

2/21/1/10/12

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CONFERENCE AND LANGUAGE SERVICES		

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2/2/1/1/10/12

**CC SUB-COMMITTEE**

**MEETING 26 MARCH 1996**

**TAPES 1 TO 3**

Tape 1

Chairperson:

Ladies and Gentlemen, welcome. Those who were not here earlier to the meeting, we have a three page, five page document on security services, five page document and also we have to deal with institution supporting constitutional democracy and I think we can deal with security services quickly and dispense with it. All

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principles are ??? .... Mr Selfe, you agree. You don't agree. Trouble. We asked the comrades who deal with security forces, all of them, from all the parties, all the comrades from all the parties to meet and deal with this matter at a multi lectural. I think you are ready to report back to us. Miss Schreiner, Dr Alant, Mr Selfe.

Schreiner:

Could you give me guidance in terms of whether you would like me to go through clause by clause or deals specifically with the aspects that have been changed from the .....

Chairperson:

Run through it clause by clause so that we haven't dealt with it for a long time so then we can also refresh our memory. I haven't read it recently, so it will also help me. So let's just run through it, clause by clause. Thank you Miss Schreiner.

Schreiner:

OK, the clause dealing with Government principle basically outlines the context in which the security services needs to operate, defines the principles of national security and most importantly defines that national security is subject to the authority of parliament and executive and that it is pursued in compliance with law including international law. The clause remain unchanged from the third or fourth, now refined working draft. There is however an issue raised in the footnote, for discussion here as to whether under those principles something dealing with the issue of mercenaries could be included. It was concern about whether one could reach a definition of a mercenary that was clear enough to actually be dealt with and the footnote deals with the most authorative definition of a mercenary but that's an issue that have been raised for discussion.

The 175 deals with the establishment, structuring and conduct of the security services

Chairperson:

So otherwise 174 is agreed once again, no problem. Thank you. The same for the question of the mercenary. Ya, OK.

Schreiner: 175 .....

Alant: Chairperson, may I say something?

Chairperson: Dr Alant

Alant: We are not suggesting necessarily that mercenaries be dealt with if they should be dealt with in this chapter, maybe mentioned under the citizenship in the Bill of Rights or somewhere else, but we just wanted to put this issue on the table for consideration.

Chairperson: Alright, thank you. Message received.

Schreiner: OK, 175 deals with the three security services define that defence forces is the only military law formality force. 175.3 was in the fourth draft part of 175.2, it's been separated into two sections so that the two stand very clearly separate the 175.3 dealing with the issue of through law being able to set up security arms, security services other than defence force or police service, or intelligence services. 175.4 the security service must be structured in regulation by national legislation , 175.5 must act and teach the members and acquire the members to act in accordance with the constitution law including customary international law, international agreements binding on the republic, 175.6 deals with the obligation to disobey illegal orders, 175.7 puts in the constitutional principle that neither security services as a whole nor their members can perform in a manner that furthers or prejudices the interest of political party. Apart from stating explicitly that the police services is a single police service because that word were dropped out of the earlier draft and dividing 175.2 into two clauses, that clause is unchanged. Moving to the defence force, 176 defines the way which the defence force should be structured, managed as a disciplined military force and defines it's primary objective - that's unchanged from the earlier draft.

Political responsibility defines this clause 177, said there will be a cabinet member responsible for defence, and that there will be a multi-party committee, what have been added there was that it should be regulated in national legislation. An issue that has been raised, although it doesn't relate to this chapter around the definition in which is covered in footnote 2, around the definition of the question commander in chief in chapter 5. 178.1 is substantially changed from the earlier draft, the wording of

it now allows for a flexibility in terms of structuring of the command of the defence force, it allows for either a single person to be appointed, or a chief of staff type of arrangement. Flowing from that 178.2 have been reworded to be consistent with 178.1

Chairperson: OK, just hold on. General Viljoen.

Viljoen: Chairperson, 178.1. If you have a single defence force and that is still laid down, then you can have only one commander. There should be no provision for senior military officers in command, there can only be one commander. That is if you have a single defence force.

Chairperson: OK, there is a view from General Viljoen. Is there response. There is a response.

..... [100] Thank you chair. We would disagree that that is the situation, because what we are concerned about is a command can be a function that is not necessarily vested in one individual but can be in a joint chief of staff situation, that does not deny you the right that if you are involved in operations of any sort, that you can then appoint a commander for that particular operation. So that you wouldn't have a chief who would be a chief in perpetuity. It provides a flexibility of the establishment of creation of your particular structure.

Viljoen: Chairperson, you can have a joint chief of staff, you can have a joint group forming a staff, but there must be one commander. Military force cannot have two commanders, because only one commander needs a single force.

Chairperson: OK, let's hear further what you are saying.

..... [113] Our emphasis here in this draft is on the words "to command the defence force". The word "to command" is different to "commander".

Viljoen: Can I ask Dr Deitlers a question that the fact that you mention the "or" it's the president's discretion and the circumstances will dictate what option he is going to utilise, but he will ultimately be the commander in chief.

Chairperson: General, how do you see that?

Viljoen: Chairperson, in a defence structure, you have a very clear cut line of command. And the commanders are assisted by

staff on all the levels. Those staff officers are not in command, the people in command must be the commanders, therefore you have the supreme commander who is the President, then you have a single force, you must have single commander and he can be assisted by staff whoever is needed.

Chairperson: Do you want to pursue this one?

Selfe: Just sort of as a final thing, otherwise we gonna get bogged down in semantics. This particular amendment has got the support of the Minister of Defence, and the Secretary of Defence in their submissions that they have made to the particular committee utilising arguments which are devised from international examples, again ...

Chairperson: What are those international examples?

Selfe: Well, the types of things they refer to as the United States. We have a joint Chief of staff which is the thing that is in charge of everything, so that each arm of service during peace time or during non-operational times is looked after by their own. The Navy is looked after by the Navy, the Army by the Army and so on and so forth. You don't have a single commander of the United States forces, however when the United States forces are engaged in a particular operation, if it is a peacekeeping thing or if it is in the Gulf, the President of the United States is able to appoint a specific individual who takes overall command of that specific operation. But when that operation is complete, the Army structure of command reverts to the ability for your joint chiefs of staffs to actually function. That is just the one example.

Viljoen: Chairperson, the joint chiefs of staff principle is actually a co-ordinating mechanism of different armed services, those are not really defence forces. If you have a single defence force it means a force which includes the different armed services and they have a commander and that could be only one commander. So, I only objecting to all senior military officers.

Chairperson: OK, Mr Eglin.

