

1/19/4

Centre for Adult Education, University of Natal

Research for the Constitutional Assembly

Assessing the plain language working draft of the new Constitution



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March 1996

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Acknowledgments

This study would not have been possible without the advice and work of three groups of people: the reference group which was set up to design the workshops and exercises, the workshop facilitators, and the administrative co-ordinators who handled the recruitment and other logistical problems. In addition we would like to thank Derrick Fine and Ann Macdonald who analysed some of the workshop data and provided written input to the final report and to Jenny Clarence, Rosemary Granger, Kim Jones, Ann Macdonald and Christine Stilwell who contributed the list of difficult words and phrases in the working draft of the new Constitution.

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Background

The Centre for Adult Education (CAE) at the University of Natal in Pietermaritzburg was subcontracted by the Community Agency for Social Enquiry (CASE) to undertake a study of the usefulness of the plain language used in the working draft of the new Constitution. This study forms part of a larger evaluation of the Constitutional Assembly being conducted by CASE.

Brief

The brief determined by CASE in consultation with the Constitutional Assembly required that the plain language and typographical layout used in the working draft of the new Constitution be tested with a variety of potential users of the Constitution. The broad aims of the study was to assess the user-friendliness and accessibility of the working draft of the new Constitution with people who may have to refer to the Constitution in their work situations. The focus was to gain feedback from people who may be called to play the role of interpreting or mediating the Constitution to others. As such, the study was limited to the views and attitudes of a so-called middle-user rather than the general "person in the street". Gaining feedback from the latter group has been dealt with in a separate study within CASE's overall evaluation.

Information was to be gathered via nine workshops; three in each of the provinces of Gauteng, Western Cape and KwaZulu-Natal. It was decided that workshops with the following groups would be held:

- Group 1 - Legal Professionals (judges, magistrates, attorneys, advocates, etc.)
- Group 2 - Service Professionals (nurses, social workers, teachers, police, clergy, etc.)
- Group 3 - NGOs and CBOs (advice office workers, trade unionists, civic leaders, etc.)

CASE and the Constitutional Assembly assisted in identifying organisations and associations from which workshop participants would be drawn. See Appendix 1 for a list of organisations, associations and professional categories that were targeted during recruitment.

Methodology

A qualitative approach was used in this study. The information was gathered in an interactive workshop style.

Workshop design

The CAE research team constituted a reference group of language and information specialists who helped to design the workshops. The efforts of this reference group led to the development of a detailed *Workshop guide* (see Appendix 2) for the workshop facilitators, a *Workshop response book* (see Appendix 3) for the workshop participants, and a *List of problem words and phrases* (see Appendix 5). Additional exercises for the workshops with legal professionals were provided by the Constitutional Assembly.

Workshop recruitment

Participants from the targeted user-groups were all invited to attend the workshops. In some cases the invitations were addressed to particular individuals, in others it was sent to an organisation with the request that a representative be sent.

Recruitment was guided by the requirements of attaining adequate representations in terms of gender, race and home language. This is purposive sampling and as such, the information gathered from the different participants cannot be generalised to be representative of the groups or professions from which they come from.

CAE conducted the recruitment in KwaZulu Natal. CASE handled the recruitment for Gauteng and the Western Cape. It was planned to have between 10 and 15 people per workshop. Recruitment in the Western Cape (average 13) and KwaZulu-Natal (average 10) was satisfactory. In Gauteng numbers were somewhat smaller than had been planned for (average 7). A total of 91 participants were recruited (an average of 10).

Workshop implementation

All nine workshops were held during the first week of March 1996. Each workshop, of three hours duration, was run by a pair of experienced facilitators. A member of the CAE research team was present at each of the workshops bar one.

The workshops were successfully implemented. Both the participants and facilitators indicated that they found the workshops to be a worthwhile and interesting experience. Favourable feedback was received on the design of the *Workshop guide* and the *Workshop response book*.

Data management

The responses of participants were recorded in the *Workshop response books* and on newsprint. Facilitators also made notes of their observations. All the information was entered onto a relational database (Paradox version 5) at CAE prior to analysis. The computerised data was checked against the originals to ensure accurate input.

The workshop participants by province														
L Legal professional S Service professional N NGOs/CBO	Western Cape				Gauteng				KwaZulu-Natal				All	
	L	S	N	All	L	S	N	All	L	S	N	All		
No. Participants	14	14	11	39	6	9	6	21	11	12	8	31	91	
"Race"														
African	5	4	4	13	2	5	4	11	5	6	6	17	41	
Coloured	3	8	4	15	0	1	0	1	2	0	0	2	18	
White	6	2	3	11	2	2	2	6	2	4	1	7	24	
Indian	0	0	0	0	2	1	0	3	2	2	1	5	8	
Sex														
Female	10	9	7	26	2	2	3	7	6	3	4	13	46	
Male	4	5	4	13	4	7	3	14	5	9	4	18	45	

Demographic characteristics of the participants

Language, race, sex and age				
Group	Legal Professional (31 persons)	Service Professional (35 persons)	NGO/CBOs (25 persons)	Total
Language				
English	17	18	9	44
Zulu	2	6	7	15
Xhosa	5	3	5	13
Afrikaans	4	3	3	10
North Sotho	0	2	1	3
South Sotho	1	1	0	2
Sotho	0	1	0	1
Setswana	2	0	0	2
Polish	0	1	0	1
Race				
African	12	15	14	41
White	10	8	6	24
Coloured	5	9	4	18
Indian	4	3	1	8
Sex				
Female	18	14	14	46
Male	13	21	11	45
Average Age				
	34.4	40	32.4	36

Educational qualifications				
Level	Legal Professional	Service Professional	NGO/CBO	Total
Standard 9	0	0	3	3
Standard 10	0	7	7	14
Diploma	2	4	3	9
Bachelors Degree	2	5	5	12
Honours & LLB	18	8	6	32
Masters	2	3	1	6
Doctorate	0	1	0	1
Some participants did not specify their educational qualification.				

The Service Professional group and NGO/CBO group were quite similar in terms of the educational qualifications of the participants.

The legal professional group comprised mainly persons with an LLB degree.

Group	Occupation	No.
Legal Professional	Attorney	8
	Candidate Attorney	6
	Magistrate	5
	Legal Advisors	5
	Advocate	3
	Lecturer & Researcher	3
	Law student	2
	Judge	1
	Prosecutor	1
Service Professional	Educators - School & Adult	7
	Social Worker	6
	Minister of Religion	5
	Community advisor	5
	Librarian	3
	Nurse	3
	Department of Labour	2
	South African Police Services	2
	Department of Land Affairs	1
	Administrator (SANEL)	1
NGO and CBO workers	Advice Office worker	7
	Trade Union	4
	Rural Development	3
	Environment	3
	AIDS worker	2
	Civic	2
	City councillor	2
	Resource Centre worker	1
	Women's organisation	1
Note: As some workshop participants were involved in more than one area of work (Advocate/Lecturer, Trade Unionist/City Councillor) the total number of people listed under the different occupations or areas of work exceeds the number of people who participated in the workshops.		

Length of experience in current occupation

On average the **Legal Professionals** were involved in their current occupations for approximately six and a half years. The average length of occupation of this group has been reduced due to the inclusion of a number of candidate attorneys (limited experience) and legal advisors, who all reported short durations of service. The group did include very senior attorneys (e.g. 28 years experience), advocates (e.g. 17 years experience) and magistrates (e.g. 35 years experience).

The **Service Professional** group comprised of people with long service in their current occupations. The average length of service being thirteen and a half years.

The average length of service within the **NGO/CBO worker** group was a little more than two and a half years. This is fairly typical for this sector which is generally characterised by short work contracts and rapid staff turnover.

Home language of participants

Recruitment was guided by the requirement of maximising the number of participants who spoke a language other than English (preferably a vernacular) as their home language.

For just over half the participants, English was spoken as a second language. This ratio was affected by the non-attendance of some of the English second language speakers who had been invited.

Language	No.
English	44
Zulu	15
Xhosa	13
Afrikaans	10
North Sotho	3
South Sotho	2
Sotho	1
Setswana	2
Polish	1

People who are likely to be reached by the participants

Participants were asked to make a list of the people that they were likely to explain the Constitution to.

People listed were mostly the various sorts of “clients” and colleagues of the participants. They are persons with whom the participants have regular contact in their work roles. In all workshops groups, the general public and community organisations were also expected to be reached.

“Clients” to whom the new Constitution might be mediated		
Legal Professionals	Service Professionals	NGO and CBO workers
Advice workers Businessmen Civic structures Clients Community organisations Lawyer forums Legal professionals Non-governmental organisations Police Public in general School students Teachers	Adult learners Church constituency Community leaders Community organisations Employers Ex-offenders General Public Health Centre attendees Library attendees Ministers of religion Neighbours Patients Pensioners Police men and women Researchers Resource Centre attendees School pupils Social work clients Social workers Teachers Trade Unions	Advice office clients Community-based organisations Farmers Farm workers General public HIV positive clients Paralegals Rural communities Shop stewards Union officials Women Workers Youth groups

Attitudes to and experience of reading legal documents

As background information, participants were asked about their prior experience of reading legal documents, particular previous South African Constitutions, and about how they felt about reading legal language (see page 2 of Appendix 3). Such questions were considered to be unnecessary for the Legal Professional group and were therefore omitted.

Experience of reading legal and constitutional documents		
	Service Professional	NGOs/ CBOs
Read a legal document		
Yes	83% (29)	88% (22)
No	17% (6)	4% (1)
Did not answer	(0)	8% (2)
Read a SA Constitution		
Yes	60% (21)	48% (12)
No	40% (14)	32% (8)
Did not answer	0	20% (5)

Two points that can be made are:

- Most participants reported some experience of having read a legal document (hardly surprising given their general level of education).
- 60% of the Service professional group and 48% of the NGO/CBO group reported having read something from a South African Constitution.

Types of legal documents read

With the exception of government Acts specific to their areas of work, relatively similar legal documents were read by participants in the Service Professional and NGO/CBO groups.

Types of legal documents read	
Service professionals	NGO and CBO workers
Affidavits	Bill of Rights
Attorneys' letters	Constitution of organisations
Bond agreement	Court interdict
Child Care Act	Employment contract
Childrens Act	Government gazettes
Constitution of organisations	Hansard
Contracts	Hire purchase contract
Deeds of sale	Insurance documents
Draft white paper on welfare	Internal Security Act
Employment contracts	Labour legislation
Environmental law	Leases
Government Gazettes	Occupational Health and Safety Act
Hire purchase agreement	Old South African Constitution
Insurance contracts	personal contracts
Interim local government legislation	Provincial proclamations
Labour Relations Act	Rental agreement
Mental Health Act	Summons
Nursing Act	Transfer of property
Old South African Constitution	Will
Statutory and Common law	
Transfer of property	
Will	

Prior reading of South African Constitutions

Reading of South African Constitutions		
Version read	Service Professionals	NGO and CBO workers
Working draft of new Constitution	12	12
Interim Constitution	7	4
Old Constitution	3	3
Note: Some participants had read more than one South African Constitution.		

Of those who had read a South African Constitution before, the Working Draft of the new Constitution was the most widely read version. This is probably due to the publicity campaign surrounding this version.

Sections of the Constitution read

The chapter on the Bill of Rights was cited as the most widely read part.

Sections of Constitution read	
Service Professionals	NGO and CBO workers
Bill of Rights Childrens' Rights Education Founding Provisions Housing Labour Bill* Local Government Marriage Act* Pensioners' Rights* Policing matters (Interim Constitution)	Administration of Justice Bill of Rights Cabinet Chapter 1 of Working Draft? Citizenship Elections Environment Labour Practices Language usage National Assembly, Preamble President Provincial Legislative and Executive Security legislation (Old Constitution) Womens' Rights
Some respondents seem to have named items that are not in the Constitution (indicated by *)	

Feelings towards legal language

Participants were asked to describe how they feel when they read legal language. This question was not put to the Legal Professional group.

Most respondents in both the Service Professional and NGO/CBO groups, describe very negative feelings about reading legal language.

