

REPORT ON MULTILATERAL WAENHUISKRANS 1, 2 & 3 April 1996

1 Introduction

1.1 Delegates of all political parties met to consider the outstanding issues in finalising the text of the constitution¹. The objective of the multilateral was to achieve political agreement on all outstanding political issues.

1.2 The meetings took place in an informal atmosphere and without the usual distractions that affected political parties participating in the constitution making process thus far. The approach of all delegates was extremely positive and constructive. This assisted greatly in the progress that was recorded.

1.3 The plenary meeting of all delegates started on Monday 1 April at 12h00. It was agreed that delegates meet in nine sub committees to consider the following issues:-

- a) Bill of Rights;
- b) National and Provincial Legislative and Executive competencies, National legislative process, the Council of Provinces and Local Government;
- c) Courts and Administration of Justice;
- d) Finance, Auditor General, financial and fiscal Commission;
- e) Public Administration;
- f) National Assembly, National Executive, Provincial Legislature and Executive, Traditional Authorities and Self Determination;
- g) Institutions Supporting Constitutional Democracy;
- h) Preamble, Language, Anthem and General Provisions;
- i) Security.

2 Progress Recorded

2.1 Bill of Rights

The sub-Committee met and considered outstanding matters regarding the Bill of Rights

The list of issues previously agreed to are:-

Section 7: State Duties

Section 9: Human dignity

Section 12: Slavery, servitude and forced labour

Section 17: Freedom of Association

Section 18: Political rights

Section 19: Citizenship

Section 27: Children

Section 33: Access to courts

Section 37: Enforcement of rights

Progress was recorded on the following issues:

Section 13: Privacy

The meeting agreed to this section.

Section 14: Freedom of religion, belief and opinion

The meeting agreed to this section. The NP withdrew its reservation to Section 14(3)(b).

Section 15: Freedom of expression

The meeting agreed to Section 15(2)(c).

The meeting agreed to the inclusion in Chapter 7 of a provision along the lines of Option B2 as proposed by the experts and the NP withdrew its proposal on the inclusion of a right in Section 15(3).

Section 16: Assembly, demonstration and petition

The meeting agreed to remove the brackets and to include "to picket" and noted that the NP reserved its position.

Section 20: Freedom of movement and residence

The meeting agreed to this section.

Section 21: Freedom of occupation

The meeting agreed that this section be amended as follows:

"Every citizen has the right to choose freely their trade, occupation or profession. The practice of this right may be regulated by law."

Section 25: Housing

The meeting agreed to this section. The DP tabled proposed rewording of Sections 25(2) and 26(2) but this was not supported by any of the parties.

Section 34: Arrested, detained and accused persons

The meeting agreed to the formulation proposed in the Memorandum from the Panel of Experts and Technical Committee 4 on Section 34(4) as contained in the Minutes of 2 April 1996.

2.2 National and Provincial Legislative and Executive competencies, National legislative process, the Council of Provinces and Local Government

The sub committee adopted the revised draft formulations entitled *NATIONAL AND PROVINCIAL LEGISLATIVE COMPETENCES*.²

The meeting agreed in principle to formulations dealing with the passing, certification, signing, promulgation and safekeeping of provincial constitutions, in the document entitled *PROVINCIAL CONSTITUTIONS*.

The meeting reached general agreement on the draft formulations on *NATIONAL AND PROVINCIAL EXECUTIVE AUTHORITY*, and that this would be redrafted to take into account the discussions.

The meeting reached consensus on the general details of the *PRINCIPLES OF COOPERATIVE GOVERNANCE*. It was agreed that the drafters would incorporate the tenor of the discussions and that these principles would give substance to the interpretation of the Constitution as a whole. It was agreed that the parties would also take into account in further discussions on these principles the submission by Minister Meyer on this issue which was submitted to the Constitutional Assembly in October 1995.

Regarding the *NATIONAL LEGISLATIVE PROCESS*, the meeting reached general agreement and that the draft formulations be refined on the basis of the discussions. This was the first discussion of this draft in the CA. It was agreed to liaise with the Sub-committee on finance and related matters, and after discussion with this Committee it was agreed that they further refine the technical matters relating to finance

The meeting reached general agreement on draft formulations on the *NATIONAL COUNCIL OF PROVINCES*. These draft formulations was being discussed for the first time amongst the parties and emanated from the general agreements reached in the discussion documents on this matter before the CC Sub-committee.

Regarding *LOCAL GOVERNMENT*, it was agreed that the discussions be incorporated by the drafters. This was the first time this draft was discussed. Related matters on finance was discussed with the sub committee on finance and it was agreed that that committee would further refine their draft taking into consideration the discussions.

2.3 Courts and Administration of Justice

Progress was recorded on the following issues:

Section 100 - Appointment of Judicial Officers

- The parties agreed that the citizen requirement will only be applicable to Constitutional Court Judges.

Section 99A - Inherent Power

²

See draft...(this footnote can be included with every paragraph)

Parties agreed that this is merely a matter for technical refinement as they are all agreed on its content.

Section 104 - Judicial Service Commission

Parties agreed to delete use of word "professor" and add words "at South African Universities under 104(1)(g)".

Parties agreed to the reformulation of 104(1)(h) to read:

"Four members of the National Council of Provinces designated together by such Council by resolution adopted by at least two thirds of its members";

Parties agreed to provisionally delete brackets in 104(1)(l).

Parties agreed to additional 104(k) and 104(l) in draft of 2 April 1996.

Parties agreed to delete words "and provincial governments in 104(3)". This was viewed as mere technical error.

The word "senators" to be replaced by words "members of the national Council of Provinces" in 104(3).

The parties agreed to provisionally delete brackets in 104(3).

Section 103 - Terms of office and remuneration

The parties tentatively agreed to period of 11 years in 102(1). The NP reserved its position.

Section 101 - Acting judges

The parties provisionally agreed to delete section 101(3).

See Appendix **.

2.4 Finance, Auditor General, Financial and Fiscal Commission

The main aim was to incorporate financial provisions on local government into the chapter on finance and to refine the draft text of 28 March 1996.

Provisions on the Central Bank, which must perform its functions independently while consulting with the Finance Minister, and the Auditor General were carried through substantially unaltered.

Provisions were agreed to on the process of allocating equitable shares and revenue raised nationally to provincial and local government and for these spheres of government to raise revenue.

The committee was satisfied that these formulations provide for a sound budgetary system in which there is capacity for each sphere of government to perform its tasks and at the same time co-ordination and effecting treasury control is also provided for.

There are no major areas of contention, and with the exception of a few minor items indicated in the footnotes, the meeting accepted all the provisions in the chapter.

The approved revised formulations are provided in Annexure **.

