

[draft]

CONSTITUTIONAL ASSEMBLY

REFINED WORKING DRAFT (THIRD EDITION)

OUTSTANDING MATTERS AS AT 30 JANUARY 1996

Sec.	Title	Outstanding Matter	Way Forward
	Preamble	To be composed	When near completion
CHAPTER ONE: FOUNDING PROVISIONS			
1	Republic of SA	i. To be finalised ii. DP proposal to simplify	i. After Preamble ii. Bilaterals
2	Supremacy of the Constitution	<i>"Binds"</i>	Reconsider in 3RD Draft
3	Citizenship	Retain reference to international law?	Consider in '96
4	Territory of the Republic	Experts to advise	Report to Subcomm
5	National Symbols	i. Schedule 2 ii. National anthem iii. Coat of arms	i. 3rd ed. ii. 3rd ed, iii. Report to CC Subcomm
6	Language	Decide on options	Bilaterals
CHAPTER 2: BILL OF RIGHTS			
7	State's Duty	i. Horizontal application ii. DP: sphere of private autonomy	Bilaterals
8	Equality	i. Horizontal applicaton ii. 8(2) options iii. 8(3) NP proposal: <i>"without derogation"</i> iv. FF: delete 8(4)	Bilaterals
9	Human Dignity	--	--
10	Life	i. Options	Bilaterals
11	Freedom and Security of the Person	i. Brackets 11(2) ii. Panel view on wording in brackets	Bilaterals Panel view

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12	Slavery, Servitude and Force Labour	--	--
13	Privacy	DP: insert <i>"intercepted"</i>	i. Bilaterals ii. Panel opinion
14	Freedom of Religion, Belief and Opinion	i. Consistent use of <i>"that the system is consistent with the Bill of Rights."</i> ii. Recognition of religious law	Panel view
15	Freedom of Expression	15(1) i. DP: Delete clause ii. Query re: <i>"hatred,"</i> too limiting? 15(3) Insert DP option Decide on options	15(1): i. Bilaterals ii. Panel view 15(3) i. Bilaterals ii. Panel to re-formulate
16	Assembly, Demonstration and Petition	--	--
17	Freedom of Association	--	--
18	Political Rights	18(2) and (3): voting age	Parties: written proposals to TRT for reformulation
19	Citizenship	--	--
20	Freedom of Movement and Residence	--	--
21	Economic Activity	Decide on options	Bilaterals
22	Labour Relations	i. DP proposal, side bar note; ii. DP proposal: <i>"DP Amendment to Labour..."</i> iii. [22(3)(c) to lock out] iv. DP proposal: p. 104 of <i>"Additional Documentation."</i>	Bilaterals
23	Environment	--	--
24	Property	Decide options	Bilaterals
25	Housing and Land	Grouping of socio-economic rights; s25(3): i. brackets; and ii. DP query on <i>"equitable"</i> vs	Bilaterals Panel views

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		"equal" access to land, and "progressive"	
26	Health, Food, Water and Social Security	--	--
27	Children	27(1)(b): brackets 27(1)(c): DP asked does this convey and absolute right?	Bilaterals
28	Education	i. Decide on options ii. Query re meaning of "further education."	i. Bilaterals ii. Panel view
29	Academic Freedom	Decide on options; Brackets Option 1 s29(2)	Bilaterals
30	Language and Culture	NP proposal on "Collective Self Determination"	Bilaterals
31	Access to Information	i. TRT query: should this apply to juristic persons? ii. NP and DP concerns with s31(1)(b); iii. Brackets: 31(2); and iv. Query: if 31(2) deleted would individuals have right of access to intelligence reports?	i. Consider in 1996 ii/iii. Bilaterals iv. Panel view
32	Just Administrative Action	i. Decide options ii. Brackets in Option 1, 32(1)	Bilaterals
33	Access to Courts	--	--
34	Arrested, Detained and Accused Persons	i. Decide on option for 34(1)(e) ii. ANC query: should this be brought in line with current bail legislation	i. Bilaterals ii. Panel view
35	Limitation of Rights	Finalisation needed	Bilaterals
36	States of Emergency	i. ANC: how does this relate to state of war? ii. ANC: Delete 36(1)(2) and (3) and deal with in legislation; iii. DP and NP: s36(4) may allow for retrospectivity. iv. 36(2)(b) brackets v. 36(6) brackets	Bilaterals