Adjectives used to describe negative feelings	Adjectives used to describe positive feelings
Uneasy, confused, irritated, exhausted, threatened, ignorant, helpless, bored, frustrated, intimidated, overwhelmed, bewildered, uncomfortable, lost, apprehensive, sense of missing important detail	Fairly comfortable, intrigued, challenged, enlightened, extremely interesting
<i>Number respondents:</i> Service professionals: 27 NGO and CBO workers: 20	<i>Number respondents:</i> Service professionals : 6 NGO and CBO workers: 1

Only 7 of the 54 participants who commented on their feelings felt comfortable when reading legal language. Such positive responses were more likely to come from the Service Professional group.

Of the 7 participants who feel comfortable when reading legal language, it is noteworthy that 6 of them speak English as their first language. The remaining person speaks Afrikaans as a home language. None of the participants with an African home language described positive feelings about reading legal language.

Understanding main ideas in a clause

Participants were asked to read the clause on **Housing and land** (Clause 25 on page 8 in Chapter 2 (the Bill of rights) and to answer questions to assess their understanding of the main ideas in this clause (see pages 3 and 4 in Appendix 3). The three exercises participants engaged in were designed to get participants to :

- interpret clauses 25(1), 25(2) and 25(3) in the Bill of Rights chapter of the working draft of the new Constitution
- discuss and compare their interpretations of the above clauses with those of a fellow participant
- working in pairs, to identify the difficulties that they experienced with the clauses.

Varieties of interpretation

Generally, participants understood that this section of the Constitution dealt with ones rights regarding housing, eviction and land. There were no exceptions to this understanding. This observation may appear to be a trivial one. It is not so if one considers the difficulty that some sections of the Constitution can pose, for example, the section on Procurement Administration.

The language used in clauses 25(1), 25(2) and 25(3) is sufficiently clear to enable the understanding that they refer to a person's rights regarding housing, eviction and land, respectively. To this extent of understanding, it did not make a difference whether one had a legal background or not. All groups were able to identify the main concept that each clause related to. However, beyond this level of understanding, substantial and significant differences are apparent with regard to the full implication of each clause.

Clauses 25(1) and 25(3) evoked the most variation in interpretation. The main area of difference in interpretation was about the nature and extent of the right contained in each clause. This was often reflected in how participants interpreted the duty or role of the state.

Clause 25(1)

The most common interpretation of this clause is that everyone has a right to **gain access** to adequate housing rather than the right to **have a house**. In other words, most people understood this to mean that there would be fair opportunity for housing for everyone and that the clause did not mean that everyone would be provided with a house. This predominant interpretation was associated with the understanding that the state would take measures to secure such a right of access as contained in the second sentence of clause 25(1).

This interpretation of clause 25(1) is represented by the following quotations:

The state must provide all citizens with an opportunity to acquire adequate accommodation.

Everyone has the right to housing and the state must take the necessary steps to secure this.

The main idea is that everyone must have the opportunity to have a house. It is not a right to have a house. This is misleading like those Readers Digest competitions - You have won a R10 000 prize. It is not clear whether you have won or not.

The only other main variety of interpretation was that housing would be provided to all. About a third of the participants understood clause 25(1) to contain a right to housing for all and that such housing would be provided by the state. For these participants the word "access" seems not have been a key determinant in their interpretation. This variety of interpretation was not restricted to participants of any particular group. There were however, many more participants from the Service Professionals group who tended to interpret the clause in this manner than from the other two groups.

The following quotations reflect this variation of interpretation:

Citizens have a right to a house. The state must provide.

All are entitled to a dwelling conforming to basic requirements. Incumbent on the state to take steps to supply these houses by way of legislation and progressive procedure.

Given that a substantial number of participants offered the second variety of interpretation and the fact that such people were represented in the Legal Professional, Service Professional and NGO/CBO groups, indicates that the wording of clause 25(1) is not clear enough and therefore open to variation in interpretation.

It can be argued that participants who interpreted clause 25(1) in this way are reading into the clause their ideological preference for state provided housing and that they twist the meaning of "access" to such an interpretation. If this is the case then it raises the possible need for additional statements in this and other "controversial" clauses that specifically exclude such interpretations.

Clause 25(2)

Clause 25(2) appears to be the most precisely phrased clause of the three. The main idea in this clause was understood in a singular fashion to mean that no person could be evicted from their home without a court order and before the circumstances relevant to the situation had been considered.

A few participants did believe an additional requirement of alternative housing being evident or provided before a person could be evicted was implied in the clause.

One complicating factor is that the word "evicted" is associated by many participants with undoubtedly cruel and illegal behaviour often **associated** with evictions in the past (manhandling, unjustified use of force, violence, destruction of furniture, etc.) and eviction is seen as **that** behaviour rather than a particular legal process.

Clause 25(3)

This clause tended to suffer the same problem as clause 25(1), but to much a lesser extent. The reason once again for the differences in interpretation stemmed from the emphasis placed on the word "access".

Most participants interpreted this clause to imply a right to access or opportunity to acquire land rather than an absolute right to have land, as indicated by the following statements:

State must provide all citizens with an opportunity to use land and these opportunities must be created fairly between citizens.

All people must be able to acquire/own land.

Everyone has an equal opportunity to obtain land. No discrimination on any basis to be allowed.

By the contrast the second variety of interpretation is captured in the following statement:

Everyone has the right to land.

All citizens have a right to land distributed equally.

Some people queried what land meant and what "land" included. Often the conclusion arrived at was that land was taken to refer to farms, as indicated in the following statement:

The main idea is like clause 25(1), except that here the clause is talking about a piece of ground presumably for farming purposes.

A few participants alluded to signs of redress and restitution being part of their interpretations.

The main differences in interpretation

Clearly, the word “access” in clauses 25(1) and 25(3) was what divided participants in how they interpreted the clauses as already indicated above.

From the discussions between pairs of participants, it also became clear that some people perceived the rights to housing and land in ownership terms only. Others reflected an understanding that the right may mean something less than ownership, including leasing and renting arrangements.

A more subtle discrepancy was about which party would take the initiative regarding housing and land provision. One view is that it is the duty of the state to take the initiative and approach the community, while another view was the community would need to approach the state.

Difficult terms in clauses 25(1), 25(2) and 25(3)

A fairly uniform list of difficult terms was identified by each participant.

Most felt that the language in the clauses were vague. One person felt that the vagueness was an attempt to avoid having to spell out what the state will provide.

Word or phrase	Details
Access	The word was seen as too vague and confusing. The confusion is aptly captured by the following question posed by a participant, “Does it mean that you will be given it, be allowed to live on it for free, or be able to buy it.”
Adequate	This word was seen to be too subjective. People questioned what standard would be used (if any) and felt that the state should explain what would qualify as “adequate”.
Arbitrarily	The word was considered to be too vague
Relevant circumstances	Participants wanted to know what would qualify as relevant and who would decide on what is relevant and not relevant.
Equitable	Participants found this to be a difficult term.
Everyone	Participants (from the legal group) felt that this word was too broad and not “legal” enough.
Equitable access to land	Participants queried what this included. Did it cover purchasing, renting, farming, as well as the use of land resources such as water?

Reasonable	Participants (from the legal group) felt that this word was acceptable for them, given their familiarity with the concept of “the reasonable man”, but that it may not have a wider usefulness.
Progressive legislation	This term was found to be ambiguous and confusing. Does it mean “ideologically left-wing” or “incremental”.
Facilitate	Participants felt that this word needed to be unpacked. If it simply means “make easy” or “help” what is the extent of such help.

The difficulties with the above list of words was expressed by participants in all groups. The sense that one has is that although the language in the three clauses conveys that main idea, it is not precise enough to be useful. The set of clauses refer to the important issues of housing and land. The different interpretations that the language elicits have fundamental implications for peoples' lives. It would seem that there is a need for greater precision and clarity, particularly for such a section of the Constitution, which is likely to draw substantial attention from the general public.

Readability and the influence of prior knowledge

The text that was used to test the readability of the working draft of the new Constitution was clause 189 on Procurement Administration.

The influence of background knowledge on readability

The readability of a piece of text is heavily dependent not only on the clarity of the writing but also on what the reader brings to the text by way of prior knowledge of the subject of the text and of texts of this type. Research has shown that active use of background knowledge and experience contributes considerably to how well readers process text. Without the active use of background knowledge the text becomes harder to read. While long and complex syntax makes text difficult to process, readers are usually most conscious of experiencing difficulty with vocabulary. If key words are known to the reader, this can greatly help the activation of background knowledge.

Traditional methods of testing readability by the use of formulae such as the Flesch Reading Ease test (which looks at such things as the number of syllables per word, number of words per sentence and sentences per paragraph, the use of passive voice, and sentence and vocabulary complexity) suffer from their inability to assess the prior knowledge of the reader and his or her familiarity with the particular type of text being read.

For the record, the Flesch Reading Ease test rates clause 25 on Housing and Land as being very difficult (3 out of 100 where 100 is very easy!) and the Flesch-Kincaid Reading test rates it at grade 16 (i.e. Honours degree) level, though its sentence and vocabulary complexity was considered relatively simple. Clause 189 is so difficult it is off the Flesch Reading Ease test scale.

However, readability tests, being mechanical, have a variety of weaknesses and other readability researchers have measured readability by comparing answers to pre-reading questions that were based on the meaning of key words in the text and the answers to the same questions once the text had been read.

The testing of clause 189 in the workshops was done in this same way. Participants were given pre-reading questions first and then they were given the same questions again as text interaction questions. The aim of the pre-reading questions was to see how much background knowledge participants could bring to the text.

The results were cross tabulated with the group (legal, service professional and NGO/CBO) and home language of the participants.

The usefulness of the plain language draft to legal professionals

A series of exercises were designed as additional tests for the legal professionals user groups. The primary aim of the exercises was to test the clarity of the plain language text of the working draft of the new Constitution in a legal practice context. In other words, is the text accessible, user-friendly, easily understood, sufficiently **precise** and **readily applicable**.

The exercises anticipated and tried to draw out some of the concerns often raised by legal practitioners around the use of a plain language approach, especially in the area of legislative drafting.

Some of these concerns include:

- that plainer language might lead to a greater variation in interpretation (and hence less precision)
- that the use of terms which do not have the same content as terms that have been used previously, might lead to a lack of certainty or specificity of meaning
- that the use of plain language might lead to a change in style, with legislation losing its coherence and elegance.

Exercises using different types of clauses were chosen to test :

- application of a clause to a situation
- variation in interpretation
- lack of clarity on meaning
- improved ways of expressing and structuring text.

Although legal practitioners would be expected to be familiar with legalese and would draw on prior knowledge, it was still important to find out things such as:

- are they sure of the meaning of the text?
- can they easily explain its meaning to clients?
- can they easily apply it to situations so as to assist clients?

The exercise on a substantive clause

This exercise was a scenario-question to test the clarity of a substantive clause (Clause 23 on the Environment on page 7). Participants were asked to give advice to clients, using a scenario based on the Environment clause of the draft Bill of Rights.

Out of 30 participants who completed this exercise some 24, in slightly differing degrees, felt that the clause established a constitutional right, although they varied considerably in their opinion on the application of the right. The remaining six were far less certain, were ultra-cautious or failed to express a clear view.

Some examples of interesting/contrasting views:

The citizen has the right to demand that the relevant state organ pass legislation to prevent any form of pollution.

This clause does not really assist anyone. No-one can force the legislature to enact statutes. Only those statutes in place are subject to scrutiny.

I think the villagers ... can prevent the company from engaging in economic activity if it is harmful to their health and contrary to their right to clean water.

Your constitutional right to a healthy environment only binds the state. To the extent that the company may be violating your right ... it is not obliged to refrain from doing so.

Key issues raised

Many of the respondents based their response on an analysis of:

- the debate on the **vertical and horizontal application of the Bill of Rights** (e.g. does the clause apply to a private company), and
- the need for **balancing different rights contained in the Bill of Rights** (e.g. the right to a clean environment versus the right to free economic activity).

Some of the respondents raised other relevant legal-technical issues, such as:

- *locus standi*: the capacity of the villagers to bring a case (with reference to "Everyone has the right" and the provisions of Clause 37 on the Enforcement of rights)
- the debate on **natural and juristic persons** (i.e. which parts of the clause apply to each, with reference to Clause 38(3) on the Application of the Bill)
- the **interpretation of rights** (e.g. using the spirit of the Constitution, with reference to Clause 39 on the Interpretation of the Bill of Rights).

