

Refer in text to delay, "w/o undue delay" rather than "forthwith"

Hofmeyr

"forthwith" has connotation of being a rubber stamp. Don't intend this. President needs to look properly at bill & if necessary refer. Amend this.



Marais

Leave it w/ Law Advisors

Draft along lines

Ramaphosa

Tech Comm + Law Advisors to reformulate

Try to capture the views &amp; concerns being put forward.

21(2) State President . . .

Sizani

Needs clarification: origin + intention.

Mahlangu

President may have doubt of any law passed.

Has right to send to Consti. Court. If need to be referred back to Nat'l Ass., can. .

President to value laws passed to see if constitutional.

Eglin

Has doubts. (1) Does Pres. have an obligation to consider whether each bill is constitutional.

(2) Does this preclude parliament from referring bills to constitutional court.

Ramaphosa

If State Pres. doesn't exercise this right, does this presume the law is constitutional. If later found to be unconstit., cd reflect on his integrity.

Marais

21(1) Before President signs Bill, needs to ensure it is in line w/ Constit.

Sizani

State Pres. sd, <sup>not</sup> be interpreter of the constit. . .

Implies stand offs b/t Pres. + Parliament.

Foresees SA President, unlike US Pres who can have a different agenda from majority party in Congress. Here, President from majority party.

President should be able to refer me.

Wessels

Debating powers of "State President" here, insofar as is part of legislative process - Bill not law until President signs it.

Initially, does not have right to get involved in changing substance of bill, just refer.

Doesn't imply veto power.

Doesn't preclude any MP from challenging legislation b/c of the process of the legislation - e.g. that a quorum of legitimate

Bhabha

Limits Presidential prerogative to constitutionality. But involves integrity of President. Must be allowed to audibly refer.

If bill passed changed by standing comm, if speaker certifies passed constitutionally passed, is obligation of President

Mulder

Have const. but go into constitutionality of bill. Not State President.

du Toit

Section aims at <sup>in</sup> sentence 2 -

If Parli + President disagree re. constitutionality, allow speaker also to refer, + access to funding to defend a bill.

Parli, speaker + President sh be able to refer.

Zglin

Sh state Pres have view on content of Bill. sh

be limited to satisfaction w/ procedure.

If concern correct procedures not followed, refer back.  
But not on substance.

Ramaphosa

Proposes  
look at IC clauses: procedure not content.

Hofmeyr

Agreement w/ procedure. Debate now about whether sd concern self w/ substance. [no stat]

But what if Pres. is unimpaired Bill is in conflict w/ consti., has no remedy, must sign.

How to situation dealt w/ in other countries w/ exec. president.

Don't want veto, but an out.

Ramaphosa

64(1)  
IC: Sec 81(2)(b) Similar to report dealing w/ functions of President.

para 21  
Differ<sup>^</sup> until deal w/ duties + functions of President.

Ackerman

Registration of Appellate Court sd. not be scrapped

Bhabha

Agree.

Grové

Problem: signed copies, can't be split to Consti. Court + Appellate Div.

du Toit

Collections of signed copies; integrity of collection sd be retained for archival pt. view.

be limited to satisfaction of procedure  
If certain court procedures are followed, after that  
but not on substance.

process  
lack of IC classes: procedure not correct

Agreement of procedure: Debate now about  
[TAPE 5A] whether of course self of substance  
But what if gov. is concerned bill is in conflict  
of order. Has no nearly, must stay.

How a situation dealt w/ in other countries of over.  
function.

Don't want veto, but on vote.

IC: see 81(c)(1) & (2) similar to report  
binding of function of President.

Defers <sup>from 21</sup> until end of duties + function of President.

Register of Appellate Court not described

pages.

Problem: signed copies, can't be split left  
Court. Court - Appellate Div.

collections of signed copies; integrity of  
collections to be retained for archival purposes.

Remedies:

Habeas

Remedies

Attorney

Bladder

Cruc

the lot

Hofmeyr

Now in a const. state, & const. court will be only one able to make a final determination on constitutionality.

In terms of logic, laws sh. be stored there. Transfer archives!

There are sensitivities on matter, but purely historical reasons not enough.

Rogstad

For each whole issue sh. be revisited.

Defer to that discussion.

Ramaphosa

For 9 different - who chairs.

This, lodging of documents.

Andrews

Agrees w/ du Toit. 3

1) Facilities & mechanisms in place.

Costs of moving the whole system need to be considered.

2) Vast # of laws passed must conform w/ constit., but have nothing to do w/ const., wd be deal w/ on ongoing basis by Appellate Court.

Ramaphosa

Similar views of both courts. Is such a practical matter

Muller

Phone call consultation - Not ideological.

v. Breda

Agrees w/ Andrews. Also, request by Premier of ORS re. movement of Parlia. to BF - retain this as bargaining chip.

Holomisa

Bulk of legisla in BF apartheid.

Break w/ past.

Keep the apartheid legisla there + put demarcation

Atkinson

legislation elsewhere.

Eglin

Brief consultation - sh include practicalities.  
From both sides what do they consider more practical.  
Objectively, how wd. they see the system functioning.  
To consider totally.

Ramaphosa

Brief consultation.  
Consider again when referred back

22(2) ✓

22(3) : 6 This needed?

Other right in access to information.

Agreed omit : unnecessary.

National Executive

(1)

Note TC agreed to "State Presidents" -  
Revisit 1 when get to power + function of provinces.

Rgositsch

What does for 2 mean. What needs to be revisited.

Mablangu

Wants to check schematic report

Ramaphosa

Head of State...

2(1) also born out by TC 6.4 Report

✓

2(2) ✓

Hofmeyr.	President or State President to be used?
Ramaphosa	TC recommends "State President"
du Toit	Look at popular usage of term; people speak of <u>President</u> Mandela. State President pompous. Reminds him of PW Botha. Let people write in what they'd prefer.
Ramaphosa	
Holomisa	No grand children want remember state Pres. Botha's
Ramaphosa	Can be finally decided when 1) Refine constitution 2) Allow CA debate.
	<span style="border: 1px solid black; padding: 5px;">Agreed</span>
Mahlangu	(1): Came back to 1. There will be nat'l or provincial executive power. Also want to hear w/ TC3 wd. say.
Ramaphosa	Defer until <sup>finalise</sup> <del>hear</del> report from TC3
Ramaphosa	Chapter is about Nat'l level. Why defer. For consistency Proposed
Hofmeyr Add	"Executive power of the Republic"
Eglin Add	"As provided for in this consti." <del>shall best</del> <del>in that...</del>
Rama	<del>to</del> Hofmeyr + Eglin Agree to amendments

2(2) ✓

3(1) fn.s 5:  
Role of senate

Zglin

DP prefers direct election of President: popular vote; better system, greater separation of powers.  
Cd allow President to float off, so include provisions on 1) accountability + term to be linked to Nat'l Assembly.

Precedents - France  
Namibian Constitution.

Ramaphosa

Requested responses.

Mahlangu

Zglin admits view not fully canvassed.  
Defer issue to allow further consideration.

Ramaphosa

Come back to it later, to allow further views to be canvassed.

3(2) Already decided

3(3)

3(4) Leave in abeyance.

4. Assumption of office

Pandor

Made reference to M "A Oath or solemn affirmation"  
"A Oath or solemn affirmation"

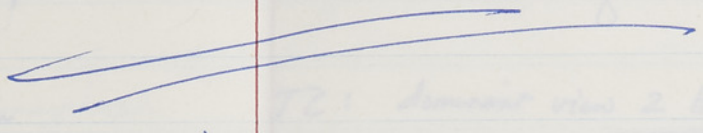


Hofmeyr

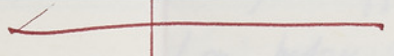
Leave all oaths for schedule for President, Chief Justice etc.