Eglin: Chairperson, I hear what the General says as a former Corporal, I don't want to cross swords with him, I am quite clear one structure you are going to have a senior military officer. I am not arguing in favour of it, but you could have

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a military jointer in command, I mean there is no reason why you shouldn't have three people forming a triumphant who will take co-responsibility for their command, I am not arguing that that is the most favourable one, but it does worry me as it's either or. I think we should decide what system we want in South Africa for the running of our defence force and not leave it as an option as to what you would do at various titles. So, if the most desirable one is the concept of a senior military officer singular obviously assisted by other people, in terms of it's function but still with the powers centred at him. I think we should say so. I am just worrying that we leave this as optional or. I think you can have an option of what I call a triumphant or a good-triumphant or a jointer acting and in charge of the defence force if you want it to do it. I don't think we should do that.

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Chairperson:

OK, thank you. Mrs Mtiutso

Mtiutso:

Chairperson, without getting bogged down here. We are frustrated especially with the discussions with the presentation from the defence force rather from the ministry, that we don't want to necessarily impose on the President what should happen, that we want to preempt what was going to happen with the defence review because it could be decided either just have this command or the joint command so then as General was saying that the emphasis is on the two command not the commander, so it would be up to the President and in view of whatever is going to be happening at the defence review. That's why the two options are put there for the President to then select whichever is applicable. Thank you.

Chairperson:

OK, I don't see this as a major, major dispute. It is a matter, that I think in discussion can also be quite easily resolved and I don't think we should get bogged down on this one. I am happy that we sleep on it, can we sleep on it, General if Generals ever sleeps? General?

Viljoen:

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Chairperson, a single defence force makes big decisions affecting the lives of people and if you want to have a jointacy for staff system of the United States then that is not an operational command, that is actually a peace , training / administrative function actually commanded or coordinated by the Secretary for Defence, but if you appoint a single defence force and you call it a single defence force, and not defence force services, such as the air force, army, navy, etc. If you have single defence

force, and you expect that defence force to fight, then you must appoint one commander. They cannot have indecision when it comes to making important decisions.

Chairperson: Can we, Dr Alant sorry ....

Alant: Chairperson, we were persuaded by the submission of the Department of Defence to make provision for this all senior military officers. During state of war I assumed that it would be a single military officer but they pleaded for this provision and we felt comfortable that you made provision for both situations. I would rather feel more happy with the first one, only a single military officer, but it is not a question of principle here.

Chairperson: Dr Alant says it is not a question of principle, the General still putting a slightly different view. Can we sleep on it. Let's sleep on it. It is not a major area of difference as far as I can see it and we will come back to it. Miss Schreiner... Yes, please

Alant: There was reference on a number of occasions as far as we see it, and I refer you to the footnote to the rather anachronistic old fashion concept of commander in chief which reminds one of Napoleon monoptart or Otto von Bismark who was the head of the state and Commander in Chief. It would confuse even the Constitutional court if you said the head of state is the commander in chief of the defence force. It means nothing and we rather refer that we describe on of the powers of the President exactly what his powers are and putting such a thing in the Constitution and on a previous occasion we had already I think decided that that should be so but that expression still exists in section 77(d) and that's why we draw attention to it.

Chairperson: So, is that agreed all round? No.

Schreiner: From the ANC side we have revisited that question and feel that it is actually important that the definition stays in the chapter dealing with the National Executive, Chapter 5.

Chairperson: So that it stays in the Chapter on the executive? Where you describe the powers and responsibilities of the President. But I thought Dr Alant is agreeing with that. Are you? Then it stays in the executive chapter, but does not, is not retained here. So it can be removed here? Are you saying so?

Schreiner: I think, if you read the footnote. The suggestion was that it be removed from Chapter 5, we are now arguing that it needs to remain in Chapter 5. It is an issue that is only addressed in Chapter 5.

Chairperson: Dr Alant, Mr Selfe first.

Selfe: Chairperson, can we hear from the ANC why the reasons for revisiting and changing their opinion?

Chairperson: OK, African National Congress can you tell us why you are revisiting and changing your opinion? Can't you make up your mind once and for all?

..... [248] The retention in section 78, where the powers and functions we argue that we need to reinstate that the President shall be commander in chief. Now in certain circumstances, you can argue that yes this is an agonistic in terms of modern existence, however after further discussion with the ministry particular the viewer rose quite clearly that if the President is to appoint military officers at various levels to command, that is not a political function as such, but he does it in his capacity as President and Commander in Chief. So that you actually link the chain of command when the President will assume command, so that there is a clear military link to it and you can't have that unless your President is defined constitutionally as the Commander in Chief. And I think General Viljoen would see that argument of having that clear military line of command is actually essential to whom  
[261] ..... goes to that level. The other side issue which can be covered in terms of law which would be the notion of who confers commissions. Politicians cannot confer commissions on generals or whoever. That has to be done by somebody acting in a military capacity and it's useful to have this distinction because it further allows you to distinguish between the political realm and the military realm over which and of course the political realm ultimately dominates that. So that's where the purpose of that comes in.

Chairperson: Dr Alant

Alant: Chairperson, I found it difficult to agree with this, the President doesn't appoint any senior officer on his own. He does it as the Chairman of the Cabinet after consultation with the Cabinet that's what we assume and he does it as the political head of the Country and not as

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the Head of the Army, as the Commander in Chief of the army, he will never .....the Minister who is the political figure there. And the President is the Chairman of the Cabinet and he may confer commissions and things and that may be described in section 78, but I cannot really see it is part of the old history of Europe that the President is also the Head of the Army. I cannot see how it works in fact that he acts as the Commander in Chief. As General Viljoen said, you must have one on the war of circumstances, one head or commander of the army and you cannot have somebody above him.

Chairperson: Yes, General Viljoen.

Viljoen: Chairperson, I agree with the idea of Chief of President should be in command. The Minister is not in command, the Minister is part of Cabinet and he is therefore part of a committee, but we have a single defence force in defence of a single country, then the actual super commander is the President and he carries out his command in the appointed single commander of the defence force.

Chairperson: Yes. Who declares war? The President declares war.

Alant: But after consultation with the Cabinet.

Chairperson: But I mean the act of doing it. It's the President. He is the one who stands up in Parliament or wherever, maybe on his lawn or wherever.

Schreiner: Chairperson, it may also be a she.

Chairperson: The President declares war. She will stand wherever, in Parliament and say I hereby declare war and so on and give the reasons. If that person is vested with the capacity to declare war, or the power to declare war, the person is leading the country to war and all that, and that time of war isn't the whole country looking for leadership in that person? He is commanding the forces, General isn't how it will work practically? Mr Selfe.