Forums and methods raised

Many respondents suggested the following as forums for taking up issues raised by the scenario:

- The Constitutional Court (e.g. to make an order)
- The Supreme Court (e.g. interdict, damages claim)
- Pressurising local authorities, provincial legislatures and national Parliament (e.g. to enforce or pass legislation).

Some of the respondents suggested these methods:

- Writing to or meeting/negotiating with the company
- Mediation between the villagers and the company
- Awareness-raising aimed at the company and the public.

These suggestions indicate that the clause was not necessarily interpreted as having a clear straightforward outcome via the courts.

Examples raised of difficulties with, or varied interpretations of text

- use of **negative** construction (“not harmful to”)
- the meaning of “well-being”
- what would be considered a “reasonable” measure
- the open-endedness of “other measures”
- the meaning of “sustainable development” and in whose interests it would be pursued.

General observations

As a test of clarity of language, this scenario-exercise seems to have been limited by interrelated factors such as:

- the tendency to jump over the text and use it as a launch-pad for getting into technical debates or different views on what the content of the text should be. In other words, little direct feedback was offered on the language and clarity of the text.
- the short time allotted (relative to the kind of time that would be spent on a legal opinion)
- lawyers' prior knowledge of this particular text
- lawyers' familiarity with legislative text (e.g. their ability to cross-refer to other appropriate clauses)

Nevertheless, some useful plain language lessons of the exercise are:

- the extent to which differing interpretations of other parts of the Bill of Rights influence the understanding of text in a particular clause (e.g. possible horizontal application)
- the uncritical acceptance and seemingly different understandings of a vague 'new jargon' term such as "sustainable development"
- the difficulty that some lawyers have with developing a step-by-step approach to advice-giving, as opposed to a more abstract opinion, based on a piece of text
- the tendency of some of the seemingly lesser experienced respondents to read the clause and approach the scenario in isolation (and not, for example, to relate it to the right to work provided by the employment offered by the company)
- that the Bill of Rights and constitutional litigation is a relatively new area of law for both seemingly more and lesser experienced practitioners: this, and not just unclear text, may also explain the uncertain approach to dealing with a practical scenario.

The exercise on an application clause

This exercise aimed to test the clarity of an application clause (Clause 38(2) on the Application of the Bill of Rights on page 14).]

Respondents were asked to give their view of the meaning of a subsection of the Application Clause and to suggest ways of expressing it more clearly.

Out of 30 participants who completed this exercise, 29, with differing degrees of emphasis and detail, understood the meaning of the clause relatively clearly. One missed the point altogether.

In response to the second part of the exercise some gave useful suggestions on difficult words or constructions, some rewrote the clause in formal legal language, and some tried to rewrite the clause in plainer language.

Difficult words and constructions

Example of **difficult words or constructions** and how to change them:

- “does not deny” - use a **positive** construction (e.g. “recognises”)
- “Conferred by” - use the **active** voice (e.g. “exist in”)
- Ambiguous words like “deny” need to be avoided.
- Long sentences should be broken up into shorter ones.
- Difficult words should be defined.

Formal language rewrite

Example of a **formal legal language rewrite**:

The rights or freedoms conferred by the common law, customary law or legislation are not diminished by the Bill of Rights, provided that those rights or freedoms do not themselves violate the Bill of Rights. (Candidate attorney)

Plainer language rewrite

Example of a **plainer language rewrite**:

The Bill of Rights recognises other rights or freedoms that exist in the common law, customary law or other legislation, as long as these are not against its provisions. (Lawyer-researcher)

Key issues raised

Issues, concepts and terms consistently raised by respondents include:

- the **supremacy** of the Constitution/Bill of Rights
- the (conditional) **concurrent application** of other laws
- the **consistency** and relative consistency of other laws with the Bill of Rights
- the question of “other rights or freedoms” not conflicting with rights **expressly contained** in the Bill of Rights.

Respondents used different formulations to express the interaction between “other rights” and rights in the Bill of Rights, for example:

insofar as they agree with

to the extent that they do not conflict with

if they are not in line with

as long as they do not contradict.

Some general observations

- Many of the lawyers appear to be so familiar with legalese, that, when they try to rewrite in plain language, they are actually paraphrasing, often using equally difficult language (e.g. words like “said”, “not contrary to”, “hereby”).
- A number of the clearest explanations of the text and attempts at summarising or rewriting, are by people who appear to have less formal legal qualification and who are working in more community-related legal work.
- Perhaps because it was the first of two similar exercises (i.e. before Exercise 3), relatively few of the respondents took a critical view of the language and structure of the clause. This is also partially explained by prior knowledge and relative comfort with legalese.

The exercise on a process clause

This exercise was designed to test the clarity of a process clause, namely Clause 54(2) on the Assent to Bills on page 18-19.

Respondents were asked if they thought the Assent to Bills Clause was clear and if they could suggest ways of expressing it more clearly.

Out of 23 participants who completed this exercise 19 were critical of the clause and many made practical suggestions for changing it and four felt that it was clear or relatively clear.

Examples of critical comments were:

No, it is a *petitio principii*, much like a dog chasing its tail. (Judge)

No. I think I understand what is meant, but I don't believe it is expressed clearly. (Attorney)

Not really. It says many things at one stage. (Legal advisor)

Other problems cited were long convoluted sentences, bad structure, vagueness, contradictions, ambiguities and a lack of clarity on what must be done to make a Bill "passable".

Problem words and phrases in the clause included:

"agrees/disagrees" (by what majority? to what extent?)

"without delay"

"reservations"

"assent"

"confirms the Bill"

"fully accommodating".

Ways suggested for improving the clause included:

- Using **shorter** and **simpler** sentences
- Using a **step-by-step** or **point-form** approach
- Flesh out grounds/basis for "agreement/disagreement"
- Give content to "reservations"
- **Separate** and **spell out** all options
- Replace all **ambiguous** words (e.g. "accommodating")

- Remove 'loaded terms' like "reservations" (e.g. replace with words like "the President is not satisfied with the constitutionality" or "does not meet the requirements and standards of the Constitution").

General observations

- Participants were more critical of this clause than the other two. Perhaps this is partly explained by participants getting into the swing of this kind of exercise and by the fact that it is a longer clause, with more glaring structural problems.
- From the few attempts at rewriting the clause and some of the vague suggestions about improvements, it is clear that respondents found it easier to pick out problems of lack of clarity and to suggest guidelines for plainer writing, than to actually rectify them.
- The respondents who come from seemingly less qualified back grounds have again responded sharply (even more than in Exercise 2) to problems of structure and layout - perhaps this kind of process clause is less intimidating than an application clause, which contains more legal nuances and prior knowledge.
- No respondents really questioned a complex term such as "constitutionality", which recurs often in the Constitution, without definition or explanation. We can perhaps explain this as fatigue at the end of an exercise or some prior knowledge of the concept, which is essential to understanding the clause.

General response to language used

Most participants gave a fairly lengthy and rich account of their general response to the language used in the working draft of the new Constitution (see Appendix 3 page 19). These responses could be categorised as Mostly Positive, Mostly Negative and Mixed Positive-Negative. About a third of the responses fall into each category.

General response to language of the working draft			
	Mostly Positive	Mostly Negative	Mixed Positive-Negative
All participants	25	27	28
By Home Language			
English	18	13	13
Afrikaans	1	5	4
Zulu	0	7	8
Xhosa	1	4	8
The remaining language groups were too small to provide meaningful information.			

The group the participants were in did not seem to influence their general response to the language used.

The home language of a participant seems to be a better predictor of whether the person's general response to the language used would be positive or negative. Participants whose home language was not English, were on the whole distinctly negative about the language used in the working draft of the new Constitution. Those with English as a home language, were marginally more likely to offer a positive response (56% of English speaking participants) than a negative one (44% of English speaking participants).

Mostly Positive

This category of responses represent a high degree of satisfaction with the language of the working draft of the new Constitution. Within this category, participants found the language to be “clear and understandable” and that the document “reads well”, and was of a reasonable size. In this sense the document was seen as an improvement over past Constitutions of this country and considered to be a “step in the right direction”, and “more of a living document” .

For some, the positive attitude expressed was based on a realisation that there are limits to the extent to which a constitution could be simplified and that the inclusion of some legal language is inevitable.

Typical comments were:

In general it is understandable. All clauses are not always easily read. However, when you read it for the second time the meaning (where it was not clear initially) becomes more clear. Personally I have no real criticism of the draft.

I think it is a step in the right direction. Personally I think one can take the process only so far, particularly if the chosen language is English. If one is disadvantaged one is going to come up against difficult words anyway. If one is advantaged, one is going to be confused by how much a word can mean. The answer as usual is education. There must be support workshops and media exposure to explain, explain, explain.

It is pleasing that such an important draft has been confined to so few pages given the vast ground it has to cover.

Mostly Negative

The main theme within this set of responses was that the working draft of the new Constitution was “not understandable”, “does not read well” and was “not precise enough”. Some of the common responses were:

- words are ambiguous
- language chosen is imprecise and defensive
- too legalistic and technical
- open to wide interpretation
- user-friendly to the public (but), may not be user-friendly to lawyers

Other typical comments were :

The language of the draft is not clearly understandable. Some of the words are very difficult to define. Some of the reading is precise, but there is a need for a clearer language text.

The language used in the draft is ambiguous and not easy to follow or interpret. Some clauses are misleading and capable of bringing a wrong impression about rights and obligations. The constitution would not be accessible to all SA citizens as English is not their first language.

My final response is that not every attempt to draft it clearly has been made.

Mixed Positive and Negative

Within this category of responses, the common feeling was that of acknowledgement of the efforts being made to make the Constitution more accessible and user-friendly. This positive attitude was however tempered by the recognition that the job was not yet done. Participants appealed for greater clarity and precision in language. The tone of this category of response is best expressed by the following statement made by an NGO person: "It is clear but not precise enough in terms of interpretation".

Typical comments were:

The language is fine except that sometimes it becomes too broad and vague. The layout of the constitution is acceptable, but the size of letters puts strain to the eyes.

Most of the language is clear, but subject to possibly too much ambiguity. While the language is user friendly to the public, it may not be user-friendly to lawyers.

Layout preferences

The existing layout of the *Working Draft of the New Constitution* has the following characteristics:

- Print size is relatively small
- Lines of print are relatively long (about 100 characters or so).
- Chapter headings are centred
- Clause headings are flush with the left margin
- All headings are in upper case
- Clause numbers are indented

According to modern trends in layout, particularly in respect of educational and reference texts, these characteristics may be problematic, particularly to people of a lower educational level because:

- Small print is harder to read (especially for those with poor eyesight)
- Long lines are harder to read than shorter ones (optimum length may be about 50 to 60 characters)
- Modern texts tend to place headings flush with the left margin (which is where the eye accustomed to starting at the left looks first)
- Upper case is much harder to read than lower case
- Clause numbers need to be very visible for quick reference.

Whilst obviously the final version will have more attention paid to the layout, it was felt that it would be worth testing preferences for layout and four versions of a text were presented to the participants. These consisted of:

Version A which has larger print (12 point Times Roman), shorter lines (about 65 characters per line), lower case clause headings, clause number flush with the left margin (for greater visibility), and sub-subsections of a clause are indented.

Version B is similar except that Clause headings are indented to line up with the rest of the text and sub-subsections are not indented (or nested).

Version C is similar to B except that the sub-subsections are indented (nested) and spaces between paragraphs are bigger.

Version D was the existing layout.

The four versions can be seen in Appendix 3 pages 9 to 13.

Layout preferences				
Version	Best	Second	Third	Least
A	38	20	18	3
B	7	12	39	21
C	22	43	11	3
D	12	4	11	52

The results are clear:

- Version D, the working draft, receives a thoroughly negative reaction.
- Version B is also unpopular.
- Version A receives the most “Best” ratings but a number of people place it third best.
- Version C is next most popular but has fewer third best responses than A.

Comments on the four versions

Participants were asked “Why did you rank them this way?”

