



Constitutional Committee Minutes

Vol. 8

Meeting Date

9 November 1995

Pages

1 -

Constitutional Committee

9 November 1995

1.) Opening

: 10:20

Apologies

Notes.

- Main Doc: 2nd Edition Revised Working Draft

- Errata.

- Meeting to finalise Working Draft for purposes of publication.

- Will not re-open debate on matters on w/ have reached agreement.

- Defer discussion of B & R until tomorrow

2. Minutes

Notes. Raise ~~issues~~ problems as come to issues - if don't reflect agreements.

3.

Language:

Meyer

Final 2nd revision:

Options or alternatives to be included where discussions still ongoing.

Pandor

Agreed

Option meriting further deliberation b/c of widest support be included, not a wide # of all options.

Ranapfosa:

Ruling 2
Have already i.d. 3 areas where options wd.
be put forward.
Wont have options for everything.
Can confirm as discuss that options wd
be included.

Marais

31 part on
Franchise: fell away.

Ranapfosa

Franchise covered in citizenship &
Bill of rights.

Discuss there

31 ✓

32

de Lange

Queried 2(2): injunction? Is it
needed?

Marais

v. d. Nothhuizen

Reference to CP re "binding" needed
"Binding" in
Old 52 problematic. Went for softer
option. But might need to re-insert
"binding"
Especially since
Horizontality debate still ongoing
in Bill of Rights.

Ranapfosa

Leave for purpose of publication?

Marais

Okay, so long as reference to CP duly

Ranaphosa
Meyer

made?
Note This - For reconsideration later.
Siddhar?

Ranaphosa

Publication
Minimise sidebars. Wd be for public.
Can put in sidebar for ourselves (the
copy CC wd use), but not for

Meyer

Get overall report back on decisions tomorrow?

Hogmeyer

Distinguish b/t notes to remind us or
notes to inform public.

Ranaphosa

This one to remind us:
We need to deal w/ "binding" +
"respect".

Fouine

But public wd then believe that
there's agreement on this. This isn't the
case.

Ranaphosa

But public will know it is a Working
Draft. That will be explained - is
Work in Progress.

Nissels

Agrees that ① doc. will state this a draft
& ② to understand doc., shouldn't
fill it with footnotes. Can include
options.

52 raises question of horizontality.
place word in brackets to indicate
this. [respect] or [binding]

Handwritten notes, mostly illegible due to blurring and bleed-through.

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§ 2(1) & (2)

Handwritten notes, mostly illegible due to blurring and bleed-through.

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§ 3

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Wissels

Don't include ^{list} party support for various options. ⁴

Eglin

Problem of procedure. No disagreement on original. The drafting committee hasn't been given mandate to redraft on its own. Reinsert original. Drafting committee can then note its concern.

Radue

Agrees.

Pahad

ANC records draft of Bill of Rights doesn't reflect ANC view.

Ramaphosa

Noted

Reinsert original s2 as on p.2.

Agreed

de Lange

s3

3(3) delete "in compliance...
internat'l law"

Smuts

^{proviso}
This/cross references to s19
on citizen. Gives greater leeway.

de Lange

All legisla must comply w/
constitution.

Eglin

Need omnibus view on this.

Grover

Constitution must be read as a whole

Grove

all relevant provisions. Law must comply.⁵
Don't need reference in 3(3) for compliance.
But might want to include ref. to
internat'l law.

Ramaphosa

DEL "in compliance ... internat'l law"

s4 ✓

s5

Strange formulation

Pandor

Yes

v. d. West

Let's hear alternatives

Ramaphosa

Could draft more elegantly.

Eglin

"The flag that is the nat'l flag at the
time the constit takes effect shall be
the nat'l flag"

Meyer

Description of flag in a
Schedule.

de Lange

Agrees.

Ramaphosa

Agreed

"The nat'l flag of the Rep is described
in Schedule 2"

(over)

all other business law must comply
but not reference in (2) for compliance
but might want to include up to
interest law

Remedies

Part "in compliance" interest law

2/2

5(2)

2/2

change formation

Index

for

lets have alternatives

v. v. West

Remedies

could draft more elegantly

2/2

"The fact that in the way a flag is the
time the most takes effect shall be
the way a flag of

Meyer

Description of flag in a
Schedule

do

Index

Remedies

Index

"The way a flag of the ship is described
in Schedule 2"

du Toit

In some context

The flag of the Rep. is red, green white
as described in Schedule 2.

C. Mfulde

Describe colours not in flag

s5(2)

Marais

No agreement in bilateral
NP want retention of both + using shortened
version for every day use.

ANC: NKOS, translated into all 11 languages.
But ANC believes can't be constitutionalised.

Serote

Defer for bilaterals

Marais

Agreed earlier to invite Prof. Khumalo to
perform the shortened version. Still needs to
be done.

Mossa

Can't leave this empty. Let discussions cont. +
report back by end of day.

Agreed

s6

Marais

Languages: ongoing bilaterals, Report back
later today

Agreed

Let ~~be~~ discuss application of lang.s, too⁷

Chapter 3

Eglin

(41)

Why "in terms of the consti" here?

Rama

This a main empowering clause stating the authority of the Republic.

Gravi

Agrees. This whole prov. provisional b/c dealt w/ also in ch. 9

Ramaphosa

Leave for now; see how to be reconciled w/ ch. 9.

Subject to

(12) Leave as Senate? Or

Leave as more neutral "a second house / chamber"?

Could

~~can~~ add exact reference when decide on that Chapter.

Randor

DEL 40(2)

Ramaphosa

But parties agree there will be "a 2nd house."

~~Ackermann~~

Leave as "a 2nd house"

No agreement as to its name or function. Will be discussed then.

Chapter 3

Why "in writing" in law?

In a non-emergency business setting, the writing of the contract is important.

When the other party promises to do something, it is important to have it in writing.

Agreement ①

How to make a contract? It has to be a contract of law.

Chapter 4

(1) How to contract? Or

How to make a contract? It has to be a contract of law.

How to make a contract? It has to be a contract of law.

How to make a contract? It has to be a contract of law.

How to make a contract? It has to be a contract of law.

How to make a contract? It has to be a contract of law.

How to make a contract? It has to be a contract of law.

s(HI)

Hofmeyr

Bilaterals on election systems ongoing
ANC: use wording in CP

Ramaphosa

[results] and [~~results in general~~]

Zifor

"and ~~in~~ general proportional repres."

Rabie

NP: "and results in"

Eglin

Bracket those words w/ ANC proposes
sd be deleted:

Ramaphosa

"and [results] in general [in]
proportional representation"

Pohl

Ramaphosa

Agreed

Yes, bracket those words.
Does not require fn.

Gordhan

Meyer

Sidebar? Otherwise lose sense of
ongoing debate on election system.

Ramaphosa

Can be included in introductory

Work still in prog.

Words in brackets mean

V. Breda

Leave existing sidebar note.

Murray

Gordhan

But there are a # of places where this
occurs

Use footnotes rather than sidebar
notes, + notes at end.

Ramaphosa

[This matter] [or the matter of the electoral
system]

Wright

Plaintiff in election dispute...
[unclear] and [unclear]
"and defendant's production..."

Labels

Product list work of ARC process
to be deleted:

Edin

"and [unclear] in general [unclear]"
"proportional representation"

Approved

for product list work
There not require for

Rumpleton

2/10/07? Outcome for cases of
regarding dispute in election system

Wright

to be included in industrial
[unclear] will in [unclear]

§ 42 (a)

Words in brackets mean

have existing side bar notes

V. Brock

in line on 2 of first column the
occurs.

Godwin

The brackets occur then side bar
notes; a tick mark and

CT's notes in the middle of the column
[unclear]

Rumpleton

Hoffmeyer

Use "Details of the electoral system are still to be discussed"

9

Ramaphosa

Yes) in brackets at end of phrase.

Zglin

Be consistent; if put in brackets, do so in italics.

Prefers sidebars, but wd otherwise need to stand out so it isn't misunderstood as being part of text.

Ramaphosa

Agreed
Italics - in brackets at end of that section. Brackets in italics.

Pahrad

Wd not imply in end Those details wd have to be included.

Gordhan

Indicate party proposals on #s of members.

