

2/1/05

CONSTITUTIONAL ASSEMBLY

CONSTITUTIONAL COMMITTEE

**DRAFT REPORT OF DISCUSSIONS
19 AND 20 OCTOBER 1995**

CONSTITUTIONAL COMMITTEE DISCUSSIONS OF 19 AND 20 OCTOBER 1995

The following documents were adopted:

Report of the Technical Refinement Task Team (TRT): Vol II
Outstanding issues

The report below reflects discussions of the:

Working Draft as presented by the TRT
and additional documentation as indicated:

SECTION	SUBSECTION	DECISION
PREAMBLE:		
		It was noted that it had been agreed that discussion on the Preamble will take place near completion of the Constitution.
CHAPTER 1		
CONSTITUTIONAL DEMOCRACY/FOUNDING PRINCIPLES:		
Republic of South Africa/Constitutional Democracy		
1		agreed to remove comma after "one" to read "Republic of South Africa is one sovereign state..." agreed that TRT would reformulate considering inclusion of the concept of human dignity and freedom and taking into account this section's relation to the above Preamble
Supremacy of the Constitution		
2		agreed to

CHAPTER 2		
"NATIONAL IDENTITY"		
Further documentation tabled "Draft formulations on citizenship and franchise"		
Citizenship		
		agreed to provisions on Citizenship in documentation agreed TRT will refine for incorporation.
Franchise		
		agreed TRT will refine for incorporation agreed TRT will take into account CPVIII wording "universal adult suffrage" agreed to place in brackets that the issue of the voting age is still to be addressed.
National Territory		
		agreed TRT will redraft bearing in mind the concerns raised about the inclusion and definition of provincial boundaries and taking into account the relevant CP.
National Symbols		
		agreed to insert that there had been a decision to retain the present flag. noted that a multi-party team were considering remaining issues regarding national symbols and were consulting experts.
Languages		
		agreed to insert that there had been agreement that there will be 11 official languages. noted that the issue of application/usage will be determined at a later stage.

**CHAPTER 3
BILL OF RIGHTS**

Further documentation tabled entitled "Bill of Rights with sidebar notes" prepared by the TRT, on which discussion was based.

		<p>agreed that discussion on the Bill of Rights was deferred until the next CC meeting to enable parties to make further written submissions by 17h00 on Monday 23 October and for the TRT to complete their refinement.</p> <p>agreed that it be noted that the Refined Working Draft including the Bill of Rights was a refined working draft as presented by the Technical Refinement Team.</p>
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**CHAPTER 4
PARLIAMENT:**

Legislative authority of Republic

37		general agreement on the need for a second house: "The legislative authority of the Republic vests in Parliament, which consists of the National Assembly <u>and a second house</u> and has the power to make laws <u>for the Republic</u> "
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National Assembly:

Composition and election of National Assembly

38		agreement to place in sidebars that there was need for further discussion on the electoral system. agreed to retain "women and men" and use this order consistently
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Qualifications of members of National Assembly

39	(1)	agreed to "Every citizen is qualified to vote is eligible to be a member of the National Assembly, except...", then to add detail following from (2)(b)
	(2)(b)	agreed to
	(2)(c)	agreed to delete brackets and retain "Senate"
	(2)(d)	agreed to
	(2)(e)	agreed to
	(2)(f)	agreed that Technical Refinement Team look at refining to read when "this section" takes effect..."
	(2)(g)	agreed to
	(3)	agreed to
	(4)	agreed that a fine was not necessary and that the subsection be deleted

Vacancies

40		generally agreed to
	(1)(c)	agreed to use the terms "Parliament" and "National Assembly" consistently
	(2)	agreed to add " <u>without delay</u> " after "filled"

