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COUNTER BOOK

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Ramaphosa

Opening 10h20

Adoption of Kwazulu provincial constitution

Eglin

If they can do it unanimously, so can we.

de Lange

Record that

Ramaphosa

Requests to hold back in Nat Excc + Nat'l Assembly
Is looking at Courts + Transitional arrangements

Agreed

Courts

Ramaphosa

Reformulation of Chapter 5. Required to go thru;
approve + iron out difficulties

Hofmeyr

Go clause by clause

94

Agreed

footnote 1 falls away for (1)

(2) same

(3) ✓

(4) ✓

(5) 2 options

Hofmeyr

Both from the drafting teams trying to solve tech problems. No poli. dispute, only technical

CC Subman 10-08

2nd term

Propose

Opening 10/02

Propose of teacher's personal contribution

Propose

if any one is to contribute, so can be

Propose

Propose that

Propose

Propose to hold back in the first - that's mainly
to bring in some educational materials

Propose

Propose

Propose

Propose of teacher's personal contribution
to bring in some educational materials

Propose

Propose of teacher's personal contribution

Propose

Propose 1 full page for (0)

- (2) done
- (3) 1
- (4) 1
- (5) 2 options

Propose

But from the briefing team they do not feel
problem. The first chapter, not technical

refinement

de Lange

Judges raised res judicata & precedent systems.
Does this capture their concerns.

Grovi

He didn't attend all the meetings. He understands it that Option 1 too wide & might impact on res judicata & precedence system.

Judges to be sorted out still.

Kungr

Chief Justice feared Option 1 only incorporated res judicata historical cases

"Respected" too wide, too vague. Believes compliance w/ might narrow it & can look into it.

Douglas

Prefer option 2. But this technical not political.

Nissels

Seems can be wrapped up in a short meeting.

Agreed
Judicial system
(95)

van Heerden

95(c) Remark - Judge v.d. Walt in Supreme Court in Putsonia.
& supported by the State & E. Cape
Requested to be heard in hierarchy of Courts

MP Requested that they be heard.

Ramaphosa

They were part of the delegation

557-5260

referred

They want to indicate a present system. How do you capture this scenario.

Henry

He also thinks we are writing. He understands it that Option 1 is what a night system is. no indicator + procedure system.

Gene

They do not want it all.

They prefer from Option 1 only indicators no indicator indicator was

Kenny

"Project" too wide for scope. Please confine it night tomorrow - can do it.

Option 2. But the technical not political.

Douglas

There can be wrapped up in a short meeting.

Wanda

Physical
Technical system
(or)

Specialist in
to
PS(C) Project - staff & staff of Police Dept.
Proposed to be held in training of Court

von Herten

Proposed that they be held.

Proposed that they be held.

v. Heerden

In submission concern, might have courts slotted in b/t High Court + Supreme Court.

Ramaphosa

Discussed by Courts Ad Hoc Comm.

v. Heerden

Yes, raised there.

Hymeyer

Havent seen this in official submissions & not faxed to ANC.

No need for meeting.

ANC expect going thru submissions, i.d. issues for discussion

But might reconsider.

Gibson

Agrees. All take submissions seriously, esp Judges. But his opposition to the hierarchy late. Has been set out for a yr.

Some participated in CA workshops.

People can change their minds. But is late.

Her view. If in doubt, hear their representations.

de Lange

Be careful if individual or groups of judges send representations to a party - not correct. Should be sent to CA.

Make it clear, repres. thru CA structures.

Wessels

Not commenting on the specific submission, but generally - when listen to representation from institutions, is from instit. This distinct from individuals in those institutions, who may

Wissel

want to lobby a poli. party. If the party or person lobbied adheres to the position, should do it as their own, otherwise gets too confused.

Kunze

This submission is part of the public submission doc.

96 (1) ✓ Straightforward

(2)

95(e)

New suggestions ← drafters.

Insert "[recognized]"

Prefer not to do that. It could be esta. by an act of Parlia or legis. Find way to get around this.

wd prefer esta by act of parlia, & then look at mode of recognition of trad. courts.

Ramaphose

~~96(2)~~ Come back this this

Agreed.

96(2)

✓ Heerden

Queried: why omitted "heard"

Hogrege

Discussed this at multilateral. Don't need both.

Agreed

(3) ✓

9b (4)(a)

Rana: 9b (3)(b) - a tech. issue. Still being considered.

9d(4)(a)

Hojung

Is refined. But difficulty in finding exact words to describe ^{could} want. Only to keep it open, but no poli. disagreement. Only a flag to remind us.

9b(4)(c)

Groot

in (c): Obliges Parli or other inst. to do certain duties. e.g. Const. Court is only court to invalidate Acts
further sd be only court to declare that Parli or Pres. has failed to comply w/ a const. duty.

de Lange

Not too worried w/ concept but word use
a + b "decide" c + d "declare"

What are differences b/t decide, declare
find. Do they have different powers.

Groot

No reason why don't stick to decide, Pen.
In any case wd take from 3 order.

Panagros

Agreed

Use decide consistently in ca(xb)(c)(d)

Agreed

Footnote falls away.

Sedibe
Sedibe

TRT will consider this + find
Will find a formulation for 4(d) -
Don't just replace it w/ decide. Consider it
closely.

Grossi

Replacement not require reformulation; but in
principle no problem w/ using decide.

Ramaphosa

Precisely.

~~(d)~~ (d)

de Lange

Problem w/ (d) - under 4 - exclusive jurisdiction
Judges saw this as contradictory b/c other courts have some
power.
But (d) under CC, but separately, so
isn't an exclusive jurisdiction, but judges
have final say.

Perhaps separate ff as (5)

v. Heerden

Agrees. Wd also provide for submissions - Judge
Heerden.

Rama

Will be looked into clarifying this formulation.

Gibson

Agrees w/ sentiment, but believes current wording
says just this.

Hofmeyr

All de Lange saying is that having in section
w/ strictly exclusive jurisdiction is
confusing. Moving it might clarify.

Gibson

Agree, in common planer lang.

Grove.

Problem - other sections link up to 96(4) as a whole - 98(1)(a). So, if split, may cause other problem.

Inserting

Thought / "including any act of conduct..."
wd deal w/ matter.

Lanaphosa

Let PRT to look at it again, taking into account comments made & return to it

(5)

Gibson

JSC
When courts formulate rules do so for judges, don't take into account lawyers who use the courts.

Ngauka

What proposing?
Explore poss. of JSC to pronounce or parliament.

Gibson

Rules formulated by court, submitted to JSC for consultation & then be promulgated in normal way.

Ngauka

Investigating Rules Board. Not sure how its composed; & what role Parli. should play.
No disagreement, just exploring.

Rama

Which body - Rules Board or JSC to be considered

de Lange

"and w/ the leave of the Court" - abstract review but included w/in the concept of "the leave" - doesn't cater for all instances. Needs to be refined.

Hymys

Drafting matter b/ all agree on this, a word reflected in the text.

Rana

But this provision here for a long time.

de Lange

But if is a mistake rectify it.

Hymys

Leave matter here. One conception, didn't relate to matters considered by court. But experts could look at it.

Ranaphosa
Gibson

OK leave as is. Come back to it.

96(5)(b) ✓

96(6)

v. Herden

Queried: why not in definitions & why here.

Grossi

b a definition. If have a general definitions clause could be moved here.

Hymys

Better to spell it out in context of the chapter. Not used elsewhere in constit. Spell it out here.

Ranaphosa

There's a view.

97(4) ✓

Gibson

Wants it ^{less} flexible. Constitution # of judges, & determined by act of Parliament. No more flexible than that - otherwise bad. 1/2 matter of poli. interference

Hofmeyr

ANC holds it should be fairly inflexible, but Chief Justice himself made the proposal.

Take practical concern of judges into account - Only footnoted, but might need further discussions w/ Chief Justice on this.

Ngwenya

Agrees.

Last time agreed "not more than", but judges said no. So agreed to have it to formulation. They were happy w/ the formulation.

Gibson

Repeat views of Chief Justice, but believes he's forgotten the past, Gibson hasn't. What happens if have a rotten JSC. Propose "not more than a certain specified # of judges". If needs to be increased later, let Parliament go thru the complicated process of amending the constitution.

Ngwenya

Proposing for 8 goes out

Agreed

DP + NP to take back to principals

97(2) ✓

97(3) ✓

97(4) ✓

High Courts

de Lange

97(4) Wd Supreme Court of Appeals make own rules autonomously?

Khosa de Lange

Should be dealt w/ by nat'l legislation, too. Otherwise can draft own rules, no matter what fabric, the JSC w/ the country as a whole wants.

"but may make its own rules of procedures"

Part. of excluded from functions

Ramaphosa

let fn 7 apply here.

Agreed

Ramaphosa

Recall Rules Board w/ JSC

Agreed

Hofmeyr

fn 7 already applicable.

Expert opinion needed on whether

- you cannot specify some element of procedure in national legisla.
- or sharp distinction b/t function - procedure.

Rana

Experts will look at this.

Rana

98(1)(a) ✓

98(1)(b)

98(2) noted also subject to fn 7.