Selfe: Chairperson, I just would like to know whether it isn't the same argument using the same argument to have written into the Constitution that the President is also Commander in Chief of the Intelligence Service, because it is exactly the same power that the President has. I mean, I would say all the practical arguments that have been raised are valid ones, ones looking for leadership, ones looking for

direction, but I mean the legalistic arguments I don't think stand up to scrutiny.

Chairperson: Isn't the Head of the Security Services? No. It doesn't make sense, because all of them are security services. How's that.

Schreiner: I don't understand the jump from the Intelligence Services to a Defence Force, because although the Constitution does define the President as having the responsibility obviously in Cabinet to decide on whether there should be Intelligence Services or not Intelligence Services. There are not the powers in terms of the Intelligence Services that there are in terms of the Defence Force to declare war the state of National Defence and I think that provide for a very different situation in relation to the Defence Force and a need to define the President in relation to that.

Chairperson: Yes. Isn't it more compelling that this person, this Head of State, being the person vested with the powers of course with consultations to declare war. I mean that's single act on it's own, doesn't that vests her/him with the power that you got to recognise. Panel, what do other Constitution say? Prof Erasmus

Erasmus: Chairperson, I do not know what all the other Constitutions say, but what I do want to point out is that what you know referring to is the content there of footnote three, the President may declare a state of national defence. This is not quite the angle that you are addressing now, but I just would like to draw our attention to the fact that the whole idea of being able to declare a state of national defence in addition to what is covered in section 36, the Bill of Rights, which declaring the state of national emergency which in the list of eventualities includes war, but then as a threat to the live of the nations. That whole matter is still, there is a relation between those two areas that's still under discussion. You will remember that a week ago or so, the formulation on the state of nations has been referred through this by it and that's not finalised yet. If a decision is taken with respect to the choice we have suggested here, it will become clearer as to what the powers of the President will be and when there should be more than one. The second aspect as to the what the powers of the President will be is in the armed forces is a matter that we haven't really discussed beyond the scope of this document.

Chairperson: Now there is a note by the TRT the suggestion should be considered - yes, I can see that. Thank you for referring me to that. OK. Have you had time to consider what is set out in 78.6 as well, that footnote? Because that's being said by the technical refinement team. Miss Schreiner, General Viljoen have you had time to look at that as well?

Schreiner: In relation to?

Chairperson: In relation to footnote three.

Schreiner: Essentially, footnote two, the question of defining the President as Commander in Chief, footnote three in relation to 78.5 and 78.6 are linked. In essence they need to be dealt with - I think part of our difficulty is that the people who dealing with chapter 5 have also been debating these same issues and relation also to the state of emergency. So what we were doing was raising issues that need to be fed into that debate and so the two can .....

Chairperson: OK, Mr Eglin

Eglin: Chairperson, all of these functions that I see that are the footnote and others, I believe that the President acting is the head of the National Executive. They are all actions as which of powers which he has due to being the Head of the National Executive but all executive power is vested in him. Of the question of the Commander in Chief, there is only reference to that and this is that the Head of State the Head of the National Executive and Commander in Chief of the defence force, those ..... define what the Commander in Chief shall done or not do. I could say it is an agonistic. I am an agonistic myself , I think it is quite a good idea. To have the President as the Head of the State, also the Chief of Defence, Commander in Chief of the defence force, but it is a decision without power. He has power as the Head of Executive, but there is nothing in the Constitution which says he has power as the Commander in Chief. So, I would argue if you want a title, and I think it is quite a nice idea to have that person who in terms of the Constitution as to hold the Constitution to do all other grand things.

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[415] Also, the whole ..... position as Commander in Chief. So, I am not oppose to that from that concept, but I don't think we should read into the fact that he is Commander in Chief, that he has any on-line functions, except such on-line functions that he has because he is Head of the Executive. I am quite happy to have a Commander in Chief

in that concept, I would ask legal people what amplify what is called, if there is a state, not of emergency or problem, but if there is a dispute involving the head of the defence force. And there is a constitutional issue, I don't know whether in those circumstances the court might not rule in the state of revolution or a state with the defence force is tried to define the legislature or the judiciary that the President as Commander in Chief would have extraordinary powers. I would say as a rule he's got no powers, but it may well be that constitutional convection says t.....

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revolutionary state involving the Commander in Chief, Commander in the head of the defence force, perhaps the Commander in Chief could step in. So, I therefore uphold the Constitution. But that's a legal point which I think is valid, other than that I see he's got no function, other than to be the unifying factor that represent the head of the defence force.

Chairperson:

Ya, um .. Well, I don't know. I think conventionally that he as Commander in Chief he does have power. Much as I think the Constitution might not spell it out in detail, but I don't know ..... what do you want us to do with this. Dr Alant?

Alant:

It is a title with no content and that is how I see it. He also appoints the Head of Police in the following section and he is not the Head Policemen ... and so on and you can go on like that. It is a meaningless, it is ..... out of a sentimental angle you can retain it. I just want to draw attention to the fact that it has no content.

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Chairperson:

Ah-ha, what does it say .... yes. In the initial one, just maybe not to delay with this point that the Executive Director points out here, it use to read, the second addition of the draft used to read "the Chief of the Defence Force must exercise command in accordance with the directions of the Cabinet member responsible for defence during a state of national defence of the President". Meaning that, effectively saying that during the state of national defence it is the President who exercise his powers of chief of the defence force, Commander in Chief rather. Why was that change, how did it come apart? Prof Murray.

Murray:  
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I think this might be going not necessarily directly answering that question, ..... Constitution's draft of the present every reference to the President, unless it clearly applies otherwise as the reference of the President in Cabinet, in consultation with Cabinet and that provision

which use to say one of those far back drafts, use to 178.2 use to have add to the detail which refer back to the President. TRT, if I remember correctly, remove that because that was implicit in any case, one doesn't need to say that. The President as Head of the Executive would have that power and Cabinet Members effectively act under some kind of delegated power of the President, but that doesn't untie the problem that is related to what the Commander in Chief, Supreme Commander actually does and what that role is. And, I know you don't want to set problems aside, but I do think you'd had more clarity on that problem when the issue of a State of Emergency or actual defences is sorted out. And it may then be worth revisiting that and seeing that there is any substance to the position, what kind of substance it should be given, whether Mr Eglin suggest his real role there should be expressed or whether that should simply be left unsaid. I think it is very difficult to deal with it now.