Ramaphosa

Agreed



Lunch



Ramaphosa

Proposed: 2 procedural matters:

- 1) G. TC requested Electoral <sup>Commission</sup> ~~Commission~~ be deferred until next meeting.

Ramaphosa

Agreed to remove from the agenda

Went

- 2) Report on Sub-Comm on Courts. Don't discuss today. Tackle later.

Bender

Take to Sub-Comm of CC before CC to assist them in resolving other outstanding issues, to report back.

Schutte

Don't include on agenda for next Friday. Could be there

Ramaphosa

Let Sub-Comm decide when to report. Sub-Comm will see how far it can go w/ it & report to CC.

Remove that report ← agenda

Returned

to TC 2 formulations

5(1) ✓

Noted footnote: IFP wants 7 yr. term.

Still need to deal w/ 4 yr. 5 yr.

Agreed subject to finalising exec. term of office.

## 5(2) Maximum period of office

Pardor

Thinks  
for 12 misplaced, should be related to 5(2)

Ramaphosa

No. (2) about # of terms. 5(1) about fixed term.

Eglin

TC: dominant view 2 terms. But depending on  
how filled office - e.g. as casual replacement,  
1 yr. before previous president's term finished, cd. mean  
6 yrs. s. So linked to 2 yrs.

Pardor

2 terms could be less than 8 or 10 yrs.

Ramaphosa

Crafty drafting cd. resolve this.

Wessel

2 consecutive terms? What is thinking behind it?  
Why?

Pardor

Power corrupts.

Eglin

All parties felt it should be limited. This person a head of  
executive + head of state. When combined, be on  
guard about longevity.

Mablaane

In TC all agree to limited periods. ANC in favour of  
exploring matter further.

Manzini

But to be explored. No agreement on term + how elected.  
This matter linked to those.  
Leave + come back later.

Ramaphosa

It was  
Agreed ✓

3(a) ✓

(b) ✓

4 ~~4~~ ✓

Eglin

Agreed, subject to method of elections.

Ramaphosa

6

Holomisa

What wd happen to seat in Nat'l Assembly vacated by President

Panda

Ramaphosa

Tech

[AD - INT]

v. d. Merwe.

That wd be vacancy w/ wd be filled automatically by ~~rules~~ according to rules

Ramaphosa

6(1) ✓

(2) ✓

(3)

Panda

Further complexity w Holomisa's question. If President ~~res~~ vacates his office, what happens to his seat.

Ramaphosa

s/He's out.

Wessel

Matter for poli. party how arrange lists.

— Why a list?

Wessel

If constituency or list, is party poli. matter.

- 3(a) ✓
- (a) ✓
- 4 ✓

Agree, subject to content of lesson.

Light  
Remphasize

What not happen to seat in this? should vacate by President

Hobbes

Paris

[TAG 6A]

Tom

Remphasize

That not be necessary if we fill out automatically  
of this according to rules

V. of M/Nov.

- (1) ✓
- (2) ✓
- (3)

Remphasize

Further completed in Hobbes's question.  
If President vacates the office, what happens to his seat.

Paris

2/1/2 out.

Remphasize

Matter for p.c. party has enough list.

Paris

Why a list?

If constitution or list, is party for election.

Wood

Kgosiile

Issue relate to office of State President. Not a matter of rules of parliament. Need to discuss how we deal w/ in interim until State Pres. replaced

Andrews

Don't want gap in interim period  
Sec 10 - Acting Pres. deals w/ this.

de Lille

Why not State Presi. should remain member of Nat'l Ass.

Eglin

Major problem poli. & in terms of sep. of powers.  
To have head of state sitting as ordinary MP not reasonable.

Ramaphosa

Agreed

6(3)(a) ✓  
(b)

Eglin

6(3)(b) agree to on this model

Rama

First reading. Need to come back to # of issues to iron them out.

6(3)(c) ✓  
(d)

Mablangu

Can only be finalised when take a decision on issues raised earlier.

Ramaphosa

Yes  
6(3)(e) ✓

Eglin

(f): No to TC dealing w/ this  
Parlia. Then Parlia. committees or senate should have an

ratifying authority.

Ackermann

Proposes Senat have input in appt. of diplomatic offices.  
Also, fn (16), don't like State Pres. acting alone.

Ramaphosa

Flag matter

Holomisa

Talking of SA ambassadors; what of recog. of foreign  
reprs?

Zglin

DP: could have force of law  
People rep. country + key security personnel

Ramaphosa

Appt. & accreditation?

Zglin

Only appt. : ratifying by Parlia. committee

Ramaphosa

Flag for later discussion.

Pandor

Difference b/w accredit + recognis?

Juh Hlirais

- Come back -

Ramaphosa (13)(g)

Alant

IC: Various types of agreements:  
those w/ don't b/c part of law, & those w/  
do w/ bind citizens.

Ratification by Parliament: needs clarity.

Ngeuka

Flag matter b/c his TC dealing w/ this:  
TC5 b/c of submissions ← State President.  
Now reformulating.

Flag pending TC5's report.

- Ramaphosa (h) ✓
- Abernethy (i):  
Contentions: No for govt of Nat'l Unity. Should be consultation w/ minority parties.
- Ramaphosa This a normal function  
1/2 flag it.
- Menzies Flag it.
- Ramaphosa 1/2 flag it b/c depends on final agreement on whether wd be a GNU
- Andrew 1) (h): queried the inclusion of this. Wd be unilateral w/o consultation w/ Min. of Justice or Min. of Correctional Services.
- 2) Wd be happy if had this power in consultation - not unilaterally.
- Davies Ad "reprieve" be used if no death penalty.
- Rama Law Advisors - phrase wd be under review.
- Kgositsile Cd. open President open to attack b/c no consultation. Leave it in abeyance to think about it.
- Ramaphosa Yes. Leave it to think about it
- 7(1) ✓
- 7(2) ✓

- 7(3)
- 8
- Pandor 7(2) Any Minister? Or Minister to effect that part. decision
- Gravé Convention: all decisions counter-signed by the responsible minister, or another minister.
- Pandor Say, the resp. minister or in their absence another
- Why say in 7(1) shall be expressed in writing  $\Rightarrow$  shall be in writing
- Ngauka Question of Min. resp. covered by convention. Where expressly stated that President should have conventions & prerogatives
- Gravé Prerogatives codified in 6(3). Believes this list exhaustive.
- Ramaphosa 7(2)  $\checkmark$  Under review.
- 8(1)  $\checkmark$
- (2)
- Wessels Asked 8(2): why?
- Alant Seems crazy.
- Andrew: To protect against worst case scenario.



Rama

45  
 Not this preclude him from acting as Min. of Defence

Menting

No, if not paid for later.

Rama

But says "public office"

du Toit

Retain, b/c of public image of constit.

Alant

Leave this clause out. Serves no purpose.

Ramaphosa

Pandor

~~look~~ Flag it.

Ramaphosa

Okay.

Eglin

Why in existing constit?

Ramaphosa

Doesn't know why.

du Toit

Smuts Premier + Field Marshal in Bri. army.  
 Do we want this to recur.

Ramaphosa

Noted proposal to remove this clause.  
 Flag it.

(9) Still in contention, to be discussed at later stage.

10

du Toit

Andrews.

10(i)(d) Start considering premiers, too.  
 Why not Louis Luyt.

Andrews

(c)(d) who decides when something not possible  
triggers next stage 4b

Steyler

If no Pres. or Dep. Pres., Cabinet wd decide.

Bhabha

Still need to decide whether we'll have a Prime Minister.

Davies

Judgement where Pres. cd. no longer fulfill term of office:  
no clear, objective criteria. How wd this be decided.

du Toit

This wd relate to disaster or emergency situation.  
Ask Tech Exp to look at German law about this.

Ramaphosa

Okay

Ackermann

If motion of no confidence for Pres. + Cabinet, this  
wd. come up. So took it down to Speaker.