Oaths or affirmations by members		
41		agreed to
Sittings and recess periods		
42	(1)	agreed to
	(2)	agreed to
	(3)	seat of National Assembly deferred for consideration
Duration of National Assembly		
43	(1)	Technical advisers to look at consistency between s 43(1) and s 43(3), although there was no disagreement on principle
	(2)	agreed question of snap elections be dealt with under vote of no confidence
	(3)	agreed to
	(4)	agreed to
Speaker and Deputy Speaker		
44	(1)	agreed to amend to read "At its first sitting after a general election, and when necessary to fill a vacancy, the National Assembly must elect from among its members a Speaker and a Deputy Speaker" agreed to delete 44(1) sidebar
	(2)	agreed to
	(3)	agreed to
	(4)	agreed to delete
	(5)	agreed to, and that simple majority is required
	(6)	agreed to delete
Decisions		
45	(1)	agreed to look at when dealing with votes of no confidence
	(2)	agreed to
	(3)	agreed to

	general	It was agreed the Technical Refinement Team will relook at the matter of referrals to the Constitutional Court and that it be considered by parties
President's rights in National Assembly		
46		agreed to
Internal autonomy		
47		agreed Technical Refinement Team will look at incorporating in this section principles of s 58 of the Interim Constitution
Remuneration of members		
48		agreed that Technical Refinement Team look at making this section consistent with the others dealing with remuneration, s 70 and s 107
Parliamentary privilege		
49	(1)	agreed to delete sentence in brackets
	(2)	agreed to
	(3)	agreed to
Ordinary Bills		
50		agree to deal with when discussing the second House
Money Bills		
51		agree to deal with when discussing the second House
Bills affecting provincial matters		
52		agree to deal with when discussing the second House
Assent to Bills		
53	(1)	Agreed to, but that Technical Refinement team consider language refinement of 53(1)
	(2)	agreed that Technical Refinement Team look at grammatical consistency of the terms "concern" and "reservation" used in the different subsections
	(2)(a)	agreed to
	(2)(b)	agreed to

	(2)(c)	agreed that Technical Refinement team look at grammatical consistency of use of "assent" and "sign", but that both verbs be included
	(2)(d)	agreed to
	(2)(e)	agreed to
	(3)	agreed that Technical Advisers will look at the possibility of including promulgation <u>without delay</u> "
Safekeeping of and public access to Acts of Parliament		
54		agreed to delete "and public access to" from the heading agreed to delete reference to Appellate Division, and to entrust safe keeping to the Constitutional Court

**CHAPTER 5
THE NATIONAL EXECUTIVE:
Executive authority of the Republic**

55		agreed to flag the question whether still dealing with an "executive" President
	(1)	agreed to insert "the" to read "the President and <u>the</u> other members of the Cabinet"
	(2)	agreed the TRT look into some of the questions raised, whether there was need for the empowerment clause, and whether adding subsec (2) was necessary; and whether it is correct to state in one subsec "must perform" and then in the other "may perform"
The President		
56	(1)	agreed TRT to reflect on whether word "symbol" is appropriate
	(3)	agreed that TRT redraft finding a better way to ensure unanimity on the wording of the provision
Powers and functions of the President		
57		agreed to reflect in side-bar the possibility of revisiting the issue in event of agreement on a government of national unity
	(2)(d)	agreed to but TRT to look at possibility of including references to relevant sections
Election of State President		
58		flagged as requiring attention regarding way in which quorums are generally reflected
Assumption of office		
59		agreed that TRT to reflect on period of 10 days or even shorter
Term of office of President		
60		agreed to
Vacancies		
61		agreed to but will also be looked at regarding votes of no confidence
Acting President		
62		agreed to