Ramaphosa

Yes. 300 ^{to} 400

542

542(a)

Murray

Tries to answer query of whether trad. leaders cd be members.

This says no, b/c hold other offices of profit.

de Lange

"Under the republic" - does this mean nat'l. But doesn't cater for those sitting according to provincial legislation.

Murray

No, they wd hold an office of profit under the Republic. ¹⁰ If we wanted them to be allowed to sit, wd need to pass a law.

Hofmeyr

"Under the Republic" \Rightarrow "public office" to clarify the meaning.

Yaacob

Include in (b) Council of Trad. Leaders.

Hofmeyr

But what if province set up "Council of Advisors"

Sizani

Deal w/ legisla. at provincial level when come to it.

Eglin:

Wd provincial offices also be "offices of profit under the Republic?"

Erasmus

Yes.

du Toit

But problems of interpretation cd. occur. "office of profit" should be rethought.

Grové

Still solves mystery - provincial functionaries also hold "office of profit under the Republic"

Eglin

E.g. wd include Town Clerks - any office paid for by executive at whatever level.

vd Wasthuizen

Try to find better word for "office of profit" But now or later?

Ramaphosa

Find a more modern term inserted in 3rd draft

Moosa

Provided we know it means at all levels.

Ramaphosa

Agreed

11

Pahad

Include pensions as well.

v.d. Westhuizen

Agreed to last time.

Ramaphosa

42(e)

Agreed to

Yacoob

but, comma after but to emphasise "but".
Shd it be omitted or retained consistently.

Ramaphosa

Plain lang. issue

Moosa

Sought Yacoob's advice.

Yacoob

Doesn't matter if its there.

Moosa

Leave in for now.

Ramaphosa

Leave in

Rabie

s43

NP 43e substituted by (d) in
IC 43(d)

"w/o having obtained leave..."

Ramaphosa

Thought agreed to say "in terms of the rules & orders", This section does that.

Can open debate in the 3rd draft.

Not significant enough to include option.

43(1)

43(2)

Agreed to

It is to be omitted or retained consistently
but cannot offer the "agreed to" but

Plain language

Draft Jacob's advice

Don't matter if it has

has in for and

has in

43

430 subject matter (b) (7)(C)

43(4)

"who having obtained leave..."

Though agrees to say "in law it is..."
"..." This is the case here.

Can you advise on the 3rd draft

It's significant enough to include it

Note matter, for discussion when deal w/ 3rd draft.¹²

See 43(2) ✓

Ramaphosa

44 ✓

45 (1) ✓

(2) ✓

(3)

The seat of the NA
[This matter is still to be finalised]

Pikedi

ANC proposes sd not be constitutionalised.
Set up mechanisms to nurture discussion.

Ramaphosa

Parties haven't presented submissions.
What mechanisms? Not ready.

["The CC when it meets next year will need to decide ^{on this matter} when it meets next year"] Italics

[Agreed]

(46)

v. d. Westhuizen

46(5) 360 ⇒ 572.1 + 578

MJ Mahlangu

46(4) + 46(8) + merge them?

v. d. Westhuizen

~~when the next~~
Maybe 3rd draft?

Rama

No, are 2 sep issues.

Ramaphosa

46(2) Flag, consequential on what happens w/ vote of no confidence. ¹³

Agreed flag.

46(4) ✓

46(5) ✓

47

46(5)

Pandor

from the time it is dissolved or its term expires, the SA is competent ...

Shorten 46 by incorporating 46(3) into 46(4)?

Ramaphosa

46(3) = (4) already discussed

v. d. Westhuizen

Can do amendment if agree to start w/ "From ..."

Eglin

"until the day on w/ the next assembly is declared elected"

Hofmeyr

Trying to avoid situation where after election has occurred, Parliament can act to short circuit declaration of new one.

Extent competence until day before the election.

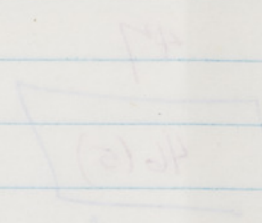
Rampage

Wish you, computer in school
I hope all the of us will be

Agree that

Wish

Wish



Wish

from the fact that it is a computer
then again it is a computer

Wish to be a computer
Wish

Wish (Wish) wish to be a computer

Rampage

Can do a computer of your school
Wish

V. B. Wathman

Wish to be a computer
Wish to be a computer

Wish

Wish to be a computer
Wish to be a computer
Wish to be a computer

Wish

Pahad

Problem: if elections not free + fair what wd happen? ¹⁴

v. d. Westhuizen

Can stick to that principle. Did consider Eglin's concern re. postal votes - a vote that cd happen before election generally. For this reason used "polling"

de Lange

"competent to function" → "to function from the day of declaration" to remove a gap.

v. d. Westhuizen

Can be made clearer.

Wesol

Don't want interim parliament fully functioning for prolonged period

v. d. Westhuizen

But time elections not declared fair + free + when competent gap again.
→ polling date / ~~date~~ declared not fair + free →

Yaacob

But can't have Parlia here + limit its functions, cd not cope w/ ~~that~~ e.g. state of emergency or other situations

v. Breda

Until the day before polling begins → day

Ramaphosa

" or the 1st day of polling "

Agreed

47(1) - (3) ✓

47(4) ✓

48(1)-(3) ✓

49 ✓

50(1) ✓

50(2)

de Lange

Take ICSB/^{(1) & (2)} place here in simple English.
This an empowering clause

Rabie

Proposal

Pahad

This not consistent w/ de Lange's proposal.

Use IC in plain Eng. but retain substance.

Ramaphosa

Leave as is?

de Lange

No, a problem.

Rabie

Wants proposal included as NP option

Ramaphosa

But seeing this for 1st time.
Note NP proposal in minutes.

Eylin

50(2) has no rel.s to anything else.

Take as is + add including rules and orders on

Eglin
de Lange

Insert IC
58(1) "including..."
Agrees, but in addition
50(2) to be replaced by 58(2)

Ramaphosa

Agreed
Indicate in brackets
" [This matter is still to be finalised]"

51 ✓
Ignore sidebar

52 Any bill introduced in Parliament

Rabie

NP Proposal — Option ⁵²~~51~~

Pahad

Let option be looked at.

Gibson:

Dmt

de Lange

Agreed
Subject to changes in Senate.

Ramaphosa

559 (1)(2) & (3)
IC provisions, cd. guide us. Cd. be
inserted for 552
Refined in 3rd draft.
Subject to decisions on Senate.

Ref. in brackets to questions of money
bills.

For purposes
53

Old s153

Ramaphosa

Insert
62 of IC to 553?

Murray

Tech Adv. to get draft to to ^{am} 10/11

Agreed

Mason

62(1) of IC refer to NA + Senate. May need to be looked at closely. Principles of 2/3 of Barla. The one idea to be retained.

Chabane

Worried about transplanting 4/c never debated. This issue could close the spirit of the debate.

Wessels

Need to ① apply in merits -
② find an option.

Pahed

TC agreed in 2/3 majority for amending constit., but ANC's submissions re. Senate, found it hard to transplant.

Agreed

2/3 majority
Draft tomorrow

s54 ✓

Rebie

56 sidebar: assent to bill.
NP: ch. 6 deals w/ Const. Court.

Ramaphosa

Should sidebar note be dealt w/ at all?

Schutte

NP proposal to Amend 87(b)
To make provisions for referral

Ramaphosa

Agreed to discuss w/ ch. 6.

Add consideration of when Bills cd. be referred: before or after passage.

Flag unit get to 87

53 ✓

56 ✓

Chapter 4: Senate

s54 ✓ but flag.

Gibson

Constit. Court provisions in ch. 6 disagree

Flag 54 to finalise

55. ✓

56

Schoeman

What of bills already w/ Supreme Court?

Ramaphosa

Can be dealt w/ elsewhere — by Chief Justice

v. Heerden

Was this issue cleared w/ Chief Justice etc?

du Toit

Clause allows Constit. to decide when to keep original bills, doesn't say they have to be kept in Constit. Court.

56 ✓

Moosa

Concern re flooding of documents re Secret

Draft in 2nd edition good, but needs a lot of work.