Eglin

See how far down scale other countries go.  
(d) → a member of the Nat'l Assembly designated  
by Nat'l Assembly.

Pandor

This section doesn't fully satisfy.

Ramaphosa

Agree to have another look here, refers to  
10(1) ← (2)

du Toit

History wd let us test whether P/W Botha wd have  
fit this clause.

Mahlangu

Impeachment: is it necessary? / <sup>Nat</sup> w/ Parliament's ability to <sup>47</sup> pass a motion of no confidence.

du Toit

Asked for small opening for motions of no confidence - to allow future research.

Ramaphosa

All right. Leave a small door.

Mamzini

Where is clause re. no confidence

Ramaphosa

Sec. 20 Nat'l Assembly.

Davies

Appealed for small opening re. decision that President sd no longer stay in power by Parliament.

Wissels

But no confidence vote allows this. <sup>Could run again</sup> No confidence vs. impeachment - later says he shouldn't be eligible to hold office in future.

Zglin

There is a subtle difference. Here, parlia. elects a President. Seems incongruous that need only 1/2 vote to remove him on poli. grounds & 2/3 on other grounds.

Impeachment needed where President elected by populace.

Ramaphosa

Look at matter again.

Pandor

Yes & try to achieve balance of Nat'l Assembly w/ removal of President. The linking wd make it difficult to act to remove the President.

du Toit

Heart of rela. b/t Exec & Legsla lies here.

Impediments to the recovery of the economy  
are a matter of importance.

Thompson

Asked for small opening for motion of no confidence  
to allow future events.

de Toit

All right. I have a small book.

Thompson

There is a clause in the constitution

Manning

See 20. Not a book.

Thompson

Agreed for small opening in decision that  
President is no longer to be elected by Parliament.

Davis

But no confidence vote allows the  
no. of members - later may be established  
eligible to hold office in future.

Woods

This is a subtle difference. How, for  
some members that making it not to remove him  
in fact - grounds - to or other grounds.

Spill

Impediment would be the President elected by  
parliament.

That is under review.

Thompson

It is to be a serious business of the  
of removal of President. It is  
difficult to get to remove the President.

Spill

[Tape 7A]

That of us. It is a matter of  
importance.

de Toit

Andrew

Reads sec. 22 p.31 - doesn't link

Panda

looking at 21

Ramaphosa

Come back to matter, & see linkage b/t this & 20,

Nyika

12(1) ✓

12(2) ✓

Rama

Ackeroman

Another view: sd. be 2 Deputy State Presidents.

Ramaphosa

Will return to this matter.

Ramaphosa

13 : 2 approaches

1 in line w/ IC

Other in fn.s

Flag this to return.

14 Return to later

Panda

15 Deal w/ Appt., Dismissal & Accountability  
Hj later

Ramaphosa

du Toit

Oath in 14 old styled lang.

Ramaphosa

Agreed, will look at Oath stylistically

16

Andrew

16(c) "enrich" always implies improper behaviour  
What does it mean legally?

Cd enrich self in proper way.

du Toit

Davies

add <sup>18.</sup> improperly enrich themselves<sup>21</sup>  
~~unfair~~

du Toit

Must prove enrichment, + intent left out in  
 this clause

Ngunka

Whole idea against "undue enrichment" —  
 agrees w/ "improper enrichment"

Rama

~~law to Tech Adv.~~ / Law Advisors wd look at how  
 this cd fit in.

Pandor

This is 8(2) : stylising : pd. employment  
 not remuneration. This good language in drafting.

Ramaphosa

Cd other clauses be looked at to see if cd. more  
 closer to his style : user friendly.

17 ✓

18

Pandor

2nd to last line, the said minister's, stead...

Ramaphosa

Straight forward, but wording to be looked into.

19 ✓

20 Agreed wd look at issue of removal in  
 conjunction w/ this + amend a finalisation.

Dials w/ Nat'l Assembly + Nat'l Executive.  
 Proposed - let go to sub-comm to reach some  
 conclusion, there's a lot of work to be done.

## 7 Reserve Bank

Davis

Agreed.

Wissels (in Chair)

Alant

Don't consider further.

Davis

Small things discussed. In spirit of discussions.

Alant

Suitable Comm. + Law Advisees

Wissels

Referred to Sub-Comm.

Andrew

Agrees w/ thrust.

1 matter has arisen: CP XXIX requires indep. & impartiality of Res Bank shall be provided for & protected by Constt.

Asked in this: 2(2)'s provision

~~the~~ don't discuss appt. : ~~not~~ possibly problematic.

Previous formulation in 1st clause had 2nd sentence whose principle —

Do panel of experts believe indep required achieved?

— if not what mechanisms needed to achieve it?

Wissel

Refer matter to sub-comm that wd entertain requirements of relevant principle.

Andrew

Get opinion of Panel as well.

Wissel <sup>Such</sup> Let the experts & not the Panel.

Andrew No, let it be Panel. They expect an economist.

Wissel Trying to use Panel sparingly. Let sub-comm. take considered opinion.

Agreed.

Etobrakim:

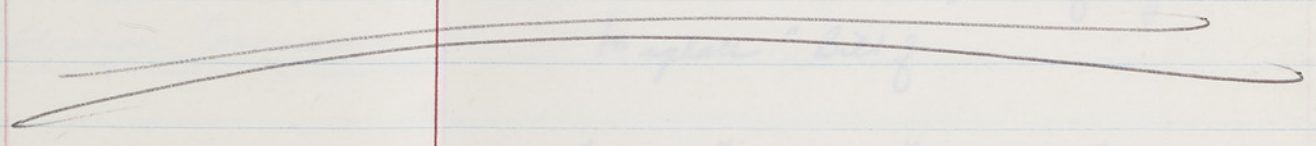
Consider Electoral system - TC 2 Vol. 2 pp. 8 Part of discussion in Nat'l Assembly.

Wissel Refer it to the sub-comm.

Agreed

CA Proposed to be Cancelled.

Agreed



17 5-11 6(2)

or to replace 8  
i. judge not judge

2/10 11 - 27 April 1994 not 1995



1.) Opening

9h08

Apologies

Eglin (late); Mashae, Skwayyija, Asmal, Makhanya, Schulte, Meyer

Replacements.

G. Vorster for R. Sizani.

Agenda

Adopted

2. Minutes

Pandor

P.4 top of 4.1:

"when a complete draft Bill of Rights was tabled to replace " Bill of

"tabled" to replace "completed"

P.8 5.11 6(2)

or to replace of

i. judges not judge

P.10 ii 27 April 1994 not 1995

5.4.2. i. ~~of~~ deleted ... "solemn affirmation" <sup>53</sup>  
in IC

5.4.3

"elected" to replace "election"

P.17 4.ii

would obstruct

5.5:3 fines to replace finds

5.6.1.ii. merit a + an → and.

5.6.2

or to replace of

Minutes adopted with these corrections.

### 3. Election Commission

Mr. Vadi

1, Clauses read: unanimous support of all parties.

DP supported additional safeguards:

p. 146 5(A) & (B)

w/ Report 143-46.

Smuts

Discussion of DP: words in dec.  
objected to following

Smita

Spoke to pts of discussion p.146  
e.g. Removal to be dealt w/ as w/  
Public Protector in IL in 1.1.6-8.  
Reservations on the Report

de Beer

Relates to this re. appt. of Comm., w/ bird's eye  
view w/ what happening in process now,

Pahl

Omnibus clause, being put H, should include  
Electoral Commission.

Otherwise support report.

Pohad

Covered by de Beer 1st p.  
How to deal w/ p.143. Yadi said there wasn't  
extensive discussions in R on this. Later stages,  
shouldn't be used by stick by poli. parties.

"The general laws must..." a prescription:  
problematic.

How to approach this?

