



Constitutional Committee Minutes
Contents Vol. VII

Meeting Dates

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19 October 1995 (30th)

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80-94

Schutte

5d(1) is over the top

Ramaphosa

What is so terrible.

Schutte

A poli head won't always get universal support.
It should be above poli turmoil, sd not be a poli. player.

Nchodo

President wd promote constit. values. 5b(1) drawn in part from the oath of office.

Schutte

If symbol of unity, shouldn't be political player

Eglin

Did support inclusion of clause doesn't like "symbol"; include other concepts as overall role of Presidency.

de Lange

Is in Sec. 81 of IC: provides exec. leadership etc. + symbol of unity.
"Symbol" not a good word

Ramaphosa

Task team to Amend "symbol"

5b(2) Agreed

5b(3)

Eglin

queried meaning.

Erasmus

Pres. as Head of State as well as Head of Exec. Branch of Gov't, represents state + has certain sovereign immunities.

2000

2000 to see the top

Remembrance

What is so terrible

2000

A girl had been always of national support. But she had this terminal, and not to a girl. player.

2000

President and present credit values. 2000. Shows in part from the work of office.

2000

If symbol of unity should be political player

2000

Did support inclusion of clause doesn't like "symbol" ; includes other concepts as overall role of government.

be large

Is in sec. 31 of I.C. : provides exact leadership etc. + symbol of unity. "symbol" not a good word

Remembrance

Task team to Amend "symbol"

2000 Agree

2000

2000

partial meaning

2000

Pro. a that of 2000 a call as that; The. 2000 of 2000, represent this. the entire through committee.

Sizani

Still unclear.

Love

Why is there a need to elaborate the further?

Pipinga
Ngauka

Parlia wd ratify treaties negotiated by Pres & Cabinet. What if Parlia refused to ratify it, wd there be conflict of sovereignty?

Erasmus

Exec wd nego. treaties, but '56(2) implies rela. to other states not w/in SA, so no conflict.

Pahad

Tech Comm. trying to reflect discussions - has nothing to do w/ rela. b/t Pres & Parlia w/ ratifies treaties. Only says Pres acts as head of state.

Marie

Sovereignty: are there different types of sovereignty.

Erasmus

"Sov. of Parliament" to be replaced w/ "Supreme Constit" - all powers of Pres. must conform to Constit.

Only other source of sovereignty - that of Const. for domestic law.

Wissels

Needs to be put in plain lang.

Ranaphosa

Refer back to Tech Team to improve draft

57(i) Agreed

Andrew

57(2) (b) → (d).

Andrew
Wd be referred ^{by reservation about} ~~for~~ constitutionality. This needs to be said clearly. Add this.

Cravi
Add references to section #s, "in terms of..."

Ramaphosa
Kuhd
Preliminary additions by reference #s to say the same

Randhot
§7(2)(a) needs amendment
Use provisions of present const.

Judhan
Leave, + in unlikely event agree to have GNU,
wd amend it.

Nzimande
Must go round in circles when know GNU won't be constitutionalised.

Ramaphosa.
Matter already referred to bilaterals. Have not yielded anything.

Leave it until matter fully resolved.

Love
Sidebar note - indicate wd return to it in unlikely event GNU agreed to.

Rabi
Bilateral: if there is no GNU, the wd be the formula; if there is a GNU wd use formulation in IC.

Pabad
Let the different options be presented.
Leave open the GNU option.

Parties cd engage in discussion.

Admission

8
The purpose of this study is to
investigate the effect of
the independent variable on the dependent variable.

Group

The purpose of this study is to
investigate the effect of the independent variable on the dependent variable.

Researcher

The purpose of this study is to
investigate the effect of the independent variable on the dependent variable.

Researcher

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investigate the effect of the independent variable on the dependent variable.

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Researcher

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investigate the effect of the independent variable on the dependent variable.

Researcher

The purpose of this study is to
investigate the effect of the independent variable on the dependent variable.

26) Stand over

Researcher

The purpose of this study is to
investigate the effect of the independent variable on the dependent variable.

Researcher

The purpose of this study is to
investigate the effect of the independent variable on the dependent variable.

The purpose of this study is to
investigate the effect of the independent variable on the dependent variable.

Nzimande

~~Don't raise false expectations of GNU.~~

Ramaphosa

IC sets out elaborate procedures for selecting & appt of Ministers. Not good; say in sidebar, if GNU agreed to, draft text wd be changed.

Ramaphosa

(2)(a) ✓

(2)(b) ✓

Schutte

(2)(c) ✓

Pahed

(d) see above

2(e) ✓

2(f) ✓

Ramaphosa

2(g)

P. Elin

let stand over until deal w/ clause 73

Rama.

Stand over

Eglin

2(h) ✓

Love

(57)(e) Sidebar note: to emphasize imp flow.

2(i) ✓

2(j)

H. Erasmus

de Lange

flaw: Presidents have other powers given in legislation. Wd those all need Cabinet agreement

Erasmus

~~TC2~~ Needs poli. decision.

Schutte

Pt. of order: to expedite progress,
TC5 seek mandate to look at ch. 6.
To be excused, to see if can return w/
agreed stand.

Ramaphosa

Not all parties cd. join the gp., but larger
parties cd. proceed.

Schutte

Let experts who dealt w/ it come

Pahad

de Lange's pt.; TC2 didn't consider
this. Ask Tech Comm to see how his
view cd. be accommodated so cd. see it
in writing
(h): DP says Pres. shouldn't have power to
appt. ambassadors.

Ramaphosa

Not dealing w/ (h)

Pahad

Disagrees w/ Andrew's interpre. of (h),
ANC says he sd. accredit foreign
diplomats

~~Eglin~~

Love

(57)(2) Sidebar note: to emphasize imp. of Pres.
But detracts by use of "in consultation"
delete whole of (57)(2)

~~M Erasmus~~
Murray

Clear instruction: list there —
exclusive powers of President, not in
consultation w/ President.

Chairman

Not all parties of joint group, but larger

Chairman

At. of order: to expedite progress,
TC's seat members to look at it.
To be advised, to see if any action is
required other.

Chairman

Not all parties of joint group, but larger
parties to proceed.

Chairman

Let report who best of it comes.

56(3)? Yes 57(3)

58(1) + (2)

TC's didn't consider
the fact that some to see how his
view could be accommodated so as to
writing

(1): Dr says they shouldn't have given to
app. members.

Chairman

Not talking of it.

Chairman

Disagreement of members' interest of it.
This says the ad. committee's
dilemma

Chairman

have

(2) (3) Sidman not: to emphasize imp. given.
But detracted by use of "in consultation".
Delete whole of (2) (3)

Chairman

Clear instruction: list there -
exclusive power of President, not in
consultation of President.

Love

Not clear, still.

(a)-(j): sd these be in constitution.

Ramaphosa

From original formulation w/ draft w/ + large extent agreed to.

Let debate be opened next yr.

Agreed - leave.

(5)(3) Agreed

58(1) & (2) Agreed

Eglin

~~58(1)~~ Special majority? + higher quorum maj. of members of house, not simple majority.

Flag this as one that needs attention re. quorum.

~~58(1)~~ how many weeks to plan inauguration of President.

Chabane

how much time must elapse b/t election & assumption of office. Existing text Accommodates these concerns

Ramaphosa

10 days.

[Agreed to]

de Lange

Thought covered in Parliament, must meet w/in 10 days.

Pres. to be elected 1st meeting.

love

Not clear still.
(a)-(j): at these be in combination.

Remedies

from original formulation: at least 20 + page
extent agreed to.

Revisit after supper

Agreed to

Agreed to

Agreed to

Agreed to

Special majority? + higher power
No. of members of house, not simple majority.

For the as in that rule either in or previous.

has many words to plan in agreement
of President.

Observe

has much that must agree with election
of office. Existing text
Associate the names

Remedies

10 days.

Agreed to

change

Point covered in Parliament, must meet after
10 days.
Per. to be elected at meeting.

Ramaphosa

This is the swearing in.

Gordhan

Gap b/t election & swearing in: creates 20 days of uncertainty. Let swearing in immediately, but inauguration later.
∴ Swearing in = inauguration.

Ramaphosa

Revisit after supper, including [10 day] proposal.

Yacoub

Immed at
Org. far more long before inauguration
Election, civil service will org. inauguration, for swearing in ceremony in the 10 days b/t election & first sitting of Parliament.

Ramaphosa

Shorter period, possibly to co-incide w/ first sitting of Parliament. Tech Comm to look into, & consult relevant civil service.

Pahad

Need head of state. Swear in at time elected by Parliament. ~~Minimize~~ Id be no gap.

Loe

Conced in 61

(60)(1) ✓

(2) ✓

(61)(1)(a) ✓

(b) ✓

(c) ✓

(61)(2) ✓

(61)(1)(c)

Paragraph

Top of election - amount is: create as
high of uncertainty, but amount of investment
but investment later.

Section

(62)(1)

(62)(2)

Limit after super, include [] proposal.

Paragraph

(63)

Section

to have
of before
will of
in amount in amount in the 10 days after
- first sitting of Parliament.

Paragraph

later first, possible to consider of first sitting
of Parliament. Took down to look into amount which
will cover.

Section

that kind of state. There is no other
provisions. It should be in law.

(61)(1)(c)

Section

Flag (63) - include options

(61)(1)(c)

(61)(2)

(61)(1)(c)

(61)(2)

(61)(1)(c)

(61)(2)

Mfulder

(61)(1)(c) "by resolution" earlier draft said by parliament.

Munay

No, reference there sect 64.

(62)

(62)(1) ✓

(62)(2) ✓

Rabie

(63)

Ramaphosa

how can we insert party views.

Zglin

Bilaterals occurring, but hasn't resolved the matter. Put the 3 options out so public can debate it.

Pandor

Re (62): Why "Acting" excludes Dep. Min.s

Ramaphosa

leave in brackets

Ramaphosa

Covered in cc)

(63)

Ramaphosa

~~Let Task Team see how 3 options captured here~~

- 3 options: 1 Dep Pres
- GNU Dep. Presidents
- Prime Minister

not elaborate, but to inform public.

Wd forward proposal to CC for consideration.

Chabane

Flagging a # of issues. Need to finalise working draft.

Pandor

how wd this be reflected - different party views

Ramaphosa

Tech Comm wd. make proposals.

Ramaphosa

(64) Side bar

Rabie

DEL or Dep. Pres.

Moosa

Why 2 type procedure for me + not other

Ramaphosa

de Lange

Don't delete dep. pres.
Until know how they'll be appt. ed.

Ramaphosa

Leave in brackets

Leave anomaly a deal w/ later

Nglin

If Dep Pres is Dep head of State, like Pres, wd need to get rid of in same way - so before decide, see what his functions wd be.