& new options need to be w/ have impact on other provisions.

Change the approach:

Don't do just 1 framework.

Do 2 options:

- ①
- ②

Ask

1 Drafters to draft the 2 options & check them w/

proponents of rules, present it tomorrow.

Rabie Agrees.

Consensus: 2 Options fully spelt out by drafters, cleared by the 2 proponents, presented tomorrow.

LUNCH

Resumed 14h 15

Chapter 5

Rabie 67(1) Doesn't reflect earlier agreement
Notes: ~~the~~ other members

de Lange No, previous wording set vested
in Presi + ~~the~~ other members.
to add other members

Rabie P. 9 of minute p. 222.1. Add "the"

v. d. Nesthuizen Question was posed about executive President
or other. Rabie correct v. minute.
but wanted to extend meaning of an
executive president.

Lamphosa

Rabie Not concerned. Accepts explanation.

67(1) ✓

2) ✓

Lunch

HR 12

Comments

Chapter 2

Page

1700 - Review of the other chapters
the other chapters

to help

to, review and of the other
is part of the other chapters
to all the chapters

Page

P. 2 of the other chapters, the other

68(1) Ophion 1 as amended

68(2)

Paragraph

Page

the content of the other chapters

67(1) ✓

67(2) ✓

Ramaphosa

68
Work down to 1 option

v.d. Westhuizen

Problem was the word "symbol" in earlier draft.

Ramaphosa

remove Republic from end of sentence

Chabane

amended to:
A " " opposes that w/ may harm it"
necessary?

du Toit

Stylistically not nice. Delete.

Ramaphosa

Option 1) up to Republic & delete
"and opposes" ... to end

Lorkey

"Must promote" ?

Ramaphosa

Agreed
Option 1 — as amended.

"The President promotes ... Republic"

68(2) ✓

Yacoob

68(2) ÷ into a) b) c)

a) is lead

b) must be upheld

c) = b responsibility

Ramaphosa

Agreed
To be looked at for 3rd draft

69(1) ✓

69(2) ✓

69(3)

de Lange

Doesn't indicate deal w/ powers given by legislation exclusively to President.

Agreed then to include this matter. Needs to be reflected fully, not only as a footnote.

Ramaphosa

Covered in 69(1)?

de Lange

No b/c seems to be nullified by 69(2)

Ramaphosa

~~not~~

de Lange

add 69(2)(c) for legislation

v. d. Westhuisen

Explained why did as did.

- 1) include 69(2)(c) or
- 2) leave over to investigate

Rabie

Question: covered in 54?

Ramaphosa

No.
Proposal to add (c):

de Lange

To " All legis. states or implies that the President ^{may} act alone "

Meyer

Problem: wd mean Pres. wd be subject to

other legislation. Agrees that advisors sd.
basis w/ President's office.

Ramaphosa

Some legis. states President can act alone?

Meyer

No?

du Toit

Send out for publication as is now, but
basis w/ President's office on this.

de Lange

Disagrees. Not technical, way of running the
country.
Present provisions for GNU.

Ramaphosa

Queried w/ Meyer this

Meyer

No, not related to GNU. Every act of President
flows thru a channel, normally thru a minister.
Need to consult w/ President's office.

de Lange

Cent off top of head cite legisla. when President
acts alone. Cent, however, occur w/ this IC.

Ramaphosa

The Constit. or legisla. may state or imply

Yaacob

President acts alone in wide range of things.
This Too restrictive, even at level of ceremonial power.

~~Yaacob~~ Pahad

Meyer correct, but only to some extent.
Legislation flows from Cabinet.

But want to enable, not preclude,
legisla. from giving Pres. powers to act
alone.

the light from the other side
of the building.

the light from the other side
of the building.

Yes

and not for protection to a man, but
basis of protection of the

Designs. No technical, very general
provision for the

General design of the

Not, not what is done. For the design
from the design, usually the design
of the design of the design.

the design of the design of the design
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Design

Design

Design

Design

Design

Design

Design

Design

Design

Design

Flag

Myer

Stand over?

Ramaphosa

No, leaving too much to tomorrow

Let go out as is for purpose of publication.

Flag issue for later discussion, consult w/ Presidential office.

delange Eglin

About Presidential resp. or collective Cabinet resp.?
Previous clause head of state, head of gov't.

President ^{executive authority} head of gov't in terms of consultation w/ Cabinet

President as head of state can act alone.

Myer

Ramaphosa

Let matter stand over until tomorrow, for decision Mon.

Rabie

2.24.3 of minutes. Not reflected in clause 2.

Ramaphosa

This addressed in 576. Adoption of any of these wd have repercussions on other clauses w/ wd have to be brought into line.

Myer

Add reference to 69(3) outcome of this wd depend on outcome of 76

Ramaphosa

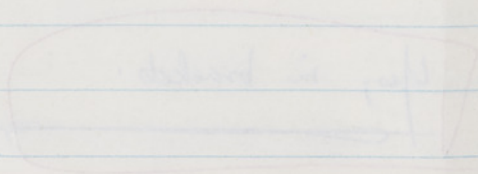
Yes, in brackets.

69(3) ✓ w/ this amended.

70-73

70(2) + 73

69



1/2 (3) ✓ of the circle

70 ✓

71 ✓

72 ✓

73 ✓

Murray

Errata - Insert in 70(2) & delete s73?

Bhabha

69 (h) (i). Insert
j add appt. of ambassadors;
k appt of commissioners
recalling of ambassadors

Wessels

But must consult w/ Minister of For Affairs?

Ramaphosa

In past? Can we add (j) & (k) as proposed?

Marais

IC?

Pandor

82(1) says
Appt & accredit receive & recognise

v. Heerden

But wd do this in consultation: 82(2)(d)

Ramaphosa

Insert "appt, accredit, receive & recognise..."

Wessels

But 69(3) says act alone? Wd this be alone?

Pahad

Present constitution: can consult but
decides himself.
Add passage

Wessels

Insert additions, & consider it once in print.

Revision 70(2)/73 : No. Later.

74 ✓

75 ✓

76

Options ✓

Query?

Murao

TZI reported on Nat. Put it in, but note
we'll refer back to relevant TZI report when
discuss it again. 25

Ramaphosa

Subject to finalising 76, talking to President's
office, + reference to TZI report.

Insert Bhubha's proposal.

70(2) + 73

E. Mulder

"self evident"

If remove 73, 75 doesn't make sense +
70(2)

Ramaphosa

Proposed to 70(2) + 73
Can be addressed in 3rd draft. Agreed

74 ✓

Meyer

No reference to office of Dep. President or appt.
We depend on 76.

Ramaphosa

Yes, needs consideration.

du Toit

Option 2 + Prime Minister.

75 ✓

76 ✓

77 Option 3: Section too long to
spell out. [Don't need to refer to exact
sections but current IC?]

Murray

77.

Inherited from earlier constitutions.

Ramaphosa

Flag for finalisation next time.

78 ✓

Eglin

~~total~~ Need to include extension of term until new Assembly
le 46 on p. _____

Precedent for extending term until new legislature installed in German court.

79 ✓

Murray

80 ✓

Sidebar note in response to question from Mr. de Lange?

If President directly accountable to Parlia.,
could be called to account by Parlia or Parliamentary Committee.

Should he be subject to this.

de Toit

Pres. as member of Cabinet accountable as well.

C. Mulder

80(i)

resp. to NA or Parliament?

Ramaphosa

Yes

de Lange

Nat'l Exec as a collective & individual accountable to Parliament.

Ramaphosa

Agreed.
Add " & a second house "

581 ✓

Mabandla

Accountability: saying Pres. as member of
Cabinet is accountable & can be dragged
before a Parliamentary Committee.

v d Westhuizen

That view of their query is correct.
Is it a problem that head of state

individual accountability means
head of state could be dragged in before
a committee.

Flag as matter to return to

81 ✓

82 ✓

83 ✓

Meyer

Quorum.

Ramaphosa

errata p. 8 deals w/ this.
Insertion of (4)

✓

Chapter 6

Zglin

Side bar note 84.

V. d. Westhuizen

Panel considered issue raised by Eglin, Agreed ²⁸
not too much merit separating President +
Cabinet. But b/c imp w/ snap
elections.