Ramaphosa

Matters Pohad raises require discussion.  
Wondering, re-draft formulation, of those issues  
should be gone into. Aspects of report under  
Appt. of Comm. etc. wd go into law.

Adhior

Report contains info to alert drafters of general  
laws & regulations of concerns raised in TC.  
Word "must" not as prescriptive as seems.

Smita

Support DP argument that these matters  
not get thrashed out. W/ no states.

Smuts

DP feels they should be threaded out:  
 Competence  
 Knowledgeability  
 3 yrs preceding  
 Fixed term of office.

If not in constlt, wd. disappear.

Pohod

Follow direction suggested - look at formulation.  
 Note DP hasn't received support of other parties in TC, <sup>for these proposals</sup>  
 Why continue the discussion here. C. be raised  
 in Ct.

Lamaghasa

Recall - approach now adopted re.  
 indep. instt, This Comm wd fall under  
 that chapter.

Have agreed wd be general provisions to  
 cover all indep. instt. In some cases  
 details will differ but general principles  
 wd apply re  
 appt.

removal  
 suspension.

Recalled in some instt. s outlined type of  
 people wd be appt. ed.

Proposed: discuss report, as discussed other  
 provisions of indep. instt. s to see that  
 harmonises w/ other instt. s. Don't  
 discuss in complete isolation.

TZ in Report i.d. crucial matters, some

for const<sup>it</sup>, <sup>some</sup> for legislation.

Accept report <sup>for now</sup> + discuss it in conjunction w/ other indep. mot<sup>it</sup> is when go thru that chapter later.

Already decided sppt. ment procedures wd be openly debated in CA.

Include those aspects of Electoral Comm. in CA debate.

Agreed

5. Report on Security Services.

Tech Adv<sup>is</sup>ions <sup>old</sup> discussion wd begin at about 10h30.

Moved to Court Systems.

Sub. Comm. Report:  
Conds

Work in Progress

W. Hojman

2 issues outstanding

- 1) Appt of Const<sup>it</sup> Court Judges
  - a) Appt. ed as done in IC, except different mechanisms done away w/ + JSC b/c the one
  - b) Appt. ed thru parliament.

Left over for further discussion, + debate in CA

2) Referring Bill to Const<sup>it</sup>. Court for Opinion

further discussion might bring consensus.

Wissels

<sup>last</sup>  
these/matters were technical, + sub-comm.

Added: Role of magistrates - jurisdiction over  
Constitutionality?

Ngauka

~~to CA~~

Referral of Bills to Constit. Court to CA. Question -  
referral before or after past.

Constit. Jurisdiction of Constit. Court.

~~to CA~~

Apppt. of judges.

Hlant

<sup>b</sup>  
Only issue, intention of principle that at some stage,  
Bills can be referred to Constit. Court.

last proposal from TRC - to delete or re-referral of  
Bills.

Queried, has this in principle been agreed to?

Ramaphosa

Don't have written report from sub-comm. Don't discuss  
further until have the written report.

Sub-comm identified matters for discussion at CA +  
CA - not for decision. Fuller discussion  
wd happen w/ report of sub-comm.

Wissels

Need to highlight issues so its clear  
where a debate + decision is required.

Parties sh. be informed beforehand, including what

referred to CA & CC.

Hofmeyr

Sub. Comm reports not yet available. Difficult to talk off top of head.

Menzies

Postpone debate until that part of agenda

Ramaphosa

Report not yet available, and systematically set out issues discussed, & decisions to be taken.

So verbal report ... work in progress

When get to item 7, put forward recommendation on how to deal w/ matters. By then, hopes will have i.d. issues to be taken to CA.

Alant

Volume 4: Demised

Ramaphosa

to TC Report.

No, waiting for sub. comm. report.

Item 6

Work in progress on all items.

Item 7 : CA:

Zbrahim

Memo tabled at meeting.

V. Breda

Electoral Systems needs to be considered at some CA.

Wissels

Noted. To be dealt w/ 1st mtg after 25th.

Open Pandor

Let secretariat arrange for members to speak from their seats on the floor.  
Let there be a 5 minute limit to any speaker.

Muller

Agreed  
Amend 1.2

Wissels

Jerom. "Length of Parliamentary term".

Manzini

Chair wd think how long debate wd go

Open up debate so it flows. Different views from diff. parties. Let Chair see how to control & monitor debate. Mandated to "cut"

Adjourned 3h05.

NB Remainder of  
in separate

Meeting Minuted by K. McKenzie (TC6.4)  
Minute Book.

(1) Religious leadership  
(2) What is a trade leader? Commission of Inquiry held.  
(3) Provision wd be added to protect directly trade-related matters - other leaders. Chg to be changed by parliament or not to be considered by parliament



25 AUGUST 1995

26th Constitutional Committee

60

1. Opening

Mh13

Apologies

Ripenja, Skwayija, Ismail  
Groenewald, Moshoe

Agenda

Adapted

Mood items :

5

6

4

2.

Minutes

Pandor

— Adopted no changes.

5.

TC 2

Rama

M J Mahlaogwe

"Traditional Authorities"

Introduced draft formulation, referring to  
Schematic Report

No contentious issues.

- fr. 5 (1) Indigenous leadership
- (2) Who is a trad. leader? Commission of  
Inquiry needed.
- (3) Provision cd be added to protect  
directly trad. r.lta. b/t monarchs &  
other leaders. Cdn be changed by  
provincial or nat'l leadership legislation.

P

Eglin

Neutral re. nomenclature. 1) Do "indigenous leaders"<sup>61</sup> have any meaning to people on ground?  
2) If translated, what wd. it mean?

Malatsi

Supports Combrasa's proposal. Is closer to African sense. "Indigenous" more easily translated than "traditional" in all vernaculars.

Kgositsile

What ~~how~~ does "indigenous leadership" have to do w/ authenticity? This was Combrasa's concern.

Nhlapo (Jud. Ex)

Malatsi explained it right. In vernacular - words "originate" vs. "trad" w/ is "hallowed by passage of time."

Mohlauzi

Sotho, Iswara: "out of one's own culture" closer to "indigenous".

Shepstone called certain law "common law"; was selective. Vs. Indigenous law. Approves of "indigenous"

du Toit

Why not use African term instead of "indigenous"?

Ngcuka

"Traditional leader" well known term.

What the change proposed create confusion?

Pandor

1) These explanations given haven't helped. Concerned about interpretation of use of "indigenous" - wd it imply that leadership isn't evolving? It is open for

Pandor

possible abuse.

2) Afrikaners are also 'indigenous'.

3) What does the "institution" of 'indigenous leadership' mean.

Lama

Term doesn't impact on substance.

Gordon

1) Concise - T Ex. justifying this change to consider

2) Question of i.d. of leadership; CA to co-op w/ the ministry?

Manzini

Re Tech Comm report should also say whether the new term + defi. sd be here or in definitions of Constitution?

Lama

Gordon's proposal; ① wd help us understand why sd use concept of <sup>indigenous</sup> ~~front~~ leadership.

Aske T Comm to elaborate more on this.

~~Manzini~~

Move on. Don't delay us otherwise in terms of rest of text. To be done in another fn, 1/2 a page.

~~Manzini~~

② Authenticity: clarity

Gordhan

Informing CC that Dept of Const. Affairs asked to look into authenticity.

Take cognisance of this.

Ramaphosa

Is this a function of CA? No. This a gov't matter.

Note this fn., can be taken up by Dept. of Res. further info. They can give it to us.

Chobane

Take out fn. 2.

Agreed

Ramaphosa

1(1) Accepted

1(2)

Pandor

Asked re 1(1) about what "instit of indigenous leadership" means?

Ramaphosa

Ch. XIII has reference to "institutions of trad. leadership"

Pandor

Withdrawn query.

Ramaphosa

1(2) re. proviso in fn: Cd be dealt w/ in legislation

Pandor

1(2) What of equality clause. Mentions Constit + customary law. What wd be supreme?