98A ✓

98(A)(a) ✓

Gibson

(b) let experts look at use of declare vs. decide

Rama

Ruled yes

99(1)

Ngcuka

Grants jurisdiction to

v Herden

Ngcuka

99(3)(c)

Supreme Court may make finding but not make declaration

Gibson

In practise not contradictory - needs proviso

Grové

No - covered in 1st line - ~~first~~ "within its power"

Ngcuka v Herden

Ngcuka correct. Considering ^{separating} 96(4)(b), 99(1) ...

Read clauses 1/2

de Lange

Judge Mohammad 99(1)(a) "must declare" sd "be" may declare". Why must retained.

Grové

If law or conduct inconsistent w/ const. there must be an obligation on court to declare it, not leave it to court's discretion.

People who have worked on this for a long time still disagree on interpretation. Need to formulate this in way that ^{expresses} poli. agreement

Gibson

Re problem is plain lang. Never refer back to other clauses. If referred back, e.g. to 96(4), wd be much clearer.

Asmat

This isn't legal. Is policy matter. Saying, even if ^{invalidity} ~~inconsistency~~ technical, "must" ~~is not~~ Too restrictive.

Asmat

All judgments are discretionary. May artificially tie the court hands. So supports de Lange, ask for reconsideration of "must"

v Herden

Adv Trenchard said use "may" in same way. Doesn't "to the extent of the inconsistency" cover it?

Gibson

look at (2)

Hofmeyr

Section 2 - Supreme law. Does this contradict that? (1) says must be declared invalid. (2) lets court suspend all consequences of the invalidity.

That, rhetorically, the correct approach.

v Herden

Agrees

Ramaphosa

(2) softens the blow of "must"

Wissels

Needs attention

Asmat

Can be moment of great crisis, when declaration of unconstitutionality could add to the flames. Then, the procedure to follow. But there must be freedom. All asking - further consideration.

Nyarko

After persuasion, Trenchard accepted "must". Cont in (2) to give further chance to correct itself.

Agreed 97 relaxed at in terms of has to simplify - need to link to provision of 96, 97 & 99.

Grové Opinions of judges occurred before reformulation of 97(2).
If asked them now, it might be different.

Gibson. Purpos must. But otherwise wording unclear. Confused
process of courts into 1.

Ranaphosa ^{that} Agreed/purposes clarification. Impact it so is clearer.
Don't say what is intended.

de Lange Earlier cd have orders of invalidity putting
retrospectively. Does (2)(c) say that? If not,
is it covered elsewhere?

Grové Dealt w/ in para (a) — can be retrospective,
present, or prospective.

de Lange Yes. But (2) ~~is not retrospective~~. Needs to
say retrospectively clearly. Other wise cd,
select arbitrary date for when b/c unconstitutional.

Hjmege But if inconsistent w/ Constit.
But saying declaration of invalidity from certain date —
allows court to set date when b/cs invalid. To allow
Parli to fix it. (c) allows consequences of the
invalid act to be valid if they are.

Ranaphosa Why was retrospective dropped?

Grové Plain Lang. But will reformulate the whole
provision.

Agreed

v. Heerden
Ramaphosa

3(a)

NP expects looking at whole issue in 2(c) for same reasons.

3(a)

3(b) ✓

3(c) ✓

Asmal

99A)

What is pign - procedure v substantive -
"to ensure that justice prevails"

Kragar

Needed words to encapsulate "inherent jurisdiction"

- (1) Inherent power to protect the process
- (2) ensure justice done

Re 2 seem to encapsulate the notion of inherent jurisdiction. But still exploring if it covers inherent jurisdiction.

Asmal

Rules of court determined by legisla^{Provisions} auth. May clash w/ Re, the procedure. Impinge on the "inherent right to protect the process"

& doesn't see how "ensure..." arises from inherent jurisdiction. not justice, but fairness should prevail, as this relates to the process.

This new. Should debate whether inherent jurisdiction for plain lay. reason is replaced w/ power, they don't mean the same thing.

"Justice prevails" could be used for substantive purposes, rather than the procedure sense intended here.

Asmat

Let us put aside this again.

Why won't normal people understand what "jurisdiction" is. Or "inherent."

de Lange

The struggle to grapple w/ this continues. Inherent jurisdiction means where there are no laws or procedures that not captured here. Let parties look at it again.

99A - further consideration.

v Heerden

Corbett - common law jurisdiction.

Ramaphosa

wd be looked at

99(b) ✓

100

⇒ In limbo ←

101(1) ✓

101(2) fn 13

Re 100

de Lange

No judges supported Option 2. Supported Option 1; only Law Soc. said wd prefer another & that wd be Option 1/2.

v Heerden

As got close to end of meeting, began to hurry. Didn't discuss it extensively.

Nessels

What doing to make progress?

Let it stand over.

Hofmeyr

Matter needs attention. Deadlock for almost 1 yr.

NP proposal politicises judge's appointment & public forums have not accepted Res.

of bilaterals have concerned + not much room for compromise.

Nessels

Referred it to bilaterals for resolution.

Rana

Notes Reviews in Minutes - Option 1 preferred in meeting of judges.

Let matter be resolved in discussions b/t parties.

s 10 (3)

Hofmeyr

Concern - Judge President. Most felt current system satisfactory & introducing provisions like this wd create practical problems.

Place whole section in brackets.

Many senior short term app. by senior judges as a social service, not to b/c permanent judges.

Ramaphosa

Is Res needed? If any where, put it in legislation.

Asmat

But execs have been known to appoint actg judges for long periods.

But let experts consider whether Res can't be regulated ~~and~~ by legislation.

Grove

Yes.

Gibson

~~Should be in the constitution, as~~
 otherwise exec. could pack a court.

de Lange

ANC agrees to delete (3)

v Heerden

NP: consider judge's comments + try to meet
 their objections in the provisions

de Lange

All judges wanted the present system; done Dan
 Mpi. of Justice who consults w/ the senior judges of
 the court, in consultation w/ the individual

Rana

Agreed to in (2)

de Lange

Yes, but just add "as determined in law" to (2)
 & delete (3)

Currently handled in legisla.

Rana

Proposed -
 Deal w/ (3) in legislation

Gibson

DP
 Sounds sensible will take advice

v Heerden

NP will take advice,

Semanya

Unfortunately word "~~the~~ total" ^{mm}
 Problems that appts could occur for prolonged
 period w/o going thru rigours of JSC.

Ramaphosa

cd go into legisla.

How cd reward 2 to deal w/ length of tenure of
 acting judgeship.

101(b) Delete "total" Then insert "continuous" + leave it as was.

Ramaphosa No-reward 2.

Ngeuka Dont combine (2) & (3). (2) is the mechanism. (3) is tenure.

Gibson. DP & NP Agreed to consult w/ principals on possible deletion of (3)

102(1)(2)(3) ✓
103

Ngeuka 101(2) / ^{Prefer} "after"

Marais No mandate on this

Gibson DP "on the advice of"

Rama To return to this.
"On advice of" binds.

de Lange Minister just rubber stamp.

Hjmyz Judges & consultations indicated present system works + should be preserved. No one has suggested we do the additional things suggested here. If there was any threat of abuse, JSC could fill post.

v Heerden Have no mandate. Need to consult principals.

101(3) - In limbo

102 ✓

103

⁽¹⁾
103(a)

"grossly"

Asmal

If 2/3 total number of both houses to vote.

High requirement.

Grossly ~~is~~ incompetent - The level of proof is great. Seems okay if incompetent.

Ramaphosa

~~Agreed~~

Delete grossly?

Ngeuka

If agree w/ 101(2) after consultation, not agree to remove "grossly"

Ramaphosa

To negotiate. ANC to sort out amongst selves

103(b)

2nd house, joint sitting?

Wait until 2nd house decided.

104

v Heerden

NP reserves position until resolve 2nd ch.

Ngeuka

(e) 1 to be appt. by advocate prof 1 by pres + (f) 1 to be appt. by attorney's prof + 1 by pres.

ANC still supports

This to balance the ^{current} dominance of adv & attorney's org.s by whites.

Gibson Adv. + attorney professions reached a sensible compromise in current JSC.

Ramaphosa Looked back.

Gibson Yes, but they resolved the problem.
The people on the JSC are there to rep. lawyers + advocates, not the pres.

de Lange Wrong. Those persons wd not rep. the President.
Presi. to consult w/ the profession widely - e.g. include lawyers for human rights etc.

To create deadlock breaking mechanism b/c of problems w/in profession.

Gibson Alternative: 2 attorneys - by profes taking into account majority + minority interests w/in the profession.

Doesn't want Pres. to be nominally "his people"

Wessels Pres does have that right in (i).

de Lange (i) is made up of lawyers. Only clause where you can bring in people from outside the profession - allows criteria for race, gender + lay participation.

Gibson's proposal patronising. Org.'s outside mainstream powers don't want to be told who wd represent them. Let them rather be consulted in process.

Gibson Leave well alone - use wording in IC.

Ngauka

21
DP is accepting need for representivity,
for bringing in blacks & women.
So, there's poli. agreement there.

Proposed: flag this & let Teach Advisors
consider a formulation w/ reflects this.

(g) - Law lecturers ask why confined only
to attorneys. Why want to participate here.

Gibson

What about Law Students? [Engne in sheet]

v Heerden

ANC issue - disappeared ^{after} 18 Dec. -
raising it again.

Wasn't in refined working draft.