Their preferences can be summarised thus (number of responses in []):

- a larger font size than in the draft version [13]
- more generous spacing [19]
- a space between heading and text [3]
- varying likes as to the horizontal alignment of clause headings and numbers:
 - headings flush left [14]
 - heading to be indented to align with text [7]
 - clause headings **and** clause numbers to be flush left [1]
 - clause numbers flush left [4] (to make them easier to find)

- indented or nested sub-subsections [34] (and in this respect the version D (working draft version) was quite liked)
- Some people wanted the subsection and sub-subsection numbers and letters to be in brackets [6] and some didn't [3]
- One person wanted the so-called decimalised numbering [e.g. 2.1.1 rather than 2.1.a]

With respect to the working draft version what was liked about it was the clear separation of each idea, section and sub-section (2) and some thought that it looked more like what a constitution should look like [4]. However, generally it was disliked and found cramped [5], off-putting and hard to read [6]. The small print made the sentences look even longer than they were.

Layout findings

A layout with larger print, ample spacing, shorter lines, lower case headings and appropriately indented sub-subsections would be preferred.

A decision would need to be made on whether left ranged clause headings or left ranged clause numbers or both are to be the most prominent reference finding tool.

Both Version A and C would be acceptable though whether to put sub-section numbers and letters into parentheses will have to be decided on.

Form of presentation

Participants were asked to choose between four types of presentation of the material, namely:

- as in the working draft
- a plainer language version
- as in the working draft but with difficult words provided with synonyms or short explanations in parentheses
- as in the working draft but with glossary definition of difficult words.

The participants were given four examples of text treated in these four ways.

Presentation form preferences					
Version	Example				
	1	2	3	4	Total
1	5	9	11	7	32
2	46	33	34	33	146
3	15	25	16	24	80
4	17	18	23	21	79

From this table it is clear that :

- Version 1 examples, texts from the working draft, receive the least approval (9.4%).
- Version 2, a further simplified plain language version gains the most approval (43%).
- Version 3, with explanatory synonyms and terms in parentheses, and Version 4, with glossary definitions, both receive nearly the same level of approval (24% and 23%)

We examined the pattern of responses for each example and in relation to the three user groups of legal professionals, service professionals, and the NGO and CBO sector. There are no anomalies that seem significant. The working draft version was consistently rated worst by all. The simplified plainer language version was also consistently rated best, though in example 2 the service professionals gave it the same rating as version 3. There was some variation in the liking for versions 3 and 4 between examples and user groups. The service professionals consistently preferred version 3.

Presentation findings

There is a clear desire for a plainer language version.

A text with some kind of explanatory apparatus (words in parentheses or a glossary of terms) is preferred to the existing working draft text alone. If the existing working draft cannot be further simplified either of these options would be acceptable.

Summary of important observations

A very small number of participants had a positive predisposition to reading legal language. It is noteworthy, that the few who did, speak English as their first language. None of the participants with an African home language described positive feelings about reading legal texts.

Home language, more than a person's occupation or education, appears to determine the level of difficulty that the person experiences with the working draft of the new Constitution.

From the results of this study we are inclined to conclude that the Constitution is only truly readable for English and Afrikaans speakers from the law profession. Overall, it is easier for English and Afrikaans speakers to read than it is for speakers of the African languages.

People with a degree and background knowledge or experience of a particular clause can process the text more efficiently than those who do not have this background. There were few exceptions to this. Speakers of the African languages who do not have degrees and only formal school education find it more difficult to process the language used in the Constitution than people from the other groups. They may have difficulty making coherent sense out of a particular clause.

All evidence points to the very real likelihood that the working draft of the new Constitution would be **not** be accessible to a person with just a Standard 8 education.

Most of the results are to a certain degree predictable and obvious. They do show however that, if the test of a readable text includes it having key words that are already known to the reader, that some of the more technical sections of the working draft of the new Constitution are not very readable.

The people consulted were positive about the commitment to writing the Constitution in plainer language. They acknowledge the progress made thus far, but see the task as far from complete.

About the legal professionals

- Afrikaans and English speaking legal professionals showed a good pre-understanding of the terminology and a good understanding of the actual text in the working draft of the new Constitution. Mother tongue speakers of African languages had greater difficulty.

- Afrikaans and English speaking participants from the law profession process legal language written in English with complete ease. For participants whose mother tongue were the African languages the text in the working draft of the new Constitution was harder for them to process than it was for the speakers of Afrikaans and English.
- Many of the lawyers appear to be so familiar with legalese, that, when they try to rewrite in plain language, they are actually paraphrasing, often using equally difficult language
- A number of the clearest explanations of the text and attempts at summarising or rewriting, are by people who appear to have less formal legal qualification and who are working in more community-related legal work.
- From the attempts at rewriting a clause and from some of the suggestions about improving the language of a clause, it is clear that participants found it easier to pick out problems of lack of clarity and to suggest guidelines for plainer writing, than to actually rectify them.

About the service professionals

- English and Afrikaans speakers and university educated speakers of the African languages could process the text with relative ease although, understandably, not quite as well as the lawyers could.
- Where the mother tongue speakers of African languages had only a formal school education there was some difficulty. This suggests that the working draft of the new Constitution can be processed by people who have attained tertiary education, but it is hard for English second language speakers with only Std 10 to process it unless they have some special experience or knowledge of the particular clause in case.

About the NGO and CBO workers

- English and Afrikaans speakers still did reasonably well, enough to generate the conclusion that they could process the text even though they had to work harder on it than the lawyers did. Generally speaking the speakers of the African languages had lower levels of understanding of the texts.
- It is important to note that there is a not only a language divide with this group, but also an educational distinction is to be made. The majority of the English and Afrikaans participants have tertiary education. The majority of the speakers of the African languages in this group had Std 10 or less.

About the layout and presentation

- A layout with larger print, ample spacing, shorter lines, lower case headings and appropriately indented sub-subsections would be preferred.
- A decision would need to be made on whether left ranged clause headings or left ranged clause numbers or both are to be the most prominent reference finding tool.
- There is a clear desire for a plainer language version.
- A text with some kind of explanatory apparatus (words in parentheses or a glossary of terms) is preferred to the existing working draft text alone. If the existing working draft cannot be further simplified either of these options would be acceptable.

Appendix 1:

Organisations/roles represented at the workshops

Organisations/roles represented at the workshops	Organisations/roles represented at the workshops
Legal Professionals (1)	Magistrate
Public Prosecutor	Attorney (private)
Constitutional Law Lecturer/Advocate	Lawyer for Human Rights
Black Lawyers Association	National Association of Democratic Lawyers
Legal Aid Clinic	Legal Resource Centre
Centre for Criminal Justice	
A private advocate and a constitutional law student failed to attend from a judge were unsuccessful.	
Service Professionals (12)	South African Police Services
High School teacher	Community Health nurse
Clergy	Social Worker (NICRO)
Social Worker (Child Welfare)	Department of Land Affairs
Department of Labour	
Non-governmental Organizations (8)	Pietist Church Advice Office
National Land Committee	Pietist Church Transitional Local Council
SACTU	Rape Crisis
Environmental Justice Networking Forum	Resource Centre worker
AIDS Training Information and counselling Centre (ATICC)	
	representatives from the Pietist Church Agency for Christian Social Action and Rape Crisis failed to attend.

Organisations/roles represented at the workshops

KwaZulu Natal

Legal Professionals (11)

Magistrate
Public Prosecutor
Attorney (private)
Constitutional Law lecturer/Advocate
Lawyers for Human Rights
Black Lawyers Association
National Association of Democratic Lawyers
Legal Aid Clinic
Legal Resources Centre
Centre for Criminal Justice

A private advocate and a constitutional law student failed to attend. Attempts to recruit a judge were unsuccessful.

Service Professionals (12)

South African Police Services
High School teacher
Community Health nurse
Clergy
Social Worker (NICRO)
Social Worker (Child Welfare)
Librarian
Department of Land Affairs
Department of Labour

Non-governmental Organisations (8)

Pietermaritzburg Advice Office
National Land Committee
Pietermaritzburg Transitional Local Council
SACTU
Rape Crisis
Environmental Justice Networking Forum
Resource Centre worker
AIDS Training Information and counselling Centre (ATICC)
SANCO

Representatives from the Pietermaritzburg Agency for Christian Social Action and Rape Crisis failed to attend.

Gauteng

Legal Professionals (6)

Community Law Centre
Chief Magistrates Office
Law Clinic/Legal Aid
Centre for Applied legal Studies
Black Lawyers Association

Service Professionals (9)

NICRO
Economical Advice Bureau
South African Black Social Workers Association
Alexandra Clinic
SAHA

Non-governmental Organisations (6)

COSATU
Black Sash
GEM
POWA
SANCO

Western Cape

Legal Professionals (14)

Attorney (private)
Judge (Supreme Court)
Magistrate (Department of Justice)
National Association of Democratic Lawyers
Ilitha Labantu
Legal Resources Centre
Black Lawyers' Association
NICRO Women's Support Centre
Muslim Assembly
Syfrets
Constitutional Law student (Wits)

Service Professionals (14)

High School teacher
Community Health Nurse
Professional nurse
Social Worker (Child Welfare)
Social Worker (NICRO)
Social Worker (Cape Mental Health Society)
Department of Labour
Librarian
Priest
Imam
SANEL

Non-governmental Organisations (11)

Black Sash
General Workers Advice Service
National Party Youth Leader
Earthlife Africa
Centre for Rural Legal Studies
Kleinmond Advice Office
Grabouw Advice Office
Hermanus Advice Office
LEAP
ATICC

Appendix 2

Workshop guide

0:30

Survey of working draft to verify

0:10

Business matters

0:10

Online purpose of workshop

0:10

Clarify payment details, transport arrangements, etc. to be made

0:10

Clarify confidentiality

0:30

Introduce response book

0:10

Refer to page 1 of the response book

0:10

Refer to page 2 of the response book

0:10

Refer to page 3 of the response book

0:10

Refer to page 4 of the response book

0:10

Refer to page 5 of the response book

0:10

Refer to page 6 of the response book

0:10

Refer to page 7 of the response book

0:10

Refer to page 8 of the response book

Constitutional Assembly Research :
Users of the new constitution

Workshop guide

Note: There will be a replacement/ additional exercise for the legal professional group.
It will be faxed to you by Wednesday, 6 March.

Time **Details** (Note: Start time as zero hours)

0:00 **Introductions:**
Workshop team and participants

0:10 **Business matters:**
Thank participants for attending
Background information on evaluation
Outline purpose of workshop
Clarify payment details, transport reimbursement, etc. Forms to be handed out at end of workshop

Guarantee confidentiality
Please emphasise that this is not a workshop about whether they agree or disagree with the content or values in the working draft of the new Constitution.

(Answer participants questions)

0:20 **Introduce response book:**
Show response book.
Explain that it will be collected in later.
Request filling in of demographic information.

Refer to participant demographic information questionnaire in response sheet 1 on page 1 of the response book.

0:25 Pre-reading exercise:

Note: Skip this exercise for the legal group.

Introduce pre-reading questions (5 minutes).
These are about attitudes to, and experience of, legal documents.

Refer to pre-reading questions in response sheet 2 on page 2 of the response book.

When they have finished filling in the response sheet, discuss with them their responses to question three (about how they feel when they read legal language) in plenary (3 minutes)

0:30 Survey of working draft of new Constitution

Lead participants through a quick survey/overview of the document. Draw attention to contents page, chapters, chapter headings, section headings and clause numbers

0:40 Looking at clause 25

Purpose of exercise: This exercise is to introduce you to a piece of text in the Constitution.

You will work on your own for 15 minutes.

Refer the participants to Response sheet 3 on page 3 of the response book.

This response sheet contains three clauses with space for a written response after each clause.

Refer them also to the working draft of the new Constitution.

The instructions

1. Turn to page 8 of the working draft of the new Constitution and carefully read Section 25.
2. On response sheet 3 on page 3 of the response book this clause is repeated. On the response sheet underline any words or phrases which you consider difficult.
3. In your own words, write down on the response sheet the main idea in each of the three clauses.

0:55 Looking at clause 25 with a partner

You will work in pairs for 15 minutes.

Refer participants to their responses on pages 3 of the response book to clause 25.

Refer to response sheet 4 on page 4 of the response book.

Instructions

1. Using your own summaries of the main ideas in clause 25, explain the meaning of each section of clause 25 to your partner.
2. Make a list of any differences in meaning between the two of you.
3. Make a combined list of all the original difficulties each of you had with the text. These can be difficulties of language, technical terms, layout, whatever.