2.5 Public Administration

The main aim was to address the following concerns:

- i. The substitution of the phrase "government funds and other sources of public money" in s171(1) by the words "on government financial support";
- ii. Separation of the definition of Public Administration and the principles governing Public Administration;
- iii. Appointments in the Public Administration on policy consideration;
- iv. Differentiation between different sectors in the Public Administration;
- v. Changing the name Public Administration Commission to Public Service Commission; and
- vi. Limiting the Public Service Commission's reach to the Public Service.

The chapter was revised and agreed to by all the parties. See Annexure **.

2.6 National Assembly, National Executive, Provincial Legislature and Executive, Traditional Authorities and Self Determination

The Committee met and considered various outstanding matters and new proposals from parties and the Panel of Experts.

Agreements were reached on:

National Assembly

Powers of Parliament

Electoral system

Elections and duration of the National Assembly

Speaker and Deputy Speaker

Internal Autonomy

Parliamentary privilege

Public access

National Executive

Powers of the President

Executive authority of the Republic

Executive decisions

Acting President

Cabinet

Provinces

Status and duties of Provinces
 Elections and duration of the provincial legislature
 Speakers and Deputy Speakers

Traditional Authorities

It was agreed that further discussion would take place between parties on Cultural Councils.

2.7 Institutions Supporting Constitutional Democracy

The Committee met and considered outstanding matters regarding state institutions supporting constitutional democracy contained in the Fourth Working Draft .

Progress was recorded on the following issues:

a) Human Rights Commission

s109(4)

" In its annual report to Parliament the Human Rights Commission must include its assessment of the observance of human rights in the Republic "

It was agreed that this clause should be deleted. However the following amendments would need to be included to other provisions to ensure that the notion of assessment is maintained:

s106(5)

" These institutions are accountable to Parliament, and must report on their activities and an assessment of the performance of their functions to Parliament at least once a year "

s109(1)(c)

"monitor and assess the observance of human rights in the Republic "

b) Electoral Commission

s113(1)(c)

" declare the results of elections within a period which must be as short as reasonably possible and determined by national legislation "

The above formulation was agreed to.

c) Independent Broadcasting Authority

The meeting agreed to the constitutionalisation of an independent authority to regulate broadcasting. This formulation would need to be attended to by the Technical Refinement Team.

3 Outstanding issues for resolution

3.1 Bill of Rights

Section 8: Equality

under discussion

Section 10: Life

The meeting agreed to Option 1 as a provisional formulation but parties who supported Options 2 and 3 would have their views clearly reflected in a footnote.

Section 11: Freedom and Security of the person

The meeting agreed to inclusion of the draft proposed by the ANC as set out in the footnote on Page 14 of the Draft 20 March 1996 with amendments as reflected in the Minutes of 2 April. The NP reserved its position on this section.

Section 22: Labour relations

No agreement was reached on the inclusion of the right to strike/lock-out.

ANC proposal for the inclusion of a provision dealing with the question of trade union security arrangements was discussed but it was agreed to leave this matter in abeyance until the whole clause was finalised.

Section 23: Environment

The meeting agreed to the formulation proposed by the ANC as reflected in the Minutes of 1 April but agreed to insert in brackets in Section 23(a) the words "*and quality of life*" as proposed by the NP.

Section 24: Property

A proposed draft property clause was referred to a sub-committee of the meeting who would table this document for consideration at the CC Sub-Committee on Thursday 4 April.

Section 28: Education

There was no further progress on this issue and the matter was still under discussion by the parties.

Section 30: Language and culture

The meeting agreed that the section should be reformulated along the lines proposed by the DP that the qualifier be amended to read "*no one exercising*

these rights may violate the constitutional rights of anyone else" and that the NP would consider the reformulation.

Section 31: Access to information

There was broad agreement with the formulation proposed by the Panel and TC4 advisors subject to the concerns raised as reflected in the Minutes. Parties requested the Technical Experts attempt to prepare a unanimous opinion on the application of the qualification to the state and private persons for consideration by the parties.

The meeting broadly agreed to the Transitional Provisions subject to technical refinement.

Section 32: Just Administrative Action

There was broad agreement on the formulation proposed in the Memorandum from the Panel and Technical Committee 4. The meeting noted the ANC's concerns regarding "fair procedure unless the administrative action is of general application" and agreed to the insertion of the qualifier regarding persons adversely affected in Section 32(2) of the memorandum.

The meeting further agreed to insert "where appropriate" in 32(4)(a) after "or" and "human dignity" before "freedom" in Section 34(4)(c).

Section 35: Limitations

The parties considered the ANC proposal.

The meeting agreed that members of the Panel and Technical Committee 4 consider a formulation taking into account the concerns expressed by the parties.

Section 36: States of emergency

The meeting agreed the following:

- Not to include a reference to an emergency committee
- The list of non-derogable rights be as proposed in the memorandum from the Panel and Technical Committee 4.
- one single emergency clause
- Agreed 6(i) in principle to the formulation in the memorandum from the Panel and Technical Committee 4 but that it should be redrafted to ensure that paragraphs 6 and 7 do not apply to persons detained as a result of international armed conflict but that they must be accorded treatment no less favourable than those standards binding on the Republic under International Humanitarian Law and its Protocols.
 - Parties to give further consideration to the two thirds majority referred to in Section 36(2)(b).

Section 38: Application

The meeting agreed that this section would be finalised when the equality clause was completed.

3.2 National and Provincial Legislative and Executive competencies, National legislative process, the Council of Provinces and Local Government

Although general agreement was emerging on the functional areas listed in Schedule 5, the meeting agreed that the matter needed to be finalised in further discussions amongst parties. However, it was agreed that a complete audit of all the matters in Schedule 5, especially a process involving consultation with departments, was no longer possible.

The sections dealing with the contents and amendment of provincial constitutions in the draft formulation entitled, *PROVINCIAL CONSTITUTION*, requires further discussion.

The following matters remain under discussion regarding *THE NATIONAL COUNCIL OF PROVINCES*:

- * The definition of Parliament
- * 30 days dispute referral

Finally, draft provisions on *LOCAL GOVERNMENT* need further refinement to take into account the discussions held.

3.3 Courts and Administration of Justice

The following matters are still under discussion:

Sections 100 and 104 - Appointment of Judicial Officers and Judicial Service Commission

The role of politicians under these subclauses is still under discussion.

Section 105 - Attorney's-General

This remains an outstanding issues.

3.4 Finance, Auditor General, Financial and Fiscal Commission

The sub-committee agreed to refer the question of transitional arrangements to the Department of Finance, to analyse existing legislation, and to make recommendations to the Technical Refinement Team as to what, if any, transitional arrangements would be needed.

Moreover, the sub-committee on finance and the sub-committee on competencies agreed that an ad hoc committee should be formed to discuss provisions relating to the passage of money bills.

3.5 National Assembly, National Executive, Provincial Legislature and Executive, Traditional Authorities and Self Determination

The following remained outstanding issues:

- a) Number of members to be elected to the National Assembly and Provincial Legislatures.