Give Dem opportunity to discuss it in a
multilateral.

Agreed

Kruger

Kruger: Law Teachers' Asso requested their
rep. on JSC be chosen on more demo.

basis - Instead of deans selecting
rep let the Assoc.'s plenary select the
rep.

Need to see how can formulate w/o constitutional
sing the Law Teachers Asso.

Consideration of how to draft this is
being attached to

Asmal

Two defects: Unacceptable that needs to be
a professor of law; requires to the rule of
law

Let it be a leader of law, designated by the appropriate body designated in legislation.

Ramaphosa

Agreed this will be attended to.

Gibson

Don't agree w/ Asmat's view

Ramaphosa

→ Drafty to take into account Review of the Law Teaching Assoc.

Hofmeyr

Wait for draft + discuss thereafter.

v Heerden

Who wd consider what draft re. (g)

Ramaphosa

(g) - drafty team for sub comm.

Hofmeyr

(i) should cater for lay people playing a greater role than do at the moment.
Presidential nominees need not be lawyers.

v Heerden

Want formulation to take back to principals.

Hofmeyr

Delete "two of whom are practicing advocates & advocates"

Gibson

This cast in concrete for ± 1 yr. - carry away at (e)(f)(g)(i). Now sees why HP distrust JSC + want a special procedure to nominate judges.

Asmat

Amused by this. Nothing cast in concrete. ~~Asmat's~~ voice of ordinary lay people critical. Doesn't compromise the integrity of the JSC - lay people can bring sense into proceedings, lawyers can't

Bmel

Don't want party hacks there, but larger participation of lay people.

23

de Lange (exf) Advocate & attorneys - need broad deadlock breaking mechanism to stop the unbecoming conduct that happened

(f) Law Professors + Law Teachers said don't want down to nominate, want democratic selection

(i) No great wisdom in any one being lawyers.

So Proposing 1 applied by Pres.

Hofmeyr

(exf) to try to enhance status quo

All members of attorneys also have say in who their rep.s should be, & it fair sd be same for law faculties.

Re (i)

Initially said 4c Nat'l Ass. should go. This ~~was~~ a compromise. Not to override balance that Presidential power. Rather to open up way for lay participation.

Wessel

Way Forward.

Gibson

v Herdren

Had many bilaterals. This raised for last time since last yr. Refer this again to the small CC. Get ANRC proposals in writing for discussion in ad hoc comm.

Gibson

ANRC trying to create a new JSC - broken up at 5 min to 12.

Gibson

Wd allows Presidents to ~~envo~~ appt. 4 of his parties advocates.

Presidents + govts do abuse power + need to see what can do to stop this from happening.

Agrees w/ v Herden re way forward.

Woods

Now want resolutions ← Judicial Ad Hoc Comm.

Will arrange own meeting & own procedures.

Gibson

Want Admin support.

If to be chaired by chairperson + Dep. Chair, outside of Press, they'll chair tightly.

Ruled: multilateral chaired by chairs?

Rama

No. A waste of time. Resolved amongst parties at bilateral level.

Proposal for whole chapter.

Gibson

Prosecuting auth. disappeared.

Hofmeyr

Agreed: fn in 3rd draft. Doesn't know why omitted.

Ramaphosa

footnoted in 3rd draft, not in new draft. Is matter need to resolve among selves.

27

No other business to come up. If no further
business.

Crispin

President's office to check power & need to
see what can be done to stop the harassment.

Agree w/ Henderson to meet present.

Non-voting resolutions - Judicial Act the
Comm.
Will arrange some meeting on procedures.

Woods

→ Crispin
Want their support.

"The Hour"

If to be done by Crispin - Dip.
Chair, outside of room, but'll chair
tightly.

Filed: Multilateral should be done.

Not a mark of time. Resolved amongst
parties at bilateral level.

Rome

Proposed for whole chapter.

Processing with. Disagreement.

Crispin

Agreed: for in 3rd draft. Don't
know why omitted.

Hoffman

footnoted in 3rd draft; not in 2nd
draft. Is matter over to resolve
among selves.

Romphras

v Herdren

Disappeared since 3rd ed.

Recommended - goes to bilaterals.

de Lange

Instructed TET to draft
No one left it out. Amendments. The issue was not discussed.

Hofmeyr

Parties w/ some co-responsibility.

105

Grove

Speaking for Asmat

(c) "decisions" too narrow
~~seasims~~

add (d) The Admin of Justice by instit. s other than courts

Wd be considered

Mtr on to transitional arrangements

→ Parties agreed to discuss this matter on 25 March
Deferred for consideration

Agreed.

Admin of Justice ch. Report back on 25 March
on outstanding issues.

Lunch:

Limitation
s/3

Bill of Rights

Number

to large

History

Great

102

Speaking in French

(2) "actions" too narrow

→ Add (d) The terms of Justice

Justice's office has been

was considered

Mr. to transitional arrangements

Justice agreed to become the holder of 22 March
deputized for maintenance

Justice

House of Justice Dr. Dept had on 22 March
in subsequent cases.

Justice

Management Committee

26 March 1996

Present: R. Meyer, A. v. Buren, K. Moshoe, C. Eglin, C. Mulder,
 W. Hofmeyr (Att) & C. Viljoen, J. de Lange, S. de Beer, ^{Ms. Moxon,} D. du Toit
 In attendance: Anton Meyer, L. Zondo, S. de Westhuizen, M. Ndziba,
 A. Ebrahim, M. Spang, G. Grové

~~2/15~~

Opening

15/17

Proposed Amendment to Constitution

Yacobs

Deal w/ 73 & 73(A)

Amendment to 73(B) same as earlier but typing error removed. New kicks in when majority of text after expiry of 2 yrs.

Tightening up period: amended 73(4)

(1) Intro of 14 days w/ in w/ CA must vote on Panel's offering

Rampson

(2) Deletion of unrec. words that create impression const. can be the constitution w/o approval of C. Court.

Hofmeyr

73(9) same as that yesterday.

Removes 2 yr. qualification; election by C. necessary only if const. not approved by requisite majority in referendum.

de Lange

Nesbitt

Yacob

(73A)(1)

Court must say why refers back

(2) CA can amend text w/in 3 mo.
broad formulation w/ time limit.
CA to manage the process to avoid
undue penalty of the process.

(3) Deals w/ refusal again - a "loop"

(4) Kicking in of ~~329~~ (3)-(9)

(5) A policy matter.

When a Const. Court deals w/ a
referendum refusal + finds that
text doesn't comply w/ a CF,
goes back to CA. CA could cure
the fr referendum, or pass it
in terms of 73(2) w/ or w/o a
referendum unnecessary.

Ramaphosa

Thanks. This is a proposal. Did slightly
more than mandated to deal w/ extra
matters: 73(5)

Hofmeyr

73(6): may want to add similar
time period as 73(9): 14 days.

de Lange

Ordered
Order of discussion. ANC wants to make
other proposals to

Nessel.

Refer these to panel. Get broad understanding
on what they said 1st.

Ejlin

what are ANC proposals - holistic view needed.

Rama

7

de Lange

Amendment to 73(3): 71(2): 2 yr period only apply here. Before, deadlock breaking mechanisms kicked in before, now after. w/ move, whole series of deadlock breaking mechanisms. Link clearly re what they are + time frames involved.

Ejlin

Mayer

Tighten this up.

Ramphosa

Yacob: (4) Add "14 days" Add to (5), line 2 of "or should" insert "w/in 14 days" & something like that to read "In accordance w/ subsection (2) within 14 days"

de Lange

Ramphosa

Mayer

(6) Process here you ended. After "71(2)", insert "w/in 14 days of such approval" to read "71(3) w/in 14 days of such approval" + insertion in last line referendum w/ shall be held w/in 90 days of such approval.

Yacob

(9) Delete "or the expiry of the said period"

Carroll

de Lange

73(5) No reference to what wd happen if no majority reached. Don't reach election stage. So insert at beginning of 73(4)

"if any proposed draft text referred to in 73(5) is not passed by a simple proposal, or..."

Want 1 more proposal, but hear Jacobs 1st.

This wd tie up all Re actions.

Efin

Let it be typed out w/ additions + subtractions.

Meyer

Insertion of 14 days in (5) - does it replace that reference to 14 days in (4)?

Ramphosa

↓

de Lange

Ramphosa

Thought saying in addition

Meyer

["if passed in accordance w/ ...]

What wd happen thereafter? Does it b/c a constt. by referring it to Court?

Jacobs

Cautious approach -

"and may be passed in terms of subsection (2)"

after deletion in subsection (4)

Cravi

ANC suggestion to insert 14 days in (5) wd allow deletion of underlined words in (4) + inclusion

Grove

of words in brackets

Mayer

Shouldn't there be a reference to 73(4) in 73A?
In addition to reference to B(2)

Jacob

Can do that. But if get 2/3 maj. in Panel
Proposal, ^{complies} ~~with~~ B(2)

Only 2 ways to refer the text to Court —

73(2) 2/3 majority

73(5) approved for purpose of referendum

So covered, but could add it.

du Tert

Adoption in
1. An additional way: / (10) + (12) after an
election, but wd still need to go to C Court.

1. If new 73t doesn't have effect, look at 68(2)

Need clarity here: wd CA be disbanded, b/c wd
still need to make amendment.