Do people favour snap elections?

If yes, how to structure?

If no, votes of no confidence?

Yacoob

President acting alone in ceremonial
functions. Cabinet & he from majority
party. Does so little alone,
if vote of no confidence in Pres., b/c he
apppt Cabinet, & come from majority party:

Shd be fresh election?

N Ass apppt a new president?

Vote of no confidence wd mean fracturing of
majority party (1) off set whole balance in
parliament to require
elections, ✓

(2) not.

Eglin

Flag this issue - need fixed 5 yr. term ordinarily.
Against snap elections. Can have special
procedure for mid-term elections
Sweden & Germany: parliament can ask to
be dissolved & election of new parlia. until
end of original 5 yr. term.

Ramaphosa

Deal w/ all these issues in 3rd draft.
Flag matter for notes for 3rd draft to
take on board Yacoob's & Eglin's
suggestions.
But for purpose of publication leave as is.

Pahad

Assess support base for ideas before consider formally. 29

Ramaphosa

Side bar note ~~retained~~

Let DP raise matter again for 3rd draft.
leave as is for purpose of publication.

✓

Tea

Chapter 6

[New Draft - 9 November 1995]

Hofmeyr

s87 p2 ^{s7(3)}
(a) - still under discussion but not final

(b) "invalid" ⇒ "unconstitutional"

s88 88 flag "inherent jurisdiction" in both matters, may need another term

s89 89(2) same - flag "inherent juris."

s91 91(b) Procedure apptg acting judges in
Constit Court, that unanimously agreed
Nov: 99(9)+(10) of IC

"Senior judge of Court" ed b/c "Head of the Court" b/c senior ambiguous.
- Asked clarity here.

Appt. procedure for Constit Court Judges -
NP = DP will provide an options

Hofmeyr

As phrased now too broad; amend possibly to
92 92(2) "an act of Parlia may provide for the retirement³⁰
of judge from advisory" "

end of ch. - Transitional Clause

List that clause at end of this Ch. until
Transitional Chapter finished

Unresolved issues still in ch.:

- 1) in ch. as options or
- 2) Omitted

Ramaphosa

Schutte

Agrees w/ Hofmeyr
NP want to add 4 options:

87 (3)(d) make pro. for petitioning
members of legial. to
Constit. Court

91 : NP options will be put forward

ATH Gen'l : NP Proposal

B/c of that

Add 94(1)(K)

Docs
given to
Chair

Prov. for app of ATH Gen +
2nd judge)
by Judicial Service Commission

94 (1)(5) ~~There is no reference to~~
~~agreement~~ Add note

In terms of present constit these appts
made w/ multi-party agreement

Gibson

DP proposals will know

1)

2) AHJ General

3) Schutte's sugg. Constit. Court judges needs multi party input, DP agrees w/ current formulation but await NP input.

Clause 93(1) & (2) implies diff. b/t removing & dismissing judge; need to be tied tog.

Hofmeyr

be referral by legislators -

Ramaphosa

85

Yess

85(4) inconsistent w) s 96(3)

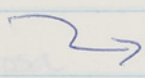
Doesn't refer to impartiality

85 ✓

86 ✓ semi colons not full stops

87

Schutte



NP option to add 3(d) in petition to Constit. Court

Hofmeyr

A appear in draft const., but Ponget agreed not appear in section in Nat'l Legislature.

Schutte

"Decide on the constitutionality..."

de Lange

ANC wd say 2nd option wd be to delete this.
87(3) in exclusive jurisdiction of Constt Court,
so believe sd go under Nat'l Assembly.

Ramaphosa

Can add, but under Nat'l Assembly

Schutte

Doubts: ^{wd be exclusion power of} Constt Court ; but not need to
be quoted in Nat'l Ass + Senate, too.

Ramaphosa

(c) already raises this.

v.d. Westhuisen

Nat'l Assembly already allows Pres. to refer.
Add there - s54, after mention of
President's referral.

Schutte

Okay, but incorporate in Senate & provincial
legislature.

Ramaphosa

Gibson

Adapt (c) to provide for it.

Grove

Referral procedure in s120 too. wd look
funny to include it here.

Ramaphosa

Schutte said cd be provided for elsewhere.

v. d. Heerden

Stop arguing -

Ramaphosa

Agreed

Provided for as indicated
s54, s120

Agreed -

3(b) "invalid" -> "unconstit."

88(2) Flag

89(2) Flag

(91) NP Option

Chabane

Concerned that ^ythis option sd go into draft,
need to see what it says.

Schulte

Raises 2 questions heads multiparty
1) Appt Mechanisms — involvement
2) "Appropriately qualified"

Appt in ~~same way~~ involving party leaders or ^{Bo}
of joint sitting of Parliament.

"Appropriately qualified": present terms of IC.

Ramaphosa

Need 2 Options, w/o exposing judiciary
to conflict.

NP proposal quite distinctive, a contention wd
be highlighted w/ 2 drafts.

Rather, have 1 draft w/ options interspersed
b/t sections

R Schulte

Can be resolved in isolation. Need to
consider it in terms of composition of cabinet.

Hofmeyr

Hoped to reach agreement b/c reached agreement
before: Jud Serv Comm. Agree Constit.
Court agreed to by legisla.s in Europe.

CP requires judiciary to be indep.

Hofmeyr

All informants agreed we should stick to existing model. 34

But 1 party cabinet would not be apolitical.

Ramaphosa

91

Include the 2 options. ✓

Insert NP Option.

Copies to be circulated

92 ✓

Gibson

93 ✓ but

Needs redrafting looks like removal, dismissal
diff. to these things.

Yes.

94

Schutte

NP 94(k)

2 ~~att^y gen's~~ ^{add. members of 2 att^y generals} to be part of JS Comm.

In line w/ (j)

+ Option for 2 Att^y gen's

Will add Option for Att^y generals.

Ramaphosa

Attorney generals: how many options would come up?

Mabandla

Queried inclusion of Options

Ramaphosa

But there is indecision on some issues.

Include options or exclude reference to them.

Parties can't reach consensus on these issues.

Ramaphosa

35
Include Option 2: "There shd be no reference to this in the constitution."

Gibson

3rd Option

ANC Nat'l Atty General

NP 9 Attorney Generals

DP shd be 1 nat'l + 9 provincial attorney generals.

Ramaphosa

Attorney General shd not be included in draft.

Schutte

Attorney General debated in CC.

Ramaphosa

Not in any draft. Omit.

Discuss in 3rd draft in January.

Refer to it by inserting:

§ "The question of the Attorney is still to be discussed & debated." §

Chelane

If issues not in this draft, have the holes

Ramaphosa

Agree 94(IXK) left in abeyance for now.

Schutte

Add side note to 94: (h)

need provisions for how vacancies are filled.

Let parties who members represent-nominate replacement.

Flag for later discussion.

Ramaphosa

95 ✓

Ramaphosa

Insert
① Heading: ^{Appt 7} Att'y General

② "The issue of the appt of the Att'y General is a matter which still needs discussion"

de Lange

No have as footnote, If insert heading etc., create expectation. Still need to decide whether sd. be new at all.

Ramaphosa

Drafters will draft in such a way that reflects this

Chapter 7

Hofmeyr

Transitional Clause

Lama

Wd be dealt w/ separately
Flag for consideration when discusses this

Chapter 7

Ramaphosa
du

New Name?
Democratized Instit.

Yacoob

"State" Institutions

de Lange

Use ~~State~~ Organs of State in leading

Eglin

What about other organs of state

Rama

Leave as is?

Hofmeyr

Wd accept if use "State Insti's"

Sizani

"Promoting" implies PR
Supporting

Ramaphosa

Agreed
State Instits Supporting Const Demo.
Wd be carried thru in rest of draft.

96 ✓

Ramaphosa

97 ✓

de Beers

98 ✓
99 (2) Agreed "breached" => "violated"

de Beers

de Beers

100 Mminutes

NP proposed new name . Not reflected
in minutes
Needs to be reflected in Minutes

Ramaphosa

Thought NP accepted explanation.
Will be noted: stress development aspect.

Eglin

NP made submission re Gender Comm.

Document: tabled
"NP Proposals: Comm for Gender Equality"

Mabandla

"Gender + Equality" queried.