Chairperson:

But I think it seemed then that the intention was that effectively as Commander in Chief, that is what he / she does during a State of National Defence and it is that unifying figure of which is the President which he have a role to play. I don't know if we are able to take this one much much further than we have know. What does the Interim Constitution say, does anybody have an idea? OK, I think members of the panel have made a point here, that this matter should possibly be probably unpacked and looked at more closely when we deal with the question of States of Emergency and declaration of war, or State of National Defence. Maybe we should look at it more closely then. The Interim Constitution does deal with that under 228 in part, under the question of accountability, in the end the President has to account to Parliament and he has to summon the joint committee and all that. Can we also look at that in relation to what we have in the National, in the present Interim Constitution? I think we flare this issue for now. Agree, Dr ?

Alant :

Ya, Chairperson we've lived with this sort of title for many decades and it wouldn't impose, I don't mind if we live with it for another 100 years. It is without content.

Chairperson:

So, can we say that this is tentatively agreed to for now, subject to the panel, I mean to the panel that technical refinement team coming back with an explanation of all this. So it is agreed to. Thank you, we move on. Mr Scholt.

Scholt: Can I raise one point, under point of responsibility. If we look at defence that is 177 and if we continue looking at 180 there is a point that is repeatedly, which talks about mutli-party committee of Parliament must have oversight over all defence matters ..... by National legislation that is in 177, and if you go to 181 it talks about the same thing. I think we can commence to two, to a one clause under 175.8 which can read as follows "that there shall be Parliamentary oversight of the security services as started by National law and all rules of Parliament", so it will cover all committees that deals with security services.

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Chairperson: There is a proposal, I think it is a drafting one. In terms of how we formulate this, that you could have this oversight responsibility being dealt with in the general clause, yes, in the establishment, structuring and conducting of security services. Possibly deals with monitoring, or whatever. Can we ask the Technical Refinement Team to see how they can rationalise those ..... Miss Schreiner.

Schreiner: I think there is a third clause that needs to be part of that rationalisation which I am not sure if Commander Paul has raised, which is 185(a) which relates to the Intelligence equivalent oversight committee. So one would need to suggest that in that 175.8 it covers 177 to 181.2 and 185(a).

Chairperson: That too we should look at how that could be rationalise too. Thank you. The TRT will note that as well. Thank you. Can we then move on?

Schreiner: Ya, we were moving on to the defence civilian secretariat 179. The amendment there to exercise any powers and perform any functions. It had been to administer matters previously, it is to bring it in line with the wording of the clause relating to the police civilian secretariat 183, the two wordings of those two clauses is not consistent. I am sure we don't need to debate that. Can I move on? OK. Moving on to police, 180.1 we have included there a phrase and where necessary to be structured and functioned at local level, and what was envisaged there was that in certain instances local level of structuring and functioning of a national police service may be necessary for example in the Metropolitan areas and the previous wording of it limited the structuring to be National and Provincial only, but we added that where necessary because we did not want to land up in a situation where it ..... locality, there had to be local level structuring of the

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police service. 180.2 deals with the powers and functions being defined of the police service, being defined in national legislation. 183, the last part of the sentence has been rephrased to prevent any duplication or a concern that there was duplication with the functions of the defence force, the previous wording was to protect and secure the republic, it's inhabitants and their property and the point have been raised in some of the submissions that the function of the defence force is to defend and protect the Republic. So the wording is now being "to protect us through the inhabitants of the Republic and their property". Political responsibility ...

Chairperson: Hold on. Let's clear up all this first. Confirm agreement. Is it agreed, 181 agreed to. Mr Selfe?

Selfe: Yes, Chairperson, I would just like to draw your attention to footnotes four and five on that page. Because it strikes me that it depends on the status of the word in brackets as set out in National Legislation, this occurs to me that if you are going to have local level policing, it might more appropriately be the province, if I can use that word, of the Province to pass such legislation so that we would prefer a formulation as set out in National and Provincial legislation. Then the question of footnote 5 again National Legislation establishes powers and functions of the Police Service and that legislation must enable the police service to discharge it's responsibilities effectively. We feel that by adding the words "taking into account requirements of the Provinces" would in fact strengthen that clause and make it's intention clearer.

Chairperson: Thank you. There is a view from Mr Selfe. 181 Provincial Legislation should regulate local police. What is effectively being said here is that delete as set out in National Legislation all together. DP says that insert it, but also include as set out in Provincial Legislation, as set out in National and Provincial Legislation. OK, what do we have to say to that? General Viljoen ... agreed to. What are we saying here? Mrs Mtiutso

## QUERIES (Tape 2)

135	Wording unclear
192	.... commission "revises" secured an .....
233	.... from the "Vibers" submission ...
252	Wording unclear
330	Wording unclear
339	.... of the "Chair" commissioner ....
402	.... of the MEC, ..... "Safety and Security" .....
425	Wording unclear
455	Wording unclear
461	Wording unclear
468	Wording unclear
514	.... inspector for "severe" monitoring ....
640	.... that "halogenastically" together ....
653	Wording unclear

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Tape 2

Mtiutso:

Chairperson, I take Mr Selfe's point, especially when it refers to 182 but I would think that in effect it would then also be applicable to 181 if you then talk about national legislation taking into account the requirements of the Provinces, so that you don't have all these legislations going this way and that way, where you can actually find a conflict between a legislation that is passed by the Province and that one that is passed by National. As long as you then say National legislation taking into account, so that whatever legislation is coming up at National level is taken to account so the point that we are raising for (2) I think is also applicable for (1).

Chairperson:

Can I say just to help us all that the question of Provincial legislation on anything is still being finalised and dealt with around the question of Provincial competencies and so on. I am inclined to suggest that we wait for finalisation of that matter on the competencies, but then say I don't know how we should deal with this, I want us to clean up these chapters as we move on. We just need a footnote somewhere that says something about what we are doing on competencies. Can you help us Miss Mtiutso.

Mtiutso:

I am not helping you Chairperson, except to say that that question would not even arise if we had to stick to Mr Selfe's own formulation of whatever legislation if you are gonna refer to National Legislation then that would take into account the requirements of the Province, so that we are here only limiting ourselves when it comes to Police to National Legislation whatever Legislation must come from National but of course National will be guided by the interest of the Provinces so that it may not even be necessary to say we need to be waiting for this, because here we are only saying that Police should fall under National Legislation of course taking into account.

Selfe:

Chairperson, I hear what you say in your remarks but it's of course very difficult to not to advance these arguments without the question of the Provincial competencies having been squared away, if you follow what I am saying. Um, there is another argument and that says that Police has been highlighted in its own chapter in the Constitution. If that is so, then despite the fact of agreement or non-agreement about competencies on Provincial powers, the power relationships that exist as between different levels of Policing need to be spelt out at least in principle in this

chapter. Because otherwise there might be a conflict between this particular section and whatever you might have in other parts of the Constitution dealing with Provincial competencies.