Panel did memo for MC to say no reason to
suggest CA wd b/c forte officio. Cd still
deal w/ Constt amendments.

Jacob

Adoption outside 73(2) a(5)

Could — 68(2) 73(13) — distinguish
adoption from passing.

Could say in 73A, adopted mee
passed by the Constt. Court.

de Lange

In response to Meyer - problem, words in brackets
had disappeared & would no longer spell out
what subsection referring to.
line 4 " and be voted on in terms of subsection (2),
ed be inserted

(4) voted on in terms of (2) ... Not Ass.

(5) ^{link} may → shall

Add further 14 days in referendum subsection.

Meyer

Need to look at amendment as a whole.
14 days in (5) - might be a bit ^{too} limited;
CA might need extra time. Extend it to say
30 days.
In other cases, 14 days quite clear.

de Lange

Look at that.
But depends on what do w) 73(5). Needs
poli. decision.
After text comes back from Court saying ^{comply} ~~agree~~,
can take it back to CA to try to get 2/3 majority.

Meyer

But 73(5) applies after Panel don't
reach a unanimous decision, let parties
look at it again.

73(5) - Court says does not comply.
Then not limited to 73(5) result
again. Could find a 2/3 majority.

du Toit

73/9) now doesn't have a choice about whether to go thru referendum before going to an election.
~~to now competing~~

Wd like to have a choice b/t a referendum + elections

Wissel

Let ANC proposal be typed + distributed in next 24 hrs.

MC discussion on this proposal on Thursday am.

A report back to caucuses on Thursday.

Eglin

Amendments -
Taking away President's discretion to have referendum:

Should this fall away or should it apply even after 2 year period finished + time frame extended.

Agreys

President doesn't have the option. He must call it.

de Lange

Earlier option: wait out the 2 yrs, don't let deadlock breaking mechanism kick in call election.

de Lange

Need to look politically at whether want to provide the option.

Further discussion

Yessie's proposal +

Eglin's proposal

Could be considered even over holidays.

Let Experts finalize + deal w/ Thursday.

Ramaphosa

Let Receive amended draft
MC to discuss on Thursday.

Ramaphosa

Problems to CA re documentation for
Friday.

People need time to read the text before the CA.

Wessels

Meet tomorrow p.m.

Ramaphosa

Concept of amending constitution has been discussed
by all parties already, but now need to
consider the real thing. Need to give people
at least 24 hours before CA

Meet prior to commencement of meeting at 2:00.

Agreed

Hofmeyr

Pt of clarity re du Toit's pt. - Cd still
by pass referendum by not adopting
amendment by a simple majority so that
option not yet removed.

Eglin

Let matters for CA take priority tomorrow.

Ramaphosa

Commence as MC + then go into multilateral
Multilateral to begin at 15:00.

ANC to ensure amendments proposing handed
over to CA.

Agreed. by which to give people back.

Rules:

v. Buda

Is it nec. to provide a Fin.

Ramaphosa

Yes

Deal w/ it tomorrow, so people can have further opportunity to study it. Will take it as read.

AOB

Internal means: Bosberaad:

Zofin

(2) Could DP bring along extra people = TCs.
Advisors: outside people, or members of CA who aren't members of CA?

Meyer

Take # of rep.s in CC. Where have people
- TCs - would stay 3 days, but need to participate for more limited time.

Ramaphosa

Agree - depends on how structure agenda + how proceed on 2nd + 3rd day.

Agenda items might not be covered, + Chair might request people to stay.

So, is difficult if people come in + out, w/o Chair requesting them to stay on.

Meyer

Maybe a practical way - arrange transport on end of Tues. to allow people to go where agreement reached.

Ram

Standby vehicle to ferry people back.

Ranophosa

Bring those people who have dealt w/ matters on an ongoing basis, shouldn't be bigger than 11.

Smaller parties allowed alternates - so could hold simultaneous meetings.

Advisors: some Tech Comm advisors will come.

Each party allowed up to 2 advisors.

Tech Hd. needed on competencies, Bill of Rights, + Panel.

de Lange

Mandate Chair + Director, once Mandate Agenda available

No, need delegations 1st; deal w/ everything, not only outstanding issues.

2nd meeting: report from second president.

Panel can prepare recommendations to discuss they will be referred to council they have authority in order. Pass into Order Paper

2nd meeting: over a series of days by chapters

Do not consider that matter of credit, + amendments in Order Paper

Amendments want to get before the board

Management Committee of April

du Toit, Chiffone, ~~Adams~~

K. Madore

R Meyer, A v Breda, C Viljoen, C Muller, C Eyles, P Grobler, J. de Lange,
 Present Likierfeld, H Ebrahim, M Spang, L Zondo,
 Opening 14/10

Rules

Likierfeld

Procedure substantially adapted
 IC didn't specify a structure for writing the
 constit, so CA Rules drafted in a vacuum,
 as if were standard Parlia practice -
 But the CA process has differed.

Rules currently ask for 3 stages

- (1) Each party makes statement in
 Constit.
- (2) Open Time

1st Reading

2nd reading stage - departs from normal
 procedure.

Parlia can propose amendments to
 clauses. They will be vetted to
 ensure they are technically in
 order. Then onto Order Paper.

2nd Reading: was a series of days -
 by chapters

So wd consider that section of
 constit. + amendment on Order
 Paper.

Amendments won't be put before the house.

Decisions not taken in 2nd reading. Amendment to be referred back to CC, w/ will meet in between -

Once cut of date for amendments reached, no further amendments, except by discussion of Chair.

Final sitting: CC to forward its recommendations re amendments to CA.

Two text compiled.

End of 2nd reading, still no decisions.

3rd reading: formal adoption:

Requires 4/3 majority of NA. Prior to this, 2/3 majority of Senate needed on matters concerning provinces.

Then the vote.

Paul
Paul

Rama

This is the proposed procedure to adopt the constitution, w/ wld require amendment of rules

v Brede

Welcomes ruling re. 1st reading, involving leadership of parties w/ speak at 1st reading.

Chair to decide how much time for other small speeches.

Warns against these letters, as process might fall to pieces.

v. Breda.

2nd Stage: main problems - delivering amendments by deadline.

Final print of draft Sun 21st - available on 22nd. Parties would have to scrutinise the final draft to see where amendments needed.

^{Doubts} ^{would} that draft be available before 21st, the day the debate starts.

Ramaphosa

What if CC on 22nd a CA on 23rd.

v. Breda

Not give 24 hrs. more?

R

Yes

v. Breda

Tried once time when proposal allows to go through the whole draft to check even changes coming from plain language process.

But Chair could allow amendment during course of debates in 2nd Stage. Don't doubt Ramaphosa's integrity, but would lay heavy req on Chair.

Give an opportunity during discussions for amendments to be generated, e.g. when further consensus reached.

generated in CA debate, let amendments go to CC, CC meet next day, report back to CA.

v Breda

Should parties dispute Chair's decision re amendment,
^{him consult w/}
 let Manlon participate

Lama

Not agree

v Breda

Even if CC met for limited time to consider amendments w/ wouldn't even need to be printed

To create flexibility to generate amend-
 ments w/ ^{hopefully} would be few & clear w/

Ranaphosa

It's the flexible procedure we should adopt.
 Some times it can even be Manlon.

Certain ruling can be straight forward,
 others not.

v. Breda

Extend period for 1st amendments \Rightarrow ?
 At least another day later.

Lama

Hence, proposed CA on 23rd.

v Breda

Don't want to delay process.

Lama

Writ. CC will go thru whole draft +
 party could produce amendments +
 forward \Rightarrow CA.

Wissel

Leave time frame as is, but allow for
 additional 24 hrs. to accept the
 initial batch of amendments.

Manlon v CC to take resolution of
 understanding that in 2nd stage writ

Wessels

accept amendments on principles (as pol. understanding reached) but on technical aspects of text.

So, if amendments come can do by 23rd.

Let heads give notice about what amendment would forward, & have them in by 23rd.

Ramaphosa

CC would be finalising 15-19. Only get final revision on 22nd.

So have CC on 22nd, & CA on 23rd.

Wessels

Believes won't hear anything new on 22nd or 23rd, altho has no quarrel re. 23rd.

de Lange

ANC agrees w/ much of Litherfield, & Breda + Wessels. Problems: look at procedures - very complicated.

Proposed do on basis that pass legisla. : Problem, in middle stage mixing CA w/ CC & will be problematic to discuss amendments by CA. Rather have to CC w/ 1/10 of those people.

Preliminary stages: needs to be a stage there as well for submitting amendments.

1st stage: 1st meeting - Chair intro, each party makes 1 speech; bill read, no amendments. Bill + amendment referred to CC.

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Handwritten text in the upper left quadrant, appearing to be a list or set of notes.

Handwritten text in the middle left quadrant, continuing the notes or list.

Handwritten text in the lower left quadrant, including the phrase "2 readings not 3".

Handwritten text at the top right, possibly a name or title.

Handwritten text in the middle left quadrant, including the phrase "Don't mix A & CC".

Handwritten text at the top right, possibly a name or title.

Handwritten text in the lower left quadrant, appearing to be a list or set of notes.

Handwritten text at the top right, possibly a name or title.

Handwritten text in the lower left quadrant, appearing to be a list or set of notes.