1:10 Clause 25 wrap up

The facilitator should write up responses on newsprint (time allowing).
The facilitator should ask:

1. What were the difficulties experienced?
2. What were the reasons for these difficulties?
3. Were there significant differences in interpretation of the text?
4. If so, what were they?
5. What were the reasons for the differences in interpretation?
6. Are there any changes that you can suggest that would make this text easier to understand?

[Note : If time is short concentrate on question 6. above. This applies particularly to the legal group who have just done an extra exercise.]

1:25 Tea

Make this a “working tea”. There should be no more than 10 minutes spent on the mechanics of getting it.

1:35 Background knowledge on the working draft of the new Constitution

Purpose of exercise: To examine the effect of background knowledge on the understanding of and usefulness of the working draft of the new Constitution.

This should take about 15 minutes.

Refer to response sheet 5 on page 5 of the response book.

Note: No blanks i.e. Participants to write “Don’t know” if they don’t know.

1:50 Interaction with the text of clause 189

This should take about 15 minutes.

Refer to response sheet 6 on page 6 of the response book.

Instructions

Turn to page 59 of the working draft of the new Constitution and read clause 189.

Answer the questions on your response form.

Do not refer back to response sheet 5.

2:05 The ideas in clause 189

This exercise asks participants to summarise the main ideas in clause 189. It should take about 10 minutes.

Refer to response sheet 7 on page 7 of the response book.

Instruction

In your own words write down the main ideas contained in section 189 of the working draft of the new Constitution.

Don't refer back to the original text you read or to your previous responses to this clause. We are trying to see what the main impression of this clause is on a reader and what remains memorable about it..

2:15 **Rewriting clause 189 exercise**

The participants are to be broken up into groups of three and asked to rewrite section 189 of the working draft of the new Constitution in language they think will make it easier to understand correctly.

This should take about 30 minutes.

Depending on circumstances the groups could record their combined version on newsprint or an overhead projector transparencies. In either case the groups should be briefed on the suggested presentation means. This will also apply to any attempt to record a plenary version.

Refer to response sheet 8 on page 8 of the response book.

After about 20 minutes have a plenary report back on the results.

If possible a facilitator should attempt to combine the results into a single version. DO not attempt this if the differences are too great and if time does not permit.

2:45 **Layout preferences**

Four sample layouts are to be looked at and preferences (in rank order given)

This should take about 10 minutes.

Refer to response sheet 9 on page 9 of the response book and the sample layouts on the following pages.

Instructions

Please look at the four sample layouts on pages 10 to 13 of the response book and rank them in order of preference on the sheet on page 9. If you would like to explain why you ranked them this way please do so.

2:55 Legal terms questionnaire

Ask participants to fill in the final questionnaire on legal terms.

The participants are asked to respond to four examples of alternative wording (response sheet 10 : pages 14-18 in the response book) and to a final question about their general attitude to the language used in the working draft of the new constitution (response sheet 11 : page 19).

Note: Only do the first two examples and the final general question if time is very short.

This should take about 15 minutes.

Refer to response sheet 10 on pages 14 of the response book.

Refer to response sheet 11 on page 19 of the response book.

3:10 Closure

Ensure that all response books and newsprint/OHP transparencies are collected!

Thank all participants and tell them they can collect their honorarium afterwards. People who have had special travel costs may also apply for reimbursement. Invite people to enjoy the refreshments.

Constitutional Assembly Research :
Users of the new constitution

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(Answer participants questions)

0:20 **Introduce response book:**
Show response book.
Explain that it will be collected in later.
Request filling in of demographic information.

Refer to participant demographic information questionnaire in response sheet 1 on page 1 of the response book.

0:25 Pre-reading exercise:

Note: Skip this exercise for the legal group.

Introduce pre-reading questions (5 minutes).
These are about attitudes to, and experience of, legal documents.

Refer to pre-reading questions in response sheet 2 on page 2 of the response book.

When they have finished filling in the response sheet, discuss with them their responses to question three (about how they feel when they read legal language) in plenary (3 minutes)

0:30 Survey of working draft of new Constitution

Lead participants through a quick survey/overview of the document. Draw attention to contents page, chapters, chapter headings, section headings and clause numbers

0:40 Looking at clause 25

Purpose of exercise: This exercise is to introduce you to a piece of text in the Constitution.

You will work on your own for 15 minutes.

Refer the participants to Response sheet 3 on page 3 of the response book.

This response sheet contains three clauses with space for a written response after each clause.

Refer them also to the working draft of the new Constitution.

The instructions

1. Turn to page 8 of the working draft of the new Constitution and carefully read Section 25.
2. On response sheet 3 on page 3 of the response book this clause is repeated. On the response sheet underline any words or phrases which you consider difficult.
3. In your own words, write down on the response sheet the main idea in each of the three clauses.

0:55 Looking at clause 25 with a partner

You will work in pairs for 15 minutes.

Refer participants to their responses on pages 3 of the response book to clause 25.

Refer to response sheet 4 on page 4 of the response book.

Instructions

1. Using your own summaries of the main ideas in clause 25, explain the meaning of each section of clause 25 to your partner.
2. Make a list of any differences in meaning between the two of you.
3. Make a combined list of all the original difficulties each of you had with the text. These can be difficulties of language, technical terms, layout, whatever.

1:10 Clause 25 wrap up

The facilitator should write up responses on newsprint (time allowing).
The facilitator should ask:

1. What were the difficulties experienced?
2. What were the reasons for these difficulties?
3. Were there significant differences in interpretation of the text?
4. If so, what were they?
5. What were the reasons for the differences in interpretation?
6. Are there any changes that you can suggest that would make this text easier to understand?

[Note : If time is short concentrate on question 6. above. This applies particularly to the legal group who have just done an extra exercise.]

1:25 Tea

Make this a “working tea”. There should be no more than 10 minutes spent on the mechanics of getting it.

1:35 Background knowledge on the working draft of the new Constitution

Purpose of exercise: To examine the effect of background knowledge on the understanding of and usefulness of the working draft of the new Constitution.

This should take about 15 minutes.

Refer to response sheet 5 on page 5 of the response book.

Note: No blanks i.e. Participants to write “Don’t know” if they don’t know.

1:50 Interaction with the text of clause 189

This should take about 15 minutes.

Refer to response sheet 6 on page 6 of the response book.

Instructions

Turn to page 59 of the working draft of the new Constitution and read clause 189.

Answer the questions on your response form.

Do not refer back to response sheet 5.

2:05 The ideas in clause 189

This exercise asks participants to summarise the main ideas in clause 189. It should take about 10 minutes.

Refer to response sheet 7 on page 7 of the response book.

Instruction

In your own words write down the main ideas contained in section 189 of the working draft of the new Constitution.

Don't refer back to the original text you read or to your previous responses to this clause. We are trying to see what the main impression of this clause is on a reader and what remains memorable about it..

2:15 Rewriting clause 189 exercise

The participants are to be broken up into groups of three and asked to rewrite section 189 of the working draft of the new Constitution in language they think will make it easier to understand correctly.

This should take about 30 minutes.

Depending on circumstances the groups could record their combined version on newsprint or an overhead projector transparencies. In either case the groups should be briefed on the suggested presentation means. This will also apply to any attempt to record a plenary version.

Refer to response sheet 8 on page 8 of the response book.

After about 20 minutes have a plenary report back on the results.

If possible a facilitator should attempt to combine the results into a single version. DO not attempt this if the differences are too great and if time does not permit.

2:45 Layout preferences

Four sample layouts are to be looked at and preferences (in rank order given)

This should take about 10 minutes.

Refer to response sheet 9 on page 9 of the response book and the sample layouts on the following pages.

Instructions

Please look at the four sample layouts on pages 10 to 13 of the response book and rank them in order of preference on the sheet on page 9. If you would like to explain why you ranked them this way please do so.

2:55 Legal terms questionnaire

Ask participants to fill in the final questionnaire on legal terms.

The participants are asked to respond to four examples of alternative wording (response sheet 10 : pages 14-18 in the response book) and to a final question about their general attitude to the language used in the working draft of the new constitution (response sheet 11 : page 19).

Note: Only do the first two examples and the final general question if time is very short.

This should take about 15 minutes.

Refer to response sheet 10 on pages 14 of the response book.

Refer to response sheet 11 on page 19 of the response book.

3:10 Closure

Ensure that all response books and newsprint/OHP transparencies are collected!

Thank all participants and tell them they can collect their honorarium afterwards. People who have had special travel costs may also apply for reimbursement. Invite people to enjoy the refreshments.

Response sheet **2**

Attitudes to and experience of reading legal documents

1. Have you read legal documents before? _____

If yes, what have you read?

2. Have you read all or part of the old South African Constitution, the interim Constitution, or the working draft of the new South African Constitution?

If yes, which one(s) have you looked at?

Which parts of any of these constitutions have you read?

3. How do you feel when you read legal language?

Response sheet ③

This is the text of clause 25:

HOUSING AND LAND

25. (1) Everyone has the right to have access to adequate housing. The state must take reasonable and progressive legislative and other measures to secure this right.
- (2) No one may be evicted from their home arbitrarily and without an order of court made after considering the relevant circumstances.
- [(3) Everyone has the right to equitable access to land. The state must take reasonable and progressive legislative and other measures to facilitate this access.]]

What is the main idea in clause 25 (1)?

What is the main idea in clause 25 (2)?

What is the main idea in clause 25 (3)?

Response sheet 5

Try and answer these questions. They relate to a text that you will be asked to read later. This is to check the impact of prior knowledge on your reading of a text from the working draft of the new Constitution.

1. What will a section called "Procurement Administration" be about?

2. What is a "tender board"?

3. What is an "organ of state"?

4. What is an "interested party"?

5. Describe how a "tendering system" works.

6. Explain why "impartial tenders boards" would be important in a tendering system.

7. You may have had difficulty answering the questions 1-6. How do you react when you meet unfamiliar words and ideas?

8. What do you do in such situations?

Response sheet ⑥

Read clause 189 on page 59 of the working draft of the new Constitution.

On the basis of what you have read in clause 189 try and answer these questions.

1. What does “Procurement Administration” make you think about?

2. What is a “tender board”?

3. What is an “organ of state”?

4. What is an “interested party”?

5. Describe how a “tendering system” works.

6. Explain why “impartial tenders boards” would be important in a tendering system.

Housing and Land

- 25.
1. Everyone has a right to have access to adequate housing. The state must take reasonable and progressive legislative and other measures to secure this right.
 2. No one may be evicted from their home arbitrarily and without an order of the court made after considering the relevant circumstances.
 3. Everyone has the right to have equitable access to land. The state must take reasonable and progressive legislature and other measures to facilitate this access.

Health, Food, Water and Social Security

- 26.
1. Everyone has a right to have access to-
 - a. health care services, including reproductive health care, of the highest attainable standard;
 - b. sufficient food and clean water; and
 - c. a social security system including, if they are unable to support themselves and their dependants, appropriate social assistance.
 2. The state must take reasonable and progressive legislative and other measures to secure each of these rights.
 3. No one may be refused emergency medical treatment.

Housing and Land

- 25.
1. Everyone has a right to have access to adequate housing. The state must take reasonable and progressive legislative and other measures to secure this right.
 2. No one may be evicted from their home arbitrarily and without an order of the court made after considering the relevant circumstances.
 3. Everyone has the right to have equitable access to land. The state must take reasonable and progressive legislature and other measures to facilitate this access.

Health, Food, Water and Social Security

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 2. The state must take reasonable and progressive legislative and other measures to secure each of these rights.
 3. No one may be refused emergency medical treatment.

Housing and Land

- 25.
1. Everyone has a right to have access to adequate housing. The state must take reasonable and progressive legislative and other measures to secure this right.
 2. No one may be evicted from their home arbitrarily and without an order of the court made after considering the relevant circumstances.
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 - a. health care services, including reproductive health care, of the highest attainable standard;
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 2. The state must take reasonable and progressive legislative and other measures to secure each of these rights.
 3. No one may be refused emergency medical treatment.

HOUSING AND LAND

25. (1) Everyone has the right to have access to adequate housing. The state must take reasonable and progressive legislative and other measures to secure this right.
- (2) No one may be evicted from their home arbitrarily and without an order of court made after considering the relevant circumstances.
- [(3) Everyone has the right to have equitable access to land. The state must take reasonable and progressive legislative and other measures to facilitate this access.]