Chairperson: Has the argument been raised in your meetings. But I haven't seen it coming before us that police chapter should stand on it's own.

Selfe: Chairperson, but it is here. I mean there are seven sections of the Constitution that deals specifically with the police and not seven sections here dealing specifically with education or anything else like that. So when you specifically dealing with something that may be a shared responsibility as between various levels of Government, then I argue that you need within those sections to spell out the power relationships and the command structures that exist in that institution.

Chairperson: I hear you. You not helping me at all. You introducing another dimension. So, you are effectively saying we need to insert in here the role that would be played by the other levels of Government. Now, hence I ask the question has this argument been entertained in your group and if it has I haven't seen it coming to me here. Because I don't see it anywhere to a point where I can say, yes, let us take it the route that Mr Selfe is raising.

Selfe: Let me put it to you this way in the discussion with the constitutional experts last Friday or whenever it was, exactly the same argument was raised I think by Mr Jakoob on the question of this whole matter falls within the debate on Provincial competencies and on that occasion I said hold on a second, it's not necessarily all squared away by simply a debate on provincial competencies, because it has specifically been mentioned in it's own section in the Constitution.

Chairperson: Mr Scholt

Scholt: I think the dimension which Mr Selfe is raising, I think our view was that that point needs to be dealt with in the National Legislation, because we cannot begin to come with details and then put them in the Constitution. I think that was the view that we had on this side.

Chairperson: Dr Alant

Alant:

Chairperson, I am not going to solve the problem, I just want to say a few words about it. Police is rather unique I think in the sense that we all agreed that there should be one force, there should be one budget, they are not Provincial budgets. There are resources allocated to the Provinces by the National commissioner, one budget, one command structure. However, it is necessary for the other levels of Government to play a role to minimise the distance between the people and the police. It is quite different here, this of the defence force where that element doesn't really enter. We have not succeeded in capturing the role of the Provincial MEC which is paramount importance except in 182.5. Each Provincial Government and that implies the MEC for Police is responsible for monitoring an oversight of the conduct and efficiency of the Police service and for cultivating good relations between the Police and the rest of the community in it's Provinces. That MEC doesn't control a budget. It doesn't appoint the Provincial commander, but he has a role play, a vital role ..... the of this are important people and if we want to improve on the formulation then I think it is 182.5 we must improve.

[135]

Chairperson:

We must improve where?

Alant:

If we want an improvement, and sharpen our pencils to improve and more specifically formulate or express the role of the Provincial government then it must be in 182.5 and we haven't succeeded in doing better than 182.5

Chairperson:

The Police National Commissioner has also said something about this. I haven't read his submission, but there is a submission which I think was put ... what is it? Mr Mti.

Mti:

Well, Mr Chairperson, the National Commissioner's concern is covered under 182.4 in the new draft, was the concern raised about the lack of about the powers between National Commissioner and the Provincial Commissioner and the new 182.4 covers the National Commissioner concern. That has been said after his submission.

Chairperson:

So this was the National Commission who made this submission and it was inserted after the submission from the National Commissioner. OK. I seem to recall that the National Commissioner did make a submission in this regard. Throughout, I am looking at the submission, throughout the National Commissioner is saying in accordance with National Legislation, in accordance with

National Legislation and so forth and so forth. Now, these are the experts who are out there in the field. People who are having to execute policing throughout the country. Are we able to say we disregard what they are saying altogether? It occurs to me that if we do, we make their task even more difficult constitutionally while we sitting in our ivory towers here. And 182.4 seems to also deal with the matter as obviously suggested by the National Commissioner which in a way addresses the whole question of Provincial and all that. Mr Jacob.

Jacob:

Thank you Chairperson. Just to sketch the history, 182.2 and 182.5 are slightly different from 182.3 and 182.4. 182.3 and 182.4 deal with control and management of the police force at the level of line functions and 182.2 and 182.5 balance the roles of the province and the nation in regard to political responsibility and direction. And I think that Dr Alant is quite right that up to now, the best balance that has been found between the need for the Provinces to have some say and the need for the National to direct in the context of a single budget, is 182.2 and 182.5 read together. So that is the political responsibility which is dealt with there. As far as 182.3 and 182.4 is concerned, that's the issue of control and management of the force. There the commission revised secured an opinion indicating that there will be problems in regard to it and the formulation was suggested the panel unanimously agreed with the opinion which had been secured by the Commissioner and on that basis suggested a reformulation and reformulation that you now see of 182.4 is indeed a reformulation which is as a result of the unanimously recommendation of the panel, arriving from the opinion which had been secured by the Commissioner which he put up. But the distinction between 182.2 and 182.5 which balances political responsibility, Nation versus the Province is a different matter from control and management which 182.3 and 182.4 deals with.

[192]

Chairperson:

I think we should move on, quite honestly, and I am inclined to say we delete the words in brackets and move on to 182. 182 also deals with a view from the DP. Can we move then to 183. 183 is fairly straight forward, there is no footnote to that one. Good, we move on. Thank you. 181.1 Miss Schreiner.

Schreiner:

181.1 defines that there would be a cabinet member responsible for policing essentially ensures that there is civilian responsibility for policing. 181.2 would have been

covered by the proposal earlier that there should be a 175.8 dealing with Parliamentary oversight. That would have been covered by that.

Chairperson: The TRT will deal with that one. We move on to 182.1

Schreiner: 182.1 provides for the President to appoint a man / woman as National Commissioner of the Police to control and manage the Police service. 182.2 defines that the National Commissioner must exercise that control over and manage the police service in accordance with the directions of the cabinet members responsible for policing. 182.3 enables the National Commissioner to appoint a man / woman as Provincial Commissioner in each Province in accordance with National Legislation. 182.4 is as been pointed out the reworked version following on from the Vibers submission. It defines the responsibilities of Provincial Commissioner subject to the power of National Commissioner and 182.5 deals with the Provincial Government's responsibilities for monitoring and oversight of the conduct and efficiency of the police service and for dealing with the relation between police and community at Provincial level. As you will see, footnote 7, 8 and 9 relate to DP position on those clauses which perhaps is best argued by the DP.

[233]

Chairperson: I think the DP's positions are as set out here. Why are you fighting the National Commissioner of Police?

Selfe: I am not fighting the National Commission of Police. I also went on of these trips to Germany, you see and I find out how well the police operate on a Provincial basis in that country. I got so excited by my experiences that I decided to try and replicate them here. On a more serious note, ...

Chairperson: Maybe you should have taken the National Commissioner with you.