Pahad

Remove Dep. Pres. + add later if agreements require it. Purpose here - you can impeach the President.

Ramaphosa

Wd need to change title too.

Pahad

Need clarity that Pres. occupies a posi. that puts him above Cabinet, in addition to no confidence wd need impeachment process.

Rana. Ruled delete or Dep Pres. from heading & Dep. Pres from 64(1)

64(2)

Ramaphosa Who decides who "may receive" - sd there be a discussion? or automatic.

Lore discretionary possibility not from earlier texts only in sidebar notes.

Ramaphosa No, in earlier text: pension

Lore But discretionary issue not in earlier texts. why added?

v.d. Westhuizen If agree no discretion, ^{consider} changing "may receive".

Ramaphosa [Agreed Tech Comm wd look into]

Lore "Mental disability" - DEL covered in (61)(c).

Ramaphosa [Agree] - delete sidebar note.

(65)(1) ✓

(65)(2) Delete: Sidebar

Andrew change "must" to "will" pre-side -

Ramaphosa But covered in following sentence

But there is a gap for...
a gap for... (2)

(2)

Paragraph: "The... - at...
... or...?"

Paragraph: "But... possibility not from...
... only in... notes."

Paragraph: "It is... text: ..."

Paragraph: "But... in... text...
...?"

Paragraph: "if... or... 'changing'...
... '...'"

Paragraph: "Agree... not... into"

Paragraph: "Mental... '... DEL...
...'"

Paragraph: "Agree... - delete... notes."

(2)

Delete:
Delete

Paragraph: "change... must... will...
..."

Paragraph: "But... in... notes"

Pandor

"another Minister" & "a minister"

Ramaphosa

Ruled yes.

Andrew

v. d. Westhuizen

The "shall" did the same in the original.
Could delete clause.

v. Breda

Does it infer, if President at a meeting, he must chair.

Ramaphosa

Is true, sometimes Pres. Pres. & doesn't chair.
Tech Comm had consider this.

Maree

Add "further, a member elected by the Cabinet"

Pahed

Scrap the clause & let cabinet

Agreed

(66)

Ramaphosa

// to 63 let Task Team, so that the options are set out briefly.

~~Ruled~~

Insertions in bold + CC wd only deal w/ those.

Rabii

66 covered by (57)(2)(a)

DEL 66.

Agreed

"..."

...

...

...

...

(67)

...

...

(1) 86

...

...

(2) 86

...

...

...

...

...

...

...

(68)

...

...

...

(1) 86

...

...

(2)(b)

(2)(c)

...

Ngli

No, need to confer authority to appt Cabinet too

Ramaphosa

Rabiu has pt., but let Josh Josh stream draft something.

Ramaphosa

(67) ✓ Agreed

(68) (1) ✓

(2) Drop brackets?

Agreed

de Lange

Who is Pres. accountable to? Individually, not only as part of collective Cabinet

Ramaphosa

Tech Advisors to look at.

Wessels

No, this only is implied.

Ramaphosa

As is appt. ed by parlia is dismissed by them, is accountable to parlia. Tech Comm to look at.

Pahad

DEL "may" ^{begin} in (67)

Ramaphosa

Wd be corrected
Corrected

(69)(1) ✓

69(2)(a) & (b) ✓

(69)(2)(c)

Andrew:

"Improperly" refers to enriching other persons

du Toit

Problem the "improper enrichment". Context of "enrich" here indicates "improper"

Andrew

But legal advisors said earlier that enrichment not improper; now say differently. Believes is "improper use"

Gordhan

Differentiate Cabinet from other persons
" improperly benefit any other person "

Ramaphosa

Tech Advisors to redraft so that Views to be taken on board; [In response to vdWeyer's] use should remain, not "improper use"

Andrew

Remuneration had earlier 2 sections, 1 about holding any other public office. Whole section fell away, including matter of Pres. not being able to hold any other public office.

Insert it under section relating to President.

Ramaphosa

Flag issue to revisit; to discuss later.

Task team will look at sec (70) ~~deleting~~ ~~He dealt w/ elsewhere.~~ reconcile w/ 48. ~~(to be)~~

Moosa

"Parliament" used here, National Assembly elsewhere. Flag matter for consistency.

Love

Gap: Whether or not Dep. Pres. + Ministers must be elected thru ballot.

Ramaphosa

Dealt w/ in appt./procedures of Ministers. ^{dismissal of} Not deleted, but redrafted.

(71)

(72)

follow the "improper" standard. List of "improper" has indicated "improper"

But legal advisors said earlier that amendment not improper; now say differently. Below is "improper" use.

Differentiating between "improperly" benefit and other forms.

Test: appears to result as that view to be taken in board; (in various published use should remain, not "improper" use)

Commissioner has certain 2 sections, 1 about holding any other public office. While some fall away, including matter of law not being able to hold any other public office.

Does it mean public holding to be absent.

Try issue to revisit; to discuss later.

Test form will look at sec (70) holding the right of election. (Article 1) of the

"Belmont" case law, National Bank. Try issue for consistency.

Type 9A: Copy: whether or not the gov. must be elected the ballot.

Part of is right procedure of Minister. Not elected, but accepted.

Andrew

Andrew

Paraphrase

Andrew

Paraphrase

Moss

Law

Paraphrase

Ramaphosa (71) Agreed to

Andrus "Assign to" change to "proclaim"

de Lange But does proclama have to always happen.
Over bureaucratism by Parliament

Morse But stability in proclamation

Rama Leave proclama in for now

Pandor: Role of Parliament in 72(B)

Erasmus This refers to Exec. power in terms of a law.

Ramaphosa Covered.

Wchodo Parli passes law, President = Exec. administration.

(73) After supper.

Conner Next Ch. 5

Clause 58

Rebri add "and Senate"

Agreed

(13)(1)

Pandor Ask this to be looked at + 57(g)
be considered at same time.

Eglin

Adjust if deals w/ Prime Minister

- (3) ed replace Prime Minister
- (2) Agrees
- (1) Problem:

President elected by Parliament, & he appt. ed Cabinet.

(1) Superfluous

Ramaphosa

Agree to flag this proposal?

Labu

Leave as is.

Bilateral: vote of no confidence ^{passed by} 5070 + 1 of all members.

Gordhan

Just comparative examples.

Under what situations wd Parliament be resolved?

v. d. Wothuican

Took from existing draft.

Ramaphosa

Just thought.

Love

Dissolution of NA or calling of election: are these covered elsewhere?

(37)(g)

Ramaphosa

Just advisors did report earlier - let Jack Jack now look at it.

Eglin

Opposed to defrocked

After vote of no-confidence, majority of Parlia might want to call election. Shd be prerogative of Parliament

du Toit

Implies Ability to call election:
This the strongest power a state President has.

To prevent frivolous action on part of Nat'l Ass.

Eglin proposal wd strengthen NA greatly,
as NATASS wd be exclusively empowered to
call elections.

Ramaphosa

73(1)

Think about it, to discuss at next session ^{when get} again.
See report drafted by Tech Adams.
Ensure consistency w/ current 57(g) + 43(=)

Pahad

What was at issue?

Ramaphosa

Proposal: Eglin: if Pres. deposed, Pres.
sd not depose Nat'l Assembly.

Pahad

Party political - Presidents elected by Pcis
parties as a whole.

Chabane

Can President resign + leave the Cabinet?

Ebrahim

Yes,
New incumbent wd change the Cabinet

61(1)(a) allows for.

du Toit

Outside discipline, cd. not be recalled.

Love.

61(1)(b) says can be recalled - no confidence.

Wissels

If Pres. resigns, his cabinet is not a Cabinet.
There's a vacancy, Parliament needs to
replace him.

Redraft (57)(2) + (3)

Ramaphosa

what if dies?

Wessels

Vacancy has to be filled in terms of Const.

Ramaphosa

Zglin

Incumbent stays in office until new president elected, & he has the resp. to select new Cabinet.

Ramaphosa

Yes.

Chabane

Where

What about appt of Commissions -
in or out of consultationv. d. Westhuizen
Nchodo

In consultation.

Power to appt. commissions thru commissions act. Noted in Sublimon doc. to CC.

Love

Raised by de Lange re (57)(2) & (3) -
Say unless stated in constit., Pres. must act
in consultation w/ Cabinet.But what if legsla. says Pres. sole decision
maker, w/ conflict w/ Pres.

So 57(2) & (3) sd be redrafted.

Mfunway

Impinges on Pres. powers, & accountability
of Cabinet

- Needs some consideration.

Diagram

Diagram of a cell - showing nucleus and cytoplasm

Diagram

Diagram showing a cell with various organelles labeled

Diagram

Diagram

Diagram

Chapter 6

Sec (1)

1. a. Working
Nucleus

Diagram showing a cell with various organelles labeled

Diagram showing a cell with various organelles labeled

Diagram showing a cell with various organelles labeled

Diagram showing a cell with various organelles labeled

Diagram showing a cell with various organelles labeled

du Toit

57(2) covers Commission Act

But Pres can have Pres. trust act on own dove
Pres, e.g. a commission to investigate a
Minister.

Ranaphosa

Such Actions wd look into it.

(73)(d)

Panel to look at quorums - & report
back to CC.

Ranchod

Recalled
his earlier proposal of 50% + 1
of all MPs

Ranaphosa

(74)(1)

v. d. Heerden

Accept consolidated draft not referred draft.
Sec (1)

Murray

Subject to lang. changes to ensure
consistency w/ rest of referred text.

Agreed to:

Sec 1(1) - 1(8) to replace whole
74(1)

Mulder 74(2)

raised margin note "The word decision"

de Lange

Check the ^{against} Const. Court judgement
re Sec. 235(8) i. wd decisions include
interpretations by the Const. Court.

Agreed

87(1) can be amended to
the law on the fact that it is not
the law, it is a common law principle
of justice.

in the
Paraphrase
But there is no law to

(177)
and a lot of questions - a right
lost to CC.

locally
known in certain regions of 2001
of all Mrs

Paraphrase
Paraphrase
(77/1)

Accept consolidated draft of report
See (1)

v. d. Herten
75(1) Amended/Agreed
Plenary

Subject to any change to know
members of the proposed text.
Agreed to:
See 1(1) - (13) to replace other
74(1)

75(2)

74(2) revised original text "the law is
not the law, but the law is not
in the law, it is a common law principle
of justice."

74(2)
in law

[Amended]

de Lange

Key participation in the legal system. Is there an empowering clause about this?

Ngwenke

Thought matter covered by 75(f)

Nzamaide

Difference b/t esta. of other types of courts + composition of courts. Perhaps need to make additions.

Schutte

Need advice on this.

Ramaphosa

de Lange's concern - news, will be addressed.