Rama

Says elsewhere Constit - the supreme law.

Meyer

"Subject to" to change to "w/ due regard to indigenous law"

Ngauka

Tension: jurisdiction to parlia: role-function; subject to Constit + customary law. "Dileti" and of indigenous law" Rest of indigenous law can be amended by

national law

Gordhan

Constit. itself will say something of indig. law, so "subject to constit" wd cover indigenous law.

Overlap b/t TC2, TC5 + TC3. Set up mechanism to synchronise those 3.

Ramaphosa

Rabie

This to establish the principle. CP XIII restated here.

Sizani

Wants legal opinion on rela. b/t Sec. 1 of Constit first here + principle XIII.

1.1 doesn't completely reflect principle XIII. Why?

Nhlago

No sure why not?

Sizani:

CP XIII The constit. states + role according to indigenous law.

b. Res. prot., recog. + acknow of trad. leaders in constit. as req instructed.

Nhlago

Split 2 arose from agreements set out in summary.

Understood CP wd. be reflected if role + function in legisla.

Sizani

Wants legal opinion - is this section in line w/ CP XIII?

[Noted]

... will not be binding on the state. ...  
... the concept of 'rights' ...

Johannes

... of ...  
... 3 ...

Johannes

... the ...

John

... the ...  
... principle ...

John

... the ...  
... principle ...

The same ...?

John

CP XIII ...

John

... indigenous law ...  
... according to ...

CP XIII (1) The rights, status & role of trad. leadership, according to indigenous law, shall be recognised & protected in the Constitution.

"The rights, status & role of trad. leadership according to indigenous law is hereby recognised"

Functions - only word from CP XIII left out.  
Questions whether need to say anything. & say  
Pass laws to deal w/ functions.

Chebane

CP talks of "tradition" ← draft "indigenous"  
↳ better in the principles?

Gordhan

1 draft to incorporate TC4 & TC5's work.  
CP XIII in both.

Let Tech Experts look at these & ensure in line w/  
CP XIII.

Hofmeyr

Agrees. Formulation of TC5 based largely on  
provision in Interim Const.

Ramaphosa

Pandor

Sections on pp 13-14 on trad. courts; here  
'trad' leadership. Substituting indigenous  
for traditional?

Ramaphosa

Not yet.

du Toit

CP's broad directions. "Institution": that made  
to stand there". Anamolous: trad. <sup>bloodlines vs. those</sup>  
<sup>created</sup> cd mean real 'leaders' or 'created'. <sup>Requests</sup> <sup>reconsideration</sup>  
of term means same as Status.

Eglin

Draft to CP XIII: Look at CP 13  
Instit., status & role

When adopting  
& specifically  
the qualification  
contained in  
CP XIII

(i) add "status & role" "according to  
"indigenous law"

Re. functions: is it necessary to say you'd  
pass laws about functions.

Chlorine

CP table of "Institutes" - change "Institutes"  
to table in the principle?

Carbon

[TAPE 2]

1 draft to organization of CP  
CP XIII in table.  
The task report table there & names in table of  
CP XIII.

Hydrogen

Agree. Formulation of TC  
function in table in table.

Amphibian

Station on pp 13-14 on table. work; here  
"that" relationship. Substituting nitrogen  
for "Institutes"?

Protein

Amphibian

Not yet.

Dr. Lot

CP's broad question, "Institutes": that made  
to stand there. Anomalous: that  
of mean real leaders in created.

CP XIII in table. Draft in CP XIII. Table of CP 13  
draft, tables & table

old "status table" according to  
"Institutes" table

Handwritten notes and scribbles on the right side of the page, including the word "Institutes" written vertically.

functions: it is necessary to say  
pass laws about functions



Ramaphosa

Send back to redrafting by Tech. Experts.  
To Co-ord. redrafting w/ TC5 & EC4 -  
proper synchronisation as Gordon suggested.

66

6. TC2: Constitutional Amendments.

Ramaphosa

Report: 105 pp. for 1 sentence draft.

Rabie

Wd need redraft by Tech. Advisors.  
Finalise when deal w/ Senate.

Stuytler

Law advisors proposed

1) All: "Parliament may amend any  
provision of this constitution." to replace  
"the ... amended"

2) Any such amendment shall be approved  
by at least 2/3 of the members of the NA  
as provided for by this Constitution.

3) Protect this section from amendment, as  
this section itself sh. be deleted.

Ramaphosa

This wd mean add'd preamble:

du Toit

Asked NP u their proposal:

absolute	} encroachments.
general	
specific	
judicial	

How do other constitutions differentiate these &  
what the practical implications wd be.

Labie

Mahlangu

Proposes: re Stygler's proposal, TC hasn't thought it thru. But let Stygler put this in writing & consider at next cc.

Stygler

1) As stands, obliges Parliament to amend.  
2) Does this provision itself need to be protected for amendment?

Ramaphosa

Was that canvassed (2)

Labie

NP made submission on this in TC.

Mahlangu

Referred to tech. report p. 6 Pt. 1.  
Stygler's proposal needs to be carefully considered.

Eglin

Urns have clearly in power & functions of Senate & provinces, Reserve position re. amendments & provinces.

Rame

Obligated to incorporate CP XXIII(4). Is it considered here?

Stygler

No agreement on how it wd take place - different mechanisms cd. be used - in abeyance until outcome of discussions in 2nd chamber.

Ramaphosa

Incomplete. Leaves out CPs. New addition. Needed more thought for holistic picture. Not accepting report. Referred back to TC until these matters considered better.

ANC

New position

of agreement not reached in new model, no need to include in constitution

Chair

Chair

to stand, design features to ensure  
of the provision that will be protected by  
members?

Chair

The that covered (2)

Chair

MP make submission in the in TC.

Chair

Agreed to be left of 2. At 1.  
Staff's proposal needs to be carefully considered.

Chair

What has changed in your function of board -  
provision, future position in...  
provision.

Chair

Should a separate...  
considered here?

Chair

The agreement in fact of not take place -  
different mechanism...  
agrees with others of the working in...  
Chair.

Chair

Proposal. Have not...  
The...  
The...  
The...

Chair

Report should have waited until Senate + provinces finalised.

Chabane

Take out brackets on p.6 re. DP - implies the DP always goes along w/ ANC.

Ramaphosa

No hurry re. amendment clause. 6 ths and 7 const.

Zifis

What of 'absolute entrenchment'. Supremacy of const. should be absolutely entrenched - as inviolable.

#### 4) TC5: Report on Blocks 5-9

Hofmeyr

p13 Matters referred to other committees

Substance: 14 =>

- Revog. of Trial Courts:  
To be harmonised w/ TC2

- Customary Law

- These Committee hasn't delved into International Law Matters.

- Attorney General: unresolved as to whether we have Nat'l Attorney general or not.

Schutte

Agree w/ report

Pandor

In p.13: Queried, does CA Research Team carry out research for TC5?

Schutte

note in fn request for research by CA Admin.

Chabane

P.14, fn 2: How did the question arise?

Schutte

Para. E, wording "... subject to fundamental rights"  
Wd lobola stand up to this?

Hofmeyr

No agreement. TC4 wd need to deal w/ this as  
dealing w/ limitations of Bill of Rights.

Chabane

Does the exemption of lobola relate to Const or legis?

Hofmeyr

View: lobola may conflict w/ Bill of Rights,  
NP said put in Bill clause saying no conflict.

Chabane

Problem lies in isolation of specifics of 'customary  
law' & saying not subject to Bill of Rights.

Menzies

TC4 did not exempt certain customs & trads  
from Bill of Rights. Suggests it be deleted here.

Hofmeyr

If limitations was included, wd conflict w/ the CP.

Chabane

Proposed: delete the question in fn 2.

Schutte

Doesn't arise in this chapter. If arises  
wd do so under TC4 - fund. rights.