- b) The seat of Parliament
- c) The majority required to dissolve the National Assembly before expiry of its term
- d) Constitutional Amendments

3.6 Institutions Supporting Constitutional Democracy

a) Provincial Public Protectors

s107

The matter of the constitutionalisation of Provincial Public Protectors still needs to be dealt with. There is disagreement as to whether it is in fact necessary to make provision for provincial arrangements in the constitution.

b) Human Rights Commission

s109(3)

"The Human Rights Commission must require information from the relevant organs of state, annually, on the measures taken to secure [achieve the progressive realisation of] the rights to access to land, housing, health, food, water, social security and education "

The parties are still considering their position with regard to this the retention of this clause.

It was argued that this clause should be deleted as the sentiments contained in the provision are already provided for in the existing provisions dealing with the functions of the Human Rights Commission.

Another view maintained that this clause should be retained as they felt that the right of the Commission to require information from organs of state on the extent to which they have embarked on programmes to secure socio economic rights would assist in pressurising the state to deliver in this regard.

c) General Provisions

s115(4)(a)(b) and s116(b)(c) Appointments and Removal from office

The matter regarding the composition of the committee and the majority needed to approve or remove the Public Protector still needs to be dealt with.

d) Cultural Commission

It was agreed that this matter would need to be discussed together with the issues of self determination and Cultural Councils.

e) Environmental Commissioner

The matter of the constitutionalisation of an Environmental Commissioner still needs to be dealt with. There is disagreement as to whether it is necessary to make provision for a Commissioner in the constitution or whether to leave this matter to legislation.

3.6 Preamble, Language, Anthem and General Provisions

These matters are receiving further attention.

3.7 Security

These matters are receiving further attention.

ANNEXURE 1

CHAIRPERSON

Ramaphosa, C

DEPUTY CHAIRPERSON

Wessels, L

ANC MEMBERS/DELEGATES

Moosa, V
Ginwala, F
Myakayaka-Manzini, M
Chabane, C
De Lange, J
Du Toit, D
Hofmeyr, W
Gordhan, P
Pahad, E
Love, J
Ngcuka, B
Mahlangu, MJ
Pandor, N
Surty, E
Mdladlana, S
Bhabha, M
Kgositsile, B
Davies, R

ADVISORS

Prof. N. Haysom
Claasens, A

NP DELEGATES

Meyer, R
Marais, P
Radue, R
Camerer, S
Rabie, J
Ackerman, N
Schutte, D
Van Heerden, F
King, T
Maree, J
Malatsi, D
De Beer, S
Alant, T
Beyers, A
Van Breda, A

ADVISORS

Malherbe, Rassie
Krull, Werner

DP DELEGATES

Eglin, C
Andrew, K
Smuts, D
Gibson, D

Leon, T

ADVISOR

Mureinik, E

ACDP DELEGATES

Green, Louis
Meshoe, K

ADVISORS

Baard, Johann

PAC DELEGATES

Sizani, R
De Lille, P

FF DELEGATES

Viljoen, CL Gen.
Mulder, C
De Ville, R
Steyn, D

ADVISORS

Viljoen, B
Maree, A

PANEL OF EXPERTS

Erasmus, M
Jacoob, Z
Bhahad (Assistant for Z. Jacoob)
Kruger, J
Sedibe-Ncholo, M
Semenya, I
Van Der Westhuizen, J

CA LAW ADVISOR

Grové, G

TECHNICAL EXPERTS

BILL OF RIGHTS

Cheadle, H
Rautenbach, I
Liebenberg, S

COMPETENCIES/PROVINCES/NATIONAL COP

Basson, D
Majola, B
Venter, F
Davies, D

CPG

Irwin, D Prof.
Vermaak, J

EXECUTIVE DIRECTOR

Ebrahim, H

STAFF

1. Meter, L
2. Rabinowitz, S
3. Smit, T
4. Keegan, M
5. De Souza, L
6. Geissler, A
7. Brand, C
8. Reijs, G
9. Haydon, S
10. Jansen, J
11. Taft, N
12. Nyoka, N
13. Powell, D
14. McKenzie, K
15. Levy, B

ANNEXURE 2

DRAFT - 2 April 1996

20.15 hrs

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CHAPTER 6 COURTS AND ADMINISTRATION OF JUSTICE

Judicial authority

94. (1) The judicial authority of the Republic is vested in the courts.
- (2) The courts are independent, and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.
- (3) No person or organ of state may interfere with the functioning of the courts.
- (4) Organs of state, through legislative and other measures, must assist and protect the courts, to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.
- (5) ³...

Judicial system

95. The courts are:

- (a) The Constitutional Court.
- (b) The Supreme Court of Appeal.
- (c) The High Courts, including any high courts of appeal that may be established in terms of an Act of Parliament to hear appeals from High Courts.
- (d) The Magistrates' Courts.
- (e) Any other courts established in terms of an Act of Parliament, including courts of a status similar to the High Courts or the Magistrates' Courts.

Constitutional Court

96. (1) The Constitutional Court consists of a President, a Deputy President and nine other judges.
- (2) A matter before the Constitutional Court must be decided by at least eight judges.

³

It would appear that there is uncertainty as to what subsection (5) is supposed to cover. Basically the provision should state the principle that orders of the courts bind not only private persons but also organs of state where these orders are applicable to them; in other words a provision similar to section 98(4) of the Interim Constitution. To cover this the following wording can be considered:

"Orders issued by the courts are binding and must be complied with by all persons and organs of state to which they apply."

If the idea is to cover also stare decisis the following can be added:

"Courts are bound by the decisions of courts of a higher status."

- (3) The Constitutional Court -
- (a) is the highest court in all constitutional matters;
 - (b) may decide only constitutional matters **and issues connected with decisions on constitutional matters**⁴; and
 - (c) makes the final decision whether a matter is a constitutional matter.
- (4) Only the Constitutional Court may -
- (a) **decide disputes between organs of state at national or provincial level concerning the constitutional status, powers or functions of any of those organs of state**,⁵
 - (b) decide on the constitutionality of any parliamentary or provincial Bill, but may do so only where this is required by the Constitution;
 - (c) **decide** that Parliament or the President has failed to comply with a constitutional duty; or
 - (d) **decide** that an Act of Parliament, a provincial Act, or any conduct of the President, **including any Act or conduct in respect of which the Supreme Court of Appeal or a High Court has made a finding of unconstitutionality, is unconstitutional.**
- (5)⁶**National legislation and the rules of the Constitutional Court must provide for a person, with leave of the Constitutional Court, to bring an application directly to the Constitutional Court or to appeal directly from any court to the Constitutional Court -**
- (a) **if the application or appeal concerns a matter that only the Constitutional Court may decide; or**
 - (b) **if it is in the interest of justice.**
- (6) **A constitutional matter includes any issue involving the interpretation, protection or enforcement of the Constitution.**

Supreme Court of Appeal

⁴ As per instruction to add words similar to those in section 97(3)(b).