(75)

(75)(f)

Maru

legala. => "act of Parliament"

w/ this amendment accepted

75(1) ✓

75(2) expanded to incorporate 76(6) + 77(3)

Wissels :

Or: Add ^{to 75(2)} / (76)(6) + (77)(3)

Ramaphosa

How

Maru

Consolidated or as sub-sections

76(1) Agreed to.

76(2) Insert

(2)(a) matters b/t "the national organs"

Bhalla

Include in such a way as covers "national organs"

76 (4)(c) for any → "a"

Munir

76(5)

delete persons, & organs of state"

Sizem

What are nat'l organs?
Does (6) necessary?

Ramaphosa

(6) moved.

Love

"Over disputes in constt. matters" Queried -
does this mean the constt. or interpretation of the constt.

Munir

different national organs - e.g. disputes b/t exec +
legisla - sd only be heard by constt. court.

Sizem

Will that be clear to everybody

Eglin

Dispute b/t:
Organs of National Gov't & Structures
Nat'l + Prov. Govts, & b/t
Provincial Gov'ts.

Tried up to indicate this.

Rams
Eglin

Yes, wd. be tied up accordingly.
Include structures under
Chapter 7

de Lange

Parlia sd be allowed to make rules for Constt.
Court, so Court + Nat'l legisla to make rules

Abstract

Abstract is sent + copy in case "abstract" is not

to (11/2) for copy

10/27

delete previous + copy of state

Page 10 (K)

What are initial signs?
B.P. (a) re-assembly?

Signs

(a) work

Language

"Our signpost is coast, water" -
has the same the coast in interpretation of the water

bar

different initial signs - e.g. shape of the bar +
shape - set up by means of water

Sign

Will this be done to complete

Sign

Propose it:
Opening Market on F. n. Structure
Half + for costs, n. bit
Historical costs

Sign

Time of a well cut

Up, not, be taken up accordingly.
Initial structure into
Chapter 7

Sign
Sign

This is the allures of water plus a sign
cut, so cut + had a bridge to make out

to large

de Lange

Need to include validity of act of Parlia. - 21
as exclusive jurisdiction of the Const. - in (2)

altho given mechanism in (4)

Murray

exclusive jurisdiction: understood range of
courts cd. consider this;

exclusive jurisdiction in final validity
w/ Const. Court.

Schutte

Agrees; Const. Court w/ exclusive jurisdiction
of Bills to validate.

de Lange

Invalidation of Act of Parlia as exclusive
jurisdiction of Const. Court - needs to be
spelled out.

Ramaphosa

It will be fixed.

Andrew

Requirement in 76(2)(a) should be given
^{that disputes} precedence for consideration
by Const. Court.

Ngeuka

It will be dealt w/ by rules of Court, that is access
to court.

Maree

(77)(1)(a) ✓

(b) require clarity on ^{why use words} "inherent
jurisdiction" from experts -

at a later stage, & in writing.

(2)(a) ✓

(2)(b) flag idea of granting temp. interdict

Mfulden

include Cabinet in conduct that is unconstt.

Ngauka

Cabinet decisions must be agreed by President + this covers that concern.

Add (3)(b) "Unless confined on appeal to it or on application to it by any organ of state" [See brackets on 68]

After "Court" but, the court may grant "

Maree
78(2)(b)

Ramephosa

Ngauka was trying to resolve Mfulden's question. v. Heerden Maree wanted to further explain this by raising (78).

Bas

~~Heerden~~

Asked Mfulden if happy.

Mfulden

Act Mfulden refers to Act + Conduct.

Ngauka

Consider Mfulden's pt.

Agreed wd be looked into.

de Lange

⁷⁷
delete (3).

Ramaphosa

No
77(3) went to 75(2), ~~to see if~~

Moosa

77(2)(a) - 76(4)(a)(b)(c) => invalidity
delete 77(2)(a)

Ngwenya

Supreme Court of Appeal can declare a law invalid or make an order, but these must be confirmed by Constit. Court.

Other courts can pronounce, but require confirmation by Constit. Court.

Moosa

Yes, so delete.

Yacoob

Distinction b/t Act of Parliament & other laws (passed by local gov't). Need both to handle the 2 situations.

Agreed.

Lylin

Follow Ngwenya + Moosa interim decisions awaiting confirmation.

Moosa

No,
77(2)(b) says Supreme Court order of no force & effect.

Yacoob

Constit has to be read Hg. Decisions already taken

Supreme Court + High Court to have jurisdiction to find acts invalid, but w/o effect until confirmed by Constit. Court.

de Lange

jurisdiction
Why broken up / repeated under each court.

25

Murray

Original ~~draft~~, ~~it~~ Could be reworked.

Dividing courts to ease following of drafts.
to make better sense of it.

de Lange

Going in wrong direction. Not making it clearer
or easier to understand.

Ramaphosa

No,
This is clearer.

Keep this chapter under review.

Ngwenka

Agrees w/ de Lange.
Ask experts to review to try to avoid repetition.

Ramaphosa

Tech Task Team to look at repetition.

Mauw

78(2) - wd it include municipal by-law.
To Supreme Court
Wd Const. Court even has jurisdiction over appeals.

Ngwenka

Magistrate's court jurisdiction wd be
spelled out in legisla., must not include
invalidating Act of Parli or Pres. proclama.

Mauw

Insert Court of Appeal to Const. Court jurisdiction.

Schutte

Believe it says this; if not, insert it.

Mauw

Play it for experts to examine this.

Ramaphosa

~~Agreed~~ Ruled, yes.

Eglin

Clarity on 77(1) Supreme Court - highest ²⁶

76(1) doesn't say highest court of appeal for constitutional matters.

Schutte

Constit. Court a court of appeal in 1st instance + Constitutionality.

Rama

Wd be looked into

Andrew

76(5) decision of CC binds all other courts.

Same not said of Supreme Court of Appeal.

Ranaphosa

Wd be looked into.

Ngeuka

Look at ^{in terms} of 77(1), too.

78(3)(b)

v. Heerden

Mentioned by Ngeuka

79(1)

de Lange

Queried ÷ 78 + 79; no jurisdiction on constit matters below those in Sec 78 -

i.e. constit. matters excluded from magistrates courts.

Moosa

No, intended declaration of invalidity

Schutte

As stands, law wd have to decide jurisdiction of magistrates court. But rethink matter; could decide it.

Ngwenke

Mag. court covered in 78(2)

Differ from 79

(80)(1)

v Heerden

① ARC objected to "citizen" } ② "appropriately qualified" instead of "who qualifies".

Andrews

Why not say "any citizen" instead of whole phrase.

Yacoub

"appropriately qualified" — Panel raised reservations if ~~CPVII~~ CPVII met.

Schutte

Let Panel Opinion be distributed.

Agreed

Ngwenke

Drop "citizen".

Mfulden

Why sd judge not be a citizen?

Ngwenke

There are South African citizens who are judges in the front-line states; why not vice-versa.

Love

If someone is regarded as competent, regardless of nat'lity — why sd be disqualified.

Schutte:

A high office, accorded great powers. Expect at least loyalty to SA

Rane.

Discussed by Sub-Comm w/ referred matter to bilaterals. [Keep the matter flagged & proceed

- v. Heerden
Hold back on rest of Dec-80 until clear what Cabinet structure composition in mid. Dec.
- Mossa
NP seeing whole of 80 in political light; sd not be political.
- Ramaphosa
v. Heerden saying rest of 80 dependent on how resolve GNU question.
- Ngwenka
Don't see why this should be linked to the issue of the GNU.
- Ramaphosa
Linkage isn't new. Can't resolve all matters now.
- Schutte
When talk about vote of Govt's Court, need confidence of 99% of people. If Cabinet composed of 1 party, anathema. In that case, sd use multi-party Parliamentary Committee.
- Andrew
Thought meeting to see whether consolidated agreement correctly reflected in revised working draft.
- Ngwenka
Don't debate substantial issues here.
- Ngwenka
Agrees. In response, difficulty, 80 - NP wants to reserve its position until GNU solved.
- Ngwenka
Let us say, matter subject to further discussion.
- Ramaphosa
Matter already referred to bilaterals. Leave as reflected in draft. + Proceed.

20 08 20

This list is a copy of the 20 most common
plants found in the area.

Map

The map shows the location of the
plants in the area. It is a copy of the
map of the area.

20 08 21

This list is a copy of the 20 most common
plants found in the area.

Map

The map shows the location of the
plants in the area. It is a copy of the
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map of the area.

Ngwenka

ANC has serious complaint

Love

Agree that can return to the section to look at issues, & include back notes, this is subject to ..., but rework the draft for purposes of publication.

Rana

Sec 80:

leave as is; revisit when next meet.

v d Heerden

80 (1)(a) bracket: "grossly" ~~revised~~.

81(2) ✓

Re 82 new

Love

"and may not be reduced": sought clarity.

Schutte

Part of indep. of judiciary. Terms honoured.

Love

Salaries could be reduced from when: now or day ansit. implemented

Ngwenka

A of today.

Zyhi

queried "and" 81(1)(g) [at end] sd be "or"

Agnes, to "and"

Ngwenka

don't put "grossly" in brackets. Think about it.

Love

Reduction of salaries: Justice cd be limited b/c

ANC in ...

Algebra

... that can refer to the ...

line

... to include ...

20

... in ...

line

...

... "prop" ...

v ...

81(2)

...

Quay

... "and ..."

line

... of ...

...

... can be ...

line

... in ...

A of ...

Algebra

... 81(2) ...

line

... "and"

... "prop" ...

Algebra

... of ...

line

Love

of this expenditure. There sh be no encroach subject to protection of the Fed order. 30
Let Nat'l Legisla. establish a new order.

Ramaphosa.

Not the concern

(83)

de Lange

1) Public Protector, is judiciary falling under Nat'l, b/c (Codd) there can be ^{other} grievance procedures for judges

2) training mechanisms for judges.

Justs improving clause, b/c of indep. of int'l institutions.

Schutte

Wasn't discussed. Let experts look at it again. Also mitted - Indep Structure to report. . .

Love

+ other . . .

v Heerden

(84) Agreed Revisit.

Ngwenya

ANC proposal

Stat Addition

(e) add "one" designated by "The other by The President"

(f) " " " " " "

(g) add "e the other designated by The President"

(i) delete "two of whom — advocates"

Logis

(i) in consultation w/ Cabinet but said earlier Pres. wd always do this

Murray

Included in purpose in some cases, but redundant here.

Murray

Will deal w/ it.

v. Heerden

~~Attorney-General - let report look at structure in
Grade 2 Auditors & report back in greater detail.
Provincial attorney generals - subject to what directions?~~

~~Direct Access ^{of people} to Const. Court to refer to bilateral.~~

~~v. de Klerk~~

Tomorrow 09h30.

Conover

that hearing, but accept a form of
"Significant Organ of State" - would require it to be
a legislative.