HEALTH, FOOD, WATER, AND SOCIAL SECURITY

26. (1) Everyone has the right to have access to -
- (a) health care services, including reproductive health care, of the highest attainable standard;
 - (b) sufficient food and clean water; and
 - (c) a social security system including, if they are unable to support themselves and their dependants, appropriate social assistance.
- (2) The state must take reasonable and progressive legislative and other measures to secure each of these rights.
- (3) No one may be refused emergency medical treatment.

Response sheet 10

Legal terms

We would like to present some legal terms to you that have been taken from the working draft of the new Constitution.

We would like to ask your opinion of which of the following choices would be best:

- The working draft of the new Constitution version.
- What these words are meant to say should be explained in plainer English while still retaining their legal precision.
- Each time a legal word is used an explanation of it should be given (placed in brackets next to the word)
- A glossary (that is, a list of these legal terms with an explanation of the meaning of each) should be placed at the back of the new Constitution

In the following examples choose the version that you think is the clearest.

Example 1: Page 19: Clause 55: Words “assented” and “promulgation”

Version 1:

55. A Bill assented to and signed by the President must be promulgated without delay, and becomes an Act of Parliament upon its promulgation.

Version 2:

55. A Bill agreed to and signed by the President must be announced through publication without delay in the Government Gazette and becomes an Act of Parliament on the day in which it is published in the Government Gazette.

Version 3:

55. A Bill assented to (agreed to) and signed by the President must be promulgated (announced publicly through being published without delay in the Government Gazette) and becomes an Act of Parliament upon its promulgation.

Version 4:

55. A Bill *assented to and signed by the President must be *promulgated without delay, and becomes an Act of Parliament upon its promulgation.

Glossary

* assented - agreed

* promulgated - announced publicly by publication in the Government Gazette.

Preferred version? _____

Example 2: Page 2: Clause 1: Founding provisions

Version 1

1. The Republic of South Africa is a sovereign democratic state founded on a commitment to equality; ...

Version 2:

1. The Republic of South Africa is a totally independent and democratic state with the highest and full law making authority which is founded on a commitment to achieve equality; ...

Version 3:

1. The republic of South Africa is a sovereign (totally independent) democratic state founded on a commitment to achieve equality; ...

Version 4:

1. The Republic of South Africa is a *sovereign democratic state founded on a commitment to equality; ...

Glossary

* **sovereign** - totally independent

Preferred version? _____

Example 3: Page 6: Clause 17: Freedom of association

Version 1

17. Everyone has the right to freedom of association.

Version 2:

17. Everyone has the right to freely meet with any organisation or person for any lawful purpose.

Version 3:

17. Everyone has the right to freedom of association (the right to freely meet with any organisation or person for any lawful purpose.)

Version 4:

17. Everyone has the right to *freedom of association.

Glossary

* **freedom of association** - the right to freely meet with and join forces with any organisation or person for any lawful

Preferred version? _____

Example 4: Page 10: Clause 31: Access to information

Version 1

31. (1) Everyone has the right of access to -.....
- (b) Any information that is held by another natural or juristic person and that is ...

Version 2:

31. (1) Everyone has the right of access to -.....
- (b) any information that is held by another person or organisation and that is

Version 3.

31. (1) Everyone has the right of access to -.....
- (b) any information that is held by another natural (an ordinary person) or juristic person (an organisation that has the right to enter into contracts and perform similar legal acts) and that is

Version 4:

31. (1) Everyone has the right of access to -.....
- (b) Any information that is held by another natural or *juristic person and that is ...

Glossary

- * juristic person - any person or body or organisation (such as a company or government department) which has the power to perform legal acts such as making contracts, suing or owning property in its own name.

Preferred version? _____

6 March 1996

Dear Workshop Facilitators

Changes for the workshop with “legal professionals”

I am very sorry about introducing changes at this stage.

These changes are driven by two concerns that have been expressed

- that the exercises may not be specific enough for the legal group
- that this group may go through the exercises too quickly.

Three new exercises for the legal group have been provided.

We are suggesting that these three exercises come into the beginning of the workshop rather than the end.

Here’s how the guide will be revised:

The exercise on “*Pre-reading exercise*” (page 2, time 0:25) will be omitted, as indicated on the guide.

Bring up the “*Survey of working draft of new Constitution*” to this 0:25 slot.

Then move into the 3 new exercises (as per fax - “**Facilitator’s notes**”)

We have been advised that each exercise should take ten minutes. I think that the first one may take a little longer. You may have to find an appropriate “Tea Time” slot.

Run with the rest of the guide as planned.

About response sheets for the new exercises:

We have provided one response sheet (on green paper) that is not numbered.

Use this for the new exercise 1.

I have faxed through “Scenario exercise” - this is the instruction that gets handed to the participants. (John/Kim: See if this could be retyped before copying)

I have also faxed through response sheets for the other two exercises. If they look lousy/can’t be retyped use the following plan: Photocopy the green sheet onto two sets of different coloured paper for the other two new exercises and read out/write on chart paper the instructions for participants/.

This way the original numbering of the response sheets in the booklet can remain unaffected. CASE will oblige with copying.

If you are running out of time, please implement the time-saving suggestions on page 4 and page 7 of your guide.

Many thanks for your tolerance. Its greatly appreciated.

Regards, Vaughn

Facilitator's Notes

Exercise 1

[Purpose: Scenario - Question to test clarity of plain language text, using a substantive clause]

1. Turn to page 7 of the constitution and read clause 23.
2. Using this clause, what advice would you give to clients who approach you with the following concerns (in other words, how do you think this clause can assist clients who approach you with the following concerns):

They are representatives of a small village 20 kms outside a town. A large company has set up a stone excavation and crushing plant near the village's water source, a well. Though it provided much needed employment the company's activities have polluted the well and caused dust - related ailments.

Time allotment : 10 minutes

Exercise 2

[Purpose: To test clarity of plain language text, using an application clause]

1. Turn to page 14 of the constitution and read clause 38 (2).
2. What do you think this clause means ?
3. How do you think it could have been expressed more clearly ?

Time allotment : 10 minutes

Exercise 3

[Purpose: To test clarity of plain language text, using a process clause]

1. Turn to page 18 of the constitution and read clause 54 (2).
2. Do you think this clause clearly expresses the possible passages of a Bill when it is referred back to Parliament ?
3. How do you think it could be expressed more clearly ?

Scenario Exercise

Please write your response on the loose green page provided

1. Turn to page 7 of the constitution and read clause 23.
2. Using this clause, what advice would you give to clients who approach you with the following concerns (in other words, how do you think this clause can assist clients who approach you with the following concerns):

The clients are representatives of a small village 20 kms outside a town. A large company has set up a stone excavation and crushing plant near the village's water source, a well. Though it provided much needed employment the company's activities have polluted the well and caused dust - related ailments.

Appendix 5:

List of problem words and phrases drawn up by language and information specialists

The list aims at identifying words, phrases and sentences that are:

- not clearly defined or understood by the majority of students
- not technical and which have no clear definition in a dictionary (see example)
- used in a way which is not grammatically correct
- sentences which are too long

Jenny Clarence, Rosemary Ganger, Kim Jones, Ann
Macedonia and Christine Stillwell

March 1996

Centre for Adult Education, University of Natal

Research for the Constitutional Assembly

List of problem words and phrases

**drawn up by language and
information specialists**

**Jenny Clarence, Rosemary Granger, Kim Jones, Ann
Macdonald and Christine Stillwell**

March 1996

This list was drawn up by the following:

Jenny Clarence	Department of Second Language Studies, University of Natal
Rosemary Granger	Language In Learning and Teaching project, University of Natal
Kim Jones	Editor, <i>Learn with Echo</i> , Centre for Adult Education, University of Natal
Ann Macdonald	Language In Learning and Teaching project, University of Natal
Dr Christine Stillwell	Department of Information Studies, University of Natal

The list aims at identifying words, phrases and sentences that are:

- non-technical but difficult, particularly for a non-native user of English
- are technical and which may require definition in a glossary (and maybe an example)
- sentences that have syntactical problem (usually sentences that are too long and/or have too many embedded clauses or are grammatically incorrect)
- sentences whose meaning is unclear.

- Pg. 2 1. sovereign , dignity, founded,
advance fundamental (would "basic" be better?)
Supremacy of the Constitution
2. supreme, binds, institutions, law or conduct inconsistent with its is
invalid.
- 3.(2)(a) entitled to the rights, privileges and benefits of citizenship; and
3.(2)(b) subject to the duties, obligations and responsibilities of citizenship.
3. (3) National legislation, acquisition, restoration
4. Territory, Schedule 1
- 6.option 1 (1) (suggest alphabetic ordering)
- 6.option 1 (2) promote
- 6.option 1 (3) promoting,
(two idea in one sentence)
6. Option 1(4) usage
- Pg. 3 6.option 2 interim
- 6.option 3 (1) Sesotho sa Leboa (*will this stand?*)
- 6.option 3 (2) regulated (*controlled?*)
- Pg. 4 8.(2)option 1 legislative, other measures, designed, rights, freedoms (difference needs
to be explained), categories
- 8.(2)option 2 liberties (simple explanation), shall not preclude
- 8.(3) gender, sex, conscience, birth (explain difference)
- 8.(4) (How and by whom)
9. Inherent dignity, inherent (*is born with*)
10. option 2 deprived, conviction, penalty, execution
11. (1)(a) deprived of liberty arbitrarily (*for no apparent reason - Good
enough?*)
11. (1)(b) detained
11. (2) integrity (*Difficult terms in this context*)
11. (2) bodily
- Pg. 5 11.(2)(b) to be secure in and control their own body (Is this the abortion
clause? It might be interesting to see how people understand this
clause)
- 11.(3)(a)(b)(c) (Good example of a clause that can be easily interpreted without
knowledge of all the vocabulary)
- 11.(3)(b) subjected, cruel, inhuman or degrading way;(definition/examples in
glossary)
12. servitude
- 13.(c) seized
- 13.(d) The privacy of their communications violated (more difficult and
vague than 13.(a), (b) & (c).
- 14.(1) right to freedom of conscience (*explain*)
- 14.(2) Religious observances
- 14.(2)(a) observances, appropriate authority (definition/example)
- 14.(2)(b) equitable basis
- 14.(2)(c) free and voluntary (Is there a difference in meaning?)
14. (3) adhered to, professing
14. (3) (*This means that...*)
15. (1)(b) impart
15. (2)(b) incitement, imminent
15. (2)(c) advocacy
15. (3)option 1 diversity (*a range of different opinions*), regulate, impartial
15. (3)option 2 represent broadly the views of society (Although the content is
different, option 2 is written in plainer language and more "popular"
language.)

- Pg. 6 17. freedom of association (the meaning of association is difficult is difficult to understand as it has no sub-clauses which help decipher meaning)
18. (1) Includes
20. (1) residence (to live)
- 21.option 1 No provision regarding a right to economic activity (This is quite difficult to process)
- 21.option 2 (1) pursue a livelihood, engage in economic activity
- 21.option 2 (2) preclude measurers, designed
- 21.option 2 (3) (is much clearer)
- Pg. 7 22. (4)(a) administration
23. (a)(I) degradation
23. (b)(I) ecological degradation
23. (b) (iii) (*for example...*), sustainable development
22. (3)(c) to lock-out (*explain if this stays in*)
- 24.option 2 (1) a law of general application(which means)
- 24.option 2 (2) expropriated, a law of general application
- 24.option 2 (2)(b) compensation
- 24.option 2 (3)(b) acquisition
- 24.option 2 (3)(c) market value
- 24.option 2 (3) When any court decides either the amount of compensation, or the period within or the manner by which payment must be made, the court must determine an equitable balance between the public interest and the interests of those affected, having regard to all relevant factors, including:-
- 24.option 2 (3)(a) the current use of the property;
- 24.option 2 (3)(b) the history and value of its acquisition;
- 24.option 2 (3)(c) its market value; and
- 24.option 2 (3)(d) the ability of the state to pay.
- 24.option 2 (4) invalidate
- 24.option 2 (5) restitution
- 24.option 2 (6) tenure, legally insecure
- Pg. 8 24.option 3 (1) dispose, guaranteed
- 24.option 3 (2) arbitrarily deprived
- 24.option 3 (3) expropriated only in accordance, a law of general application
- 24.option 3 (4)(d) beneficial
- 24.option 3 (5) dispossessed, restitution, equitable redress, general application.
- 25.option 3 (6) inconsistent
25. (1) reasonable, progressive legislative, other measurers
(*Definitions/examples*)
Everyone has the right to have access to adequate housing. The state must take reasonable and progressive legislative and other measurers to secure this right.
25. (2) evicted, arbitrarily
25. (3) Everyone has the right to equitable access to land.
26. (1)(a) reproductive health care
26. (1)(c) (a social security system. If they are unable to support themselves and their dependants, appropriate social assistance should be give.)
- 9 27. (1) (d) maltreatment, neglect, or abuse
27. (1) (e) exploitative
27. (2) paramount
- 28.option 1 (1)(b) progressive legislative and other measures
- 28.option 1 (2) institutions
- 28.option 1 (2)(c) comparable
28. option 2 (3) common language, culture, or religion.