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37	Enforcement of Rights	--	--
38	Application	i. Decide on option ii. DP formulation on sphere of privacy	i. Bilaterals ii. DP texts for bilaterals
39	Interpretation of Bill of Rights	--	--
CHAPTER 3: PARLIAMENT			
40	Legislative Authority		Reconsider when name of 2nd house agreed
41	Composition and Election of National Assembly	i. Formulations on number of members ii. Formulation on electoral system	TRT to formulate; to be considered 31 JAN
42	Membership	i. Boldface: 42(1)(a); 42(2) and 42(3) ii. NP proposal to replace 42(2)(b) with s43(d) of the IC	Consider in '96
43	Vacancies	Delete	TRT
44	Oaths or Affirmation by Members	--	--
45	Sittings and Recess Periods	Seat of government	Bilaterals
46	Elections and Duration of National Assembly	i. Amendment agreed to 29/01/96; ii. New subsections proposed in side bar notes	TRT to reformulate
47	Speaker and Deputy Speaker	--	--
48	Decisions	--	--
49	President's Rights in National Assembly	--	--
50	Internal Autonomy	i. NP proposal Nov 95; ii. New formulation on minority participation; iii. New formulation on selection committee initiation of bills	i. Considered 1996; ii/iii TRT to draft

Sec.	Title	Outstanding Matter	Way Forward
51	Parliamentary Privilege	--	--
52	Bills	Bills	Consider after decision made on 2nd house
53	Constitutional Amendments	Ensure complies with constitutional principles	Consider after decision made on 2nd house
54	Assent to Bills	Referral of bills to Constitutional Court	Bilaterals
55	Promulgation	--	--
56	Safekeeping	--	--
CHHAPTER 4: COUNCIL OF PROVINCES/SENATE			
57	Establishment		Discuss in '96
58	Composition		Discuss in '96
59	Powers and Functions		Discuss in '96
60	Participation in the National Legislative Process		Discuss in '96
61	Mediation Committee		Discuss in '96
62	Chairperson		Discuss in '96
63	Sitting and Meetings		Discuss in '96
64	Decisions		Discuss in '96
65	Internal Autonomy		Discuss in '96
66	Composition and Election of Senate		Discuss in '96
67	Purpose and Functions of Senate		Discuss in '96
68	Qualification for Membership of Senate		Discuss in '96
69	Oath or Affirmation by Senators		Discuss in '96
70	Sittings		Discuss in '96
71	President and Deputy President of Senate		Discuss in '96

Sec.	Title	Outstanding Matter	Way Forward
72	Quorum in Senate		Discuss in '96
73	Rights of Members		Discuss in '96
74	Rules and Orders		Discuss in '96
75	Inter-governmental Relations		Discuss in '96
CHAPTER 5: THE NATIONAL EXECUTIVE			
76	Executive Authority	--	--
77	The President	--	--
78	Powers and Functions of President	i. Final outcome to be determined by decisions on GNU; ii. 78(3)(a); iii. ANC: cover exclusive powers granted in legislation	i/ii. Finalise after decide on GNU iii. TRT to consult with President's office
79	Election of President	Side bar note on written resignation	Consider
80	Assumption of Office by President	--	--
81	Term of Office of President	--	--
82	Vacancies	Complete section	Consider
83	Acting President	i. Finalise once composition of Cabinet known	Finalise later
84	Removal of President	---	---
85	Cabinet	Decide on options	Consider
86	Deputy Ministers	TRT: should matter be constitutionalised?	Consider in '96
87	Continuation of Cabinet After Elections	--	--
88	Oath of Office	--	--
89	Accountability of Ministers and Cabinet	Query whether President could be "dragged" in front of Parliament	TRT to respond
90	Conduct of Cabinet Members and Deputy Ministers	--	--