Handwritten text in the bottom left quadrant, appearing to be a list or set of notes.

In committee stage, let Man Com be drawn in -
for flexibility v. Broda requests.
CC to deal w/ all amendments.

Prepare final text for tableting & discussion
by CA.

Then back to CA + then discuss principle +
objects; no further amendments, except
for consequential amendments like commas.

Over a few days debate. Then vote.

+ 2nd reading.

If agree, can put time frames.

The proposal would exclude a large # of members,
who wouldn't be able to make collective input.

They should be informed of this in CA on Friday.

Committee stage requires clause by clause
endorsement in middle stage.

Parties shouldn't come to filibuster, but there shd
be flexibility to allow amendments that
come out of debate, + CC more flexible here.

1st stage has built in flexibility v. time.
Agrees - wd adopt go section by section.

CA hasn't had time or opportunity to discuss
the detail; shouldn't we allow that, not
nec. section by section, but chapter by
chapter, for public consumption as

CA CC - ...
for ...
to ...
paper ...

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Meyer

will.
CC would still be available in the intervals to meet.
I'd not however expect CA to speed amendments.

du Toit

Make concession 1st reading NP to make 2 speeches
to accommodate 1/2's.

de Lange:

have been
Would be nice if CA got access to broader
discussion re Bill; but, compact programme:
so the 3 or 4 days available for amendment,
take 1 or 2 to CC etc.

Only scope - to get final draft out quicker.

So, these are practical, pragmatic problems w/
ANC proposal tries to solve.

Rana

Can't we do both:

Sought open debate in CA all along + Man Com
authorised Chairpersons to i.d. issues for
discussion in CA, w/ view to convening it
weekly or 2x a month.

Many members, despite caucus briefings, not
aware of constitution. Need to create an
opportunity for them to do so.

SABC might want to broadcast it to cover the
full debate. That's good for the ordinary
citizens.

Can't you have limited CA meetings + then CC.

Graban

Not discussing principles, but logistic issues.

Jindhan

Not adverse to inclusiveness
But can we agree w/ broad parameters, & then
what date —

Substantively proposed:

Ramaphosa

ANC is capitulating

de Lange

"to the Chair's shores"

v Breake

Start w/ 1st stage on 22nd,
instead of CC on 23rd, move that 1st day
of 2nd stage to 23rd.

Wd give parties effort. to scrutinise the
draft.

Close public amendments on Mon 23rd.

23rd 10 am 2nd stage discussion of
1st chapters. If amendments generated,

CC on 24th to consider amendment
already tabled & those generated in
debate.

Next day kick off w/ CC

Judge as moderating re # of amendments.

By interspersing, if run out of time
can still use Sat 4 May + conclude
on 6 May.

v. Breda

Don't programme Tues 7 for anything. Leave it free for eventualities.

Jordan

On discussion of chapters, allocate time to parties; parties of knowledgeable people. Moderator helps of all parties, to decide on time allocation & that part of the procedure.

If programme 3 ch.s for 1 day, include that, no matter what time we stop.

Hogmeys

How do we best use available time.

Let 1st stage of plenary be extended to let parties state their problems

But use rest of time to resolve outstanding issues in CA

Let informative, inclusive process happen in 3rd stage - Chapter by chapter.

e.g. some issues - Bill of Rights to continue until end. Can't let that block the consideration of the rest.

de Lange

Re v. Breda's middle phase proposal: Care juggles CA - CA - CA: won't generate amendments in CA; they should be in the order paper

Also may need to batch amendment, rather than deal w/ one at a time.

Meyer

Follow Rava's idea: to do both. Let Chair & Prof Chair work out a schedule.

Meyer

It is, CA is place where total overall picture of new const. debated. Those in CC have been engaged in new const for months; give rest of part to participants, too

Jordan

1st stage: 1st reading (leaves out wk 18-21) ^{final nego. tech. checks parties concerned}
Take on board v Breda's concern re checking

Remapher

1st reading 24th: table text, bodies speeches - out not, ^{where} party stands on text as whole + table amendments formally; otherwise rest of day ed be used in speeches chapter by chapter.
CA be extended 1/2 day → 25th

Eglin

Remapher

2nd stage: CC, amendments tabled on 24th. To last 25/4 to 2/5

Eglin

3rd: 3/5 - 8/5 First debate on final text. Chapter by chapter.

Remapher

Allows v Breda's concerns re. b/t 3 & 8/5 accommodate "punches" + "gottches"

Eglin

2nd final reading 8/5.

Eglin

Agree, committee work at CC. But how do you allow ordinary members to give input at CA.
Alternating CA-CC-CA word word.

In 1st meeting, allow as many to participate as can over 2 days, 2 1/2

Allow 24th pm or 25: let Man Com or Emere to process the amendments.

Eglin

Then go to CC block to process amendments.

Mayer

Same as Godhan, except
Starts on 22nd, amendment submitted goes to 24th.

Godhan

^{giving}
Let Chair home - might want to give 1/2 day
on 22nd

Ramaphosa

Start 22nd: 2 full days discussions
Table, party leaders + others talk.

Eglin

23rd: Talk still.
Perhaps on 22nd, start after lunch.

Ramaphosa

Matters outstanding - few. Talk for 3 days.

Then talk 3-8/5

Eglin

No, if have good discussion in beg, people
won't want to have a long final debate.

Ramaphosa

Talk 23rd, 24th,

Eglin

25th - 2 May: Committee
3-6 May: last stage
Leave 7-8 free for whatever

de Lange

Let Chairpersons + leaders of

- 15-21 Tech stuff
- Leave day or so - final changes re
- 2 day opening debate - w/ will exist
- CC; amendment budget
- Then break into CC, deal w/ amendments

— period at end to talk again.

But have 1 or 2 days open to deal w/ ~~Paper~~ problems.

Meyer

Agreed

v Boda

When CC meets, ^{what} procedures used: chapter by chapter or amendments?

de Lange

Marlon can drive this, but seems, go thru ch. by ch., section by section.

Boda

1st stage 22-24 awaiting amendments for order papers.

de Lange

Agree too w/ Eglin has too, b/c wd be difficult for people to forward amendments, + lot dilates occur at same time.

Agreed

⇒ Tea break ←

Ramaphosa

Multilateral people have had to go;
Proposed: dispense w/ multilaterals - deal w/ at the boskermat. Wd give expect more time to draft.

Agreed

Andrew

Hasn't received a formal doc. on Local govt. even for boskermat.

Rame

There is a doc. that arose from bilateral

Jordan

Mr. Gure is doing a draft. Needs the week-end.

So, we'd be available at busberaad, & would structure the the discussion so not occur a day or so after the doc. distributed.

Jordan

ANC will provide a verbal briefing.

Amendments to IC.

Jacob:

① 73A to make sense of Options 1 & 2

73A tabled yesterday required a policy choice.

But that choice might not be possible, inserted Option 2 to make it possible.

② Received ANC submission after draft done. Will indicate changes as per day.

573 has 3 kinds of things that can do

1. Pass it (Sec 73(2)) $\frac{2}{3}$ maj.

2. Support it 573(3) simple majority

3. Approve 575

Each w/ a different consequence.

Jacob

2 kinds of texts:

Constit. texts TBA Option 2(2)

Amended text taking into account C Court's proposals

(3) a request

(4) Amended: Need to decide ^① 14/30.

② needs to link w/ 73(2)

(5) more complicated -

Originally - where panel text not passed, now, where Panel produces no text at all.

Deal w/ 2nd increased period by 30 days to cater for original 30 days + additional 14/30 days [← (4)]

Problem when period begins:

Trigger from date of submission in re case + End date suggested for submission to Panel.

(6) Looks good, but line 4 "approval" problematic. Replace w/

"certification by the Institutional Court"

If don't do this, still need to accommodate time for certification.

(9) Needed tightening: now is tight, linked to 73(3) & (5) + leaves no

room for difficulties. Ensures election not have to be called if constit. is not approved in referendum or if no

Jacob

refrendum is called.

Can ignore 73A Option 1

(2) Linked to 73(2) + 73(5)

73A (4) deals w/ kicking in (3) - (9)

ANC submission differs in way in which 73A (1) formulated. ANC wants more, court should say in what respects court doesn't imply.

Jacob

Panel believes its an unnecessary, but unhelpful addition, should it be added for caution.

v Breda

(4) pg. 5 line 2: "amend" not "amended"

de Lange

2 issues:

- (1) (b): queried whether problem remains. Agrees distinction b/t approval + certification. But "approval under subsection (5)" - problematic 14 days after approval; but make it 14 days after certification.

Option (2)(1) ANC w/ more detail, perhaps too much detail.

if look at 73A(4)

Problem, after the (2), end in loop.

if court refuses to certify, go back into 73(2) or 73(9)

de Lange

if Court says does imply + certifies - has to go back to CA for approval.

if by these 2 instances isn't passed by 4/3 a

simple majority, should it have access to deadlock breaking mechanism again.

Doesn't deal w/ 73(5); but what if don't get a simple majority. Wd need to be linked back to 73(9).

If Court refuses to certify, enters loop again. After a while not worthwhile: needs to go back to section 73.

Jacob

BA does create a loop. If court doesn't approve, must go back to the CA interests of (1). No way out of that.