Rama

Deal w/ it if & when <sup>it does</sup> arises under  
fundamental rights.

Hofmeyr

If it sd arise there,

Sizani

Principle XIII also in proposed clauses here. <sup>76</sup>

Rela. b/t common + customary law. Former mentioned here. Did TC discuss what the common law was. Status of common law + w/ common law.

Relevant b/c assumption is legal system is Roman Dutch. Assumption that customary law barbaric, + to be applied in marginalised courts at a lower level.

Ngauka

These questions not relevant.

CP 13 introduces principle of equality of the 2 systems. Must recog. this principle when discuss the area dealt w/ here.

This section says:

Indig law on same footing as common law.

Rama

If want principle to be interpreted - say so.

Sizani

Fundamental question: has full discussion of CP 13 been considered. In CP XIII

Both systems discussed - are they co-existent in one system or in dual.

Rama

Sizani raising this for his own clarity + asking TC.

Schutte

Indig. law not being relegated, but on par w/ common law. Can't be applicable e.g. to company law.

Ngauka

Supremacy of Constit; Common Law + Customary Law both subject to constitution.

Ngcuka

Now give auth. to courts to apply indigenous law,  
so indigenous law elevated to higher status than  
had.

Sizani wrong.

Ramaphosa

A-D: Straight forward. Accept it?

du Toit

Word "right"

Rama

Out of order.

A-D accepted

E Revisit as other clauses begin to take  
shape

du Toit

SA<sup>n</sup> common law mixes Roman-Dutch,  
Eng. + SA<sup>n</sup> law.

Growing thg wd take years.

Say "indig law + common law wd be  
recognised."

Ramaphosa

Will be considered.

F-G?

Schutte.

Tech Advisors to draft F.

No agreement on G.

Ramaphosa

Attorney-General:

Hofmeyr

ANC says sd. have a nat'l Att'y Gen who  
sd be safeguarded from poli. interference.

Other parties don't agree.

But doesn't have to be dealt w/ in Const.

Nguyen

11  
New firm wants to want to apply for license  
as independent law clerks to help with the firm  
3A  
Tape  
firm's money

Ramphos

A-D: straight forward. Accept it?

du Toit

Kind "right"

Ram

Out of order.

A-D accepted

E relevant as other clauses depend on this  
stage

du Toit

2A common law under Roman-Dutch

Eng. + 2A law.

Creating the but take years.

2A "with law" common law will be

recognized.

Ramphos

Will be considered.

F-P?

Schutte

Text: Attorns to draft F.

No agreement on P.

Ramphos

Attorney-General:

Hofmeyr

and says so. but what if the firm  
is to be safeguarded from possible  
other parties that agree

But doesn't have to be dealt with in text



Ramaphosa

Include in constt. only if can reach agreement, or leave for legis. where can evolve naturally.

Schutte

Principle 5, Schedule 4: implies in "equitable legal process" that Atty general be included.

Atty general, for each division

Principle 20 & 21: "effective public admin" requires devolution & decentralisation.

Ramaphosa

Queuid: NP stand: only provincial A-Gs, not nat'l.

Eglin

Sd<sub>1</sub><sup>be</sup> in; + A-Gs linked to provincial + s of court.

Nat'l: policy but not to direct or interfere w/ line functions of provincially based A-G

Mulder

A-G not in judiciary principles. Oversight. CP 31(G) wd also support A-G. Not in favour of nat'l A-G.

Sizani

Won't insist on it being in constt., ~~But~~ No need for it, but wouldn't oppose inclusion.

Green

Accept nat'l A-G accountable to Cabinet + parliament. Not opposed to provincial, but they wd be accountable to province + nat'l A-G.

Ramaphosa

⇒ Tea break ⇐

Ramaphosa

Reopened

Eglin

Break thru: Tentative Understanding <sup>re process</sup>

1) Ask Law Advisors to draft -

a) Sd be ref to AG office + matters related to it

b) Functionary at nat'l level to coord nat'l + deal w/ policy

c) Provincial AGs - on line functions

d) Method of appt to ensure impartiality

e) elaborate rula. b/t nat'l + regional

Ramaphosa  
Ngauka

Parties will consider draft when presented. Emphasis in indep. not b/t nat'l + prov., but b/t policy + line function.

Eglin

Rda. needs to be set out in law

de Lange

Giving instructions to draft - wd it be open to discussion.

Eglin

draft wd allow parties to evaluate pts.

Ramaphosa

Understanding of the process ...  
Law Advisors to draft.

Will come back to CC for further discussions.

JCS failed to process this matter. CC helped.

Schutte

Note: completes work of TC5.

74

## 7. Sub-Comm Report on Courts & Admin of Justice

Schutte

Major issues Outstanding:

Appt.s

If ANC accepts <sup>provisions</sup> proposals in IC, NP might agree. But IC has context of multiparty Cabinet.

Hold over until composition of Cabinet finalised.

If not:

NP stand: legislature decides but almost by consensus.

Ramaphosa

Memo.

A. No disagreement here.

Tech matter: drafting.

No decision required.

B. :

Hofmeyr

Appt. of Chief Justice - not as contentious:  
More serious issue: Appt. of Consti. Court judges.

Other countries do allow legisla. to appt., but not w/ the high majority NP requests.

Consultative Forum: abolish distinction

JSComm to nominate 3 more persons than required, President chooses from Presl.

If fails to select enough, give reasons why + JSComm to give new nominations

Rama

Is Schutte pleased w/ present form of oppt in IC,<sup>75</sup>  
provided exec. multiparty.

Proposed: go route of IC & nat'l party to  
reserve its position, pending agreement on  
how the Nat'l Exec. wd. be structured.

Schutte

Yes. Matter to be revisited when Nat'l Exec.  
decided.

Ramaphosa

Sec 99 as Stands acceptable, w/ modifications  
Hofmeyr forwarding.  
4 judges ← judiciary ⇒

Agree on principle.

Chabane

Queried, implication that if Exec. based on  
majority rule, then appt. of judge, integrity  
in question?

Schutte

Yes

du Toit

Clause 3(c)(a) & (b):  
Queried is this rough draft.

Hofmeyr

Agreement on appt. of judges. Other outstanding:  
A debate on referring bills ← Parliament.

Ramaphosa:

Let drafters incorporate proposal  
forwarded by Hofmeyr on appt. of judges.

Reforward to CC, to consider clause by  
clause.

fn. in oppt. to say inserted pending agreement on

Nat'l Exce.

Jurisdiction of C Court.

No record yet of these. Need to consider views expressed in CA before finalised.

Wait until record of Nat available to reconsider.

Closure

16h.39

Apologies: A Fourie, J. Rabie, D. Schutte ⇒  
J. Marce + P. Steenkamp; de Lange + Poodor (late)

Attendance: Skuyler, Meyer, Ebrahim, Zondo, v.d. Westhuizen, Sediko Nkoko  
Jacob, Adziba, Mzi.

1. Opening

09h17

Apologies  
Agenda

Adopted

2. Minutes

Hofmeyr

Adopted w/ these corrections:

8.3 pt. 4.2 i

Wording "the PAC sought clarity as to what  
status the clause would give to  
Customary law"

4.2.ii insert "the"  
by the Courts a subject to  
fundamental rights.

4.5. iv a. : delete "conditions"

4.5. ii. delete "generally"

~~also~~ substitute when for  
6.2 "possibly free"

constitution spelled correctly.