Switz

5(4) but a old draft.

Conover

by use of title draft?

v. de Klerk

has not just a organization.

Spring

hearing like Organ of State - that will be

[TAPES 1A]

Will look at it

Monday

~~in the... to...
 ...
 ...
 ...~~

...

Chapter 7

Heading

Sec 85

OEIPO

(20)

1.) Opening

09h 55

Welcome

Extended greetings to
Birthday: Dr. T. King

2. Chapter 7: Instit; Constit. Demo.

Love

Review heading, b/c other structures also
support Constit. Demo. — Replace w/
"Supporting Organs of State"

de Lange

heading to 85(3) & (4) creates impression of
autonomy. These all need to capture that.
These structures ed. be included in definition
section under organs of state.

So clarify as supporting organs of state.

Cameron

Liked heading, but accept's Love's pt.
"Organs of State" doesn't capture it altogether.
Are supportive.

Surtz

85(4) revert to old draft.

Cameron

Why was old title changed?

v. d. Westhuizen

New was just a suggestion.

Hofmeyr

Something like "Organs of State or State Instit. to
Promote Democracy"

(85)

19. Open

09/1/92

Widdows

Proposed opening to
Part 1: Dr. T. King

Chapter 7: Part 1: Open

Open to all, the other states also
support (with some) - before of
"opening up of state"

opening + (1992) - 1992
opening, that all out to open the
the structure of the state in
state with open of state.

to draft an opening up of state.

their leading, but scope's limit of
"opening of state" must open to all
As suggested.

1992) Part 1 to all state.

if we're the draft?

1. Widdows (for me for a suggestion)

Widdows: the "opening of state" in Part 1, 1992

to say there are instns to assist the public.

Census

There may be additions to list in 85 coming out of bilateral.

Ranophosa

If they come, they will be added.

Andrew

Earlier, And-Gen.: prescription that salary allowance ed. not be reduced.

Add here, during term of office, salaries + allowances may not be reduced.

To entrenched independence. As w/ judiciary.

have

Accept only for "during their terms" — new terms ed. be drawn up for new Egypt.

Affrey

If add this here, where wd it end? has been accepted for And-Gen. Should it go further. Others accountable to Parliament. ANC will think about it, but need to draw a line.

Andrew.

We be happy if it just put in And-Gen.

85(2) ✓

85(3) ✓

85(4)

de Lange
Justin

Flag last word of (3) + (4):

~~85(3)~~ "institutions" — so brought in line w/ changed title.

Smit

85(4) Profus old 156 (3) in p. 76.

v.d. Westhuizen

Changed for plain lang.

Knight

- ① "discharge of powers & functions" redundant
- ② add "the said instit" — to increase accessibility

Hofmeyr

In favour of making it clearer, but almost all instit, e.g. Human Rights Comm + Justice structurally not indep; what holding about is indep. of their work + want situations where parlia. can still legisla.

Ramaphosa

→ Keep old 3, reformulate more plainly. Agreed.

~~Hofmeyr Ramaphosa~~

- (2) "exercise their powers & perform their functions"
- Can't have a single term: power, function or duty. Have a uniform term.

v.d. Westhuizen

Using these terms consistently then out

Hofmeyr

Enough to say "perform their functions", delete "exercise their powers".

Rane

Experts will look into this proposal.

85(5) ✓

86(1) ✓

86(2) ✓

86(3)

Mbiti-Kgositsile

Move 86(3) to Judiciary. If need trace to be kept behind; 28 Sep. — footnote on

Hogmyer

this pt. : TC saying if Public Prot. looks into maladm. in judiciary, should be limited to admin. functions (not judicial decisions).

Lost here.

Schubert

de Lange

Sec 83: mentioned this - need empowering clause to set up system of dealing w/ grievance procedure vs. courts.

Ramaphosa

Will be attended to by Tech Committee.

de Lange

Proposed last night for Sec 83 -

- Empowering clause w/ says nat'l legis. can be passed to ~~set up~~ set up mechanism to deal w/ grievances vs. judiciary
- Training

v. d. West

But here

de Lange

1

Ngoenka

Judicial to be dealt w/ here, too. Sep. judicial functions b/t admin + decisions, + allow public proc. to deal w/ former

Cramer

Insulate Courts in decisions

Ramaphosa

Asked TC5, did they deal w/ this.

Hogmyer

Provided in judiciary ch. a specific mechanism for complaints re. decisions. Public Protector excluded. Sd that be raised in

Hogmyer

Ch. on Courts or Law.
In "Courts" say, Parli. must set up that
grievance procedure + once its there, Parli
may include Public Protector

Schutte

Expects to give advice on how Judiciary
can be scrutinised.

Conner

Say specifically Pub Prot. Court deal w/
decisions

Sarty

Clarity: judicial function admin. or decisions.
Proposed clause needs to set this out more
clearly.

Kgositsile

"judicial functions": if encompasses decisions +
admin. aspect of problem

de Lange
~~Ngwenya~~

change "function" => "decisions"

Agreed

Kgositsile

Sub clause negative; reformulate in positive.

Agreed

Leave to Jack Jean to rework.

86(4) ✓

86(5)

Conner

Brackets: should vague terms be used or
clear list be set out.

History

86(5)

in "case" say "facts" must set up that
previous procedure - one to that, facts
may include "but for" test

2. duties

steps to give advice on this following
in the conditions.

Causes

but specifically but not. set out of
decision

last

last: "previous function" about in "last"
history about what to set the other
clearly.

Historic

"historic function": of comparison decision
about. what a function.

~~Historic~~
to change

change "function" or "decision"

Figure 1

Historic

Historic function; reference to "facts"

86(3)

change in last case to result

86(4)

86(5)

Causes

Historic: should refer to, be used
clear cut be set out.

v. d. Woerthuisen

Also queried what "exceptional circumstances" were.
Want direction.

Camerer

Replace [brackets] for "exceptional circumstances"

de Lange

At whose discretion wd this be; or is this an empowering clause?

Yaacob

Functionary wd have discretion & if dispute arise, court wd have to decide.

Camerer

"exceptional circumstances" - still needs clarity.

v. d. Woerthuisen

Replacements attempt to make it clearer.

Hofmeyr

Legislation ed. spell out more exactly what the exceptional circumstances were.

Ramaphosa

Insert
"exceptional circum. to be prescribed by law"

[Agreed]

Andrew

86(3): DP reserves position as w/o mandate.

Meshe

Problem w/ endorsing 86(3) as Public Prot must be allowed to investigate judges' performance.

87(1) ✓

87(2)

Ngeuka

Is period renewable? Thought TC said sd.

be renewable at least 1x

Cameras (18) NP hld, not renewable.

Ramaphosa Word open debate. Leave it, hear other views, & revisit later.

Hofmeyr But as made now is renewable.

Ramaphosa Leave as is. Return to in January.

88

Cameras Bilateral discussions ongoing

Ramaphosa Delete for now, as no provisions?

Kgositsoe Delete.

Ramaphosa Note
Let matter be revisited when deal w/ draft in January.
But delete for now.

89 (1)(a) ✓

(b) ✓

(c) ✓

(2)

Hofmeyr "purposes" is this consistent E is functions and elsewhere]

Ramaphosa Experts will look at,

for account of last 12

My bill, the amount.

(88)

Dear

How do you like it. I have it, but the way, a little later.

Remittance

but it is not in a number.

Myself

There is

There is no money.

Remittance

(2) 89

88

What is the account of

Dear

What is the account of

Remittance

Dear

Myself

Note

It will be sent when the bill is done.

Remittance

But what for

(1) 89

(2)

(3)

(3)

"purpose" is the matter of a function and

Myself

There will be a

Remittance

(3)

Andrews

Re deletion of 88 - something not be kept in.

Comer

No provision b/c held over to see what powers + functions of provinces.

Ramaphosa

Will return to in Jan.

89(2) ✓

89(3) ✓

90

Comer

NP submission: priority must be gender equality; if achieved should be reoriented to assist discriminated against groups, so less developmental aspect.

The proposal should be set out in sidebar notes.

Rename

"Gender Equality", or "Gender, Equality + Development"

de Lange

Covered in 90(3)

Rogositoile

ANC w/ serious problem w/ this as dilutes the Commission's function.

Comer

NP committed to this.

① Judge Adjust name + NP wd be happy

"Gender Equality + Development"

90(2): insert "lobbying", after "educate"

Hofmeyr

Agree, insert "lobby for".
Opposed to NP proposal that This Comar should focus on a whole range of devel. issues.

Cramer

Regard gender function as an absolute priority.
At some future date, may need to broaden its function.

Lana

Saying
Key focus shd. be on gender equality, that once obtained, change focus. Cd. be prescribed by law.

Agreed

Manzini

Omitted "investigating". Insert "investigating"

Agreed

Rampho (91)

Davies

Lengthy doc. from Legal Advisors responding to DP & Aud-Gen. Shd be interaction b/t all.
Let that be part of process of comment on the draft.

DP -

Proposal coming out of that - Panel.

Recommended

Rule. b/t Aud/Gen + legisla. auth. be strengthened

- 1) Rule. to parlia be specified
- 2) Reports submitted to leg. auth.s.

(3) 916

History

appear to be prepared that the same should form a
substantial part of the work.

Case

lighter than before in an earlier part.
At the same time, my own to make it finer.

Case

my own to make it finer, but in
substantial part of the work, from C. to proceed to
the end.

History

United "investigation" last "investigation"

History

History

(1)

Device

draft. It that be part of process of account - the
the. It that be part of process of account - the
the. It that be part of process of account - the

Proposed coming out of that - part.

Revised

the. It that be part of process of account - the
the. It that be part of process of account - the

(1) the. It that be part of process of account - the

(2) the. It that be part of process of account - the

Darius

①

91(3) ^{insert} every "legislative" authority

Alant

②

DP: Say budget of And-Gen. part of budget of Parliament to protect monies. ANC doesn't feel this appropriate.

Chabane

③

Draft changed "by law" to "national + [provincial] legislation". Against this. And Gen act a piece of national legislation; amendment to that act w/ allow for provincial power. Keep "by law".

Darius

v. d. Waathuizers

Global issue: "by law" - includes common law, etc; b/c changed to legisla., queried to include provincial & local?

Andrew

If insert "legislative", wd imply only to them & no other. Is that the intention

Ramaphosa

No, not intention

Darius

Ament to "legislative auth & any other authority prescribed by legisla..."

Andrew

Wide variety of org.s audited; at very least, report to governing body of body being audited.

Alant

Agues. Leave as is. Think about & revisit.

Use "national legisla"; delete "[provincial]"

Andrew

But many provincial bodies wd have to be audited. If prov. legisla. ^{want to set up} want, sd have power to have And-Gen. audit it.