Flexibility when CA dealing w/ it in terms of (2) in the loop:

- can be passed by 2/3 majority or suggest text in terms of 73(4) or approve text for purposes of 73(5)

So CA can do what it wants.

Loop breaking capacity in the variability of (2). If CA doesn't pass it, (4) breaks the loop. If assembly ~~approves~~ ^{supports} it (3) comes into play. If does not (9) comes to play.

So very conceivable loop breaking procedure in (2) need w/ 73(9) need lg w/ (4).

de Lange

Agrees if take Zac's draft fine, but tighten up w/ 73(5)

but w/ 73A shouldn't create a repeating loop.

Jacobs

If says, unless certified by Court, no const. Unfortunately, must keep going back.

de Lange

Certified copy comes back, it looks at it a 2nd time, amends, forwards to Court 2nd time. Should it continue afterwards. 1st loop.

Jacobs

but deadlock breaking mechanisms kick in need to go to Court 1x.

Needs extra clause. Court has certified does not comply.

Need clause of says what happens next.

Policy decision

Jacobs

Resolves it. But even if change loop; say go to 73(3) leads you to 73(4), if approved leads you to 73(5).

So always go back to 73(2) or for certification.

de Toit

Agrees w/ de Lange. Need to break the loop.

Jacobs right - must have certification

Say in (4) "amended text deemed to be a text in terms of 73(1)"

73(2) should refer to amended text in same way too.

de Lange

To get out of the loop, must be approved by Court, but make sure it doesn't go 2x.

73A(3) s71.

When certified [Text]

if certified does comply

does not comply

} back into deadlock breaking mechanism in 73.

"Reboot clause"

Yacob

- ① If CA passes text re 71(2) & court certifies, no need for that text to come back to CA.

73(B) applies, can be proclaimed.

- ② Loop misunderstood

- (1) comes into question only if court doesn't
- (3) certify

Re goes back to 71

Best taken care of read 71 w/ 73(a).

So not referred back to CA if court certifies it.

de Lange

On 1st pt. Yacob right, where certified.

Doesn't believe should have 2nd loop for noncertification.

But as far as 2nd part of (3), send it back to 73: where 73(2) or 73(5) wd resolve it.

du Toit

ANC proposal - gives clarity

if certifier → this happens

if doesn't certify → that happens.

Yacob's clause brilliant

But for clarity sake, add ANC proposal.

de Lange Short adjournment to resolve matters?

Breakthrough:

Chair: C. Ranophosa
de Lange
President: M. ...
Secretary: ...
Apologues: ...

Accept Zac's 73A(3) provided that the period of 73 months be replaced by a period of one month after the end of

Yacob Formal deci. that Opta 1 falls away

Ranophosa [Agreed]

(3) only applies to non-certification - spell it out

After 1 month + Plan w/ 71(2) to Cont + comes back from court non-certified

Ranophosa Mind boggling & don't put it into draft
It's hypothetical

Yacob It's built in 73(3) if not certified in 73A(3) - whole section deals w/ certification

[Agreed]

Draft as amended produced as CA de. to be distributed tomorrow for Friday.

31 Chalane & P. Closure

73(4) (p.2) & (5): 14/30:

Hofmeyr Use shorter period of 14 days for (4) + 44 for (5)

Management Committee

14 April 1996

Chair: C. Ramaphosa

Present: P. Marais, M. V. Mork, P. Marais, ~~A. v. Breda~~ ^{E. Meyer}, K. Andrew, R. Sizani, C. Chabane, K. Meshoe, M. Nyakayaka-Mangini, C. ViljoenApologies: ~~R. Meyer~~, C. Eglar, A. v. Breda

In attendance: H. Ibrahim, M. Spang, C. Likiefel, M. Keizer

1. Opening
Remaphosa

8h07

Procedural matters.

CC will receive report from various subcomm on progress made at boskeraad.

Agenda

Adopted.

2. Minutes

Adopted.

3. Matters Arising

No new matters other than those on agenda.

3.1 Evaluation of Progress

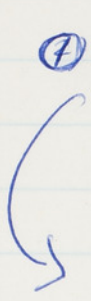
Ongoing item.

Abraham

Refinement

1) Depending on report tables, need for me to give instruction on refinement, to prepare document for 15 April.

Ramaphosa



⑦ Let TRT access members of parties to consult on refinement process.

Need to know where members will be: phone, fax numbers.

Wissels

On 3 occasions, Man'lm said wd. keep on evaluating the process to see if meeting objectives in terms of time scales + managing the process.

Thanked Admin for way conducting the process.

Ramaphosa

He is saying everything well extremely well. Achieved a lot of what intended to achieve. On target in programme + will be able to finish on 8 May.

K. Andrews

Quered, interpretation clause. If so,

Ramaphosa

There isn't one in IC. Advisors say shouldn't include it: wd be too extensive + lead to further confusion.

Have not given attention to it.

Abraham

Interpretation + Definitions clause

Roma

under ongoing discussions.

Perhaps give ~~instructions~~ ^{mandate} to TRT chair, to ensure doc. technically is as advanced as poss.

Andrew

5233 in IC seems as an interpretation clause. + 5232 interpretation clause

Ranaphosa

Ask TRT to look at interpretations + definitions.

fred

Issues overlooked they still need to be inserted. In some cases TRT will be able to insert tentative clauses, after consulting chair & dep. chair.

Chabane

- ① Outstanding issues - if resolved before 15, how will they be entered in existing drafts.
- ② TRT asked for contact w/ poli party members. In case disagreement happens, what will happen - what mechanisms exist before 15th, so don't obstruct progress.

Ranaphosa

- Re. ① Let CC deal w/ that: don't take blanket decision in HC
- ② Mechanisms - won't happen in way issue. Can check notes

Rama

a tapes, & in cases of extreme doubt will contact various poli. players to verify decisions made.

Sizani

If mistake made, will pick it up & point it out. Not fool proof.

Wissel

Asked, when have new text, add cfs for reference; & make the text user friendly, as annexure.

Ramaphosa

Okay, except worried about adding too many pages to text. So put cfs etc. in a separate annexure.

Wissel

to be
these annexure.

Agreed

3.2 Process of Certification

Ebrahim

CA Report, pp. 9-10.

* Preparation for certification

* Appt. of council: to rep. CA in C. Court.
Appt so can participate in discussions so informed when represent CA.

Look Chairpersons to take matter forward.

Ramaphosa

Decision on how to proceed to appt counsel.
Counsel to appear before court (Jans), & need to finalise docs before.

Need initial periods to notify any parties who
had want to oppose const. .

Sizani

Opposing arguments?

Ramaphosa

President of Const. Court said wd set aside
June to consider certification of Const.,
in open court, where counsel will argue
in what respects complied w/ CPs +
pay to court its certification.

Need to table report on how complied,
+ const.

Court wants to hear argument, & may want
to ask questions.

So need to present drafts & report in time
to allow them to scrutinise them.

As well, may be parties in CA who believe
in certain respects consti. doesn't
comply w/ CPs.

Those parties wd need to be represented by
counsel as well.

All this in terms of Court rules & what
Pres. of Court may prescribe.

So need counsel

Moss

Our lawyers will need to be available whole of June. Hopt. & brief counsel almost finished.

- (1) To defend CA against any parties who say doesn't comply
- (2) To present argument for contract even if unopposed

Let Chair & Dep Chair to brief counsel ASAP. next week

3.3 Schedule

Chabane

Trust factor: let me delegate esp. to Chairperson, Hq of Admin & any resources available: to proceed that matter w/o me being present. To report to me when convenient.

Meyer

Need to apppt. people tentatively to ensure availability, but consider need to apppt people who have been involved in process all along: Adv. Grov & his staff, part. as key advisors to CA.

Ramaphosa

Look for granted that law advisors team and in end be part of this ^{entire} team - provide backup & might do initial report.

Representation to court - advisors who were part of process but no longer here who are accustomed to court, need their skills too.

Need variety of skills.

Rama

Agreed, Chair finishes + report council to reg. CA.

Agreed

3.3 Schedule

Schedule tabled

~~Noted~~ Confirmed

Nissels

In programme, ample time to resolve outstanding matters.

4. A.O.B.

Chabane

Exec Dir pted out Admin looking ~ adoption - ~~progress~~ briefing on what's happening ~ this.

Has a few ideas.

Ramaphosa

Refer until 18th. ^{after recess}

Agreed

Zbrahim

15th CC. Let there be MC on 15th to table whatever matters that MC needs to consider

Rama

Confirmed

Meyer

Re. Schedule: observed, all parties committed keeping to schedule. But me

Moya

party questioned this in news. Wants to ~~ensure~~ ^{ensure} their commitment
Queried common view on this.

Ramaphosa

Don't discuss now, Don't interrogate that party. Let parties make statements briefly.

Mossa

Agrees w/ Wesulu's assessment. Views shared by all. If anyone differs sd be said.

Ramaphosa

Viljoen

Mossa

FF concerned that IFP outside, + if poss to bring them in, extend period to do so.

Don't like scrunching: great # of issues being discussed in short time. Not IC.

Doubts whether poss.

Will make statement re IFP at beginning of CC.

Andras

DP committed to doing everything poss & bring as co-operative as possible to reach target, But is a tall order, & sd not pretend that major issues remain to be resolved.