3. Meeting arising

3.1 Sub-Committee Report on Count

September 1998

Apologies: A. Fournier, D. Rabie, D. Schutte  
U. Mace & P. Steenkamp; Murray-Leslie

Members: Stephen Taylor, Graham, John, et al. (see list)  
James, Michael, Neil

1. Opening

Hygiene  
Hygiene

2. Minutes

Agenda

History of the museum:

1.5.1.1. The site was built on a plot  
which was owned by the  
County Council.

1.5.1.2. The site was subject to  
fundamental rights.

1.5.1.3. The "condition"

1.5.1.4. The "quality"

1.5.1.5. The "standard"

conclusion of the report

3. Members' Advice

3.11. Courts

Wojciesz

Spoke to doc. "Matters regarding..."  
i. P.6 Amended draft:  
Mr. Grovi not available, so rough draft.

ii. P.10:

Maree

Requested delay

Ramaphosa

Additional Matters for finalisation:

Request to defer discussion but alternate here.

Ebrahim

Concep. - Judges from Constt Court.

Not in doc.

Recommendations (technical & largely wording)

Will circulate, but request that recommendations be referred to Tech Experts to consider when drafting.

Ramaphosa

No difficulty

Chabane

fn @ p.6: is this correct.

Ramaphosa

fn should say NB reserved its position, its agreement subject to how matter Nat'l Exec. wd. be finalised.

Nd. be amended.

Chabane

Sought clarity on p.7 para (e)  
Is there anything which prohibits the JS Comm from re-nominating people the President has rejected?



Ramaphosa

Deal w/ it when get there.

Clause 1: Judicial Authority: } Accepted  
fn 2: just for definition.

fn 3: needs reformulation

Clause 2: Judicial System:

Maree

Constit Court in 1 } established  
Supreme Court in 2 }

[ (iv) - (vi) ] Estab. of courts not very clear.

- Say a local gov't decides to put up court w/  
begins to compete w/ Magistrate Court.

Are there ceilings placed on diff. jurisdiction  
levels of establishment of courts?

Hofmeyr

These  
Matters to be governed by general principles -  
in clause (1) + (3) - especially  
(3). Requires an Act of Parliament.

Maree

Insert  
vi

"Presided over by a judge"

vii

"Presided over by a magistrate"

Ngwenya

Long discussions. "Similar status" covers  
this.

Ramaphosa

~~Magistrates' courts & other courts pres~~

Hofmeyr

Thought NP had mandate for its agreement. Why raised again. legal system may evolve. Don't entrench so much in Constit. that couldn't happen.

Marce

Proposes:

mentions Magistrate Courts. If want to mention other courts do so in v with "other courts"

Ramaphosa

[ Reserve decision on 2(v) for now, & let HVC consider this, for later discussion ]

Section 3: Jurisdiction of the Constit Court

31(b): retain v delete

Hofmeyr

Views given in CA debate: not needed in constitution.

Concerns raised by Constit. Court judges: allows undue delay & filibustering; & wd involve court in the hurly burly of parliament.

No harm if delete clause. Could be done thru provision of President referring matter if has serious doubts re constitutionality.

Ramaphosa

Law Advisors' option proposes deletion: also provision on Nat'l Assembly.

Zglin

Hofmeyr said Bills can be tested not only laws thru Presidential referral.

Right of jurisdiction: if deleted here wd.

Mare

the jurisdiction over Bills if only in Nat'l Assembly.

R Hopmeyer

Jurisdiction conferred in 2(1). There was exclusive - no other courts

Ngcuka

Still contentious as to whether Pres. sd. have this power

Eglin

Again, if said this in sec. in Nat'l Ass wd it confer jurisdiction.

Radue

1) 3(1) Consti. Court only: If remove (b), is removed from the exclusive juris. + opens matter to other courts.

2) If left only to President to refer, less democratic than if let Parliamentary members

Mare

Broaden the scope of (b) to include President

Ramaphosa

Is it nec. to go beyond "to consider ... or a provincial legislature."

Ponder

Sets out principle. How cd be dealt w/ elsewhere - e.g. section in Nat'l Assembly...

du Toit

de Lange

Agrees, The principle necessary if want to give exclusive jurisdiction. If not in constit., other courts could be open.

Marce

"at the request..." Could be incorporated elsewhere - in Constitution or Bill?

Ramaphosa

When discuss nat'l ass.

Agreed

Hofmeyr

"to consider the constitutionality of any national or provincial bill" proposed.

Ramaphosa

Inelegant

Marce

Principle not yet decided.  
before (passed by) Parliament.

Hofmeyr

don't agree w/ "before Parliament".  
But cd find formulation that talks about Bills but doesn't refer to what stage - Law Advisors.

v. Hurdin

Look at  
Report on Nat'l Assembly  
p. 21 fn. 43:

Pandor

P. 4 of Sub. Comm. Report

Chabane

Legal advise? as to whether is possible.

Eglin

3(b) confers exclusive rights. If that not there, where else wd it confer on CC to consider anything but a law.

Hofmeyr

This  
An undecided pt; no legal opinion.

proposed

"to consider the constitutionality of any Bill referred to it, according to the constt."

Ramaphosa

"... in terms of the provisions of this constitution."

D. du Toit

Queried: ~~referred~~

3(1)(a) disputes w/ local gov'ts need to be covered.

Hofmeyr

Provincial constt's may contain similar clauses. Depends on what says elsewhere in the constt. Need to say Constt. Court should have exclusive jurisdiction, not High Courts etc.

Ch allows:

If Bill referred by Provincial ~~legislature~~ <sup>legislature</sup> - would go to Constt. Court.

Zylin

Confirmed:

1) Amend

2) Delete

Deletion => debate on Nat'l

Ramaphosa

3(2) ✓

3(3) ✓

Hofmeyr

Correction Clause 4(a) => Section 5.

Ramaphosa

4(1) & 4(2)

de Lange

4.1 "Constit. jurisdiction" : does this confer  
excluding exclusive jurisdictions of Constit. Courts :  
so wd be all matters except exclusive

Hofmeyr

Jud advice.

(1) Sg 8 pr 2: suggests definition of  
constitutional jurisdiction.

3(1) talks specifically about Constit Court.

But make doubly sure is correct by getting an  
Opinion from Law Advisors.

Ramaphosa

Agreed

Opinion from Law Advisors

Hofmeyr

4(2)

Constit. sd. spell out in full what is  
the jurisdiction of the diff. levels.

No agreement on Magistrate's Courts + what  
level of constit. jurisdiction sd have.

Law Advisors said let legislation set it out.

Might accept w/ proviso,  
provided that they cannot declare any  
legislation invalid, except by amendment

Proviso wd require 1(7) to be amended.

Pandor

"Only"

Queried from Experts : use of "only"

p. 9 8 : "shall be regulated only by" &  
"shall only be regulated by..."

10 3 : why not "...the CC only shall have"

~~Agreed~~ Ramaphosa

Note

Law Advisors wd. look into this.

3.1 "The CC only"

↓

Ramaphosa

Pandor saying  
"Only the CC shall have *juris*."

Ngauka

1(7) says jurisdiction set out only in constit. then  
in 4(2) magistrates court set out in legisla.  
Contradiction.

Ramaphosa

Law Advisors to look into Hofmeyr's proviso + remake  
1(7) + 4(2)

Chabane

"Act of Parlia" amend to  
of Natl law to be consistent  
w/ message in rest of Constit.

Lama

[looked into by Law Advisors.

5(1) ✓

Maree

demands certain qualifications.  
CP VII A If judiciary must be qualified,  
shouldn't the CPs be spelled out here.

Ngauka

This discussed fully. Covered by term "fit & proper".  
Term evolving "shouldn't be fixed in detail".

5(2) ✓

5(3)

Pandor:

footnoting wrong from 3 onwards,

Ramaphosa:

Noted Chabane's correction of fn 12 at beg. of discussion

Ramaphosa

(6)

86

Mare

Need to unlock the mechanism to appt judges to  
Constit. Court. for p.15(6)

Hofmeyr

Queried (4) : Look at actual formulation

Ramaphosa

New formulation Agreed

Mare

fn. 14 : "fit & proper" persons appt. ed as judges;  
why not write same words for other judicial officers.

Hofmeyr

Agreed that matters re. Magistrates' Court wd in detail  
be dealt w/ in statute.