Deputy President(s)/Prime Minister		
63		agreed TRT to see how can reflect the three options in a side-bar without filling too much space; the three options are: - one Deputy President - two Deputy Presidents - Prime Minister
Removal of President or Deputy President		
64		agreed to remove "or Deputy President" agreed that the purpose of this clause was that this procedure apply regarding the President
	(2)	agreed the TRT to relook the question of discretion, by considering changing the words "may receive..."
Cabinet		
65		agreed side-bar also applicable here
	(1)	agreed to
	(2)	agreed to delete
Appointment and dismissal of Ministers and Deputy Ministers		
66		agreed to and agreed above side-bar may also be applicable
Oath of solemn affirmation		
67		agreed to delete the word "may" in the first line
Accountability of Ministers and Cabinet		
68		agreed TRT to consider accountability of President
	(1)	agreed to
	(2)	agreed to delete brackets
Conduct of the Cabinet and Deputy Ministers		
69	(1)	agreed to
	(2)(a) and (b)	agreed to
	(2)(c)	agreed TRT redraft taking into account the views expressed: - the DP wants "improperly" inserted - the ANC suggested "enrich themselves or improperly benefit any other person"
Remuneration		

70		<p>agreed TRT to look at reconciling this section with the other sections on remuneration, ss 48 and 107</p> <p>agreed consistent use be ensured of the terms "Parliament" and "National Assembly"</p>
Temporary assignment of a Minister's powers and functions to another Minister		
71		agreed to
Transfer of powers and functions to another Minister		
72		agreed to retain use of the word "proclamation"
Votes of no-confidence		
73		<p>agreed to flag the issue for further discussion</p> <p>agreed the TRT to reconcile with ss 57(2)(g) and 43(2)</p> <p>agreed TRT also to investigate the issue of quorums in general</p>

**CHAPTER 6
COURTS AND ADMINISTRATION OF JUSTICE**

Judicial authority		
74		agreed to accept the consolidated draft subsecs (1) - (8) subject to language refinement.
Judicial system		
75	(1)	agreed to
	(2)	agreed TRT to reformulate and expand by incorporating subsecs 76(6) and 77(3).
Jurisdiction of the Constitutional Court		
76	(1)	agreed to
	(2)(a)	agreed TRT refine by including disputes between national organs
	(4)(c)	agreed to include "a" to read "on any conditions and for <u>a</u> specified period..."
	(5)	agreed to delete "persons and organs of state".
	(6)	see above subsec 75(2)
Jurisdiction of Supreme Court of Appeal		
77	(1)(b)	agreed TRT to clarify use of term "inherent jurisdiction".
	(2)(a)	agreed TRT to redraft subsec 77(2)(a) with reference to 78(3)(a).
	(2)(b)	agreed to flag for further consideration
	(3)	see above subsec 75(2) and 76(6)
Constitutional jurisdiction of other courts		
78	(2)(b)	agreed to amend to read: jurisdiction to enquire into or rule on the validity of <u>any</u> legislation or <u>conduct by the President</u> agreed TRT to look at avoiding repetition. agreed TRT to look at issue of appeal regarding the Constitutional Court being a court of first instance and a court of appeal
Other jurisdiction of courts		

79		agreed to
Appointment of judicial officers		
80	(1)	agreed to amend to read: Any woman or man who is a citizen, <u>appropriately qualified...</u> agreed to flag for further consideration use of the term "citizen".
	(2) - (9)	agreed to retain as reflected in this draft and to flag for further discussion
Removal of judges from office		
81	(1)	agreed that "grossly" be inserted in brackets
Remuneration of judges		
82		agreed to note concern of possible prohibitive costs of "...and may not be reduced"
Other matters concerning courts		
83		agreed to
Judicial Service Commission		
84		agreed TRT to relook at this section and to investigate the position of the Attorney- General in Canada and Australia.