Andrew

to include "national + provincial law"

Alan

91(2) says instits funded from public money,
Covers Andrew's concerns.

Chabane

Concern: privileges + immunities of And-Gen.

du Toit

Remember, provincial needs cd be addressed through
Senate.

Davies

If ^{must} specify, say "national legislation".
If perceived need to delegate powers from
And-Gen to prov. legislature, cd be covered in
nat'l legislation.

Andrew

Not satisfied.

Ramaphosa

New issue brought in by Task Team
So, raise matter after Refined Draft
insertion of
Other "legislative" — to be dealt w/
by Tech Experts.

Immunities [Chabane] — not in original draft.

(92)

Andrew

(92)(4)

Insert: re salaries cant be lessened.

Davies

Is it needed?

Jacobs

Why courts singled out, b/c courts shouldn't

adjudicate on com's salaries.

Agreed - no 92(4)

92 (1) - (3) ✓

(93)

Love "at national" => "of national"

Murray Yes, should be amended.

Camerer "legislators" sounds funny: "Americans"

Knight Canadians not Americans.

Andrew "legislatures"

Muller "legislators" => "level"
"at nat'l, prov & local level"

Murray Trying to avoid "levels of govt"
Give Task Team chance to tighten up.

Agreed

Amend
Love "Resp for managing elections so that they be
free & fair"

Ramphosa Task Team will consider as tightening up.

(94)

Need to add fixed term?

Yacoub

Reflects cc subcomm discussion: fixed period to be determined by legis.

de Beer

Last discussion - reached this conclusion.

Love

~~(94)~~

Not against fixed term; but wording implies Nat'l Legis. wd only prescribe fixed term.

Appt. procedures sd also be covered in nat'l Law.

de Beer.

Covered later.

Andrew

Do we need ^{general} empowering clause saying how wd. operate.

Rama.

✓

Panel wd look at this.

Grove

The Electoral Comm. wd consist of at least 3 persons.

Panel to look at thg.

95(1)

Mfulder

Appt. mechanisms only spelled out in And. General.

Replace "section" w/ "chapter"

Mpanza

[Agreed]

(19)

Not to add fixed time

Effects of substance on...
distance of life.

1950

last observation - under the microscope

1951

Not against fixed time; but only right
will right. not against fixed time.

Revisit

1951

App. position of also be noted in work

Revisit 96

Count later

1952

To see and temporarily change some of the
specimens.

1953

Point to look at this.

1954

The Ethical team. not part of a last 3 years

1955

Point to look at this.

(20)

App. mechanism and speed of
the process.

1956

Revised "action" w/ "chapter"

1957

1958

w/ This
95(1) ✓

95(2)(a)

95(2)(b)

Kgosi Bate

2/3 majority for (2)(b)

de Beer

Want to negotiate (a) + (b) together.

(96)

Same

Jan

Cameroon

Qualifications - genuine cost for Human Rights & Gender Commissions. Had been in footnotes. Let drafters look at it

Comm. 5 to be SA citizens?

Gender - have a track record "Fit & proper"

Review of genuine in legislation

v d Westhuizen

Not in consolidated draft. Can do it if know whether there is agreement.

Kgosi Bate

CC never discussed Gender Comm in this light. From looked at Briefing report. Needs proper processing. Parties to pick up those issues.

1/2 the
100 (1)

100 (2)

100 (3)

100 (4)

100 (5)

100 (6)

100 (7)

100 (8)

100 (9)

Chapter 13: Financial

(95)

100 (10)

100 (11)

100 (12)

100 (13)

100 (14)

100 (15)

100 (16)

100 (17)

100 (18)

100 (19)

100 (20)

100 (21)

100 (22)

100 (23)

Ramaphosa

Original text said qualifications issue needs further debate -

Andrew

Put in establishing principles: (85). Fit & proper, SA citizens & appropriate qualifications & experience to fulfil their functions/carry out their duties.

Cammer

Include draft like this & revisit it. Put Magnin note: to be considered at next round.

v. d. Westhuizen

Jacob Zeydler will consider this & where to best put it: at beg. or under general provisions.

Kgositsile

95 (2)(a) sd not include lots of details except "framed in accordance w/ rules & orders of Parliament"

(2)(b) $\frac{2}{3}$

de Beer

refer for further discussions b/t parties.

Bilateral raised issues & ANC said wd come back

Kgositsile

Further discussion lunch time.

[Page 3A]

Original text was handwritten
further down

Handwritten

That is established principle: (20) ...
It is again - appropriate procedure -
agreement to paper this procedure/any
this date.

Handwritten

Include date like this - month 7. 82
Major one: to be considered as part
of...

Handwritten

Just change all numbers like 10 to 100
but not 10: at top of column
general practice.

Handwritten

PS (20) do not include top of detail except
"found in accordance with..."
reference"

Handwritten

(25) 1/2

Refer for further discussion of this
Bilateral related issues - Mr C and
some back

Handwritten

Handwritten

(2) ✓

141 (3)

Alant

Why was proviso "but, revenue..." included?
Return to it later.

Andrew

Want wording?

Nat'l Rev. Fund collects provincial funds as agent; paid across; so need proviso.

replace:

"paid" to replace "credited"

Davies

Transfers made along financial year so "credit" reflect real situation.

Andrew

Davies agree. Nat'l Rev. fund - To determine how much & when

Alant

Return to clause at later date.

Andrew

Add -
Sidebar: "credit" or "paid"

Davies

Depends in end on shape of inter-govt

Ramaphosa

Add
credit " [*pay*]"

Agreed

Rama.

" [in terms of this Constit]" keep or delete -
Leave in

(1992)

Alert Key foundation for ITC

Davis Section of the i depends on shape of intergov'tal relations

Andrew ^{provisions} ITC part change

Ramaphosa Try: Int. Court, clause inserted.

Subject to later additions

Andrew Add sidebar notes "this matter to be considered/ revisited"

Kpositsile Key notes?

Rama Use brackets or bold

du Toit Inadvisable to include notes in law as they reflect party positions. Set to technical doc.

Chakava

Ramaphosa Use brackets then.

Alert Need to revisit when see all clauses relating to intergov'tal framework.

Rama Agree! Add ITC clause, sidebar note. Matter to be finalized at a later stage. Additions might be needed.

(142)

Alan: Keep formulation from IC

Davis: Problem w/ this: depends on shape of intergov'tal relations

Andrew: IC ^{provisions} not enough.

Ramaphosa: Try: Int. Consti. clause inserted.

Subject to later additions.

Andrew: Add sidebar note: "This matter to be considered / revisited"

Kgositsile: Why notes?

Rama: Or use brackets or bold.

du Toit: Inadvisable to include notes in bar as wd reflect party positions. Sd be technical doc.

Chokane

Ramaphosa: Use brackets then.

Alan: Need to revisit when see all clauses relating to intergov'tal finance.

Rama: Agreed Add IC clause, sidebar note. Matter to be finalised at a later stage. Additions might be needed.

143(1)

Alant Keep [nat'l + prov] - remove brackets.

Remove brackets.

Davies Keep, but clarity needed re. sidebar note.

Rahad What wd be role of nat'l, provincial + local legisla. Need consistency at all three levels. Cd include clause on legisla in competencies.

Ramaphosa Sidebar note to be attended to.

143 ✓

144 ✓

145 ✓

Not criticised

[

146

147

Davies

Vs sidebar note

148 not contentious .. Depends on decisions on intergovt relations.

Correct "contentious"

Agreed.

Let (148) be revisited when next met.

Alant

Create small committee to discuss financial matters. After cc meeting.

Ramaphosa

Okay. Can sanction that process. They'll report when next met.

(149)

Andrew

Reports sd go to local govt as well.

Rama

Think about it in small grp w/ will report back.

Ramaphoon (150)

Davies

~~Andrew~~ ~~David~~

Re 151(2) providing so Res Bank indep + impartial
sd jeopardise regular consultation in 151(2).

Andrew trying to avoid any chance for nepotism. But
This would subvert its functioning & wd be
struck down by the courts.

Problems. (1)

Otherwise 150 not correct. ~~at~~

Central Bank. Sd be closer to original
wording.

(2) 151(2) 4th line originally
"provided that", replaced by "but"

Davies

(139)

shall be => is

Revised

v.d West

See what can do about name.

151(1)

Andrew

Instit. indep of bank fundamental to DP

Public Admin not indep, as wd be
Financial + Fiscal. Asking for
same ^{wording} clauses on impartial & indep.

(137)

Andrew

right side of the page is well.

Just about it is small of all right but.

(130)

Dave

~~Andrew~~

Re 12(2) providing to the bank help is essential
of Japanese regular contributions in 12(2).

Andrew trying to avoid any blame for rights but
The words about it functioning a bit
about how by the way.

Problems

Planned 120 not correct, 27

Central bank, 21 to show to rights
morning.

② 12(2) the way of
"further that" referred to

(134)

Dave

shall be => to

Financial

in what can be done here

v.6.102

12(1)

Andrew

Just. help of bank fundamental to 12

Ch. 12

(138)

Financial - Fiscal. Asking for

some changes on important - indep.

Andrew

Wd fulfil CP29

So ISD doesn't comply; add words simi to other parallel instit.s.

Ramaphosa Proposed he + Wassels meet w/ Alant, Andrew + Davies to look at this

Alant Wd include ^{central bank} prov. finance + fiscal comm.

Davies Include others: Jacobz, Erwin

recalled need for advice on "provided that" + "but"

Knight

"provided that" creates exceptions; must be wd understand "but" better + courts wd interpret it so.

Rama

Subcomm to discuss issues + report back to CC

Alant

Let chairpersons only come in on Central Bank issues.

If endorsed by CC, CA wd pay for tickets.

[Agreed]

(138)

Love

Let ^{ch.} 12 come before ch. 11.

Love

138(i)(f) + (g) separated to emphasise (g). Good. But
Concern that "accountable" needs clarity, add
"accountable to parliament."

Ch) ^{insert} "career - development practises"

138(3) Remove brackets

138(2) "legislation" => "national legislation"

NP proposed delete admin & replace w/
"service"

agreed to consider
ANC thinking about it + study implications

Rama

Task Team will follow up & consider

Ripinga
Love

138 (i)(g) ~~provided the public~~
Insert "with" "with timely"

139(2)

re-instate as prescribed by nat'l law

139(4) ^{replace} "is" w/ "must be"

Murray

Covered in 139(1) & insertion w/ be duplication in
(2)

Love

No. How does promotion of basic principles +
values occur? Need

Agreed add "as prescribed by nat'l law"

Love

138(i)(f) + (g) separated to emphasise (g). Good. But
Concern that "accountable" needs clarity, add
"accountable to parliament."