Mare

NP wants to take it further - an extra check & balance  
covering legislation, & safeguarding this.

Ramaphosa

How wd it be inserted.  
5(1) deals w/ qualifications

Mare

Nguke

1

Mare's pt.  
covered in 5(1)

Ramaphosa

Yes.

Nguke

(6): ANC happy w/ formulation. Footnote 13  
- doesn't need to be referred to Magistrates'  
Commission.

Agreed



Zylin

Queried "on the advice of..."

Hofmeyr

Same in intention as Interim Constit.

Zylin

Why use the phrase of

Hofmeyr

Sec 104(1) of Interim Constit.

Yaacob

Ramaphosa

DP fought for the term at World Trade Centre.

Mulder

President is bound by the advice?

Rama

Yes!

D. du Toit

"On advice of" usually used to formulate a convention that exists.

British law wd. say President must follow that advice.

But no convention here.

Meyer

More involved. Here not clear that the President would be bound by advice. Had it so that excludes doubt.

Pandor

What impact on 4(a) - 4(f)

[But that's Constit. Court judges]

Pahad

4(d) + 4(e) of pres. doesn't nominate on advice, must give reasons, + JS Comm give new nominators.

Hofmeyr

Constitutional Court judges - President should have some discretion to ignore or ask for further advice in Sec. 4, but Sec. 5 different.

"recommendations used" in Sec. 4 - is not "on the advice" as in Sec. 5.

Ramaphosa

If doubt, cd. be clarified further. Thought will be given by law advisors & if further clarity needed, they'll recommend.

(7) Compromise agreed to. ✓

(8) Agreed to ✓

(7) Judicial Service Comm.

7(1) - ✓ 7(5) ✓

Noted

(8) + (9)

Hofmeyr

Awaiting formulation on Attorney-Generals.

Ramaphosa

Noted

Tea Break

4. TC1 Report on Blocks 7 & 9:

Handwritten notes

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(7) Handwritten notes with a checkmark

(8) Handwritten notes with a checkmark

(7) Handwritten notes with a checkmark

(7) - (8) Handwritten notes with a checkmark

Handwritten notes

(7) + (8) Handwritten notes

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Handwritten notes at the very bottom

4) TC 1:

Mr. Hablangu:

Spoke to Doc. entitled, "Report on  
Blocks 7 & 9"

Language -

all 11 could be official

Lang.s of record or communication

Marais

P. 23, [3 (10)(b) of Constit.] re. Pan S Afr. Lang. Board in (b). Pan S A<sup>n</sup> Lang Board needs to be esta. Wants Legal Opinion.

Sign language: NP seeks to show compassion: Queued, is it a language or technique?

Expert: Sign language a real language.

NP: not bound to section 3 of IC, but it sd.

from the basis of discussion on official lang.s.

Proposes: debate Sec. 3; delete what's bad, keep what's good; don't start debate from afresh.

Then after discussion refer this + sign's lang. to sub-comm.

Deang

PAC asks to withdraw its submission on Block 9, & reformulate it - re-flag.

Nzimande

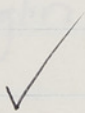
Go item by item.

Ramaphosa

Repeated NP proposal:

discuss issues & then refer to

Sub-comm.



(1)

(1) NAME & Territory

Agreed Rep. of S.A.

PAC to bring reserve position, to bring new submission.

## NAT'L TERRITORY

- (ii)
- Agreed, but PAC reserves its position,
- Manzini Asked for proper definition of territory.
- Meyer  
 Query: spell out whole area? Beacon to beacon?  
 from IC: Schedule 1: Involved definition.  
 Always defined in terms of past.
- Corder  
 This taken from 1(2) of IC which comes from  
 Schedule 1. Beacon to beacon.  
 Otherwise to say, same territory as now.
- Bhabha  
 Advice needed: if name territory, are we  
 limiting ourselves too much. Might find more later?  
 E.g. Robben Island.
- Chabane  
 Use general formulation, commission a  
 doc to inform about exactly what this  
 means - how many islands we have etc.
- ~~Corder~~ Ramaphosa: Re Schedule 1:
- Corder  
 Schedule 1: how provinces  $\div$ ed, too.  
 Robben Island in Magisterial District of CT.  
 Formulation in 2 obviates a schedule -
- Eglin  
 How is this dealt w/ in other constitutions?  
 Requested an "international procedure".
- Corder  
 Enormous detail in IC b/c of boundary

Corder

disputes b/t provinces. Believes draft formulation suffices.

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Chabane

The formulation doesn't exempt us from defining provincial boundaries, w/ could happen somewhere else.

Detailed

1 territorial description

NP?

Retention of natal: Kingdom w/in Republic?

du Toit

United Demo. Union of SA as well.

Meyer

Depends on what powers & functions of kingdom wd. be.

Kgositsile

Formulation: refers to Schedule 1, Part 1: need formula. That allows a process, rather than adhered to 27 April 1994.

du Toit

Territory historical can change over time.

- (1) "The Rep. of SA comprises [name provinces]."
- (2) Nat'l law w/ has Swygors-General's particulars. Law can be changed.

~~Cd add Sen~~

Cd (but don't have to) add 2nd S w/ says where wd. be defined.

Chabane

Agreed, provided add "islands & waters" in 1st sentence.

Eglin

Trdy. Note, CP: territory adjustment needs a specific procedure.

Mulder

Principle good, but wd depend on final decisions about # of provinces [ + Volkstaat ]

Ramaphosa

Wessel

Description in Law.  
Procedures for change?

Du Toit

Make (1) + (2)

" The Rep of SA comprises the areas of [names of all] including all islands & waters."

If Volkstaat agreed to, just add it.

Ramaphosa

Tech Experts + Law Advisors take these proposals ~~taking~~ into account also what is set out in principle

**Anthem**

Constitutionalise what is necessary. <sup>What is necessary?</sup>

- (1) Anthem (?)
- (2) Coat of arms (?)
- (3) Flag (?)
- (4) Seat of Govt (?)

Anthem often dealt w/ in legislation.

Cooper

Wd. depend on the poli. will.

Marais

Remember there's still uncertainty. So, sd be included.

Chabane

How cd you describe a flag in the Constit.?

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## ANTHEM

Pahad

leave in abeyance to allow ANRC to formulate a position by the next CC meeting

Ibrahim

Note: PAC to reformulate its submission.

Agreed

Wessels

Circulate shortened version & possibly hear it.

Maras

10 June hearing.

Ask Prof. Khumalo

On record w/ secretariat.

Revisit when shortened version circulated.

## Flag

Mulder

FF wants to rethink position on current flag.

Manzini

No problem w/ current flag, ~~but want to~~ <sup>subject to consulting</sup> finalise w/ their principles.

Reasserting position. Wasn't said right in submission.

Ramaphosa To be revisited to finalise,

## Coat of Arms





Merais

Should be in Constitution. Is an international symbol of authority.

Nzimanke

Re report: ANC + DP don't want current coat of arms. Present shouldn't be considered.

Merais

TC: various parties have changed their positions. NP open to ANC/DP suggestion, but queried "mechanism". Reminded chair, last time flag committee did nothing. Small gp. Investigate financial implications - changing existing coats of arms in bldgs, etc.

Eglin

Is current coat of arms appropriate to new SA. Seal still has 4 old provinces. Sd. be current. Shouldn't be in constitution. By proclamation <sup>by state</sup> President. But provided for in Constit.

Gordhan

Get rid of current coat of arms. Agree w/ Eglin's proposal.

Ramaphosa

Agreement:

- (1) Investigate new coat of arms
- (2) Proclamation

Chabane

Old coat of arms to go. New coat of arms - symbols. Let Tech Ex. work out.

Ramaphosa

Don't give symbols. Agree on mechanisms.

Pandor

1) Id new coat of arms to precede proclamation.