Selfe: [252] See the National Commissioner grew up within a ..... which was highly centralised, so .... Chairperson, on a more serious note. I think that two issues that Mr Jakoob has identified, one is the control on management and the other one is the sort of political control. I think if you start off on a 182.5 - quite frankly in our view, 182.5 gives the Provincial Governments, in our view, absolutely no effective control of any meaningful nature over the police in the Provinces. And because of that, everything else then flows from it because in our view, they don't have enough meaningful power so to all the other powers for

example to be consulted in the appointment of the Provincial Commissioners to develop both policy and legislation regarding various aspects of policing then fall away, so I believe that one, if one starts on sub-paragraph 5 and starts giving the Provincial Government meaningful powers, then other things automatically as it were, flow from that. Now, we are not arguing that the National Commissioner should not be able to direct the Provincial Commissioners in certain respects. But there must be a relationship that exists between the directions that the National Commissioner gives the Provincial Commissioner in certain operational circumstances and the political directions that that person should get from the relevant member of the executive committee.

Chairperson: How do you answer this Mr Selfe? Let me hear what Mr Scholt wants to say. Mr Scholt

Scott: The point that I would like to raise is that it is going to be important to look at the question of relationship between the National and Provincial Commissioners in the context of the National legislations that is there, because there are even mechanisms that are defined where the Provinces do make an input in terms of policy in terms of also other issues that are even operational issues, that are related to policies, not just an order coming from a particular office that do x and y and people don't have any say. And to look at the MEC, there is a structure they meet every month where they deal with issues. If you look at issues that they deal with, they do participate on policing matters, even at a national level. If you look at the question of Provincial Commissioners, they meet in fact once, sometimes twice a month. So we need to look at it, in that context, that there are mechanisms that are in place in order to ensure that they do make an input and in terms of how for instance the policing should be done, whether at a provincial level or local level. And you also have the committee structures that are there. Thank you. So my view is that, have it minuted, the clauses that are here should remain as it is and we should not just look at it in isolation in terms of what is happened.

Chairperson: Mr Eglin

Eglin: Chairperson, I just want to express what I call practical terms and also get an answer in practical terms. Are we not talking about the command structure, we are dealing with what is said political oversight, now at the moment you mention there are all kinds of meetings and instructions

come through. I wanted to take the case of Gauteng and Jesse Duante. She is operating under the present Constitution, in which the powers of the Provinces is not the powers of the police on a command structure, but the responsibility of MEC, and the Exco for the Province in respect of the oversight are scheduled. She is operating on that basis. Now, I just assume much more, the only thing she could now do is operate until (5) under 183.5. Is responsible for monitoring and oversight over the conductive efficiency of the police and for cultivating good relations between the police and the rest of the community. That is how I see the sum total of would be her new responsibility under the new Constitution. All I want to know, is there a view that in fact, there is too much power, or too much authority given to Jesse Duante in the executing of their functions at the moment or are we saying that this is just another way of giving exactly the same power but casting it or putting it in different words. What are we trying to do? Are we taking away or are we giving?

Chairperson: Are we taking or giving. None of the above, they say. Mr Mti first.

Mti: [330] Chairperson, I am not sure exactly .... exhausted ..... earlier on. Firstly, I think we are saying in as far the competence of the powers that will have to be resolve in the discussion of section 5 of the present constitution. And secondly, 183.5 does give Provinces power to monitor and oversight responsibility at provincial level but we are also saying some of the concerns that we are raising here are actually covered in the present Police act which give clear direction of what is the role of the MEC and what is the role of the Chair commissioner and we do not think that is necessary for us to impose in the Constitution the role of the MEC, Safety and Security ..... don't think may always be there, else we are saying some of these can be regulated by a National Legislation and the present police act does actually accommodate and give clear direction of what is the role of the Provincial Commissioner and what is the role of the MEC official.

[339]

[402]

Eglin: Chairperson, can I ask a simple question. Because I am a leek in this, I wasn't involve in the meetings. Is the MEC at the moment in charge or designated MEC for safety and security in Gauteng Province, is that person going to have more power or less power or more responsibility or less responsibility in terms of the new Constitution then she

would have under the old Constitution? Is it going to be more or less? That is all I wanted to know.

Chairperson: Maybe the question that ..... maybe you want to answer, Miss Schreiner, please.

Schreiner: I think it is a difficult question to answer when it is put in that form, because it certainly, the MEC and I don't want to personalise it to one particular person sitting, or one particular problem, but certainly in terms of this draft of the Constitution, an MEC would not have the kind of functions, powers defined as they are in the interim Constitution, but this draft needs to be read with the legislation that would structure the police at National level, Provincial level and deal with the functions of the National Commissioners and the functions of the Provincial Commissioners set and place the equivalent of the Council of Executives, that brings together the Minister and the MEC's to resolve it. So, essentially what we are saying is that those issues should be defined in law, not in a Constitution that's actually going to define in stone or relative stone, relations that are particularly complexed and need to be also addressed in a changing context in a process of involving police services and involving culture of policing within South Africa. So I don't think you can answer simply they going to be increased, they going to have more powers, or less powers, because essentially the law that flow out of this section, will then define the details of those powers and functions.

Alant? Chairperson, I hear what my colleague is saying but if it is correct that the powers of the Provincial MEC's would be 182.5 then one might find that the present police act might become unconstitutional perhaps if it goes further than what is said in 182.5 in this page and that is the only function identified in terms of the Constitution.

Chairperson: Isn't it correct also that the powers of provinces, I mean the question that Mr Eglin raised, at the moment revolve around the provinces having some role in the appointment of the Provincial Commissioner, that falls away. That would now be done by the National Commissioner. At the legislative level. I must stop.

Schreiner: Sorry, just to respond on the question of the National Commissioner appointing the Provincial Commissioner. It goes on to say in accordance with National Legislation, so exactly what mechanisms get spelt out in what role

Provincial Government or the Council of Provinces or etc. plays into it is a question that then gets define in the law, is not a question that gets defined in detail in the Constitution as it was.

Chairperson: Miss Schreiner, I should shut up. I should shut up, because you obviously have looked much more closely into all this matters and I was trying to look a bit clever and ..... Advocate Jacob.

Jacob: Just to add one more variable to the puzzle that we have at the moment and that is the National Legislation regulating the police service, will also have to ensure that the police service performs its' functions effectively.

Chairperson: I was also going to go to that, but once again I should shut up. Dr Alant.