CHAPTER 7 INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY:		
Establishment and governing principles		
85		agreed TRT to relook at chapter heading
	(2)	agreed TRT to look at refining the term "exercise their powers and perform their functions".
	(3) and (4)	agreed to but the TRT to bring word "institutions" in line with possible changes to heading.
	(5)	agreed to
PUBLIC PROTECTOR Functions of Public Protector		
86	(3)	agreed that the brackets be removed agreed that the TRT relook taking into account suggestion to change "functions" to "decisions", and the negative phrasing
	(4)	agreed to
	(5)	agreed to add "to be prescribed by law" after exceptional circumstances agreed to remove words in brackets
Qualifications and tenure of office		
87	(1)	agreed to
	(2)	agreed to
Provincial public protectors		
88		agreed to delete
HUMAN RIGHTS COMMISSION Functions of Human Rights Commission		
89	(1)	agreed to
	(2)	agreed to, but TRT to look at word "purposes", and word "functions" in heading
	(3)	agreed to
COMMISSION FOR GENDER EQUALITY Function of Commission for Gender Equality		

90	(2)	agreed to insert after "to educate" the words "to lobby for" agreed that TRT look at adding "investigate"
AUDITOR GENERAL Functions of Auditor General		
91	(3)	agreed TRT to reformulate by taking into account the suggestion of including "every <u>legislative</u> authority" and "any <u>other</u> authority" agreed to delete the words "and provincial" in brackets, noting the DP's objection
Qualifications and tenure of office of Auditor General		
92		agreed to
ELECTORAL COMMISSION Functions of the Electoral Commission		
93		agreed TRT to consider and refine the term "at national, provincial and local legislators"
Composition of the Commission		
94		agreed to, but TRT to look at a more general empowerment clause
GENERAL PROVISIONS Appointments		
95		agreed TRT to look at possibility of including a general clause on qualifications and tenure of office regarding the Human Rights Commission and Commission for Gender Equality
	(1)	agreed to replace "section" with "chapter"

CHAPTER 8 PROVINCES		
		agreed to bring this Chapter in line with amendments in the Chapters on Parliament and The National Executive and to note only additional comments.
Provincial legislative authority		
97		agreed TRT may look at the suggestion that reference to the possible existence of provincial constitutions be included in the opening provisions.
98	(1)	agreed to
	(2)	agreed to flag question of numbers and TRT may consider including different options.
99	(1) and (2)	agreed to synchronise with related provision in National Assembly chapter. agreed to flag issue of residency requirement for further discussion
	(2)(c)	agreed to remove brackets and TRT to consider the possible inclusion of the houses and council of traditional leaders.
Vacancies		
100	(1)(c)	agreed to remove brackets
Sittings and recess periods		
102	(1)	agreed reference to Chief Justice be replaced with "President of Constitutional Court or judge designated by him or her".
	(3)	agreed to delete phrase in brackets
Duration and dissolution of provincial legislatures		
103	(1)	agreed to
	(2)	agreed that this depends on how votes of no-confidence are dealt with elsewhere and that the question of a quorum be flagged for further discussion.

	(4)	<p>noted for the record a new matter was raised regarding inclusion of "in consultation with the President" after Premier of the province.</p> <p>agreed TRT look at last two lines of this subsec, particularly the role of national government when provincial arrangements are not in place and the position during a period of national defence.</p> <p>agreed TRT to consider expanding this section to deal with the questions raised.</p>
Speaker and Deputy Speaker of provincial legislature		
104		agreed to delete reference to Deputy Speaker in provincial legislature
	(5)	agreed TRT to look at when considering the question of quorums.
Privileges and immunities of members of provincial legislatures		
108	(3)	agreed to delete [national and provincial]
Assent to Bills		
109		agreed TRT to bring this section in line with the provisions on the National Assembly
PROVINCIAL CONSTITUTIONS		
Adoption		
111		<p>agreed TRT look at whether it is necessary at all to consider the inclusion of specific CPs applicable to provincial constitutions or whether this is sufficiently covered by the Constitution.</p> <p>agreed TRT look at question of subsequent amendments to the national constitution which may make unconstitutional some provisions in provincial constitutions.</p>
PROVINCIAL EXECUTIVES		
		agreed TRT to bring Provincial Executive provisions in line with National Executive and to consider the relevant CPs.
NATIONAL AND PROVINCIAL LEGISLATIVE COMPETENCIES		