Ramaphosa

No, want gender equality + development.

Hofmeyr

Queried what envisaged: gender equality ✓

Hefneys

gender issues + building houses + creating jobs.

38

Ramaphosa

100(2) proposes adding development opportunities

King

Diluting purpose of the commission

Malan ~~King~~

^{strong} Emphasis on gender + submissions raised issue of dev. of women.

Ramaphosa

Chabane

NP said maint devl., Comm not to undertake those tasks, once gender equality reached, wd refocus on development, so cd. continue.

Manzini

Need ^{other} structures in govt to look at question of gender (men + women in rela to each other). Sd. relate to Human Rights Comm.; but also structures in other dept.s.

NP doesn't understand what women want. Taking process back.

Want Comm on Gender Equality

Eglin

"and Development": hesitant to add this extent to w/ need it, otherwise, already in the clause.

Ramaphosa

Agrees w/ Eglin. Does NP insist?

Malan

Concern: need equality + development. If latter addressed, of men + women, wd be satisfied. Don't add development here,

Melan

then, but how wd we address that need?

Ramaphosa

Lead Minutes ~~rest~~ from last meeting.

King

Supports Mrs. Melan. Worried that if talk about gender equality of all people, need to hesitate from going too strongly on a feminist bent; don't be high handed, nor go for statistical prescriptions. Much of inequality cultural. Education + dev. imp. aspects of gender equality. These must be addressed to attain gender equality.

Ramaphosa

"development, protection" does cover NP concerns.

Melan

Only wanted CC to heed submissions. If making designs, at least aware of request of submissions.

Ramaphosa

Agreed: leave matter out for now
Get further explanation on how development issue will be addressed elsewhere

Mabandla

CP2 gives direction for gender equality. not moving away from this

100 ✓

101

Alant

101 (1)(c) drop "national legislation"

(2) "legislation" okay.

(3) authority "by legislation" [drop national]

v d Westhuizen Agreed, but make consistent
wd imply wd have to
But/consider other legislation.

Alant That's how wd understand it, but be provincial
& national.

Hofmeyr National office.

Alant Need to include provincial ~~local~~ legislation
Leave it, ongoing discussion w/ Auditor Gen in
January.
101 ✓

102 ✓

103:

de Beer Give Murray & v. d. Westhuizen report - TC.
Ask them to apply their mind to:
103 (2) + "manage"

to improve these so better reflect TC's
thinking.

v. d. Westhuizen (2) : ^{other sections say} inserted b/c 1 Elections must be
declared fair & free.

But agree Electoral Comm cannot organise & run
elections & declare them fair & free.

But who cd then?

Hofmeyr Understands suggestion made on this. But

Hofmeyer

41
wd be difficult for anyone else who hadn't been hands on
& cd mean wks or months of litigation.

- So wd need it to be someone w/ hands on experience of it.
- What are internat'l precedents

Meyer

Is there a need to declare elections free & fair. Normally the structure w/ ran the elections wd declare this - Chief Electoral Officer.

If contest of result occurs, cd. go to court.

Cd be contested in court or special electoral court.

There is a need for a special electoral court.

De Beer

TC did think this through & decided -
election management:

- 1) Prep & main of roles
 - funds
 - regulations
 - education of electorate

General laws must indicate doesn't monitor or
adjudicate

Ordinary courts wd adjudicate.

Wd support esta. of special court, w/ wd be involved in whole process of elections.

Zylin

- Electoral Comm sdn't declare elections free & fair
- Concerned about word "manage" voters roll.
Wd require vast bureaucracy

Ramaphosa

Many issues need to be looked at when deal w/
3rd draft.
Let this suffice.

42

Hofmeyr

Let details be discussed later. But declaration of
free & fair: Is it necessary?

Counts as recourse where people concerned about a
result.

Proposes: consider deleting (2) & clauses on
parlia & declaration of free & fair.

Meyer

Agrees.

But (1) sd say can delegate its power to
local authorities.

Xacobb

If delete "free & fair" provisions, courts wd
deal w/ one by one; but what if situation
was so bad, too many constituencies
unfair & can't declare results of election.
Might need to retain some provisions in
nat'l assembly:

Parlia b/c competent to function
when electoral Comm. unable
to declare the election.

de Lange

But who wd declare Nat? Need research

Ramaphosa

Leave as is for now. But delete (2)

Hofmeyr

(2)
Del. ref

Ask for research to be done + if necessary bring in mechanism

Ramaphosa

Agreed
Delete (2) ✓

103 (3) ✓

104 ✓

v.d Beerden:

NP proposal, CP 12: self determination.
Need for cultural councils.

Cd add here Comm. on Cultural Affairs.

Ramaphosa

Out of Order. New issue.

Note - raised matter, to be discussed next year.

105

de Beer

104 Errata: Agreed to
Bilaterals on 105(4), Noted.

Malan

NP proposals
105(1)(2)

Tabled doc:

"P.65: General Provision (Chapter 7)"

In other areas, fit + proper adequate, but in
Aud gen + Public Protector need additional
qualifications.

Ramaphosa

This a new formulation. wd require separate

Ramaphosa

Subsection

Let it be flagged & noted as an proposed amendment

Ramaphosa

A of clarity: extensive discussion on these issues.

Ramaphosa

No more debate. Included as sidebar note on 3rd draft.

105 ✓

de Beer

(106) let it stand over b/c of bilaterals

Chapter 8.

Viljoen

Self determination. Add in ch.4 & ch.8 some wording indicating self determination is referred to & inviting comments

Moosa

CC hasn't discussed self determination in report from Volksraad council. So, can't say much

Moosa

Ask panel to find way of indicating that it is a matter coming up for discussion.

Ramaphosa

Let formulation be put thg & considered tomorrow.

Rabie

let experts look at relevant TC2 report when draw up formulations

Ramaphosa

Will be done

Ch. 8

Ramaphosa

CP 18 says provinces not be same.

Meyer

Adjourn.

Eglin

Re Ch. 8

only 2 issues in fn.s

Take as read

Amendments to nat'l assembly carried over to provincial legislatures.

Mossa

But are some logical inconsistencies, esp w/ 108 + 138

du Toit

Minutes 2.14.1 m
2.28

ANC doc. requested there prepared & ready to be distributed to tech. advisors.

Mossa

Let 108 + 138 Stand over until tomorrow.

Agreed

Alant

~~the~~ Bilaterals include provincial finance & want to go into 155 + 156 of IC. When have finality, NP will submit on this.

Marce

Had problem w/ ~~108~~¹⁰⁸. Stands over but critical for the whole.
Adjourn to deal w/ whole in total.

Ramaphosa

Take all as read, except 108 + 138
 Problems can be raised tomorrow.

Agreed.

Chapter 9

Meyer

Different options be taken on board to keep
 debate open - give selves more time to
 resolve this.

Mosesa

Need options

But too many options available: 3. Need
 2.

141 Keep ~~103~~ all?

143 " " ? Keep 3 slightly
 modified; merge 1+2.

Eglin

Option 2 tries to absorb other proposal.

Look at s139

Pol party submissions 24/10; Option 2 wd
 fall away.

P.10

Tech Advisor

Option 2: a consolidation of diff. parts of
 DP submissions.

Eglin

Parlia can legislate under any matter
 on schedule 4 + so can provinces.

Says later re overrides when conflict
 arises.

Clear alternative where provincial powers under.

from German constitution. All subject national competencies.

Ramaphosa:

Mossa's proposal - deal w/ Ch. 9 by putting Options forward.

(Venter)
Tech Advisor w/ Mr. Eglin, Mr. Mossa a ANVC rep., & of FF PAC NB reps - to see how to develop options, to present tomorrow.

Bandu

Chapter 10

Mossa

ANVC in process of submitting a doc. to allow bilaterals.

Agreed

Mabandla

Ch. 9: ① Options

② Clauses w/o Options. These deferred too?

Chelle

Yes.

Rakhe

Tomorrow

Just raise problem was w/ 12 + 13; devote most of time to Bill of Rights.

Votes of no confidence: 2

Ramaphosa

Decided: flagged issue
Tomorrow to start w/ Ch. 4
Closed 18h 20.