Alant: Chairperson, you asked the question whether the MEC or police has got more power or less than, or the Provinces got more power or less than provide for the interim Constitution. We made a study of this although it is some time ago already, if we refer to the section on powers of Provinces in the interim Constitution, 217 then. ... now there the MEC have the power to approve or veto the appointment of the relevant Provincial Commissioner. We didn't want to write this into the Constitution, we thought this convention and also the National Legislation should provide for that. And then what we have in the present police act, is the provision for the ..... and the regular consultation and we couldn't think of a situation where the National Commissioner would appoint a Provincial Commissioner without talking to the Provincial MEC's. I cannot see that, if we want to go spell out that detail in this Constitution, it would be rather lengthy. And then there was the provision, that the Provincial Legislature could pass laws pertaining to the police which shouldn't be in conflict with the National Legislation that's all and we didn't describe it here. We thought that that should be done in another chapter pertaining to the provincial powers. The framework idea of the province which has the powers to legislate it is not in conflict with the frame with legislation. So that it is all that is specifically said on the powers of provinces. We think it is a better formulation that we have here, in this draft.

[425]

Chairperson: Once again, I realise that I should never ever tempted to say anything. I looked at the old Constitution, the interim,

I am putting it away now.

Eglin: Mr Chairperson, just one more question. I think Mr Alant as dealt with 217, 218 and I accept that question of appointment of Commissioners, but under 219 the MEC have got a special, may I call political function in relation to provinces, which is spelt out a, b, c to g. Now, do I take it out of the new ..... that that person would not have those powers under 219 a, b, c to g, but that those powers would be exercised by the member of cabinet responsible for policing? Well, 219 says something to the ..... direction and the directions of the relevant member of the Executive Council refer to 217, the Commissioner shall be responsible for ..... So he is responsible for that subject to the direction of the Exco member at this stage. Do I take it if it is now no longer going to be subject to that Exco member's instruction or advise. Is who is going to be responsible, is it going to be the member of the cabinet responsible for ... It has to be somebody other than Commissioner himself, it's got to be a political person accountable. If it is not going to be the Exco member of the Province, is it the Exco member of the National Level?

[455]

[461]

[468]

Chairperson: Let's hear, Mrs Mtiutso

Mtiutso: Chairperson, we were trying to explain that these things would be defined at the National Legislation. We are not as we are trying to say removing or adding powers. All we are saying is that it is enough in the Constitution that interim Constitution was the negotiated interim Constitution and it had to go into detail and clear one of the guidelines that we are given was not to necessarily go into all the detail. The powers of the Provinces I am sure are still going to be defined and also the powers then of your MEC if there is going to be an MEC, will also be defined that is why there is always a sentence that says in accordance with the National Legislation. That is understood that all this details will go into the National Legislation.

Chairperson: I think that is clarified. We move on. We look at Intelligence. Anything we need to raise on Intelligence. No.

Schreiner: I think maybe just an explanation on 184.1, which is a rewording although there is no change in terms of the intention of 184.1 from what we previously said. The submissions have indicated that the clause as it was, was open to interpretation that the President may have a right

in an individual capacity to establish an Intelligence Service. We want to make it quite clear that although the decision is a decision by President in Cabinet. The establishment of services have to go through Parliament, through National Law so the rewording to ensure that we talking about Intelligence Services other than defence and police intelligence and that they have to be set up in terms of the law.

Chairperson: Is there any difficulty there? No difficulty. And then the rest is the same.

Schreiner:  
[514] The rest of 185(a) is covered by the clause proposed for 175.8. 185(b) relates to an inspector for severe monitoring, that remains and 185(c) remains facilitating and co-ordination between Intelligence services setup in terms of 184 and also the intelligence divisions of defencing.

Chairperson: Advocate Jacobo.

Jacoob: Just clarity for purposes of redrafting in terms of what was intended. Is it correct (a), (b) and (c) of 185 leaving aside the preamble to 185 now, (a), (b) and (c) relate to the intelligence service establishes by the President in terms of 184 and to the intelligence divisions established by the police force and the defence force, this is how I understand it. (a), (b) and (c) relate to the intelligence division as well as those services established by the President and if we could get that confirmation it makes drafting a lot easier.

Chairperson: Miss Schreiner

Schreiner: Can we confirm that that is correct? The 185 relates to any intelligence services setup in terms of 184 as well as defence and police intelligence.

Chairperson: Thank you. Yes, Dr Alant

Alant: I just want to draw attention to one small thing, and that is in 185(a) we have a multi-party committee of Parliament and they deal with all matters relating to defence including the intelligence divisions of the defence force and police service. Now, if you look at 177.2 and that multi-party committee of Parliament must have oversight over all defence matters as regulated by National Legislation. So you have common ground here. The Intelligence according to this formulation will be dealt with by the two committees of Parliament. One under defence and one under

intelligence.

Chairperson: Mr Mti

Mti: Chairperson, I suspect Dr Alant missed the point we were earlier proposing that we do away with 177.2, 181.2, 185(a) and have those covered under 175 and a new 8. It would read that there shall be Parliamentary oversight over security services as determined in the National Legislation all rules of Parliament. So the question that is raising therefore would not be of a serious nature.

Chairperson: That seems, Dr Alant, to cover it. I thought I would say that by I was afraid that I put my foot in it again. That seems to conclude this one, I think. Can we agree that we don't need to deal with this chapter at the retreat. It just need to be redrafted and we will deal with it as a Constitutional Committee on the 4th, alternatively the 15th. Prof Murray.

Murray: Again, one small matter that is going back to footnote three. There were two proposals in footnote three, the one dealt with related to an addition to section 78.5, the second one which was agreed I think by the ad-hoc committee that dealt with this chapter, relates to a proposed addition to 78.6. Is the correct thing to do then to move this proposal into the chapter on and we can talk about it then.

Chairperson: I think what, 78.5 and 78.6 should now be uplifted into the body of the draft and then on the 4th, alternatively the 15th we then deal with it. But you will also have clarified your own mind about this whole thing about States of Emergency, National Defence, State of War, State of Revolution, State of Interaction, everything. Advocate Jacob. The ANC is being rebellious.

Jacob: Chairperson, the one thing we haven't dealt with and that is, I forget the word now, but those people who are paid to fight everywhere, mercenaries. That was mentioned earlier it has actually not being disposed, let left hanging in the air unless we dispose it.

Chairperson: Yes, as I understood it, Dr Alant was saying that it needs to be dealt with somewhere. I think he said in the bill of rights ...

Alant: Under the, we thought under section 3 of the Constitution on the citizenship that could be, there could be an Annexure there.

Chairperson: He said it should be dealt with somewhere in the Constitution under citizenship or something. I didn't get the sentence he said that should be dealt with under the security services. It is matter that we just need to look into. I think you should look into it. Mr Eglin

Eglin: Mr Chairperson, I take it as a result of Prof Murray's intervention. When we come to the question of the State of Defence we will consider that halogenastically together with the State of War, State of Emergency, etc.

[640]

Chairperson: That is what I was saying. Ya.