Ch) ^{insert} "career - development practises"

138(3) Remove brackets

138(2) "legislation" => "national legislation"

NP proposed delete admin & replace w/
"service"

agreed to consider
ANC thinking about it + study implications

Rema

Task Team will follow up & consider

Ripinga
Love

138 (i)(g) ~~provided the public~~
Insert "with" "with timely"

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re-instate as prescribed by nat'l law

139(4) ^{replace} "is" w/ "must be"

Murray

Covered in 139(1) & insertion w/ be duplication in
(2)

Love

No. How does promotion of basic principles +
values occur? Need

Agreed add "as prescribed by nat'l law"

Andrew Queried in 139(4) what "accountable means"
 Love In 1st instance, respons. to Parlia.
 Andrew Parli appt?
 Love Yes
 de Beer Used ex. of And-Gen.
 v d West 139 Sidenote - DELETE

139(4) hesitant to say must be, use "must account"

Agreed

Love (140) CI Insert "With in the public Admin..." at Beg.
 "Withi... there is a public service"
 Solves sidebar.

v. d. Westhuicment Sidebar: also need to solve, omission of 2 concepts

- "career orientated"
- "non-partisan"

Consider including these, or at least "career orientated".

Jacobs Relevant CP had 9 sep. items to comply w/.
 These 2 terms are different from efficiency, etc. . Related at level of structure of public service as opposed to its functioning.
 As structure wd be non-partisan so people didnt have to leave it if govt changed.
 Proposal: insertion of "Career development"

Needs to be addressed.

Panel needs to consider this.

Love

2 issues:

concern

- ① to ensure "career orientation" has meaning all understand
- ② to hearing heard vastly different understandings of the term

Need to meet these by covering them all.

- ① Career pathing;
- ② security of tenure;
- ③ to preclude appts on basis of policy orientation
- to preclude appts on basis of policy considerations

Version 2: "The Public Admin shall be oriented to career development"

§ 142G

Ends of Employment: covered in (142). But gov's case, Dint provide job guarantee.

de Beer

Re Jacobz input

Agree w/ his view on the principle at stake.

Love

Agrees.

and Weatherizer.

Nchodo.

Agrees w/ the 3 dimensions of career devl.
Love spelled out.

To ensure loyalty of public service to the service not a poli. party, to ensure it loyally executes the gov't's policy of the day.

— Had to re-examine proposed insertion to ensure properly covers the requirement of the CPs.

Ramaphosa [Agreed]

2 issues:

Ch. 11 Security

① Learning about what's different in security of the

② Our history, account of how to practice
app of basic of using security
③ The basic theme of this course is

④ The basic theme of this course is
⑤ The basic theme of this course is

Revisit lunch

⑥ The basic theme of this course is

⑦ The basic theme of this course is

⑧ The basic theme of this course is

Demographic History

Chapter 11

Statement of Principle ✓

Sisulu: Keep Options open about whether will be Ch. 12 or 11.
No problem w/ Statement

Sisulu: Agrees to refine. ✓
Alant: Agrees. ✓

Murray: → Panel concerned w/ Preamble:

Let meeting consider Options over lunch.

Sisulu 127 (4)

Concern w/ "train" ⇒ "educate"

Agreed

Sisulu 127(6)

"nat'l interest": queried what was exactly meant.

Alant: TC ~~to~~ decided to leave it undefined to let Courts interpret it.

Murray: It is a general phrase + included to distinguish from party poli. interest.

Agreed

Murray

127(7) : when to be achieved ?

127(8)

127(7) : omit b/c occurs in Public Admin -
strategies for ensuring repres. in future.
Wd be catered for there.

Sizani

~~Can omit~~ Ongoing progress.

Alant

This isn't part of Public Admin.

v.d. West

Find words to fit sense of progressive
work & not immediate requirement.
Task team to work on this.

~~Wessels~~ de Lange

Understood Public Admin wd include
Security Services.

Love

~~Wessels~~

Public Admin has general principles
for structures funded by public
funds.

Public Service not necessarily Security
Services.

~~Propose~~

If include 127(7) wd duplicate. Covered
by Admin. If included, sd include
Same wording.

Agreed

de Beer

Agrees w/ Love & affirmative action there.
Refer to clause.

Murray

127(1) ; when to be advised?
127(2)

127(3) : can't be done in public Admin -
strategies for ensuring success in future.
Will be covered for those.

Zisani

~~Commitment~~ Ongoing progress.

Alant

This text part of Public Admin.

v. v. Mat

Find ways to fit sense of progressive
work & not immediate requirement.
Task team to not on this.

de Lange
128(1)

What's not Public Admin and include
Security Services.

Love
128(1)

Public Admin has general principles
for structures funded by public.

128(1) ✓

Public Service not necessarily Security
Services.

128(2)

If include 128(1) and duplicate. Can't
by Admin. If include, it include
same wording.

128(2)

128(2) ✓ w/ Alant
refer to clause.
affirmative action there.

Wessels Incorporate clause or refer to it?

Love Repeat, for now, to ensure clarity.
So 138(1) except Public Admin => Sea. Services.
to replace 127(7).

Grove Don't repeat, make clear Security Services fall under Public Admin.

Wessels Agreed Tech issue. Task Team to resolve.

Agreed Delete 127(8)

Love Attention drawn to need to ensure employee security of to be picked up in legisla.

Love Was Ori. of 128 Why 120(3) left out/ in refined draft.

Murray Sec. ~~123~~¹²⁰⁽³⁾ moved to Sec. 127(2)

Lunch Break

128(1) ✓

Clarity

128(2)

Murray Concern raised re 128(2): "guided by" threat.

Mulder Originally said "according to the principle"

or "in accordance with"

Agreed
128(2) ✓

129 (1) ✓

129 (2)

Sisulu

Quoted verse

Knight

Thought "oversight over" was same as oversee

Take it under advisement

Sisulu

To oversee to supervise

Oversight over: ability to look into

Wessels

Agree - wd be revisited by task team.

(130) (1)

Alant

① Words in brackets " [The President ...] " - unrec. should be deleted

② Jordaan:

Other constit. s say Head of State "Command defense force": a sentiment not needed.

Grovi

① a matter of consistency. Delete under police or mount it in defense force.

Delete [phrase] in bracket.

Eglin

Capital head of Def. Force: Head not Chief.

Wessels

Chief. Retain.

Agreed.

(131) ✓

Murray

130(2) : tension b/w Commander in Chief & taking direction from the Cabinet.

60

There's political direction

actual command & control exercised by Chief.

Ultimate command w/ Pres.

130 doesn't capture the situation clearly. Want to consult & refine draft

Alant

Last part of 130(2) "during a state of ... " : a sentiment.

President can never act as Head of Defense Force.

Sisulu

Pol. resp w/ Cabinet, Operational resp. w/ Head. President at top of both.

Murray

That is correct, but in fact command resp. lies w/ ~~Commander in Chief~~ President.

who should be able to override operational commands

Alant

Delete " and, during a state of nat'l defense of the President "

Eghe

130(2) doesn't affect Chief of Defense Force

Wessel

Agreed

Could Task Team speak to people who worked on this — Sisulu & Alant — to refine text further.

Wessel :

(131)

"Card control" : in or out?

Sisulu

Agreed to Delete it

Murray

131 Sidhar: insert clause secretariat to be estab. by legisla.

(132) ✓

(133) ✓

(134) ✓

(135) ✓

Sisulu

Want standard on compatibility of the services.

Queried 137(a)

Agreed monitoring of services wd be uniform.

Wessels

Wa be corrected - 1 umbrella clause for monitoring of the 3 services.

Agreed

Murray

137(b) Army + Police or civilian secretariat for intelligence as well.

Sisulu

Added inspector general Police + Army above civilian secretariat.

An individual(s) to deal w/ specific issues.

136(2)

Maree

duty imposed: what is remedy

Maree

if duty not carried out? Or will there be a general clause? 62

Yacobs

All const. justiciable. if someone doesn't do duty, can be taken to court.

Rest of chapter accepted.

Ramaphosa

Remember, provisions repeated - Nat'l Exec.

du Toit:

ANC
Want provisions to be included in next draft on provincial legisla + Senate.

Provincial constitutions:

~~Presented 160 (3) taken over~~

Homogeneity clause? Prov constt should conform to certain basic principles: democratic, multiparty, regular elections: minimum requirements.

Eglin

(97) only acts should (88) be put here or left where is.

Ramaphosa

(97) why "..."

Ranehod

Some provinces use Parliament + Cabinet;
Need to clarify: Parlia, legisla assemblies?
Cabinet or Exec. Councils?

Ramaphosa

Are
Provincial legislatures

Gordhan

97 same as 102, Return to it at 102?

97 ✓ Delete

63

"..."

98(1) ✓

Ranchod

"results, in general, in prop rep"
Attend to in same way as w/ nat'l

Ramaphosa

[Agreed]

98(2) Leave as are w/ ANC proposals.

Ramaphosa

a note → Debate ~~identical~~

Flag it → similar or same as have had [ANC]

Smaller than have now [DP]

[Agreed]

Flag it to revisit; include options in text.

du Toit

98(2) partly moves to homogeneity. Can be changed in prov. constit.

Ebrahim

"..." Reference to issue of competency.

Agree to include.

(99)(1)

Ramaphosa

Add residency requirement?
Reconcile w/ nat'l formulations?

Ebrahim

Is residency needed to vote in a province.

du Toit

ANC wants common voters' role:
Same role for nat'l & provincial.

Marais

Qualification for member of prov. legisla.

Marais

- NP agrees residency qualification needed. ⁶⁴

Hofmeyr

Have been considered yet?

Eglin

DP said had to be qualified to vote in that province.

Ramaphosa

Agreed

Flag to let parties further consider the matter
Will revisit.

Gordhan

Let ANC consider it.

Rama

Agreed

Insert reference to this matter, as is imp,
& we'll revisit.

99(1) ✓

~~Need voters~~

99(2)

Ranchod

Trad. leaders —

Ramaphosa

Agree

This will be synchronised w/
provisions for Nat'l Ass.

Gordhan

Wd mean explicit provisions that
members of Trad Leaders not qualified
to run for Prov. council

du Toit

Remove brackets ~ local govt

Add trad. leaders & all that.

Agreed

Murray

But did not agree on Trad leaders in Nov's Ass. ^{How relevant}
Include there? ⁶⁵

Ackermann

- Flag until finalis. trad. leaders

Ranschod

- Say sd be disqualified.

Rama

- Other rules sd. regulate that - if Trad Leader elected to legisla wd resign Council.

Hofmeyr

2x salaries covered under
^ 2(b)

2(c) raises conflicting loyalties

Agreed add

2(d) ✓

2(e) ✓

2(f) // same problem as other wd be
attended to.

2(g) ✓

2(h) ✓

(3) ✓

[4]

Agreed:
Delete

100 (a) ✓

(b) ✓

[c]

Radue ^{include in 100} Changing residency if included as qualification for being a member. 66

Ramaphosa Ruled go.