⁵ Still to be considered.

⁶ This subsection has been reformulated in view of the concerns raised at the CC subcommittee meeting of 15 March 1996. Please note the following:

- The first sentence of the previous formulation has been combined with section 97(4) and 98(2) and is now contained in the new section 98B.
- The reformulated subsection (5) now also includes provision for direct access to the CC in matters where the CC has exclusive jurisdiction.
- The wording has been broadened to include the previous section 99(3)(b) which has now been deleted.

97. (1) The Supreme Court of Appeal consists of a Chief Justice, a Deputy Chief Justice and the number of judges of appeal determined by an Act of Parliament.
- (2) A matter before the Supreme Court of Appeal must be decided by the number of judges determined by an Act of Parliament.⁷
- (3) The Supreme Court of Appeal may decide appeals in all matters, and is the highest court of appeal except in constitutional matters. It may decide only -
- (a) appeals;
 - (b) issues connected with appeals; and
 - (c) any other matter that may be referred to it in circumstances defined by an Act of Parliament.

High Courts

98. The High Courts may decide -
- (a) all constitutional matters except those that only the Constitutional Court may decide; and
 - (b) all other matters not excluded by an Act of Parliament.

Other Courts

- 98A. All other courts may decide those matters determined by an Act of Parliament; but, no Act of Parliament may allow these courts -
- (a) to enquire into or rule on the constitutionality of any legislation or any conduct of the President.
 - (b) to **decide** that any organ of state has failed to comply with a constitutional duty.

Court procedures

- 98B. All courts function in terms of national legislation, but the Constitutional Court, the Supreme Court of Appeal and the High Courts, respectively, may make their own rules after consultation with a body that may be established by national legislation to make recommendations concerning court procedures.

Powers of courts in constitutional matters

99. (1) **When deciding a constitutional matter within its power a court may make any order that is just and equitable, and if it issues an order declaring any law or conduct unconstitutional it may -**
- (a) **determine the date from which that law or conduct is to be regarded as unconstitutional, which may be either the date on which the order is issued or a date in the past or the future;**

⁷ The DP suggests that the number of judges be fixed by the Constitution.

- (b) if it determines a date in the future, order the authority responsible for the defect which gave rise to the unconstitutionality of that law or conduct, to correct the defect before that date; or
 - (c) determine whether or the extent to which anything done in terms of the unconstitutional law or conduct is to be regarded as valid.
- (2) (a) The Supreme Court of Appeal or a High Court may make a finding on the constitutionality of an Act of Parliament, a Provincial Act or any conduct of the President but may not issue an order declaring the Act or conduct invalid.
 - (b) If the Supreme Court of Appeal or a High Court makes a finding that any Act of Parliament, a Provincial Act or any conduct of the President is unconstitutional, it may grant a temporary interdict or other temporary relief to a party pending the decision of the Constitutional Court or the constitutionality of that Act or conduct.
 - (c) National legislation must provide for the referral of a finding of unconstitutionality to the Constitutional Court.⁸

Inherent power

99A. The Constitutional Court, Supreme Court of Appeal and High Courts have the inherent power to protect their own process and to ensure that justice prevails.⁹

Interpretation

99B. When interpreting any legislation, every court may prefer any reasonable interpretation of the legislation that is consistent with the Constitution.

Appointment of judicial officers

100. Option 1

- (1) Any appropriately qualified woman or man who is a fit and proper person may be appointed as a judicial officer.
- (2) The President, after consulting the Judicial Service Commission, appoints the President and Deputy President of the Constitutional Court and the Chief Justice and Deputy Chief Justice.

⁸ A transitional provision will be provided to ensure that court rules provide for direct access to the Constitutional Court until appropriate legislation is drafted. Further clarification needed on the broadening of this section to include any constitutional issue.

⁹ Still to be considered by TRT.

- (3) The other judges of the Constitutional Court are appointed by the President, after consulting the President of the Constitutional Court, in accordance with the following procedure:
 - (a) The Judicial Service Commission must prepare a list of nominees with three names more than the number of appointments to be made, and submit the list to the President.
 - (b) The President may make appointments from the list, and must advise the Judicial Service Commission, with reasons, if any of the nominees are unacceptable and any appointment remains to be made.
 - (c) The Judicial Service Commission must supplement the list with further nominees and the President must make the remaining appointments from the supplemented list.
- (4) At all times, at least four members of the Constitutional Court must be persons who were judges at the time they were appointed to the Constitutional Court.
- (5) The President must appoint the judges of all other courts on the advice of the Judicial Service Commission.
- (6A) In the appointment of judicial officers account must be taken of the need for the judiciary to reflect broadly the racial and gender composition of South African society.¹⁰**
- (6) Other judicial officers must be appointed in terms of an Act of Parliament.
- (7) Before judicial officers begin to perform their functions, they must take an oath or affirm, in accordance with Schedule 3, that they will uphold and protect the Constitution.

Option 2

- (1) Any appropriately qualified woman or man who is a citizen and a fit and proper person may be appointed as a judicial officer.
- (2) A person appointed as the President, the Deputy President or a judge of the Constitutional Court must be -
 - (a) a judge; or
 - (b) qualified to be admitted as an advocate or attorney and, after qualifying, must have practised as an advocate or an attorney or lectured in law at a university for at least 10 years; or
 - (c) a person who, by reason of training or experience, has expertise in the field of constitutional law relevant to the application of the Constitution and the law of the Republic.

¹⁰ The TRT suggests that this provision could be replaced by a general one covering the appointment of members of all constitutional (and statutory?) institutions.

- (3) A person appointed as the Chief Justice, the Deputy Chief Justice or a judge must be qualified to be admitted as an advocate or attorney and, after qualifying, must have practised as an advocate or an attorney or lectured in law at a university for at least 10 years.
- (4) The President of the Constitutional Court and the Chief Justice must be appointed by the President on the advice of the Judicial Service Commission.
- (5) The Deputy President of the Constitutional Court and the other judges of the Constitutional Court must be appointed after advice by the Judicial Service Commission and in consultation with the leaders of all political parties in Parliament who wish to participate.
- (6) In the event of no consensus having been reached in terms of subsection (5), the judges must be appointed together by a majority of at least 75% of the members of the National Assembly [and the second House in a joint sitting].
- (7) At all times, at least four members of the Constitutional Court must be persons who were judges at the time they were appointed and no more than three should have qualified for the Court in terms of subsection (2) (c).
- (8) The President must appoint the Deputy Chief Justice and all other judges on the advice of the Judicial Service Commission.
- (9) The appointment of other judicial offices must be made by an independent body established by an Act of Parliament which must ensure that the appointment, promotion, transfer or dismissal of, or disciplinary steps against such judicial officers, take place without favour or prejudice, and that the applicable legislation and administrative directives are applied uniformly and properly, and that no victimisation or improper influencing of these judicial officers occurs.
- (10) Before judicial officers begin to perform their functions, they must take an oath or affirm, in accordance with Schedule 3, that they will uphold and protect the Constitution.