Sec.	Title	Outstanding Matter	Way Forward
91	Temporary Assignment of Powers and Functions	--	--
92	Transfer of Powers and Functions	--	--
93	Votes of No Confidence	i. Snap or mid-term elections ii. Panel opinion	Consider Panel opinion forthcoming
CHAPTER 6: COURTS AND ADMINISTRATION OF JUSTICE			
94	Judicial Authority	--	--
95	Judicial System	--	--
96	Constitutional Court	96(3)(a) not yet final	Consider
97	Supreme Court of Appeal	<i>"Inherent jurisdiction"</i>	Consider in '96
98	Other Courts	<i>"Inherent jurisdiction:"</i>	Consider in '96
99	Powers of Courts	--	--
100	Appointment of Judicial Officers	Select option Constitutional Court judges	Hearing Bilaterals Report on 1
101	Acting Judges	<i>"Senior judge"</i>	Consider
102	Tenure and Remuneration	--	--
103	Removal	--	--
104	Judicial Service Commission	i. 104(1)(h) ii. 104(1)(k) iii. Transitional clause	Consider in '96
105	Other Matters Concerning Courts	--	--
	Attorney General	--	Hearing
	Transitional Clauses	--	Consider in '96
CHAPTER 7: STATE INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY			
106	Establishment and Governing Principles	--	--
107	Functions of Public Protector	--	--

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108	Tenure	Term renewable or not?	Consider
109	Functions of Human Rights Commission	Implications of TRT memorandum on HRC	Parties to consider; Bilaterals
110	Functions of Commission for Gender Equality	NP proposal tabled in Nov 95	Bilaterals
111	Functions of Auditor General		Multiparty meeting on fiscal matters
112	Tenure		Multiparty meeting on fiscal matters
113	Functions of Electoral Commission	NP proposal for amendment	i. TRT to consider ii. Bilaterals
114	Composition of the Electoral Commission	--	--
115	General Provisions: Appointments	NP proposal: " <i>p.65: General Provisions</i> "	Considered in 3rd ed.
116	Removal from Office	--	--
CHAPTER 8: PROVINCES			
117	Provinces	i. TRT query: VSC Report and self-determination	Consider side bar note
118	Application of this Chapter	Decide on option	Consider
	Provincial Homogeneity	Preliminary provisions	
119	Legislative Authority of Provinces		
120	Composition and Election of Provincial Legislatures		
121	Membership		
122	Vacancies		
123	Oath or Affirmation by Members		
124	Sittings and Recess Periods		

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125	Elections and Duration of Provincial Legislatures		
126	Speakers		
127	Decisions		
128	Internal Autonomy		
129	Privileges and Immunities of Members		
130	Assent to Bills		
131	Promulgation		
132	Safekeeping of Provincial Acts		
133	Executive Authority of Provinces		
134	Powers and Functions of Premiers		
135	Election of Premiers		
136	Assumption of Office by Premiers		
137	Term of Office of Premiers		
138	Vacancies		
139	Acting Premiers		
140	Executive Council		
141	Continuation of Executive Councils After Elections		
142	Oath or Solemn Affirmation		
143	Accountability of Members of Executive Councils		
144	Coconduct of Members of Executive Councils		
145	Temporary Assignment of Powers and		