Constitutional Committee

10 November

1) Opening

09h30

7 ✓

8

Sandoz

Horizontal application of right isn't handled.
Let Tech Committee look at this

Ramaphosa

Flag for ^{consideration} 3rd draft.

8(1)

8(2) Erata accepted ✓

Chedde

Radue

NP will propose options here + there. Option for 8(2)

Proposes: along lines of
along present 8(3)(a) to be inserted here

Preclusion clause preferred above that.

Smuts

Options help inform public.

Differences of approach exist
v (2) include 2nd option -
along lines of formulation in
margin.

... ..
...

1) Opening

00/80

7 ✓

8

... ..
... ..

...

... ..
... ..

...

80

80)

...

... ..

...

80)

(NB)

... ..
... ..

... ..

... ..
... ..
... ..

...

Smuts

Insert
(3) "[but not limited to]" insert
after including

49

Pandor

Don't object to inserting DP option in (3).
But concerned that this phrase used in
various places. Should it only limit
this clause or be used consistently w/
"including"

Hogmyer

If use here & not elsewhere wd suggest
including elsewhere means something else.

NP Option of IC 8(3)(a): no indication
There of temporariness.
Notion of what constitutes discrimination change
over time & new forms may be recognized in
future of require affirmative action.

This clause allows for this flexibility.

If NP wants definite proposal, let them give
wording.

Radue

Want wording in marginal note, which
more or less follows 8(3)(a) but adds word
"likely" and likely

Ranaghan

Compromise possible?

Smuts

Re NP proposals - can't be reconciled w/ DP.
Debating "and likely".

Aspect of temporariness not in NP
proposal.

Tech Adv.

Tried to deal w/ this in supplementary memo.
No agreement possible.

Smity

In response, issues raised re temporariness +
affirmative action new. ^{Addressing three} Affirmative action agreed to.
Shouldn't be limited.
Present formulation too reflect earlier consensus.
Need to add
Let NP concerns be raised later.

Zibenberg

1) Cd. say (= CP5 FF proposal)
"measures that have as their object"

Smuts

~~Opposes~~ inclusion of "and likely" —
Put in brackets. And add [+ including]
in (3)

Radue

Just include the 2 options.

Ramaphosa

Options: NP Option in sidebar note
or Insert in brackets words proposed by DP.

Hofmeyr

She suggested "designed [and likely]"
O'Brien no substantive differences b/t the 2
formulations.

Smut

(2) Agrees
(3) Generality lang.: put ^{in "but not limited to"} ~~and including~~
Agreed ✓

2 options in sub(2): ① existing +

Ramaphosa

designed a likely to
[including but not limited to]
Agreed to.

8(3) ✓

Suggested add. in side bar to be looked
at in 3rd draft.

8(4)

Mfulder

P.57 of Memo raises FF proposal.

Ramaphosa

Agree will be looked at again in 3rd draft.

9 ✓

10 ✓

11(1)

Rando

Right to Life. No support in any
internat'l instrument.
Delete Option 3.

Sizani

PAC disagrees w/ Option 3 but objects to deletion.
Clause must follow Namibian clause.

If deleted, retain one part? see above.

Ramaphosa

Covered in Option (2)

Hymey

Insert
Option 1 " [and the death penalty is hereby abolished]"

Agues, add No in delete 3.

Radue

Record official objection of NP

Ranaphosa

DEL Option 3.
Insert in brackets in Option 1 " [and the death penalty is hereby abolished]"

Agued

||

Accepted heading change - Errata.

Chieadli

11(3)(c) "or the necessary legal consent"
Delete

Agued

Radue

~~11~~ "including the right to be free from all forms of violence" + delete (2)(b)

or put (2)(b) in brackets,

Surty

remove protection against
(b) wd secure people from state intervention in prostitution

Ranaphosa

Agued (2)(b) to be put in brackets.

12 ✓

Smuts

13

1(c) ought to include "interception"
"to have their comm.s intercepted or
violated"

Rana

Ruling - don't insert. Accept.
Attend to refinement in 3rd draft.

~~Supplementary report~~

Surdy

Remove (2) : juristic persons can be
covered elsewhere.

Hofmeyr

P.6 of memo.

Surdy

let (2) be put in brackets.

Radue

13(1) & (2) could be replaced by reformulation
on p.6 of memo.

Juristic persons to be dealt w/ in limitations clause.

Hofmeyr

Wd include list at end of chapter to say
(b)(c) & (d) to be included.

Agreed

replace p.6 form. for 13(1) & (2)

14 (1) ✓

14 (2) ✓

(3)

Raubenheimer

Disagree w/ Erata proposal

Lauberhermer

si

The provisions of the const. do not preclude

Muller

14(2)(a)

Pardo

Prefer wording in Errata, let look at wording new formulation in 3rd draft.

Chadle

But Errata doesn't give Must Not (3) sd. do. And ^{thus} recognition of validity of marriage + family law, but don't insulate law of must agree with constitution.

Type out + let people consider it over tea.

Agreed

Muller

Amend: "any" to "all" in (2)(a)

Ranophoso

~~Agreed~~

Eglin

DEL "any"

Rana

Agreed

14(1)

Pardo

"opinion ..." delete rest. to superfluous.

Agreed

15 (1)

Smits

Bracket all (2)

~~(3) needs new sub =~~

Zuberberg

Compromise option on p. 7 of memo.

"The protection in Subsection (1) does not

Smits

Still wish to bracket 2(c) of that formulation

Lanophosa

Replace 15(2) w/ formulation

~~that report~~ in Memo + bracket 2c

Mossa

Agreed
Against bracketing

Lanophosa

No will stay bracketed

Hofmeyr

Can accept (2) in Memo,

But ^{for its} 2(c) - want (b) from draft, perhaps
w/ ^{omission} addition of word "violence".

Mabandla

(3) replace "and present a diversity of opinion" w/
"and reflect broadly the view of society"

Zuberberg

p. 7 of Memo: alternative formulation

"by public media ... diversity of opinion"

Radu

Wd accepted it

Pandor

AFC opposed. Broadens the scope too much.
Support Mabandla's suggestion.

"reflects broadly the view of society"

Radu

Am proposal. Agree to (3) in text or

Rodue *alternativus in memo.*

Ramaphosa Is new, Deal w/ it in 3rd draft?

Eglin Queried - does 2(a) mean anything? What do propaganda or war mean. Too general.

Zelenberg Based on internat'l instruments.

Chandler Effect of this is this kind of speech not protected
Can be regulated by statute.

Ramaphosa Re (3)
Insert ANC option

Hofmeyr "Media" too broad. Mean newspapers, TV + radio, not pamphlet. b there a good term. Use:
"Newspaper + public broadcast media"

Dea Sants Public + electronic media. Use electronic

Ramaphosa Leave as "electronic media" ?

Mfoldes Leave for 3rd draft.

Hofmeyr "newspapers + electronic media"

Rodue "public media"

Ramaphosa 1) leave as is

2) Other option to include

insert ANC PROP.
+ insertion of "newspapers + electronic" newspapers + electronic in 3rd draft

Muller

Right to petition

16 ✓

17 ✓

18 (1) ✓

Errata — on Errata every citizen correct
Accept including — Errata

18(2)

Marais

NP says CP8 stands for universal adult franchise
need to limit to adults.

Insert adult

Murray

CP requires every adult w/ right to vote

Limitation clause not allow legisla. to stipulate voting
age.

Marais

Disagrees that signifies this.

~~Amphora~~

Insert in brackets "[adults]"

Wd allow for later discussion.

Agreed

Amphora

Concerned every adult citizens...

Rena

18 (3) ✓

19 ✓

18(1) ✓

18(1)

18(2) ✓

18(3) ✓

18(4) ✓

18(5) ✓

18(6) ✓

18(7) ✓

18(7)

18(8) ✓

18(9) ✓

18(10) ✓

18(10)

18(11) ✓

18(12) ✓

18(13) ✓

18(14) ✓

18(15) ✓

18(16) ✓

18(17) ✓

18(17)

Rama. 20 (1) ✓

20 (2) ✓

20 (3) ✓

20 (4) ✓

FF concern to be considered when discuss 3rd draft.