Acting judges

101. (1) The President may appoint an acting judge to the Constitutional Court if there is a vacancy or if a judge is absent. The appointment must be made on the recommendation of the Cabinet member responsible for the administration of justice acting in consultation with the President of the Constitutional Court and the Chief Justice.
- (2) The Cabinet member responsible for the administration of justice must appoint acting judges to other courts [on the advice of/after consultation with] the senior judge of the court on which the acting judge will serve.
- [(3) A person may be appointed as an acting judge more than once but may not serve for a **total** period of more than six months **[without the approval of**

the Judicial Service Commission]. A person continues as an acting judge to complete any unfinished case after the expiry of the period of appointment.]¹¹

Terms of office and remuneration

- 102.** (1) Constitutional Court judges are appointed for non-renewable terms of up to nine years.
- (2) Other judges hold office until they are discharged from active service in terms of an Act of Parliament.
- (3) The salaries, allowances and benefits of judges may not be reduced.

Removal

- 103.** (1) A judge may be removed from office only if -
- (a) the Judicial Service Commission finds that the judge suffers from an incapacity, is [grossly] incompetent, or is guilty of gross misconduct; and
- (b) the National Assembly [and the second House, at a joint sitting], adopt a resolution calling for that judge to be removed, which is supported by at least two thirds of the total number of members [of both Houses].
- (2) The President must remove a judge from office upon adoption of a resolution calling for that judge to be removed.
- (3) The President, on the advice of the Judicial Service Commission, may suspend a judge who is the subject of a procedure in terms of subsection(1).

Judicial Service Commission

- 104.** (1) There is a Judicial Service Commission, consisting of -
- (a) the Chief Justice, who presides at meetings of the Commission;
- (b) the President of the Constitutional Court;
- (c) one Judge President designated by the Judges President;
- (d) the Cabinet member responsible for the administration of justice, or that member's nominee;
- (e) two practising advocates designated by the advocates' profession;
- (f) two practising attorneys designated by the attorneys' profession;

¹¹ Parties agreed provisionally to delete sub clause 101(3).

- (g) one teacher of law designated by teachers of law at South African universities.¹²
 - (h) **Four members of the National Council of Provinces** designated together by **such Council** by resolution adopted by at least two thirds of its members;
 - (i) four persons, [two of whom are practising attorneys or advocates]¹³, designated by the President; and,
 - (j) when considering matters specifically relating to a provincial or local division of the High Court, the Judge President of that division and the Premier of the province concerned.
 - (k) In the event of a dispute arising in the advocates profession during the appointment process referred to in subsection 104(1)(e), the president shall appoint, after consultation with the relevant profession, one of the practising advocates to be so designated.
 - (l) In the event of a dispute arising in the attorneys' profession during the appointment process referred to in subsection 104(1)(f), the president shall appoint, after consultation with the relevant profession, one of the practising attorneys' to be so designated.
- (2) The Judicial Service Commission has the powers and functions assigned to it in the Constitution and national legislation.
 - (3) The Judicial Service Commission may advise the national government on any matters relating to the judiciary and the administration of justice, [but when it does so, it must sit without the four members of the National Council of Provinces referred to in subsection (1)(h)].¹⁴
 - (4) The Commission may determine its own procedure; but, decisions of the Commission must be taken by a majority of its members.

Other matters concerning administration of justice

105. National legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution, including

- (a) training programmes for judicial officers;
- (b) procedures for dealing with complaints about judicial officers; and
- (c) the participation of people other than judicial officers in decisions.

¹² Parties agreed to delete the word "professor" and add the words "at South African universities".

¹³ Parties agreed to provisionally delete the words in brackets.

¹⁴ The NP reserved their position.

Attorneys-General
105.A....¹⁵

¹⁵ Discussions between the parties to continue.

ANNEXURE 3

Draft minutes of Subcommittee 6

1,2,3 April 1996

Self determination, Traditional Authorities, National Assembly, National Executive, Provinces

SELF DETERMINATION

The NP spoke to their proposal dated 10/11/95 on Cultural Councils and a Cultural Commission.

No agreement was reached on this proposal and it was agreed that further discussions on this matter should take place between parties at a later stage.

Chapt 11

TRADITIONAL LEADERSHIP

g was agreed to:

The institution, status and role of traditional leadership, according to indigenous law, are recognised.

A traditional authority which observes a system of indigenous law may continue to function subject to any applicable legislation or any amendment or repeal of such legislation.

The courts must apply indigenous law when that law is applicable, subject to the constitution and any relevant legislation.

Council of traditional leaders

170. National or provincial legislation may provide for the establishment of councils of

traditional leaders to deal with matters of common interests. It was agreed that the chapter should use the term traditional leadership as in Constitutional Principle XIII and that the chapter would be redrafted.

Chapt 3

NATIONAL ASSEMBLY

40

Legislative Authority of Republic

The draft text dated 2 April 1996 tabled in Subcommittee 2 was agreed to.

new clause

Powers of the National Assembly

It was agreed that a section on the powers of the National Assembly should be added to the chapter part of which could be included in the clause dealing with the Legislative Authority of Republic.

The following formulation was agreed to:

In exercising its legislative power the National Assembly may -

a) consider, support or amend any legislation referred to it;

b) initiate or prepare legislation, except money bills;

c) determine mechanisms to ensure that -

i) the national executive is accountable to it; and

ii) there is parliamentary oversight over executive action [including the implementation of legislation, the departments of government, and [any other organ of state or statutory body.]

Elements of s39A on page 39A of vol 2 of the documentation will be integrated with other provisions of the legislative authority and powers of the Assembly.

41

Composition and Election of National Assembly

Electoral system

The following draft was tabled:

The National Assembly consists of between 300 and 400 members elected in accordance with a system of proportional representation prescribed by national legislation and which

*is based
on a common voters roll*

*elects
members to the National Assembly from preferential national and
provincial lists in such a manner as to ensure that the
membership of the National Assembly [accurately] reflects the
proportions of the votes recorded for each party in the election.*

It was agreed that the clause would include reference to national and provincial common voters rolls.

300 - 400

No agreement was reached.

Multi-party democracy

It was agreed that the chapter on Parliament should include reference to multi-party democracy in keeping with Constitutional Principle VIII.

Parties would consider recommendations from the Panel in this regard.

42(1)(b)

Membership

It was agreed that the Panel would examine this clause to ensure that no legal problem would arise should a member of a provincial legislature or local government wish to stand for election to the National Assembly.

45(3)

The seat of Parliament

No agreement was reached.

46

Elections and duration of National Assembly

The ANC and NP agreed that s46(4) should be reformulated to read:
The National Assembly remains competent to function from the time it is dissolved or its term expires until the day before the first day of polling for the National Assembly.