- Pg. 10 29.option 1 (1) academic freedom
 29.option 2 The right should form part of the right to freedom of religion, belief and opinion (section 14) and it should only apply to individuals, not to institutions.
(Unclear)
31. (1)(b) natural or juristic person
- 32.option 1 (1) administrative action, procedurally
 32.option 2 (1) *(Too many negatives)*, adversely affected
 32.option 2 (2) administrative action is of general application
 Everyone whose rights are adversely affected by administrative action has the right to fair procedure unless the administrative action is of general application. *(So something is not unjust if it affects lots of people or everyone.)*
33. impartial, dispute
 34. (1) allegedly
 34. (1)(b) consequences
- Pg. 11 34 (1)(c) compelled
 34 (1)(d) (too long)
 34. (2)(c) substantial injustice, promptly,
 legal practitioner*(How is this to be determined?)*
 34. (2)(e) accommodation, nutrition
 34. (3)(c) unreasonable delay *(Who decides what is reasonable)*,
 concludes
 34. (3)(e) legal practitioner, substantial injustice
 34. (3)(g) adduce *(provide evidence as proof)*
 34. (3)(h) self-incriminating
 34. (3)(i) practicable
 34. (3)(k) omission
- Pg. 12 34. (3)(l) reasonable
 34. (3)(m) prescribed
 34. (4) bring the administration of justice in disrepute., *(an example here?)*
 consequence (as a result of)
 36. (4)(b) indemnifying *(explain)*
 35. (1) or pursuant to law of general application only, pursuant
 35. (1)(b) compatible with the nature of the right that it limits; and
(Further explanation may be require here)
 36. (1) emergency
 36. (1)(a) invasion, insurrection disorder
 36. (2) emergency, consequence, declaration
 36. (2)(a) prospectively, declaration
 36. (3) Derogate, in consequence
 36. (4) enacted
 36. (4)(a) imposition, retrospective penalties
 36. (4)(b) indemnifying
- Pg. 13.
 36. (4)(c) Section 27 (1)(d) maltreated
 Section 27 (1)(e) exploitative
 Section 34(1)(c) compelled
 36. (5) omission
 36. (6) validity
 36. (7) in consequence

- Pg. 14 37. competent, alleging, infringed, appropriate relief, declaration of rights
 37. (e) associator
 38. (1) organs, natural and juristic persons
 38. (2) conferred, common law, customary law
- Pg. 15 39. (1) When interpreting the Bill of Rights every court -
 39. (1)(a) must promote the values that underlie an open and democratic society
 based on freedom and equality;
(What are these values?)
(What does this mean in practice?)
 39. (1)(b) must consider all applicable international law; and
 39. (1)(c) may consider foreign law.
(Which foreign laws and why?)
 39. (3) purport
- Pg. 16 40. (1) legislative authority, vested
 41. {results}, in general, {in} proportional representation
 41. electoral system, prescribed, proportional representation
 42. eligible, assembly
 42. (a) an office of profit, compatible
 42. (b) legislature
 42. (c) unrehabilitated insolvents
 42. (d) declared, of unsound mind
 42. (e) anyone who, after this section takes effect, has been convicted of an
 offence and sentenced to more than 12 months' imprisonment without the
 option of a fine, either in the Republic, or outside the Republic if the
 conduct constituting the offence would have been an offence in the
 Republic; but, no one may be regarded as having been sentenced until an
 appeal against the conviction or sentence has been determined, or until
 the time for an appeal has expired.,
 (too long), takes effect, constituting, expired
 43. (1) vacancy
 43. (1)(a) ceases to be eligible
- Pg. 17 45. (1) President of the Constitutional Court
 45. (2) extraordinary sitting
 46. (2) dissolved
 46. (3) proclamation
 47. (1) Speaker, Deputy Speaker
 47. (2) Designate
 47. (3) procedure
 47. (4) resolution
 48. (1) *(Reference to whether this occurs - section No.5),*
 majority *(how many is a majority),*
 any other matter *(too vague)*
 48. (3) on both sides of a question.*(Expression),*
 deliberative, deciding, presiding member
- Pg. 18 50. (1) duration
 50. (2) A committee of the National Assembly may summon anyone to appear
 before it to give evidence on oath or affirmation or to produce
 documents.
 (and is such a person compelled to do so)
 51. (2) liable
 51. (3) privileges, immunities, prescribed
 52. note 2: referral
 54. (1) has reservation, constitutionality

54. (1) The President must, without delay, either assent to and sign a Bill passed by Parliament or, if the President has reservations about the constitutionality of the Bill, refer it back to Parliament for reconsideration
54. (2)(b) full accommodating the President's reservations,
- Pg. 19 55. promulgated, promulgation
(This section is easier to read than the Bill of Rights)
- Pg. 20 57. Council of Provinces (where does it sit?)
58. (2) in accordance with, principle of proportional representation
59. (2) Inter-governmental institutions, monitors the establishment and co-ordinates the functioning
(need examples in glossary)
59. (3) governance
59. (3)(d) adherence
59. (4) in regard to (With)
59. (4)(c) fiscal commission
- Pg. 21 60. (1) amendments, consideration
60. (2) functional areas, Schedule 5 (what is a schedule)
60. (3)(c) Mediation Committee
60. (3)(d) referral
60. (3)(f) must then be sent to and dealt with by the President
60. (4) Section 143 option (3) does not apply to a Bill which is not approved by the Council of Provinces. (*Does not exist?*)
61. (1) mediation
62. Permanent delegates
- Pg. 22 66. (2) indirectly
67. (2) rejects
67. (3) joint, amendments
67. (6) Appropriating revenue or imposing taxes, pertaining, contemplated (is it necessary to use this word)
67. (7) Bills affecting the boundaries of provinces or the exercise or performance of the powers and functions of provinces must be passed by both Houses and, if it is a Bill other than a Bill referred to in subsection (8), affecting the boundaries or the exercise or performance of the powers or functions of a particular province or provinces only, it must also be approved by a majority of the senators of the province or provinces in question in the Senate.
(Sentence too long)
- Pg. 23 67. (9) No amendment of Chapter 9 is of any force or effect unless passed separately by both Houses by a majority of at least two thirds of all the members in each House; provided that the boundaries and legislative and executive competencies of a province may not be amended without the consent of the relevant provincial legislature., legislative and executive competencies
67. (10) contemplated
67. (12) resolution, ratification, accession
68. resides
70. (1) chief whips
70. (2) must convene
70. (4) public interest

- Pg. 24 73. (1) Executive Councils of provinces
73. (4) Executive Councils of provinces (?)
75. (1) Inter-governmental
(Sentence too long)
75. (2) Consultative, liaison
75. (3) fiscal
- Pg. 25 77. (2) observance
78. (1) any legislation
78. (2)(b) implies
78. (3)(b) convening
78. (3)(c) assenting
78. (3)(d) referring, reconsideration, constitutionality
78. (3)(f) summoning

78. (3)(g) dissolving
78. (3)(h) appointing commissions of enquiry
78. (3)(i) accrediting foreign diplomatic representatives
78. (3)(j) appointing ambassadors; and
(Doesn't this contradict 67 (ii) ?)
78. (3)(k) conferring
78. (4) countersigned
- Pg. 26 79. (2) designate
80. ceases
81. (1) *(Add: see section 82)*
81. (2) elected to fill a vacancy in the office of President, the period between
that election and the next election of a President is not regarded as a term
of office.
(What does this mean?)
82. (1)(a) speaker
83. (1)(b) designated
84. (1)(a) violation
84. (1)(b) misconduct
84. (2) not receive any benefits of that office, and may not serve in any public
office
- Pg. 27 85.option 2 (1) consists
85.option 2 (4)(a) execution
85.option 2 (4)(d) preside
85.option 3 *(Which is what?)*
85. (4) execution
87. Competent, assumes
88. *(Page ref.)*
89. (1) accountable
90. (1) ethics
- Pg. 28 90. (2) inconsistent with their office, private interests
92. proclamation may transfer
92. (a) entrust
93. (1) dissolve
- Pg. 29 94. (2) independent, impartially, prejudice
94. (4) Organs of state
96. (2) The Constitutional Court makes the final decision ^^ whether a matter is
a constitutional matter. (^on^)
96. (3) disputes
96. (3)(b) unconstitutional (*word order*)

96. (4) in the interest of justice, and with leave of that Court.
 96. (5) jurisdiction
- Pg. 30 97. (2) inherent
 The Supreme Court of Appeal has the inherent jurisdiction that vested in the Appellate Division of the Supreme Court before the Constitution took effect. (*not clear*) (*was vested in*)
97. (2) jurisdiction
 98. (1)(a) jurisdiction in all constitutional matters except in matters that only the Constitutional Court may decide; and,
 (*Which are?*) (*Refer to relevant sections*)
 jurisdiction (used a lot)
98. (2) The provincial and local divisions of the High Court have the inherent jurisdiction that vested in the provincial and local divisions of the Supreme Court before the Constitution took effect.
 (*As in 97*)
99. (1)(b) equitable, order as to costs, declaration of invalidity is to operate retrospectively,
 99. (1)(c) declaration of invalidity, the competent authority, the defect
 99. (2) temporary interdict or other temporary relief to a party,
 constitutionality, interdict
 99. (3) with a sufficient interest, confirm or vary
 100.option 1 (1) proper person (?)
 100.option 1 (2) Judicial Service Commission
 100.option 1 (7) (*ref.*)
- Pg. 31 100.option 2 (2) as an advocate or an attorney
 100.option 2 (2)(c) a person who, by reason of training or experience, has the expertise in the field of constitutional law relevant to the application of the Constitution and the law of the Republic.
 (*Like whom? Examples in Glossary.*)
 100.option 2 (3) Chief Justice, the Deputy Chief Justice
 100.option 2 (5) consultation
- Pg. 32 100.option 2 (9) victimisation, improper influencing,
 The appointment of other judicial officers must be made by an independent body established by an Act of Parliament which must ensure that the appointment, promotion, transfer or dismissal of, or disciplinary steps against such judicial officers, take place without favour or prejudice, and that the applicable legislation and administrative directives are applied uniformly and properly, and that no victimisation or improper influencing of these judicial officers occurs. (*Too long, difficult for Std. 8*)
101. (1) absent, recommendation
 102. Tenure
 103. (1)(a) incapacity, incompetent, misconduct, Chief Justice
 104. (1)(c) designated, Judge President/s
 104. (3) judiciary
 105. note 2 prosecutorial, constitutionalised
- Pg. 33 105. Note 2 prosecutorial authority
- Pg. 34 106. (1) constitutional democracy (*explain*)
 106. (1)(a) The Public Protector
 106. (1)(b) The Human Rights Commission
 106. (1)(c) The Commission for Gender Equality
 106. (1)(e) The Electoral Commission
 106. (2) subject only, impartial
 106. (3) Organs of state, impartiality, dignity, effectiveness