Muller Concern w/ "anywhere" in 20(1)
Squatting?

Raulenheimer. Wd be limited in limitations clause

Marais 18(3) might clash w/ limitation on who d run in s 42

Ramaphosa Put in brackets for later resolution.

21

Smuts Support Option 3 ^{but} ~~but~~ "freedom of occupation"
Use different title "Freedom of Occupation"

Sixty Sd not ~~use~~ ^{have} Eco. Activity right. But if do, use
~~Opposes~~ Exchange Heading, p. 10 of
Memo.

Radin Does Option 3 apply to juristic persons?

Raulenheimer Draft w/ in application clause

German Option in Memo on p. 10:
(1) same as 1st s of Option 3.

2nd sentence in (1) of Memo included b/c German 15 don't have general limitation

clause.

Rodue Keep Option 2 in

Ramaphosa ✓ Keep Option 1 + 2 + 3

(22)

Smuts Include matter in Margin note for 22(4) "Every trade union..."
As Option.

de Lange This cd be dealt w/ in limitations clause.

Chiedli Agrees. Need precluding clause to prevent other clauses from taking effect.
Need to show what rights cd stand in way of trade unions having good management.

Smuts Why sd trade unions be immune from this kind of govt legislation

Pander Amend (4)(a): "determines..." → "entails..."

Smuts Object to qualifying right to strike in (2).

Smuts Amendment wdnt solve problem.

Agnew DP proposal impractical.

Smuts Could they debate?

Wessels Bilateral from December, Leave as is.

22(4)

Handwritten notes, possibly "Handwritten notes for 22(4)"

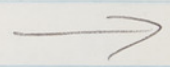
(22)

Handwritten notes, possibly "Handwritten notes for 22(4)"

22(2) Held over

Handwritten notes, possibly "Handwritten notes for 22(2)"

Handwritten notes, possibly "Handwritten notes for 22(2)"



24 Held over

Handwritten notes, possibly "Handwritten notes for 24"

Handwritten notes, possibly "Handwritten notes for 24"

Handwritten notes, possibly "Handwritten notes for 24"

Handwritten notes, possibly "Handwritten notes for 24"

Handwritten notes, possibly "Handwritten notes for 24"

Handwritten notes, possibly "Handwritten notes for 24"

di Lange DP proposal legally untenable, not legally rational.

Ramaphosa Chudde says not necessary.

Yacoub Unanimous - limitation clause covers it.

Ramaphosa **Hold** Flag matter to return to matter in January.

Not include DP proposal in 22(4)

22(2)

~~Out~~

~~Prohibit committee~~

DP proposal to be copied & distributed.

s 23 ✓

s(24) Hold over to after tea.

s 25

Wissel record PAE's objection to grouping of socio-economic rights.

Note

s 25

Ramaphosa Errata proposals noted.

Pandor let 25(2) be amended so stops at "circumstance." Delete rest. Can insert "relevant"

"No one may be evicted from their home arbitrarily or with an order of court after making the relevant circumstances."

Radue NP
(2) strip after "court"

Why used "have access" & not "access" in 25(1)

Lieberberg Was just flow.

✓

Radue (2) proposal

Fouie "adequate" housing.
Memo 3, p.16-17: create too high of expectations. What is "adequate"

Pandor Section is enabling right. Legisla. shall ed. interpret what "adequate" is

Keep in after "relevant circumstances" kept in.

Ramaphosa (2) "... court [made after ^{relevant} / circumstances]. "

Agreed

Fouie (3) Why is access to land dealt w/ under housing clause.

Bmuto Bracket (3)

Ramaphosa Agreed, bracket 25(3)?

Pandor Eroding a significant right. Note ANC really opposes bracketing.

Chabane In terms of (3), don't bracket now, but ^{flag to} come back to it.

de Lange Queried 25(3)

Lichtenberg. This might not be immediately available, so use "reasonable + progressive" - use in 25(3)

Ramaphosa ~~Flag~~ 25(3) [not bracket] so return to it later.

Smuts Agreed.

Rodue But clause doesn't belong here. Leave in brackets.

Ramaphosa Agreed Bracket it. 22(3)

26 ✓

~~Tea.~~

27 ~~xxx~~

Pandor 27(c) NP proposal insert "shelter".

Agreed to

Hofmeyr 27(f) let Tech Services review (f) b/c of problems w/ detention of juveniles.

Flag for later discussion

Ramaphosa

27 ✓

w 27(c) amendment

28

Marais

didn't intend wording to be so.

Additional possible (3)

(c) to stand as is to b/c (3) in brackets.

Pandor

NP only introduces resp. to fund; disguises state support for private institutions. Other rights asserted there covered elsewhere.

Ramaphosa

(2)(c) to become another option in brackets.

Pandor

Option to what

~~28(1)~~

~~(2)~~

28 (1)

(2)

[(3)]

Marais

Yes

Ramaphosa

Yes. Just change to Option

Azimande

Option to what? to 2? or on own.
If on own, ANC stand in opposition must be made clear.

Marais

Not option, but possible addition (3) in brackets.

Ramaphosa To stand on own? If so, (2)(c) more or less tranches on the matter.

Marais In original submission, included this submission. Don't relate to private institutions discussed in (2).
Set to separate.

Pandor How did not current provisions not respond to content of this.

Marais Can have private educ. instit. w/ is not culturally based.

Zuberberg Add include it as option to 1(c)
Adds "culture & religion"

Marais Thinking of school w/ specific lang, cult & reli. character. 1(c) deals w/ ordinary school.

Chabane Does NP accept (1) & (2).

Ramaphosa NP said agree to 1 & 2.

Marais But don't cover whole range of educ. institutions w/ are possible.

Ramaphosa Let the proposal be 3 in brackets. Not option but possible addition.

de Lange Debate wd be on 3. Put
Option 1 NP proposal
Option 2: This subclause should not form part of this section

Nzimande Believes NP matter covered in 2. But fearing state to fund schools that are discriminatory.

Pando

Include as Option

3(1) → "acc."

3(2) "Provided further..."

To clarify is issue of funding.

Ranaphusa

No. Follow de Lang's proposal.

Option 1 - [(3)]

Option 2 - No provision shd be made w

[(3)] shd not be included

Agreed.

28 ✓ w/ this amendment

29 ✓

Radue

Add - p.34 of Memo:

Pando

Clause shd not stand on own as right, concerned not right granted to institutions. Return to original position. Remains in "Rel. Body: Opinion" or "Freedom of Expression".

Shuts

Japanese version:

"Academic freedom is guaranteed"

Nzimanide

Academic freedom for whom? For individuals, not institutions.

Radue

Long history of discussion led to present formulation.

Let it be as set out in 29 or in p.24 of Memo.

Saito

Ramaphosa

In options: (1) New formulation in Memo.
 (2) ANC views - sd not stand on its own, but w/ ① Freedom of Belief
 ② Ref. to persons

Smith

Refer existing re "Japanese".

Ramaphosa

Then options w/ (1) Existing formulation
 (2) ANC option.

29. w/ this amendment ✓

30 ✓ Flag for later consideration.

Rabue

Introduce new matter: add right
 "collective self determination"

League will handle

forming forming maintaining

Flagged

→ To be dealt w/ in January.

"NP Proposal"

31 ✓

Raubenheimer

Flag:
 To include juristic persons
 To be addressed later.

32,

Hofmeyr

Access to info

At by, of clause

"An act of parliament must provide for access to ..."
 insert (a) c (b)

20

20

In 1911 the ...
(1) ...
(2) ...
(3) ...

21

21

The ...
(1) ...
(2) ...

22

22

23

23

24

24

31 [C]

25

26

26

27

28

28

29

30

Ranophosa Fly for consideration in January.

Hofmeyr Raised earlier. Not incorporated in text.

(31) Insert in brackets

" [An Act of Parliament must provide for access to...]"

Radue Let minutes note the proposal,

Hofmeyr Clarify that right wd be regulated by act of parliament.
Not a fundamental human right, "not in any other constitution". Needs mechanisms to deal w/; so commonly dealt w/ in legis.

- ① Is right
- ② Is regulated in legislation

Smit CP9: Don't need to insert this.

Ranophosa Wd ["c] This right shall be regulated by an Act of Parliament ?"] do?