The DP would examine this formulation.

It was agreed that the Panel would look into the implications of the declaration of a state of emergency.

46A **Dissolution of the National Assembly before expiry of its term**

No agreement was reached on the majority required to dissolve the National Assembly.

47 **Speaker and Deputy Speaker**

The ANC proposed that provision be made for several presiding officers under s50 - internal autonomy.

50A **Evidence before the National Assembly**

It was agreed that a new clause would be added as follows:

Evidence before the National Assembly

The

National Assembly, may -

i) require anyone to appear before it to give evidence on oath or affirmation or to produce documents;

ii) require any person or institution to report to it; and

iii) receive representations from interested parties.

The

National Assembly may, in terms of its rules and orders compel any person or institution to comply with a requirement in terms of paragraph (i) and (ii).

3) *Evidence given or reports made to the National Assembly by a person or institutions in terms of subsection (1) is not admissible as evidence against that person in a court of law.*

51 **Parliamentary privilege**

It was agreed that a clause be added as follows:

Salaries, allowances and benefits payable to members of the National Assembly are a direct charge against the National Revenue Fund.

Reference to remuneration of members of Parliament should be removed from the chapter on finance as it was a parliamentary privilege to make a direct charge against the National Revenue Fund for the remuneration of members of the National Assembly.

53 **Constitutional Amendments**

No agreement was reached on the majority required to amend the Constitution. The NP proposed 75%, the ANC two thirds.

new clause **Public access**

The following clause was agreed to:

The National Assembly must

a)

public participation in the legislative process; and

facilitate

b) conduct its business in an open manner and its sittings must be held in public; but reasonable measures may be taken to regulate public access to the Assembly.

CHAPT 5 **NATIONAL EXECUTIVE**

Discussion on the following clauses took place on the basis of a memorandum from the Panel dated 11 March 1996 on page 107 of volume II of the documentation:

The President

Agreed to

Powers of the President

Agreed to with the deletion of clause (2)(b)

Executive authority of the Republic

The alternative formulation was agreed to with the following changes to

be made by the Panel:

- The term Cabinet be used
- the notion of co-ordination be included in subsections (1)A(a) and (b)

- Subsection 5 be deleted

Executive decisions

Agreed to

Discussion on the following clauses took place on the basis of the 4th working draft:

83

Acting President

It was agreed that reference to the Speaker should be deleted.

85

Cabinet

Prime Minister should be replaced with Deputy President.

It was agreed that the Panel would look at the following proposed formulation for s85(3):

The Deputy President and Ministers are responsible for the functions of the executive assigned to them by the President.

The Deputy President must assist the President in the execution of the functions of government.

The NP was still in negotiations about multi-party participation in the decisions of Cabinet.

CHAPT 8

PROVINCES

116

Provinces

(h) Should read North West

117A

Section 117(2) was agreed to.

Status and duties of Provinces

Under discussion in subcommittee 2.

120

Composition and election of provincial

No agreement was reached on the number of members of the provincial

legislatures

legislatures. The ANC stated that there should be between 30 - 100 and the NP 30 - 80.

It was agreed that this would be discussed in conjunction with the number of members of the National Assembly.

125

Elections and duration of provincial legislature

It was agreed that President would be deleted in 125(2) and Premier would be deleted in 125 (3).

It was agreed that the bold type in section (4) should be deleted in keeping with agreements reached on the National Assembly.

125A

Dissolution of provincial legislatures before expiry of term

It was agreed that this section would be dealt with together with the equivalent section in the National Assembly.

126

Speakers and Deputy Speakers

It was agreed that this formulation would mirror the clause in the National Assembly chapter.

130A

Application by members to Constitutional Court

It was agreed that further discussions on this would take place between parties.

ANNEXURE 3

DRAFT - 3

3 April 1996, 08.30 hrs.

Status: As of instructions of Multilateral Subcommittee 4 (Finance). For discussion by plenary on 3 April 1996.

Author: TRT

Typed by: Margy Keegan

**CHAPTER 14
FINANCE**

GENERAL FINANCIAL MATTERS

National Revenue Fund

1. (186) (1) There is a National Revenue Fund into which all money received by the national government must be paid.
 - (2) No money may be withdrawn from the National Revenue Fund except in terms of an appropriation by an Act of Parliament; but, a province's equitable share of revenue raised at national level is a direct charge against the National Revenue Fund.

Equitable shares and allocations of revenue

2. (193) (1) National legislation must provide for -
 - (a) the equitable division of revenue raised at national level between the national, provincial and local levels of government;
 - (b) the determination of each province's equitable share of the provinces' share of the revenue; and
 - (c) any other allocations from the national government's share of the revenue and any conditions on which those allocations may be made.
- (2) Legislation referred to in subsection (1) may be enacted only after the provincial governments and **organised local government** have been consulted and any recommendations of the Financial and Fiscal Commission have been considered, and with regard to -
 - (a) the national interest;
 - (b) any provision that must be made in respect of the national debt;
 - (c) the needs and interests of the national government determined by objective criteria;

- (d) the need to ensure that the provincial **and local governments** are able to provide basic services and execute the functions allocated to them;
- (e) the fiscal capacity and efficiency of the provincial **and local government**;
- (f) developmental and other needs as well as economic disparities within and among the provinces;
- (g) obligations of the provincial **and local governments** in terms of national legislation;
- (h) the stability of revenue shares and allocations; and**
- (i) other interests based on objective criteria.¹

National, provincial and local government budgets

3. **(187)** (1) National legislation must -
- (a) prescribe the format of national, provincial **and local government** budgets;
 - (b) prescribe **when budgets must be tabled in Parliament and provincial legislatures**; and
 - (c) ensure that budgets at all levels of government show the sources of revenue and the way in which proposed expenditure will comply with national legislation.
- (2)** Budgets and budgetary processes must promote transparency, accountability, and the effective financial management of the economy, debt and the public sector.
- (3)** **Budgets at all levels of government** must contain estimates of revenue and expenditure, and proposals for financing any anticipated deficits for the period to which they apply, and must differentiate between capital and current **expenditure**.

Treasury control

4. **(188)** (1) National legislation must -
- (a) establish a national treasury;**
 - (b)** prescribe effective measures to ensure transparency and expenditure control by introducing at every level of government -
 - (i) generally **recognised** accounting practice;
 - (ii) uniform expenditure classifications; and
 - (iii) uniform treasury norms and standards; and

¹ The Sub-committee agreed to delete the following formulation:

- 193 (3) The allocation of revenue by the national government -
- (a) to a provincial or local government may be made only in terms of an appropriation by an Act of Parliament; and
 - [(b) to a local government must be made, ordinarily, through the provincial government of the province in which the local government is located.]