Murray [100⁽¹⁾(c)] Not in add-on draft, but added to make consistent w/ Nat'l clauses.

Ramaphosa Agreed - remove brackets.

100(2) ✓

101 ✓

102(1).

Yacovb Needs more thought

Radue ^{Use} "Chief Justice or a judge designated by him"

de Lange .Sd fall w/in purview of Constt Court President

v. d. Westhuizen 102(1) about determining date.

Andrew Does Judiciary Section provide for Judge Pres. in each Province. Wd be more appropriate.

Ramaphosa Constt Court or Presi. of Constt Court?

Godhan "Presi. of Constt. Court or a Judge of the Constt. or Supreme Court designated by him ..."

Agreed

102(2) ✓

²
~~102~~(3) Delete: Agreed ✓

103(1) ✓

103(2)

Andrew

Not desirable, as raised in Nat'l clauses.

Depends on how deal w/ no-confidence clause.

Gordhan

We need to study what's happening in KwaZulu

Natal to see what bearing it wd have

on this section.

Shows: Nat'l Govt to have resp. to reg.
voters' rolePremier in consulta w/ pres. to call
election.

103(3)

Quorum requirement

Agree

duToit

103(4)

Add

Premier of the Provinceⁿ in consultation
w/ the Presidentⁿ

Gordhan

① This of nat'l concerns

② Common voters role

③ IEC to run elections & needs
consultation

v. Breda

no, say "after consultation"

Ackerman

Common Voters' role not yet agreed upon.

de Lange

CP VM requires common voters' role.

Ramaphosa

Common voters role 1st raised now.
Needs consideration.

No suggestion of "in consultation w/ President"

Ruled

Can be noted; but can be considered later.
This + voters' role.

Gordhan

Tech Exp. to look into -
last 2 lines ¹⁰³ (4) part where electoral
arrangements not in place

Ruled yes

Eglin

① 103(4) raised pt for nat'l ass. -
how many days before or after -
need for flexibility in exact date.

② + defrocking of Pres., provincial elections?

Love

Election: must be based on the nat'l election
law, so 1st & subsequent elections based
on same.

For time when no prov. legisla. exists
(that 90 days) - need prov for
nat'l govt to be caretaker in some way.

Andrew

① Love's 1st pt not practical b/c
provincial elections may have diff.
mechanisms

② 43(4) relevant to 103(4)

Loze

Electors need to be under umbrella of IEC.
Debatable whether difference of provincial structures means there must be different norms + standards for elections.

Rojmeyer

May need more extensive section here to deal w/ concerns raised.

Let experts look at 103 + see if new clauses need to be added.

Ranaphosa

Useful. Yes.

Shradin

Mandate to consider what happens what happens during period of nat'l defense?

Ranaphosa

Yes

Ranaphosa

Agreed 104(5): quorum requirement not be looked at

de Lange

¹⁰⁴⁽⁵⁾ Does Deputy Speaker need to be spelled out?

Ranaphosa

Leave as is + come back to it.

Remove Dep. Speakers from provinces?

NP.

Let provinces decide.

Rama

Leave in + consider it

v d Wetherington

If take it out, then provinces can decide.
They're not prohibited -

Agreed - remove.

Agreed
104(4) + 104(6) be deleted

70

Ackermann In Nat'l Assembly said w'd return

(106)

de Lange Look at wording of 55 (1), concern about
"autonomy"

(107)

Andrew by provincial legislation

Godwin Nat'l oversight makes uniform - disallows 2x
salaries.

Andrew Argues w/ 2x salaries; but prov. legisla.
resp. to their electorate, not to Nat'l Ass.

Love Also need to preclude 2x benefits

Hofmeyr In response to Andrew, Comm shd be set up at Nat'l
level to look at public's salary. Do we need
of provincial commissions, too. If no body did
this, wd be inefficient + cost effective.

Ebrahim Just instructed to find consistency about
ways of remuneration, to consolidate + make
consistent.

+ this Commission was muted.

Ramaphosa Leave this matter until receive report on the matter
from the Jack Team

Yacoub

Agreed: 2x benefits not accepted now or will be considered later?

Rona.

Receive proposal that parties can consider.

108(1)

Agreed

Delete sentence in brackets

108(2) ✓

Agreed

108 (3) delete [nat + prov]

109 ✓ Noted sidebar

du Toit

General provision to bring this into accord with elsewhere - ^{we} referral to Constit. Court: ^{so} ~~te~~ referral by Premier in line w/ referral by Pres.

Agreed to

(110 :)

Love

Obligation of Prov. govt to forward legisla. to Nat'l govt.

Ramaphosa

Ruled

Let Tech Experts consider this Find out how dealt w/ elsewhere, too.

(111)

du Toit

basic IC Sec.163 contains/principles w/ ~~prev~~ must be the minimum set w/ provincial constit.s should have. Wd create structural + functional homogeneity. Wd allow uniformity + coherence of state. a smooth running b/t levels.

Wd include: at least 2 branches of gov't, \div of powers;
 ① indep of branches of gov't, ② periodical dems. election based on direct, ③ secret vote in system of proportional representation, ④ accountability of exec. council, ⑤ acknowledgement of official opposition.

Asked for draft to be done on this.

Eglin

many of

1 The 34 cfs need to be included in new const't for structures w/ are not yet created.

Ask Panel, which need to be included to say what local gov't + prov gov'ts should conform + what actions of nat'l gov't should conform?

Love

Eglin + du Toit's comments

Love.

Application of cfs nationally consistent w/ application in provincial const't.

Eglin

Retain AP 14 for prov. constitutions

Hofmeyr

Hesitate that CP in new constitution, but may be elements of those that need to be enshrined in nat'l const't to provide a framework for prov. const't.s.

de Lange

Isn't this covered in 111(2) 1st sentence.

Dealing w/ 2nd sentence?

Du Toit

Exactly!

Ramaphosa

Task Team will look at this + see how

to address this.

du Toit

Provincial constit^{ns} must acknowledge are inseparable part of SA

de Lange

What happens to amendment to prov. constit? Are they also referred to Constit. Court.

Erasmus

Aware of implication. Applies to amendment procedure as a whole.

Wd consider the matter as a whole.

Agreed

111 dealt w/

(112)

Andrew

55(2) [w/ will be reassessed] - similar empow^{erment} clause wd be needed in 112.

Ramaphosa

Various amendments affected n Nat'l Exec wd automatically apply when there are similarities w/ provincial.

Maree

But if add from nat'l to prov. last sentence, create a contrast focus; rather if prov. constit. exists

Erasmus

Recall Sec. 55 - Constit. Supreme + all exec. power in terms of it; Supremacy of Constit must be carried down to prov.

- level of Prov. Constit. brought in, not be in sense that agrees w/ nat'l.
- Need to work out texts

Agreed

✓ Clarity language, esp. "who must exercise"

113(1) ✓ in line w/ what adopted in Nat'l Ass.

? (2) Include note that consideration needed re GNU

114 (1) ✓
(2)

Eglin ^{Provincial} ~~Drop~~ or bring into line of nat'l provisions —

Ranaphosa 115-126 so agreed w/ this understanding

Re CPs omitted & stated in "Outstanding Issues"

Experts w/ mandate to consider these in terms of ch. 4, 5 & 8

& Tea

* Meet after elections

9/10 Nov. — Agreed to —

8/9 Nov

Submissions (further) — deadline 23/10 — 17h00 particularly ~ Bill of Rights.

CT

Eglin

~~Agreed~~

Let by Tues 12h00: poli parties do updated proposals on competencies

75

3rd Draft - 6 Sep. "Nat'l + Prov Legi. + Exec Com.

On p. 104 - prior to 4 Sep.

Tabled at meeting: (3rd Draft.)

Used draft 6 Sept.

Take into account decisions at bilaterals to improve draft.

du Toit

ANC:

Also want to open question of Senate. See Hg as a package.

Ramaphosa

Doc. refers to Senate.

Eglin

When will see Senate provisions?

Morais

Yes, will be tabled as an ANC position.

Moosa

Reminded members, at time of 3rd draft asked to prepare proposals on the Senate. Did so, & tabled doc.s not new.

But 3rd draft doesn't capture all of 4 Sep's Subcom discussion.

Gordhan

2 models of Senate. Let drafters prepare alternate texts on these.

Moosa

Want to comment on 3rd draft, Framework legi -

Mossa

no agreement in Subcomm on this.
C'd be added as an option.

But ANC not in favour of this, query how w'd apply & whether w'd be in section of conflict of laws.

Query, what is definition of "framework"
If deal only w/ standards, too narrow & perhaps not needed.

Conflict of laws (5)

5 (1) (a)(b)(c) : CPs captured in inadequate manner - watered down.

- ① { Delete this +
Use lang. of CPs instead

Many items w/ lang. of interim constit. (as are some differences b/t CPs & IC)

- ② Proposed - in event of dispute over legislation, such legisla. deemed required if such legisla. deemed desirable by Senate, or approved by Senate. on issues set out in schedule

Will submit revised doc. to Experts.

Merais

NP will put its position in writing & forward to Secretariat.

Ramaphosa

Let parties comment on 3rd draft, let comments be reconciled to produce draft for consideration on 9th.

du Toit

ANC Doc as it stands has heading, but no status.
to be headed to Secretariat

Gordhan

Proposals in 28 Sep. Subcomm pack

77

Deals w/ Nat'l + Prov. Leg. Competencies

Local Govt

Ramaphosa

Draft tabled & distributed.

Referred to all parties to reflect on it to discuss on
9 Nov.

Indigenous Leaders.

Doc. tabled at meeting =

Ramaphosa

~~Consistent~~

Referred ~~until~~ to consider when meet again?

Zylin

(3) queried implications.

Fouie

Sue fn. : not committing selves

Ramaphosa

Why not use something similar to Ch. 11 in IC

Transfer Ch. 11 of IC for discussion purposes,
to focus minds

Chabane

Draft arose out of IC discussion.

Love

Re Ch. 11 - not helpful.

Ramaphosa

Dropped suggestion.

H. J. Meyer

Ch. II formulations are better than these.
Drop details in text
Transplant in way w/ is in keeping w/
style to just deal w/ matters of principle.

To consider draft on 9 Nov.

Agreed

Moosa

If Experts Take Ch. & précis it to bare bones
removing things w/ cd be legislated.

Amendment
(153)

Rama

Refer to consider at next meeting.

Outstanding.

Section 1) Committee:

1) Small gp.
handed draft to tech. experts.

2) Sec. 45
let parties apply minds
Cd make written submissions

3) Sec 50-52 : Bills.
Refer until deal w/ Senate.

de Lange

Make some linked clauses are kept Hg.
Is link to competence, too.