Agreed

Randor (32) Prefer
New formulation p. 28 of Memo.

New title: "Fair Administrative Action"

^
"Everyone has a right to fair admin. action"

Then new formulation.

{ Smuts Want old title, old option 1.
 { Radue Agree to Option 1. Why did Tech Ad. amend in Memo.
 Chaddle Instructed to reconcile (1)(2) & (3). Had to isolate core elements of each & tried to give effect to them.

Pandor Option 1
 Option 2 - from new memo + new title.
 delete existing 2 & 3

Smuts Old Title / New Title

Hofmeyr Admin Justice just legal ~~justice~~ jargon.
 Needs plain language.

Chaddle "Just Admin. Action"

Agreed

Radue (33)
 "where approp or rec. at ~~end~~ in last line."

Agreed

Hofmeyr Access to Justice → Access to Courts.

Agreed

(34)

Rodue

Approve of Tech Adv. proposals on
 34(1)(d) & (e) on
 pp 32 & 30 of memo.
 Let these be substituted for original.
 We'd like (4) retained.

Hofmeyr.

Agrees to replacement of (1)(d) & (e) as
 recommended in prop.
 Retain (4). Might need redrafting.

Simuts

Accept replacement of 1(d), but retain
 original (e)

de Lange

~~Keep as proposed, will come back to reformulation~~
 Accept for publication, but
 34 (3)(e) flag for later discussion
 proposed new wording on p.30
 of Memo.

Pandor

Orig + Memo formulations as
 Option 1 + 2 for 34(1)(e)

Rodue

Brackets on 4 removed?

Rama.

Agreed

Lichtenberg

Noted in Minute: informing ^{accused} people of what rights -
 in a lang. they understand.
 34(2)(c) & (e), but need to be
 informed of all rights.
 Flag for later consideration.

Rana.

34(3)(e) as reformulated in Mema.
adoptedrest of
34 ✓

35

Surtly

P.34 of Mema; ANIC agrees to except (2)
as basis for limitations clause.

Smuts

Adhere to concept of necessity test.
Words missing 3rd last line~~to extent of limitation~~

Dmit

Radev

Agree w/ DP

Ranaphosa

DP & NP retain existing formulation
Retain as is w/ full understanding that needs to be
dealt w/.

Hjorge

Agrees, retain the 2 options

Chadler

Line 2 36 → 37

~~fall~~ DEL "except the rights in s37"

Agreed

35 (3)

Radev

"law", ^{insert} common law, customary law

Kilibring

Refinement Team says law refers to all.

Ranaphosa

Covered.

Pandor

If include options, include Option in p34 of Memo.

71

Ramaphosa

No, note it a return to it in January for discussion.

(30)

Radue

Reservations don't inclusion of
^ (5) - allows retrospectivity. + directly contrasts w/ (4).

Delict.

Smuts

from ~~ICJ~~ CPR,
DELETED.

Hofmeyr

sd state of war be treated as same as state of emergency.
Need at least a note that there is a question about
whether a state of war sd be treated the same as a
state of emergency.

(5) relates only to State of Emergency.

4(a) a safeguard - cannot create retrospective
crime. (3) only tries to make it clear that that
will not override our normal obligation to
recognise crimes against humanity as recognised
by international community as crimes.

Radue

Criminal law of SA? Or international criminal law.
Bracket it

Ramaphosa

Flag it for later discussion.

Swy

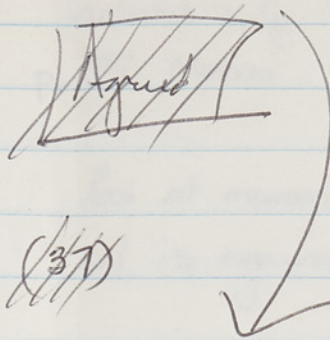
Did discuss problem of ... what sd be in
legislation + what in constitution. Possible deletion
only b/c cd be put in legislation: (1) - (3)

Side bar
note.

Radue

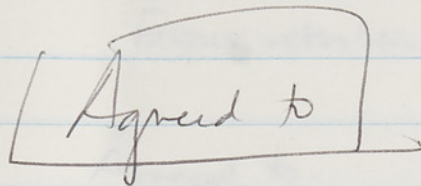
(8)

Insert " detained again on the same grounds "



~~(37)~~

Duty



(37)(i) ✓

37(2) :

Cheadle

Removal of exception^{to} section 37, and need (2) - shd be dealt w/ by rules of court.

Agreed delete 37(2)

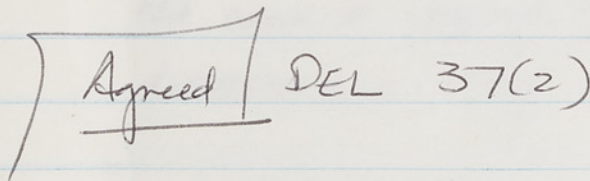
~~38~~

Hofmeyr

No retain principle of class action.

Cheadle

In 37(1)(c)



38

Radue

Inclusion of "judiciary" explained on p. 35 Memo.

Raukenheimer

Posi at moment, appeal vs lower court deci.
w/ is against constit.

Radue

Favour retention of option 1 of ~~as~~ (3)

Agreed to.

(39) ✓

Cheadle:

Juristic Persons in Option 2:

p. 36 of Memo. gives core range of rights for juristic persons

Ramaphosa

Insert these on p. 36 in Option 2 in square brackets?

Pandor

Wd need it stated clearly was for discussion only

Radue

NP believes court sd decide this.
Sd not set up core rights w/ aren't exhaustive.

Cheadle

Leave Option 2 as is?

Hofmeyr

No - include Option 2 w/ rights as set out in memo - w/ note w/ makes

clear included to discuss in progress so public ed comment.

Property Clause

- Kyrositsile (24) Ongoing negotiations; deadlock
- Rodue Oppose ANC proposal. Will counter w/ another Option.
- Smuts (2) ~~No one may be arbitrarily...~~

Note view ←
 PAC: 1) No property clause.
 2) Restitution clause - claims to go back to 1652.
- Fourie Why not existing property clause stand in way of land reform.
 ANC proposal: no property clause. Doesn't protect property rights.
- Pahad. ANC response: is a property clause.
 Wd appear in draft consti. as an option.
- Eglin Queried para. 4 - refers to what?
- Ramaphosa Means s24
- Pandor Shows need for balance b/w those who own property & those who need access. Table -
 PAC view
 ANC +
 NP (supported by DP)

Smuts Not NP only, but they converge here.

Ramaphosa Includes all 3 options
PAC
ANC +
NP/DP

Moses ANC submission is a property clause.

Nzinande

Chabane

Right to strike

22(2)

DP Proposals : "DP Amendment to Labour 522(2)"

Nzinande Queried what meant by "poli. purpose"?

Smuts Re the ILO standards

Cheadle Proposal problematic.
pre-strike conciliation:
what if responding to lock out.
Need broad principles, but must be set out in detail in legisla.
Let DP flag this proposal for later discussion.

Radue Happy w/ draft as now set out

Ramaphosa Flag issue for debate in new year.

Smuts

4(a) in side bar note

22(4) Flagged for discussion in Jan.

14(3)

"Proposal from the Tech Advisors Clause"

Radue

Agrees to

Pandor

Not
Objecting to sense conveying. Cd be clearer, & what
does "religious law" mean?

Chiedle

Islamic law

Same phrasing as in IC.

Flag question of "reli. law" for discussion of
3rd draft.

Pandor

Agree. But express concern clearly - or
may be interpreted as for more than recognition of
marriage.

Mahlangu

While recog^{reli.} marriage, need to recog. customary
marriages, too.

Pandor

Does application section

Chiedle

s1.5.1 of new const. recognises ^{religious} ~~customary~~ law.
But the section wants to recog. marriages coming
from reli. systems

Mossa

Doesn't cover Mahlangu. Talking of religion, belief,

Musa

opinions. Talking of other sorts of marriages.

Ed say 3(b) / ^{ref. law} "or other recognized traditions"

Agreed to insert

Smits

Flag

Ranephosa

Include ^{proposal} in draft, ^{as amended} Flag as 14(3).



Box
2/2