This isn't Kempton Park, & wd be unfortunate if have new coalition that need to amend soon after b/c crush.

Concern re pressures on the legal advisors, Lack calm reflection, I cd have "sloppy, second rate" formulations.

Don't think by date for end of debate

Myer

NP: upst n talks - believe can reach goal. Progress made on a set of critical issues & way in w/ outstanding issues reduced. Focused & determined talks.

Agrees, main requirement (negotiators & tech support staff) - to produce correct product.

Ranephosa

Wanted to postpone these statements now.

Mossa

When amended contract last at Fri, was unanimous amongst parties in CA.

Schedule before us accepted by all parties at the MC. No party has said extend date beyond 8 May.

Is wrong for DP to create impression that we being placed under undue pressure, or care isn't being taken to draft provisions in professional & cool-headed manner.

If people believe another process should be followed, let this be said here.

Issues have been discussed over & over again; submissions considered.

Resolved all big outstanding issues.

Don't stick by date for sake of it, but

Mossa

don't create unneeded uncertainty by changing date willy-nilly.

Di Zeni

Job upset when DP raises doubts about 8 May, to his birthday. Suggest date.

Mishoe

Every party should have the right to voice their views & should not be seen as disloyalty.

Smaller parties have worked under contents.

From now, not proud of ^{contents} final draft.

Ramaphosa

Parties should steer clear of making statements to get publicity. SD say how, have been part of process for 2 yrs, consensus making process there.

Rather, let parties say how, in a global way - disclosed clause for clause, just b/c 1 proposal they have made is rejected.

For those who doubt - what is it we have not achieved in last 23 months and achieve in an extra month or 2 after 8 May?

What would this mean for the country - uncertainty about ability of country to meet deadlines

- have on currency
- curtail foreign investment -
- create lack of confidence internally

Renaphosa

Have set aside time to deal w/ technical matters.

Will win

IFP: always said doors of CA remain open to IFP to return. IFP keen to come back, & certain members following the process closely.

Rebmonity: wants to know what progress making. interesting. May show signs they want to come back.

Closed 9h10

Request CC to commence 9h30.

Chair: C. Rumpson
Report: V. Moore, C. ...
L. Wessels
In attendance: M. Spay

1. Opening

2. Minutes

3. Presentation of Minutes

David Everett

Management Committee

15 April 1996

Chair: C. Ramaphosa

Present: V. Moosa, C. Eloff, L. Green, A. v. Breda, P. Marais, L. Wessels

In attendance: M. Spang, A. Ebrahim,

1. Opening

8h20

Agenda adopted

2. Minutes

Wessels

Note Re Minutes + correct at the next meeting.

3. Presentations of National Survey Results by (CASE)

David Everatt

Presented "Report," ^{rep.} documentation + "Executive Summary" in document pack.

Explained methodology

- 1) How many people have heard of CA?
- 2) Did they learn anything?
- 3) Exposure to debt credit?
- 4) Interest in demand for add. information about credit.

5) Cost benefit analysis.

60% of SA have heard of CA; not reaching rural areas, women, people aged 50 and above.

Lorant

2) what did they know?

48% knew spontaneously.

20% say "making laws"

16% don't know

People learned of CA: TV, radio & print; 13% from friends, at school or at work. Which says people talk about it.

Logo recognised by 41%; 17% saw the edition of "Constitutional Talk"

Means: hit rate: 73% of all SA.

80-74% : subsidised

60% : rural

Comparable:

In voter education campaign 75%

of people exposed: 57% said media taught them something (+11 million). Rural people learned the most.

PPP: 13% ^{attended} have had meeting on CA or constit. & about 1/2 said were actively engaged in meetings.

Trade unions kept their members involved; churches less so; other kinds of org.s didn't keep their members informed.

3)

Almost 1/2 of all respondents felt part of the process; where people didn't, were waiting to see largely, not register.

Loratt

63% said they wanted to be part of the process.
Overall, people had faith in the process,

Re draft consent: 8% have seen it; of those
64% read it (1.2 million people), of these
91% understood all or some of it. Only
14% tried to read all of it.

Language: little difference b/w white & black.

Now: in public discourse: but % don't
know how it will affect SA;

④

→ 82% said want to know more: want to
know what our rights are.

① if take how much it costs, divided
by costs overall, comes to
£1.61 per person reached

② what happens next? Media
campaign has worked, but how
to fulfill this desire for more
info.

Wessels

People reached in rural areas: what
medium reached them?

Loratt

Complicated b/c diff. rural areas.
Always most effective: face to face.

94 elections: video vans, + workshops.
Only campaign case evaluated
that widely reached people.

1/3 of people in rural areas don't have batteries for radios. So in rural areas chud face to face.

Moosa

Break down of info by province, + particularly KwaZulu Natal.

Forsyth

Data 5 days old + still analysing. The one piece he has re. people wanting more information:

91% in No. Province said yes, down to 75% in KwaZulu Natal.

In \pm 1 month, a full report will come out. If want info can ask.

Eglin

That was interest. What about "Attitude Hds": ~~to~~

Forsyth

40 page exec. summary out in meeting now. Supp. Not to look at race, but advantage.

But data in computer + ready to run.

Paraphrase

Questioned when will analysts stop looking at people in terms of race. \hookrightarrow offensive.

Forsyth

Less such categorisation here, so only 3 or 4 graphs w/ shows similarity - a positive thing. But if ignore race, possibly blinding self to realities.

Queen

In 1999 election, new voters becoming 18.
Legislative doesn't reflect how youth under 18
respond to constit.

Evrett

To reach this goal, need parental agreement,
+ cost.

Can say, younger you are, greater use of
electronic media + can project their
knowledge might be higher.

But, Plain say, people say constit.
should become part of the school
curriculum, at least the B of R +
Preamble.

Ramaphosa

Good analysis. Thanked Dr. Everett +
his team.

4. Programme for CC

Ramaphosa

Evrett

Introduced "Programme of Work - 15 to 19 Apr"
"CA Programme," separate
doc.

let CC endorse or not ^{clauses} ~~overall~~ draft

Contentious matters to be referred to Sub Comm
+ Preamble

Bill on 19th:

close discussions in Wed pm
then later CC discussions in

addendum to be considered by CC during that final phase.

Issues Requiring Attention

Draft reflects high degree of consensus, but

CC to work side by side w/ Sub Comm; reformulation work in evening. Approve or amend programme

Maraco

Outstanding issues: legis. & exec. competencies of provinces.

Abraham

Not noted as contentious as formulations inserted drawn from Aristotle; felt cd not soft say part.

Sprung

clauses were contentious just b/c needs consideration.

But agrees ch. 4 needs consideration.

Ramaphosa

Can pick that up when deal w/ draft itself. So will look at list in conjunction w/ draft, itself.

Eglin

CC people haven't seen this. Need to before have serious discussion.

Ramaphosa

Is necessary. Finalisation of draft not as straight forward as we had thought.

Apologies given for not having draft available in time, but then

worked hard.

Work programme helps b/c not going through whole at once.

Will go down clause by clause. Most of formulations were new.

Let people bring 3rd + 4th draft + IC.

Massa

Approving provisions for purpose of appearing in Bill - wd unless specifically decide wd be revisited -

Ramaphosa

Yes.

5. Draft Prog. for Adoption Day.

Ramaphosa

Referred to Mancom on Thursday - other parties not here (FF, PAC)

Spang

Okay if in consultation w/ chair can continue / ~~at~~ aspects.

Ramaphosa

Agreed.

Ezlin

"Constitution Day" possibly rather than "Adoption Day"

Ramaphosa

Ask CA Admin to find another word.
Agreed

9h05

13 April 1996

Chair Ramaphosa

Present: de Beer*, A van Breda, L Wessels, C Eglie, C Viljoen,
K. Meshoe, R. Meyer, V. Mooka, Chabane, Manjini

Apologies: R Meyer

In Attendance: H Ebrahim, M. Spang, P. Lichtenfeld, M. Keizer

1) Opening

08h10

R Meyer

de Beer to stand in for Meyer from
08h30.

Agreed to

Meshoe

Excused at 08h30 also for wife to go

Agreed

* Agenda adopted

2. Minutes

Adopted.

3. Matters Arising

None

4. CC Programme for 18-19 April

H. Ebrahim

No documentation.

Sought direction re notification of CC.

Forbes

May be more profitable to adjourn CC & allow ad hoc committees continue to meet & prepare reports.

5. CA Agenda

CC to meet later today or tomorrow.

Mossa

- Ask all CC members to be available thru out day, as difficult to predict when would be called.

- Course of today & this evening, finalise outstanding issues, rather than tomorrow.

Work late into night, & tomorrow to give experts as much time as poss to finish the Bill.

Eglin

What is cut off time for info to go to experts to prepare Bill.

Wissel

Make an effort tonight; sooner we finish, sooner they can start w/ finalising.

Ramaphosa

Work thru day, into night to finish.

Let subcomms work all morning, CC to work in p.m. into evening.

Ed even break into comms then themselves, do have no speakers but

Moosa

Allow party caucuses 10h30-12h00.

Aquid

5. CA Agenda

Ramaphosa

Shift intro. speeches to Tuesday.

Wessels

Agues. Parties should strategise on own to conduct debates not rigidly in chapters. Open discussion

Lefin

Cut off time for submission of amendments

v Breda

Should it be necessary, can adjourn later.