		<p>agreed that further written party submissions using the Third Draft dated 6 September 1995 as a base document would be submitted to the Secretariat as stated below in concluding remarks.</p> <p>agreed that TRT would on the basis of the submissions prepare a revised draft.</p>
<p>CHAPTER 9 LOCAL GOVERNMENT Further documentation tabled: draft formulation on local government</p>		
		<p>agreed to defer discussion on this chapter until the next CC meeting.</p> <p>noted draft dated 19 October 1995 tabled.</p>
<p>CHAPTER 10 INDIGENOUS LEADERS Further documentation tabled: memo including draft formulations</p>		
		<p>agreed TRT will transplant Chapter 11 of the Interim Constitution and to do so in keeping with the present drafting approach, retaining the principle and refining the detail.</p> <p>agreed to defer discussion until next CC meeting.</p>

CHAPTER 11		
SECURITY SERVICES		
Statement of principle		
		agreed that content is generally acceptable
Establishment and governing principles		
127	(4)	agreed to replace "train" with "educate"
	(7)	agreed TRT reformulate to indicate the notion of progressive movement towards a goal but follow similar wording in chapter on Public Administration and also to avoid repetition. agreed TRT to look generally at consistent terminology for issues such public administration, public service, security service
	(8)	agreed to delete
DEFENCE		
Defence Force		
128	(2)	agreed "guided by" be replaced by "according to" or "in accordance with".
Political responsibility		
129		agreed TRT to look into use of word "oversee" and to consider using "have oversight over" and to avoid repetition of these words .
Command of defence force		
130	(1)	agreed to delete the sentence in brackets. agreed to retain "Chief of the Defence Force " as the correct title.
	(2)	agreed TRT to look into the question of operational and political responsibility in liaison with the relevant members.
Defence civilian secretariat		
131		agreed to delete term [and control].
POLICE		
Police service		
132- 135		agreed to
Intelligence		

137		agreed TRT to consider an umbrella clause on monitoring
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CHAPTER 12**PUBLIC ADMINISTRATION:****Basic values and principles governing public administration**

138	(1)	agreed TRT refine and consider - Chapter 12 be placed before Chapter 11 - subsec (1)(g) and (1)(f) - insertion of the word "career" in subsec (1)(h) - add word "with" after "public"
	(3)	agreed to remove brackets
Public Administration Commission		
139	(2)	agreed TRT to look at including the words "as prescribed by national legislation" to the end of subsec (2)
	(4)	agreed to amend to read The Public Administration Commission must account to Parliament
Public Service		
140		agreed TRT will refine and consider whether the requirements of CPXXX are met.

**CHAPTER 13
FINANCE:
GENERAL FINANCIAL MATTERS
National Revenue Fund**

141	(1)	agreed to
	(2)	agreed to
	(3)	agreed to retain "credited", and add [paid] agreed to retain brackets in [in terms of this Constitution]
Annual Budget		
142		Agreed to insert sec 186 of the Interim Constitution and to insert in brackets that this matter is to be finalised at a later stage
Procurement administration		
143		agreed TRT to look at matter referred to in side-bar note
Guarantees by national government		
144		agreed to
Accountability of enterprises receiving public funds		
145		agreed to
FINANCIAL AND FISCAL COMMISSION		
		agreed to endorse a committee to discuss the Chapter on Finance, including the Financial and Fiscal Commission, Central Bank, and discuss also finance in provinces, and that the composition of this committee will be changed as required by the specific issues discussed
CENTRAL BANK		
		See above endorsement of committee agreed there be reference to the word "Central Bank"

CHAPTER 14		
AMENDMENT OF THE CONSTITUTION		

		agreed to defer discussion.
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CONCLUDING REMARKS		
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		agreed TRT be mandated to do their work with confidence and a certain amount of flexibility agreed TRT to ensure that TC reports are considered during the refinement process. agreed all further written party political submissions be given to the Secretariat by 17h00 on Monday 23 October agreed next meeting of CC on 9&10 November
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