	107. (1)(a)	impropriety
	107. (2)	<i>(Vague)</i>
Pg. 35	109. (1)(b)	attainment
	109. (2)	as regulated, monitor, to investigate, observance, secure appropriate redress
	110. (2)	to monitor, to investigate, to lobby
	111. (1)(c)	<i>(Vague)</i>
	111. (3)	has a direct interest in the audit, and
	112.	non-renewable
Pg. 36	115. (1)	fit and proper
	115. (3)	Parliament <i>(NA)</i>
	116. (2)	Resolution
Pg. 37	117. note	Constitutional principal XXXIV, heritage, self-determination
	118.option 1	extent, modified, provincial constitution
	118.option 2	provision
	118. (1)	inseparable, sovereign state
	118. (2)	themselves to the, in a sprit of ubuntu, pursue, co-operate, reconstruct
	118. (3)	founded (based)
	118. (4)	homogeneity (The language used in this provision is interesting. It uses popular terms and style, within a formal context. More of the Constitution should be written like this).
Pg. 38	118. (6)	majority government, multi-party democracy, regular elections, the franchise, a common voters roll, proportional or other representation, undiminished
	118. (7)	adhere, separation of powers, appropriate checks and balances
	118. (8)	neighbourliness
	119.	vested
	120. (1)	common voters roll, and results, in general, in proportional representation
	121 (a)	holding an office of profit, be compatible
	121. (c)	unrehabilitated insolvents
	121. (d)	unsound mind
	121. (e)	constituting the, disqualification, anyone who, after this section takes effect, has been convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic; but, no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed. <i>(too long)</i>
Pg. 39	122. (1)(a)	ceases, eligible
	123.	Solemn declaration
	124. (1)	determined, designated, duration, recess
	124. (2)	extraordinary (special), conduct urgent
	124. (3)	where it ordinarily will sit
	125. (3)	dissolved, term expires, proclamation
	125. (4)	remains competent to function
	126. (2)	preside, a Speaker
	126. (4)	resolution adopted

- Pg. 40 127. (1) provides otherwise
 127. (2) a majority of the votes (*what is a majority*)
 127. (3) the presiding member of, no deliberative vote, cast a deciding vote if
 128. (1) orders
 129. (2) civil or criminal (need to distinguish between these two terms)
 129. (3) privileges and immunities
 130. (2)(a) reservations
 130. (2)(c) accommodating, constitutionality
- Pg. 41 131. (1) promulgated
 131. (2) the national Government Gazette
 132. Entrusted, conclusive evidence of the provisions of that Act
 Provincial Executives
 133. (1) executive, vested
 133. (2) who must act in accordance with the Constitution. (according to the requirements of ...)
 134. (2)(a) determined, consultation
 134. (2)(b) implies
 134. (3)(a) appointing and dismissing, assigning
 134. (3)(b) convening Executive
 134. (3)(c) assenting
 134. (3)(d) referring, reconsideration , constitutionality
 134. (3)(e) referring
 134. (3)(f) summoning, extraordinary, conduct urgent
 134. (3)(g) dissolving, confidence
 134. (4) countersigned
 135. (2) designated, preside, procedure, schedule 4 applies (*ref.*)
- Pg. 42 136. Premier-elect, assumes, swearing or affirming faithfulness, solemn declaration
 137. (2) No person may hold office as Premier for more than two terms of office; but, when a person is elected to fill a vacancy in the office of Premier, the period between that election and the next election of a Premier will not be regarded as a term of office. (two sentences)
 139. (1) absent, perform
 139. (1)(a) designated
 141. competent to function
 143. (2) bound
- Pg. 43 144. (1) act in accordance with a code of ethics prescribed
 144. (2)(b) inconsistent
 144. (2)(c) entrusted, improperly benefit
 147. (3) reconstitute
 147. (4) (?)
 148. (a) equitable, revenue
 148. (b) conditionally, unconditionally
 148. (c) revenue
 149. (a) equitable share of revenue
- Pg. 44 149. (2)(a) interest
 149. (2)(b) provisions , national debt
 149. (2)(c) objective criteria
 149. (2)(d) fiscal capacity, fiscal performance, efficiency of utilisation of revenue, economic disparities (difficult language)
 149. (3) deducted, equitable share of revenue, allocations, obligatio, compensate provinces, commensurate, fiscal capacity.

149. (4) expeditiously
150. (1)(a) income tax, levies, excise duties, levies or surcharges on any taxes and duties collected nationally
151. (1) capital expenditure, reasonable norms and conditions
151. (2) fiscal year, redeemed, current expenditure, bridging, redeem, prescribed, compiled with
151. (3) recommendations
151. (4) guarantee, verified
152. (a) allocation of revenue
152. (a) an appropriation by
152. (b) located
- Pg. 45 153. (1) Provincial Revenue Fund, allocated
153. (2) under appropriation made by an Act of the province concerned
154. (1) adopt, resolution
154. (2) deviate, principles embodied in the Constitution
154. (2)(a) procedures
154. (3) amendment, are consistent with
154. (3)(a)(I) homogeneity, encroached
154. (3)(a)(ii) advisability, executive
154. (3)(a)(iii) apprising itself
154. (3)(b) indigenous
154. (4) amendment to, are consistent
154. (5) The Republic (Parliament), conforms to, status
- Pg. 46 155.option 1 legislative authority, is vested, functional areas
- 155.option 2 (2)(b) unreasonable action, materially and unjustifiably prejudicial to economic unity
- 155.option 2 (1) The legislative authority
- 155.option 2 (2)(a) rendered; or
- 155.option 2 (2)(b) materially, unjustifiably prejudicial to economic unity
156. (1) The legislative authority
156. (2) functional area
- 157.option 1 framework legislation
- 157.option 2 (1) functional areas
- 157.option 3 override power
- Pg. 46 158 The legislative competence of Parliament an provincial legislatures includes the competence to make laws which are reasonably necessary for, or incidental to, the effective exercise of such competence.
158. competence, competence, reasonably necessary for, or incidental to, the effective, such competence
(unclear)
- Pg. 47 159.option 1 (1) prevails
- 159.option 1 (1)(a) generally applicable standards
- 159.option 1 (1)(a)(I) rendered
- 159.option 1 (1)(c) prevention of prejudice to the Republic
- 159.option 1 (2) promulgation
- 159.option 1 (3) competent court, on a construction of the Constitution
- 159.option 3 (d) common market
- Pg. 48 159.option 3 legislative competence
- 159.option 3 (3)(a) deemed to be necessary
- 159.option 3 (3)(c) construction of the Constitution, prevails
- 159.option 4 expressly or by necessary implication, inconsistent with each other
(- example possible)

	159.option 4 (1)(a)	be regulated
	159.option 4 (1)(b)	regulated or co-ordinated
	159.option 4 (1)(e)	materially prejudices
	159.option 4 (3)	constructed
	159.option 4 (4)	prevails
	159.option 4 (5)	constructed
	160.	functional or institutional integrity, not encroach on, encroachment on
Pg. 49	161. (1)(b)	entrusted, accordance
Pg. 50	163.	tier
	163. (a)	enhance, viability, sustain ability
	163. (b)	civil society, self-governance (<i>is there such a word</i>)
	163. (c)	(...example)
	163. (d)	economic viability, sustainability, selfsupportiveness; (<i>is there such a word</i>)
	163. (e)	international local government institutions
	163. (f)	responsiveness
	164. (2)	territory, demarcation of areas of jurisdiction of local governments.
	164. (3)	different categories of local government
	165. (2)	by-laws, inconsistent
	165. (3)	legislative competence
	165. (4)	Rendered in a sustainable manner, are financially and physically practicable
	165. (5)	to associations, mutual interest
	166. (1)	provisions, good governance, public accountability
Pg. 51	166. (3)	Financial and Fiscal Commission, levy, property rates, levies, tariffs
	166. (4)	criteria, entitlement
	166. (6)	publicised, constructed in accordance with the relevant legislation of a competent legislature.
	166. (7)	Operational budgets must balance, that expenditure and income must be projected to be equal
	167. (2)	intervals
	167. (3)	ward, system of proportional representation, or ward representation, or both proportional and ward representation
	167. (4)	discriminated
	167. (5)	natural person
	167. (5)(b)	ordinarily resides, liable
	167. (7)(d)	exempted
	167. (7)(e)	disqualified
Pg. 52	168.	Legislative competencies Licensing Parks and recreation Rates, tariffs and taxes Storm water
Pg. 53	169. (1)	traditional authorities, indigenous law
Pg. 54	171. (1)	enshrined
	171. (1)(a)	professional ethics, promoted
	171. (1)(b)	efficient
	171. (1)(c)	development oriented
	171. (1) (d)	impartially, fairly, equitably and without bias (<i>do these mean different things?</i>)

171. (1)(g) transparency
171. (1)(h) Good human-resource management and career-development practices, to maximise human potential must be cultivated
(Word order)
171. (1)(I) ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.
(Contradiction)
171. (2) Policy considerations, not precluded
The appointment in the public administration of a number of persons on policy considerations as regulated by national legislation is not precluded.
(Meaning unclear)
- 171.(3) Legislation regulating the public administration may differentiate between different sectors, administrations or institution in the public administration. *(Meaning unclear)*
172. (4) The Public Administration Commission must account to Parliament. *(Grammar)*
173. (1) loyally (?)
- Pg. 55 173. (3) No employee of the public service may be favoured or prejudiced only because that person supports a particular party or cause.
(This means that this may be just one of a number of aspects which may count for/against such a person.) ("prejudiced" is used here in a legal sense and this may confuse some readers)
- Pg. 56 174. security
174. (a) reflect, resolve
174. (b) compliance, international
175. (3) Structured and regulated
175. (4) accordance, customary, binding
Customary international law *(explain)*
175. (5) manifestly illegal order
175. (6) furthers, or prejudices, the interests of any political party;
176. (2) territorial integrity
177. (2) Oversight over (oversee)
- Pg. 57 178. (2) command
179. civilian secretariat
(What is a secretariat? A commission? A Council?)
180. (2) powers and functions, discharge
180. (3) prevent and investigate, secure
181. (2) must have oversight over all police matters
(Oversee - - may be a strange expression to some)
181. (5) oversight *(overseeing!)*
182. (1) National Commissioner
182. (2) National Commissioner
182. (3) Provincial Commissioner
182. (5) oversight, cultivating
- Pg. 58 184. (2) designate, assume
185. to have oversight over *(oversee)*
185. (b) monitoring, by an inspector appointed, by a resolution adopted
(Syntax)

- Pg. 59 186. (1) revenue, raised or received
 186. (2) to be credited paid to,
 No money may be withdrawn from the National Revenue Fund except under appropriation made by an Act of Parliament; but a province's equitable share of revenue collected nationally is a direct charge against the National Revenue Fund to be credited paid to the Provincial Revenue Fund concerned (*too long*)
186. (2) appropriation
 187. (1) procedure
 187. (2) estimates, revenue, expenditure, capital and current expenditure
 188. (1)(a) expenditure classifications, uniform treasury norms and
 188. (1)(b) national treasury and prescribe
 188. (1)(c) confer, organ of state, persistent maladministration
 Procurement Administration
 188. (2) ratified by
 189. (1) procurement, impartial tender boards,
 The procurement of goods and services by organs of state ant any level must be regulated in terms of national legislation, which must provide for independent and impartial tender boards to be appointed to deal with procurement. (*Two sentences*)
 189. (2) tendering system
 189. (4) an interested party
- Pg. 60 190. (b) compliance of the guarantee with such norms and conditions
 191. Any enterprise may be required to report to or give evidence before Parliament, in a manner determined by national legislation, if public money is invested in it, its sources of revenue are regulated by legislation, or it is able to raise revenue in terms of any legislation.
 (*Further clarity required - examples*)
 192. Remuneration
 192. (1) allowances, benefits
 193. (1) office of profit under the Republic
 193. (2) under the Republic
 Fiscal
 194. Independent, impartial
 195 (1) recommendations, requirements
 195. (1)(a) allocation of financial and fiscal policies;
 195. (1)(d) taxes, levies, imposts, and surcharges, to levy
- Pg. 61 195. (1)(f) assigned
 195. (2) relevant, economic disparities, legitimate interests
 197 regularly
 199. (1) currency, protect the value of the currency of the Republic, sustainable economic growth
 199. (2) in the pursuit of its primary object, favour or prejudice, regular consultation
 200. customarily
- Pg. 62 201. (1) International Agreements, ratification or a accession, resolution
 201. (2) ratification or accession, tabled (*Tabled?*)
 201. (3) enacted as law
 Customary International Law
 202. inconsistent
 203. presume, obligations