Agreed

Mossa

Let drafters know they aren't mere minute takers,
but use our creativity & initiative to put the
something that will take things forward.

Agreed

Proposed
55(2) General empowerment clause

Referred to next meeting

57(2)(d) Accepted for now.

59 Drafts wd be prepared

(95) } Defer to all parties to discuss
(96) } it; discuss at next meeting,

⇒ Making Tech Team + Sub-Comm on Judiciary

3. AOB

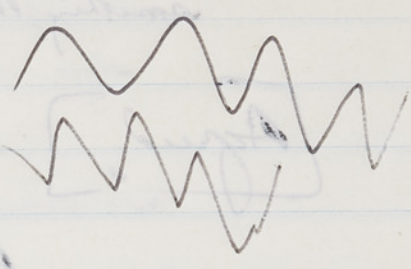
Let referees take TC reports very seriously.

Agreed

4. Closure

Not 57.

the paper does not seem to be
but we are certain a carbon to go to
writing that will be the first



General improvement of
M
to be used to test writing

to be used for

to be used

to be used to all parts of
it; discuss it not

Making a table

3 AOB

to refine the TC right very

Project

Change

Feb 27

1 Opening

The Chairperson opened the meeting at 10h25 & welcomed everyone.

Ramogosa A no. of docs
Agendas noted.

- Dealing w/ 2nd ad. kept w/king draft.
Today - w/king draft - aimed at finalising
publication purposes.
Issues - we still have
to take decisions will be dealt w/.
Errata doc

Open debate - should pass over
to U.S. still have to give
attention to.

Refer to Bill - Rights
Tolu people - we
- all the provisions today
- leave tomorrow - Bill - Rights

Minutes minutes

Propose " we added - spend
time going through them.

m

draft Pg 3

(1) Agreed to.

De Beer on pt of order,
When we going to refer to the notes.

we have some comments

Best way \circ \checkmark \rightarrow issue \checkmark
refer to the docs
everyone feel free to raise whatever
they wish

Meyer

When go for 2nd Draft Revision
have been made (no I.C.)
 \circ \checkmark \checkmark \checkmark \checkmark
concluded \checkmark \checkmark
look at pending diff
Options included Draft \circ
to be published

Pander

We had agreed \checkmark \checkmark be broad
Options / inserted
future deliberation
try to have \checkmark coherent, neat
able to be engaged by the
public

Cyrl

- need for long debate
I have identified areas where
Options - be put forward
There are areas where will try to sell
out Options
Note Meyer & Pander's comments

Maria's

(i) \rightarrow to Garcia notes - notes
ref \checkmark \rightarrow to franchise now this
has fallen away why?

Cyrl Does it franchise fall citizenising
- but - rights

marais

Cyrl Any program.
(1) Agreed to
(2) NO program.

de Lange what is meaning of 2.2.
Do we really need it?

marais worried in reference to respect, don't
know if going enough
why ref to wording of CP IV

Vdwest 2(1) is NB - = of present CP IV
+ (2) program using binding
- implications & not
be - time in int'l law -
horizontality
But may need to include
binding somewhere
can relook at 2(2).
Part of program is horizontality
debate o / returned

Cyrl. leave as it ^{for now}, agree now
- > we come back on proposals

marais - } long of CP IV references.
is noted &

Meife Are we having sidebar & pursued
verse

Cynl Soeba - be done to remind
ourselves

'notes - when we produce 3rd
working draft it will be there

Meife Can we consider 'end of
discussions tomorrow

Cynl OK leave it open

Meife When come to Soeba
discussions let those NB to remind
us - these NB to public to see

Cynl This one is to remind us - respect
binding

Fouie C is / problem & if there are
serious problems this must be reflected
broadly

Cynl This is working draft - the words
we perceive, NB.
will have to explain why this
is working draft.

~~Fouie~~ → a
Wessell In - full → C 2 to n made
over → L 4 will be stated
clearly C this is draft &

(2) ✓ do - believe - have similar footnotes x - (options
of I horizontality - if I rule ✓
c → instance ✓ of
being the options name place
word - brackets

eg if say court must respect o-
is binding
do - want the doc to left c option
I → favoured " per party A
Options will be there
notes will reflect who favours what

aglin

problem procedure
1 left was original draft.
There was no disagreement on (2)
but now drafting committee has
redrafted this.
Should include (2) as it was
Can have footnote c this clause
Should be revisited

hadre

wording
✓ like original (clause 12)

amad

~~the~~ put on record c
draft ' Bill ' rights did x reflect
ANOC position

Cent

proposal has been made
Because respect introduces new
concepts, we should revert to original.

I propose revert
Agreed to revert to ordinal (2)

(3)

De Lange

3(3) In our view put full stop
after citizenship - leave rest out -
was to be in compliance & consist
- int'l law is so complex & regards
to citizenship

Smith

Ref to int'l context
might make sense to leave it
& compliance & consist

De Lange

All legislation is to be in compliance
& constitution

Appl.

Seems persuasive pt.

Crinin

would like view to what extent
when refer to int'l legis must it
be qualified by "in compliance &
consist."

Clare

Consist is to be read as a whole
- all relevant provisions
S(2) says "
It is to be to have ref to 3(3)
to compliance
But have to decide whether about

Int. law.

Cyn. In compliance & consist. has been answered.

Agreed Can we put full stop ' citizenship
 del~~et~~ deleted - dealt c later.
 & of internatio - Agreed

~~Here~~ (4) Agreed to

(5) Strange formulation

Panelor Yes

~~V d well~~ we are willing to war officers

Cyn - be more elegantly.

Coqin The flag that is the national flag
 of the Rep when the court

call

The existing nat flag of the Republic
 continues to be the national flag.

Weyor include description - same as

be large Do same as c Nat Territory.

Cyri Agreed
the national flag & republic is
described - Schedule 2 &

Mavis I described & national flag
prepared in State Herald

Dutoit - say
The flag & republic is red, white,
green...

Munde Schedule 1 be those of

Cyri The flag is described in Sch 2.

The national anthem is...

Mavis ~~Parliament~~ betw NP/ANC
NP - retention of present anthem

ANC - ' ' 1 anthem

Nkosi Sikeleli

translated 7 11 lyrics.

Also ' ' not constitutionalising
anthem

NP feels → - be made & const

Lesire make 1 & 6

Pikoli Agreed ' will ask come back.

Marius It was agreed on the ...
invite Prof Kumalo to make presentation
- C is still outstanding

Moses When do they intend to report back
has to be by end of today.

Cyril They will meet today
because of the ...
Report will be given to

Marius waiting for Nsimande to arrive

Cyril (6)
languages
was

Marius will get report later today

Brakha But consult ~ languages etc
than 11 official langs - lang
of record.

Cyril C is covered ~ application of lang
Agreed

Chapter 3 Parliament

again 401) why do have "in terms & consult"

Cyril That has one & main empowering
one's

Arone & agree C that but this would

position is provisional
 Chap 9 deals with this
 Are we able to leave for now -
 look at late Chap 9 - reconcile

~~the text~~ ~~part~~

Cyn1 40 (2) leave at Senate & now.

Mamangni would prefer to leave Senate. still

Cyn1 more neutral would be
 Nat ASS and a second house
 - be referred to as Senate for now

Pardo what we had agreed to be to use
 term

Cyn1 all parties
 Agreed leave as second house

Bindra does Senate form of part of parliament

Cyn1 Agreed Parliament consists of the
 Nat. ASS & a second house.

Nat Assembly

Cyn1 Sida la vote re electoral system.

Wany Our position & wording
 Propose word results in square brackets

second [in]

[results], [in]
and in general, proportional representation.

Rabie Last cc agreed to include
and results.

Ciglin was agreed 'last
- those words be bracketed.
put [results] and [in]
- put footnote

Cyn - problem to bracket the words
of ~~reference~~ suggests.
Does it even require footnote? ^{working draft}
Agreed to 41 c brackets

Mayer IS this - where can have case -
side-la

Am7 I propose to leave - brackets.
Can be explain - introd. - 6
it would drift with still - progress
words - brackets means something

Retain the side-la &
V Breda proposal - it be side-la & detail
- schedule.

NB to retain side-la & system
is still - disc - c & -
perception - that the only aspect
is &

Gordhan Suggest c rather than side bar
go for system of footnotes but
c explanation ' end of text
where applicable
where not " then have brackets

Amr. sentence ' end in brackets
the details of the electoral system will be
~~still~~ worked out / finalized

Aqin Total format > doc
- be consistency
where comment easier to have as
a sidebar so not read as part of
actual constitution &

Amr. Italics could be used - agreed.
I would favour brackets.

Pamad want to add & record c
does & mean c details will
detail necessarily appear &
constit.
ANC position & → a still / b/c
c but b i means details will
appear & constit

Amr. ⌈ ⌋ c brackets - italics

Gordhan (41) - should we not put range of
numbers 300-400.

Qnl Add 300-400 - Agreed

42(a) trad leaders of covered for.

Sizain How is this covered.
Murray Where trad leaders / covered by this
42(a) trad leaders / > permitted
to be members & assembly but this
- is varied

~~not~~
De Lange what about provincial legislation.
will it be covered by 42(a).
trad leaders / I mean that - prov.
structures

Murray > it is < they are excluded
I think COS would office of public,
to include > have to

Hitney be Lange's Q re: to "under the
Republic"
would public office set & <
prov. constitutions
- we not use public office

Yacoub this is. person is read sect 0. where
- look i (b), should include
trad leaders < (b)

Hitney > help < specific problem, but not
general.

Grain should deal w this when we deal w provinces > w nat ass.

Agui Quality & indiv to become a parameter
If provinces set up trade leader
is this office of profit under the Republic &

Grasmus S(i) states the Republic & st 'u
one sov democratic state.
Provincial Offices cannot be separate
entities &

bu fort could run w interpretation problems.
Should rethink use of phrase 'Office
of profit'

Greve mystery is solved look ' III (a)
" anyone holding ... "

Agui office of profit & central govt is clear
understood.
but > clear & provinces & local govt.

Vdwest - find better word & office of profit
→ some problem
- we do so before draft is presented
→ wait

Cyn? Can we ask them to find more
modern term

Muosa

"anyone being paid by
anywhere"
means any level of govt

Mamad

(42) sidebar
never / intention & somebody is
receipt of state pension / >
preclude from gardening & office.

Adwesi

< is position < m

Cyril

fine then, can we move on.

42 (e) new sentence.

Yacoub

Problem & judiciary people
comma after word but. - should be
need to take into removed.
but - is taken & etc

Cyril

proposal to remove, after word but.

Muosa

Yacoub - give us advice

Yacoub

boesiu matter

Muosa

lets leave as it is - come back
to it

Cyril

leave comma in.

(43)



Box
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