Eglin: Chairperson, once again I would like experts to give me an answer to it. I am not unhappy with what I call the ring of 174(a). I shall ... national state, national security must reflect the resolve of all South Africans. That is an assumption that all South Africans at pursue resolve. But as individuals and as a nation, to live as equals to live in peace and harmony to be free from ..... free and to seek a better life. Now in the sense of that is now a constitutional requirement, that that was national security must reflect, and I presume it means and no more, or no less. Then I want to know, how does this deal with the Republic of South Africa one self democratic state found under commitment to provoke human dignity to achieve quality and to advance fundamental human rights. Is National Security not going to do anything with the democratic state? Secondly, when you come onto bill of rights, it says the state's duties, and I presume the state's duties must include the duties of the intelligence, must respect, protect and promote and fulfill the rights of the Bill of Rights. All I am saying is 174(a) is an except from of what I call a political state, of a general kind. I get extraordinary worried when I see that is what National Security is about and only that with affect other obligations are placed on the State as a result of the founding principles and of the Bill of Rights. And I do believe at some stage somebody should look into this. Because there can't be a conflict between the two.

[653]

Chairperson: Mr Eglin has raised an important point. Can we ask the Technical Refinement Team to look at 174 as well as what we say the founding principles and the Bill of Rights. Ya,

I think it's really sort of to check whether there is consistency and all that.

Eglin:

Preamble to the Constitution might also affect. Depending on what it says.

Chairperson:

That's another one. Also the preamble. And if we will have a postamble, also a postamble. Five things, preamble, founding principles, Bill of Rights. What are we saying here in the security services? And the postamble if there wouldn't be any. There will be any postmortem. OK. So, we will next deal with this matter. What is this, Mr Ngcuka you and Miss Mtiutso waving to each other, pointing fingers that you must leave. Ladies and Gentlemen, thank you very much. Can I say that I don't think we do now have time to deal with ....

Tape 3

Chairperson:

That's another one. Also the preamble. And if we will have a post amble, also a post amble. Five things, pre amble, founding principles, Bill of Rights. What are we saying here in the security services? And the post amble if there wouldn't be any. There will be any post mortem. OK. So, we will next deal with this matter. What is this, Mr Ngcuka you and Miss Mtiutso waving to each other, pointing fingers that you must leave. Ladies and Gentlemen, thank you very much. Can I say that I don't think we do now have time to deal with ..... able to do any justice to those institutions. Can we refer them to the next meeting? And besides they are lastly dealt with anyway. Have a good ....

**QUERIES (Tape 1)**

013	Wording unclear
084	around the definition of the "question" commander in chief
100	Unknown speaker
113	Unknown speaker
157	.... a military "jonter" in command
159	... forming a "truimphed"
164	... call a "truimphed" or a "good-truimphed" or a "jonter"
188	... actually a "peace", training / administrative ...
248	Unknown speaker
261	Wording unclear
275	Wording unclear
362	.... state of "nations" has been referred
406	Wording unclear
415	Wording unclear
433	Wording unclear
453	Wording unclear
478	Wording unclear
561	Wording unclear
625	Wording unclear
Sell	<i>Selfe</i> Spelling?
Alant	✓
Mtenswa	<i>Mbintsso</i>

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Careed

Spelling ?

it now allows for a flexibility in terms of structuring of the command of the defence force, it allows for either a single person to be appointed, or a chief of staff type of arrangement. Flowing from that 178.2 have been reworded to be consistent with 178.1

Chairperson: OK, just hold on. General Viljoen.

Viljoen: Chairperson, 178.1. If you have a single defence force and that is still laid down, then you can have only one commander. There should be no provision for senior military officers in command, there can only be one commander. That is if you have a single defence force.

Chairperson: OK, there is a view from General Viljoen. Is there response. There is a response.

..... [100] Thank you chair. We would disagree that that is the situation, because what we are concerned about is a command can be a function that is not necessarily vested in one individual but can be in a joint chief of staff situation, that does not deny you the right that if you are involved in operations of any sort, that you can then appoint a commander for that particular operation. So that you wouldn't have a chief who would be a chief in perpetuity. It provides a flexibility of the establishment of creation of your particular structure.

Viljoen: Chairperson, you can have a joint chief of staff, you can have a joint group forming a staff, but there must be one commander. Military force cannot have two commanders, because only one commander needs a single force.

Chairperson: OK, let's hear further what you are saying.

..... [113] Our emphasis here in this draft is on the words "to command the defence force". The word "to command" is different to "commander".

Viljoen: Can I ask Dr Deitlers a question that the fact that you mention the "or" it's the president's discretion and the circumstances will dictate what option he is going to utilise, but he will ultimately be the commander in chief.

Chairperson: General, how do you see that?

Viljoen: Chairperson, in a defence structure, you have a very clear cut line of command. And the commanders are assisted by

which use to say one of those far back drafts, use to 178.2 use to have add to the detail which refer back to the President. TRT, if I remember correctly, remove that because that was implicit in any case, one doesn't need to say that. The President as Head of the Executive would have that power and Cabinet Members effectively act under some kind of delegated power of the President, but that doesn't untie the problem that is related to what the Commander in Chief, Supreme Commander actually does and what that role is. And, I know you don't want to set problems aside, but I do think you'd had more clarity on that problem when the issue of a State of Emergency or actual defences is sorted out. And it may then be worth revisiting that and seeing that there is any substance to the position, what kind of substance it should be given, whether Mr Eglin suggest his real role there should be expressed or whether that should simply be left unsaid. I think it is very difficult to deal with it now.

Chairperson:

But I think it seemed then that the intention was that effectively as Commander in Chief, that is what he / she does during a State of National Defence and it is that unifying figure of which is the President which he have a role to play. I don't know if we are able to take this one much much further than we have know. What does the Interim Constitution say, does anybody have an idea? OK, I think members of the panel have made a point here, that this matter should possibly be probably unpacked and looked at more closely when we deal with the question of States of Emergency and declaration of war, or State of National Defence. Maybe we should look at it more closely then. The Interim Constitution does deal with that under 228 in part, under the question of accountability, in the end the President has to account to Parliament and he has to summon the joint committee and all that. Can we also look at that in relation to what we have in the National, in the present Interim Constitution? I think we flare this issue for now. Agree, Dr ?

Alant :

Ya, Chairperson we've lived with this sort of title for many decades and it wouldn't impose, I don't mind if we live with it for another 100 years. It is without content.

Chairperson:

So, can we say that this is tentatively agreed to for now, subject to the panel, I mean to the panel that technical refinement team coming back with an explanation of all this. So it is agreed to. Thank you, we move on. Mr Scholt.