- (c) confer on the national treasury effective powers to stop the transfer of funds to any organ of state in the event of serious or persistent material financial maladministration.
- (2) (a) A decision by the national treasury to stop the transfer of funds to a province **in terms of subsection (1)** lapses unless it is approved by Parliament within 30 days.
- (b) Before Parliament may approve the decision -
 - (i) the Auditor-General must report to **Parliament**; and
 - (ii) **the province must be given the opportunity to state its case.**
- [(c) A majority of the members of Parliament must be present when Parliament approves the decision.]²

- (3) **The transfer of funds to a province may not be stopped in terms of subsections (1)(c) and (2) for more than 120 days at a time unless Parliament, following the procedure in subsection (2)(b), reconsiders the decision and extends its operation.**

Contracts for goods and services

- 5. (189) Organs of state must contract for goods and services in accordance with national and provincial legislation which provides for **a fair, transparent, competitive and cost-effective procurement system.**

Government guarantees

- 6. (190) (1) The national government or a provincial or local government may guarantee a loan only if the guarantee complies with the norms and conditions for such a guarantee set out in national legislation, **and such guarantees must be reported on annually.**
- (2) National legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

Remuneration of persons holding public office

- 7. (192) (1) National legislation must provide for the determination of any salaries, allowances or benefits of the following:
 - (a) Members of Parliament and the Cabinet, and Deputy Ministers.
 - (b) Judges.
 - (c) The Public Protector and the Auditor-General, and members of any Commission provided for in the Constitution.
 - (d) Traditional leaders and members of any councils of traditional leaders.

² To be reconsidered when Parliament and COP are finalised. The DP proposes a majority in each house would be needed to approved the decision.

(2) National legislation must determine the upper limits for any salaries, allowances or benefits of the following:

- (a) Members of provincial legislatures and Executive Councils.
- (b) Members of local governments.

(3) National legislation must provide for the establishment of an independent commission to make recommendations -

- (a) to Parliament on the salaries, allowances and benefits of members of Parliament and the Cabinet, Deputy Ministers, members of provincial legislatures and Executive Councils, members of local governments, and traditional leaders and members of any councils of traditional leaders; and
- (b) to the national and provincial executives, local governments and any other relevant authorities on the implementation of that legislation.

FINANCIAL AND FISCAL COMMISSION

Establishment

8. (194) (1) There is a Financial and Fiscal Commission for the Republic, which is independent and subject only to the Constitution and the law, and which must be impartial.
- (2) National legislation regulates the functioning of the Commission.

Functions

9. (195) (1) The **Commission's duty is to** make recommendations to Parliament, provincial legislatures and any other authorities determined by national legislation **regarding any matter assigned to the Commission by the Constitution or national legislation.**
- (2) **In performing its functions, the Commission must consider all relevant factors including those listed in section 193(2).**

Appointment and tenure of members

10. (196) (1) The Commission consists of the following women and men appointed by the President -³
 - (a) a chairperson and a deputy chairperson who are full-time members:
 - (b) **nine persons, each one nominated by the Executive Council of a different province;** and
 - (c) seven additional members, some of whom must be experts in local government finance.
- (2) Members of the Commission must have appropriate expertise.⁴
- (3) **A member of the Commission may be removed from office during the member's term of office only by the President on grounds of misconduct, incapacity or misconduct.**

Reports

11. (197) The Commission must report regularly both to Parliament and to provincial legislatures.

CENTRAL BANK

³ Sub-committee 4 (Finance) assumes that the President must act in consultation with Cabinet (cf. s78)

⁴ The DP proposes a provision in the interpretation section stating that no member of any commission established in terms of the constitution may hold office in a political party.

Establishment

12. (198) The South African Reserve Bank is the central bank of the Republic and is regulated by national legislation.

Primary object

13. (199) (1) The primary object of the South African Reserve Bank is to protect the value of the currency of the Republic in the interests of balanced and sustainable economic growth in the Republic.
- (2) The South African Reserve Bank, in the pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice; but, there must be regular consultation between the Bank and the Cabinet member responsible for national financial matters.

Powers and functions

14. (200) The powers and functions of the South African Reserve Bank are those customarily exercised and performed by central banks, and must be determined by national legislation.

PROVINCIAL AND LOCAL FINANCIAL MATTERS

Provincial Revenue Funds

15. (153) (1) There is a Provincial Revenue Fund for each province into which all money received by the provincial government must be paid.
- (2) No money may be withdrawn from a Provincial Revenue Fund except in terms of an appropriation by a provincial Act; [but, revenue allocated to a local government through a province in terms of sections 193 is a direct charge against the provincial revenue fund.]

National sources of provincial and local government funding

16. (148) (1) **Local government and each province**
 - (a) is entitled to an equitable share of revenue raised at national level to enable it to provide basic services and **execute the functions allocated to it**; and
 - (b) may receive other allocations from national revenue, either conditionally or unconditionally.
- (2) Additional revenue raised by provinces **or local governments** may not be deducted from their share of revenue raised at national level, or from other allocations made to them out of national government revenue. Equally, there is no obligation on the national government

to compensate provinces **or local governments** that do not raise revenue commensurate with their fiscal capacity and tax base.

- (3) A province's equitable share of revenue raised at national level must be transferred to the province expeditiously and without deduction except when the transfer has been stopped in terms of section 188.

Provincial taxes

17. (150) (1) A provincial legislature may -⁵
- (a) impose taxes, levies and duties excluding income tax, value-added tax, general sales tax and customs duties; and
 - (b) impose flat-rate surcharges on the tax bases of taxes, levies and duties imposed by national legislation, excluding those of corporate income tax, value-added tax and customs duties.
- (2) The power of a provincial legislature to impose taxes, levies, duties and surcharges -
- (a) may not be exercised in a way that materially **and unreasonably** prejudices national economic policies, interprovincial economic relations or the national mobility of goods, services, capital or labour; and
 - (b) must be regulated by national legislation which may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

Local government rates and taxes

- 17A (a) **A local government may impose rates on property and, subject to national legislation, may impose other taxes, levies and duties; but a local government may not impose income tax, value-added tax, general sales tax, customs duties or surcharges.**
- (b) **The legislation referred to in paragraph (a) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.**⁶

Provincial and local government loans

18. (151) (1) Provinces **and local governments** may raise loans for **capital and current expenditure in accordance with reasonable conditions** determined by national legislation; but, loans for current expenditure -
- (a) may be raised only when necessary for bridging purposes during a fiscal year; and
 - (b) must be redeemed within twelve months.

⁵ DP wants exclusive provincial taxes.

⁶ The NP and DP want a provision requiring a uniform tax structure in each local government's area of jurisdiction.