Sec.	Title	Outstanding Matter	Way Forward
	Functions		
146	Transfer of Powers and Functions		
147	Votes of No Confidence		
148	Sources of Provincial Funding		Multiparty meeting on fiscal matters
149	Allocations to Provinces from National Revenue		Multiparty meeting on fiscal matters
150	Provincial Taxes		Multiparty meeting on fiscal matters
151	Provincial Loans and Guarantees		Multiparty meeting on fiscal matters
152	Allocations by National government		Multiparty meeting on fiscal matters
153	Provincial Revenue Funds		Multiparty meeting on fiscal matters
154	Provincial Constitutions Adoption and Certifications		
CHAPTER 9: PROVINCIAL AND NATIONAL LEGISLATIVE AND EXECUTIVE COMPETENCIES			
155	Legislative Authority of the Republic	Select option	Consider
156	Legislative Authority of Provinces		
157	Framework Legislation	Select option	Consider
158	Necessary Ancillary Power		
159	Conflict of Legislation	Select option	Consider
160	Integrity of Provinces		
161	National Executive		

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	Authority and the Provinces		
162	Executive Authority of Provinces		
CHAPTER 10: LOCAL GOVERNMENT			
163	Government at Local Level		
164	Establishment of Local Government		
165	General Powers and Functions of Local Government		
166	Administration and Finance	166(2) TRT query	Consider
167	Elections		
168	Legislative Competencies, Powers and Functions		
CHAPTER 11: TRADITIONAL AUTHORITIES			
169	Recognition	i. Consider use of term <i>"traditional authorities"</i> ii. Matter still be considered	Consider
170	Councils of Traditional Authorities	Matter still being considered	Consider
CHAPTER 12: PUBLIC ADMINISTRATION			
171	Basic Values and Principles	NP: use of public service	Consider in 3rd draft
172	Public Administration Commission	--	--
173	Public Service	<i>"Only"</i>	Consider in 3rd draft
CHAPTER 13: SECURITY SERVICES			
174	Governing Principles	--	--
175	Establishment, Structuring and Conduct	--	--

Sec.	Title	Outstanding Matter	Way Forward
176	Defence Force	--	--
177	Political Responsibility	--	--
178	Command of Defence Force	--	--
179	Defence Civilian Secretariat	--	--
180	Police Service	--	--
181	Political Responsibility and Accountability	--	--
182	Control of Police Service	--	--
183	Police Civilian Secretariat	--	--
184	Establishment and Control of Intelligence Services	--	--
185	Powers, Functions and Monitoring	--	--
CHAPTER 14: FINANCE			
186	National Revenue Fund		Multiparty meeting on fiscal matters
187	National and Provincial Budgets		Multiparty meeting on fiscal matters
188	Treasury Control		Multiparty meeting on fiscal matters
189	Contracts for Goods and Services	Delete 189(4)?	Multiparty meeting on fiscal matters
190	Guarantees by National Government		Multiparty meeting on fiscal matters
191	Accountability of Enterprises Receiving Public Funds	i. NP query re universities ii. TRT: section may be unnecessary	Consider Multiparty meeting on fiscal matters

Sec.	Title	Outstanding Matter	Way Forward
192	Remuneration of Persons Holding Public Office		Multiparty meeting on fiscal matters
193	Persons Holding More Than One Office	<i>"Office of profit"</i>	Consider
194	Establishment, Financial and Fiscal Commission		Multiparty meeting on fiscal matters
195	Functions		Multiparty meeting on fiscal matters
196	Appointment, Qualifications, Tenure and Dismissal of Members	Matter still under discussion	Multiparty meeting on fiscal matters
197	Report	Still under discussion	Multiparty meeting on fiscal matters
198	Establishment, Central Bank		Multiparty meeting on fiscal matters
199	Primary Object		Multiparty meeting on fiscal matters
200	Powers and Functions		Multiparty meeting on fiscal matters
CHAPTER 15: GENERAL PROVISIONS			
201	International Agreements	s201(1) and (2): brackets around <i>"[the second House]"</i>	Decide upon
202	Customary International Law	i. <i>"Breach"</i> ii. Broader question of customary international law iii. Impact of these on provincial and local law	Consider in '96
203	Applicaton of International Law		
	Provincial Acts		Consider