Aquid

Ramaphosa

Starting time?

Wessels

Tuesday pm., forceful opening statements, amendments & speeches on amendments.

Aquid

Lbrahim

Start Tues 14h15 Open debate. Whips asking how to org. party speakers. No time be distributed according to parties + they can org. that themselves, as have no speakers list.

Wissels

We impress them what time will ^{make available}
Concerned that there will be no speakers list.
Whip will strategise how to use this time.

Ramaphosa

Whip & Mr. Lillienfeld will work out speaking arrangement, on the basis

Lillienfeld

On basis of speakers' list

Rama

Yes

Zylio

Parties can decide how to use time allocated

Rama

Yes

Lillienfeld

Clarify times for Wed.

Wissels

Cabinet meeting? So, rather meet in afternoon.

Ramaphosa

[Agreed]

Wissels

Afternoon & early evening session.

Zylio

Cut off time for amendment?

Wissels

12:00 Thursday?

Franklin

Adviser would have to org. agenda & programme for all.
12:00 Thurs. would deadline

Ebrahim

would only give CA 2 hrs. to org. the agenda + docs

Wissub

Be flexible + stagger amendments, so amendments for ch. 1-2 by 18:00 on Wednesday, so on Thursday deal w/ ch. 1 + 2 amendments + rest of amendments due Thursday + deal w/ on Friday.

Ebrahim

Difficult for TRT, because different parts interrelated.
Let deadline be late Wed., to let CA Admin prepare agenda

Zilberfeld

29 March: agreed amendments in by 12:00 Wed.

Adams

Also agreed Chair flexible + not be quilled by Man Com.

Ramaphosa

"chill out", Staggered amendments could be looked at in global way.

Zylin

Go clause by clause, starting w/ 1 + going forward as far as can go.

Ramaphosa

Yes.

Ebrahim

Trying to translate Bill into 11 languages. Because amendments late, these would be available until later.

Lichtenfeld

Closing time for debate on Wed. 17h00.

Rama

Yes.

6. Visit by Butros Ghali - Pres. Masri

Ebrahim

Corresp. from dept. of Foreign Affairs.

Wissels

Build Ghali's visit into event for CA.

Moosa

Okay. Leave to Chairs to discuss w/ Parlia & work out something appropriate.

v Breda

26 April in Committee stage. Under tremendous pressure. Let it be in morning (Chali)

Ramaphosa

Agreed, Parlia won't be in session, so CA would be looked upon to enable Masri to speak to us. Shouldn't include him if allow Ghali to speak.

Give them both 1 hour of time. Allow both. Inform them of the political moment unfolding.

Wissels

Difference not one just of protocol. Discuss this seriously w/ foreign affairs & Parlia

Ramaphosa

Agreed to in principle, will work out programme.

7. Programme for 8 May

Eylin

New const. tremendously imp & imp occasion & shd be celebrated. But 8 May not be correct day. Rather, day it b/c's the constitution, after certification achieved. Own celebration self-congratulatory.

Ramaphosa

Rephrased. What happens if Court refers the whole constt back?

Chabane

Agreed w/ DP, but believes this wrong now. 1 imp. day, & 2 imp. processes.

8 May the deadlines will ought to meet all along - the watershed of passing text.

May be deadlocks, & some hitches in Constit Court.

When const. finally certified, might not need ~~formal~~ celebrations.

Both days could be celebrated.

Proceed as planned, but factor in possible need for additional ~~cele~~ event on day of certification.

van Breda

What if doc'd pass by 2/3 on 8 May.

Ramaphosa

View that proceeding to the adoption of this constitution, if not unanimously, then by

Paraphrase

2/3 majority. Some party leaders say as still 48 issues still outstanding - this a dangerous misreading of progress made.

Gaps being narrowed on a daily basis.

His count: 12 issues still outstanding.

Woods

If parties disagree, they should say on what basis they believe this.

Wissel

2 imp. dates, 8th of May + Certification date. 8 May has grabbed the ^{imagination} ~~heart~~ of the country.

Takes the paramount date, but doesn't grasp imagination of public.

Will we be red-faced on 8 May?

If fail, would need to explain to those who come why we have failed.

Eglin

Day consist b/c's an imp. doc., is the critical day

If celebrate 8 May, scale down what is included in doc.

Doesn't support scale envisioned for 8 May.

General ^{agreement} ~~consensus~~ to seek ^{consensus} progress, but joint the consensus itself.

Concerned re. outstanding issues.

Shouldn't work 4 to consensus to please the guests, + if it pressures members to agree to what otherwise wouldn't, guests shouldn't come.

Has, need to consider legal consensus that agrees w/ CPs.

Agrees to internal celebration on 8 May, but not to preempt the big occasion of introducing the constitution.

Chabon

Wissels

110 ambassadors report to their home countries in any event. No need to report back to them, in any event.

Erasmus

Moss

Disappointed. This tabled at 1st Man Com meeting this year. Has repeatedly asked for guidance + none forthcoming.

Improper to staff, who have worked flat out on this.

Lejin

When tabled programme, wd want a grandiose programme. This isn't a major party.

There's great international + continental interest.

Ramsey

Disincline to talk about a party or celebration, rather a decent, humble occasion that recognises the work people have done.

Reception

Viljoen

Need clarity on what want.

2nd date a solemn + serious occasion.

Not a party or celebration.

Re consensus - all hope for that.

Still concerned w/ IFF. Wd like consensus too, but will be guided on

Chabane

principally not the emotional momentum of the time.

Should be a natural celebration, as at end of World Trade Centre. Shouldn't be the solemn occasion.

Ramaphosa

Chabane

Moved. Adopt the proposal; not the 1st time here. People didn't consider - if budget bloc a source of concern / inauguration of President.

if debate the size of banquet, that's another question.

Moosa

Tony Lim never happy about anything. It would be best if he stayed away, so won't spoil the party.

Zylin

DP view Will report back to caucus. Believe the major, solemn occasions will be the day implemented.

Ramaphosa

This isn't a party. Invite those who played a role, made submissions + interacted in programme.

Worked through list of invitees. For supper.

~~DP Statement~~

Chabane

Programme, p. 14 - Manicom attending provincial events ~~for week~~

Spang

For week-end after 8 May - speakers.

Chabane

Agreed to if available.

P. 15/16 : by Chair & Rep Chair called by name when

Ramaphosa

Let parties have a closer look at programme
Bring draft programme back to Mancom for
finalisation -e.g. President addressing CA (not a
member of CA)

Chabane

P. 24 Does list of Trad Auths reflect dynamics of
our society. Criteria of selection: seniority or notoriety.
Auds to be tied up.

Zirahim

list based on consultation w/ trad. leaders. But notes
what Chabane says so don't brush any of the
sensitivities that exist.

We appreciate feedback ASAPP

8. DP Statement ~~Interim~~

Ramaphosa

Refer to CC. Request Tony Lemi's presence in
cc.?

Wissel

Matter was in CC agenda. Process thru
MC; but if MC view to want full scale
debate & request Mr. Lemi's presence, we be
the decision.

Chabane

Heard Lemi not prepared to appear before CC
Do we require his presence. Can we do sans if
if he's not there.

Rama

Thought CC asked for his presence. Has Eglin

encouraged the request to him.

Eglin

Hasn't discussed w/ Lem.

This a robust poli. party attack on another political party.

Shouldn't ~~put up~~^{disturb} process of constit. making.

Wd prefer another forum, rather than interfering w/ current negotiations.

Wessels

CC not Parlia & Chairpersons don't have same rules as Speaker + Dep Speakers.

Can't discipline & punt a member by asking that he be removed from precinct of Parlia or his salary be reduced.

Don't have auth to demand his presence; but do have clout to request his presence.

Report in days to follow on activities of CA

Poli. statements made. DP's rep., Eglin, will report to him, but CC has imp work to do.

Ramaphosa

Should not interfere w/ CC. If to be discussed, discussed right at end, after CC has dealt w/ its business.

Closure

Agreed

9h30

Aljoen

P. 7 - 23 Apr. : proportional basis. Argues shouldn't be - so imp for

minority parties, not strictly applied.

Ranapbasa

Rules
~~Agree~~ wd use some flexibility.

Parli Rules in Standing Rules for the Nat'l Assently - p. 9

Policy ~ White Papers - Which shapes implementation of law.

What of committees w/ legislation.

*

① Add Law Division: w/in each dept - what law admin. by each, what regulations made in terms of each law. A lot of policy in regulations.
Apartheid passport.

List of legislation

Red book - reveals? Butcher's.

② * Devising policy - White / Green Paper

Scandinavian programmes: White & Green papers.

Summaries: how changes, what looking.

Assess what laws to be amended to implement White Papers.

Has to involve public.

③ Budget expenditure

Budget allocations & expenditure to

identify -

bottlenecks, where are regulations w/ obstruct

Compare budgets, annual reports.
Set of calculator - unique results.

Budget assessments.

④ Monitoring / Investigation.

Newspapers \implies ANC research.

Monitoring transformation

9) Liaison of Business

10) Interaction of Civil Society.

1st quarter: last yr.

2nd quarter: budget

3rd quarter: legisla.

4th quarter: budget for next-yr.

October

Budget against Annual Report.