- (2) National legislation referred to in **subsection (1)** may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.⁷

AUDITOR-GENERAL

Functions of Auditor-General

- 111.** (1) The Auditor-General must audit and report on the accounts, financial statements and financial management of -
- (a) all national and provincial state departments and administrations;
 - (b) all local governments; and
 - (c) any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General.
- (2) The Auditor-General may also audit and report on the accounts, financial statements and financial management of any institution in control of public money, as may be regulated by legislation.
- (3) The Auditor-General must submit audit reports to the legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation. All reports must be made public.
- (4) The Auditor-General has the additional powers and functions prescribed by national legislation.**

Tenure

- 112.** The Auditor-General is appointed for a fixed, non-renewable term of not less than five years and not more than 10 years.

ELECTORAL COMMISSION

Functions of Electoral Commission

- 113.** (1) The Electoral Commission must -
- (a) manage in accordance with national legislation elections of national, provincial and local legislative bodies;

⁷ The DP is considering the need to include the following provision:

"Provincial user charges

18A A provincial legislature may impose user charges after considering any recommendations of the Financial and Fiscal Commission.

- (b) ensure that they are free and fair; and
 - (c) declare the results of elections as soon as possible but not later than ...days after the first day of polling.
- (2) The Electoral Commission has the additional powers and functions prescribed by national legislation.

Composition of Electoral Commission

114. The Electoral Commission must be composed of at least three persons. The number of members and their terms of office must be prescribed by national legislation.

GENERAL PROVISIONS

Appointments

- 115.** (1) The Public Protector and members of any Commission established by this Chapter must be women or men who are South African citizens, are fit and proper persons to hold the particular office, and who comply with any other requirements prescribed by national legislation.
- (2) The Auditor-General must be a woman or a man who is a South African citizen, is a fit and proper person to hold that office. Specialised knowledge of, or experience in, auditing, state finances, and public administration must be given due regard in appointing the Auditor-General.⁸
- (3) The President must appoint the Public Protector, the Auditor-General and members of any commission established by this chapter on the recommendation of Parliament.
- (4) Parliament must recommend a person -
- (a) nominated by a committee of Parliament in terms of the rules and orders;⁹ and
 - (b) approved by Parliament by a resolution adopted by at least two thirds of the members.
- (5) National legislation must provide for the appointment of an acting Public Protector, Auditor-General or commission member when it is necessary to ensure the effective functioning of the institution.

Removal from office

- 116.** (1) The Public Protector, the Auditor-General or a member of a Commission established by this Chapter may be removed from office only on -
- (a) the grounds of misconduct, incapacity or incompetence;¹⁰

⁸ The DP proposes a provision in the interpretation section stating that no member of any commission established in terms of the constitution may hold office in a political party.

⁹ DP reserves its position on the composition of the committee.

¹⁰ Whether or not the words "gross" should be added is a political question. The DP proposed "gross" to match provisions in the chapter on the judiciary.

- (b) a finding to that effect by a committee of Parliament;¹¹ and
 - (c) the adoption by Parliament of a resolution, calling for that person's removal from office, and supported by at least two thirds of the members.
- (2) The President may suspend a person from office upon or after the start of proceedings before a committee of Parliament for the removal of that person, and must remove a person from office upon adoption by Parliament of a resolution calling for that person's removal.

¹¹ DP reserves its position on the composition of the committee.

ANNEXURE 5

PUBLIC ADMINISTRATION

Item	Section	Section Title	Issue Resolution
1.	171(1)&(2)	Basic values and principles governing public administration	<p>Separating definition of Public Administration from the principles and values governing Public Administration.</p> <p>S171(1), as appear in the 4th edition, has been split into s171(1) and (2).</p>
2.			<p>Government funds and other sources of public funds.</p> <p>The words "government funds and other sources of public money" has been replaced by the phrase "on government financial support". The new phraseology has been accepted by the parties on the understanding that the intention is to cover all institutions that receive government funding, be it in the form of operational costs, government guarantees or levies charged by parastatals.</p>
3.	171(3)		<p>Appointments on policy considerations.</p> <p>The concern respecting appointments in the Public Administration has been addressed by reformulating s171(3) as follows:</p> <p>"The appointment in the public administration on policy considerations is [not precluded, but national legislation must regulate these appointments in the public service."</p>
4.	171(5)		Differentiation between different

sectors in public administration.

S171(1) has been inserted for purposes of emphasising the differential nature of sectors obtaining in public administration.

- | | | | | |
|----|--------|--------------------------|----------------|--|
| 5. | 172 | Public Commission (PAC). | Administration | <p>Change of the name PAC.</p> <p>The name PAC has been changed to the Public Service Commission(PSC).</p> |
| 6. | 172(2) | | | <p>Limiting the role of the PSC to the Public Service.</p> <p>For purposes of ensuring that the length and breadth of the PSC's reach to the public service, s171(2) has been reformulated as follows:</p> |

The object of the PSC is to promote the basic values and principles of public administration [in the public service]

ANNEXURE 6

DRAFT -3

2 April 1996, 20:30

Status: By instructions of Subcommittee 5 of the multi-lateral discussion held at Arniston on 2 April 1996.

Compiled by: Snakes Nyoka

File Name: 12-v3

CHAPTER 12 PUBLIC ADMINISTRATION¹

Basic values and principles governing public administration

171. (1) Public administration includes administration at all levels of government and the administration of institutions that are dependent on government financial support.
- (2) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:
- (a) A high standard of professional ethics must be promoted and maintained.
 - (b) Efficient, economic and effective use of resources must be promoted.
 - (c) Public administration must be development oriented.
 - (d) Services must be provided impartially, fairly, equitably and without bias.
 - (e) People's needs must be responded to, and the public must be encouraged to participate in policy-making.
 - (f) Public administration must be accountable.
 - (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
 - (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
 - (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.
- (3) The appointment in the public administration of a number of persons on policy considerations is not precluded, but national legislation must regulate these appointments in the public service.

¹ This is the final draft, as agreed to by all the parties, in the multilateral discussion held at Arniston.

- (4) Legislation regulating the public administration may differentiate between the different sectors, administrations or institutions in the public administration.
- (5) The nature and functions of different sectors of the Public Administration are relevant factors to be taken into account in legislation regulating Public Administration.
- (6) National legislation must ensure the promotion of the basic values and principles listed in s171(2).

Public Service Commission

172. (1) There is a single Public Service Commission for the Republic, which is independent and must be impartial and regulated by national legislation. Each of the provinces may nominate a representative to be appointed to the Commission.
- (2) The object of the Public Service Commission is to promote the basic values and principles of public administration in the public service.
- (3) Provincial representatives in the Public Service Commission may exercise the powers and perform the functions of the Commission within the provinces, as prescribed by national legislation.
- (4) The Public Service Commission must account to Parliament.

Public Service

173. (1) Within the public administration there is a public service for the Republic, which must function, and be structured, in terms of national legislation, and which must loyally execute the lawful policies of the government of the day.
- (2) The terms and conditions of employment in the public service must be regulated by national legislation. Employees are entitled to a fair pension as regulated by national legislation.
- (3) No employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause.