

Constitutional Assembly

Errata

Refined Working Draft ***(Second Edition)***

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ERRATA - CONSTITUTIONAL COMMITTEE 9-10 NOVEMBER 1995

Page	Section	Provisions	Side bar notes
3	s5		<i>The issue of symbols is being considered in a subcommittee</i>
3	s5(2)		<i>The ANC - changed and must be in legislation and not in the Constitution.</i>
5	s8(2)	<p><i>amended to read</i></p> <p>Equality includes the full and equal enjoyment of all rights and freedoms. To achieve equality, measures, including legislative measures, designed to protect and advance groups or categories of persons disadvantaged by [unfair] discrimination may be taken.</p>	
7	s11	<p><i>Heading 'Freedom and integrity of the person' should read</i></p> <p>Freedom and security of the person</p>	
7	s11(1)	<p><i>the word 'right' should read 'rights':</i></p> <p>Everyone has the right to freedom of the person, including the rights not to be -</p>	
7	s13(2)	<p><i>should be bracketed</i></p> <p>[(2) Every juristic person has the right not to have - (a) their property searched; (b) their possessions seized; or</p>	

		(c) the privacy of their communications violated.】	
8	s14(2)(a)	<i>delete 'established' and insert 'made'</i> that those observances follow any rules made by an appropriate authority;	
9	s14(3)	<i>delete first two lines and replace with</i> Legislation consistent with the Bill of Rights may provide for the recognition of -	
9	s18(1)	<i>add ', ' after choices, delete 'which' and amend 'includes' to 'including'</i> Every person is free to make political choices, including ing the rights -	
11	s18(2)	<i>delete 'such' and replace with 'these'</i> Every citizen has the right to free, fair and regular elections for any legislative body established in terms of the Constitution, to vote in these elections and to do so in secret.	
11	s21	<i>Option 3</i> <i>delete 'shall have' and replace with 'has'</i> <i>Option 3</i> Everyone has the right to pursue the livelihood of their choice, including the right freely to choose their occupation or profession, their place of work and their place of training.	
11	s22(2)	<i>the word 'right' should read as 'rights':</i> Workers have the rights s -	

15	s24(7)	<p><i>in the last line include the words '... or community...' '... or community's ...'</i></p> <p>In this section, "discriminatory law or practice" means any law or practice that would have been inconsistent with section 8 had that section been in force at the time the law or practice dispossessed a person or community or affected a person or community's tenure to land.</p>	
15	s25(1)	<p><i>amended to read</i></p> <p>Everyone has the right to have access to adequate housing. The state must take reasonable and progressive legislative and other measures to secure this right.</p>	
15	s25(2)	<p><i>this provision should read:</i></p> <p>No one may be evicted from their home or have their home demolished -</p> <p>(a) arbitrarily; and (b) without an order of court [made after considering all relevant circumstances, including the circumstances in which the home or the land is occupied, the duration of the occupation and the availability of suitable alternative accommodation].</p>	Note: The factors a court is required to consider in terms of s25(2)(b) do not bind the court but ensure that eviction orders are not made mechanically as occurred on occasion in the past.
15	s26(3)	<p><i>replace 'shall' with 'may'</i></p> <p>No one may be refused emergency medical treatment.</p>	
17	s27	<p><i>words added:</i></p> <p>(c) basic nutrition, basic health care services and social services; (d) be protected from maltreatment, neglect, and abuse;</p>	

		<p>(e) <i>delete 'physical or mental'</i></p> <p>be protected from exploitative labour practices, and not to be required or permitted to perform work or provide services that are inappropriate for a person of that child's age, or that place at risk the child's well-being, education, health, or spiritual, moral, or social development; and</p>	
17	s28	<i>amend side bar</i>	NP option is to replace 1(c)
19	s31	<p><i>replace 'a' with 'the', 'to' with 'of' and add the word 'to' at the end of the line</i></p> <p>Everyone has the right of access to -</p>	
23	s34(3)(e)	<p><i>add 'in a language that the accused person understands';</i></p> <p>to choose and be represented by a legal practitioner, to have a legal practitioner provided at state expense if substantial injustice would otherwise result, [where the interests of justice require it,] and to be informed of both of these rights in a language that the accused person understands;</p>	
23	s35(1)	<p><i>the reference in this section to 'section 36' should be 'section 37' (Enforcement of rights).</i></p> <p>The rights in the Bill of Rights, except the rights in section 37, may be limited by or pursuant to law of general application only to the extent that the limitation of a right is -</p>	
31	s39(1)(c)	<p><i>delete 'comparable' and 'case'</i></p> <p>may consider foreign law.</p>	

33	s40(2)	<i>replace 'the Senate' with 'a second house'.</i>	
33	s42(b)	<i>replace with:</i> members of [a second house] , a provincial legislature or a local government;	
33	s42(e)	anyone who, after this section takes effect, has been convicted of an offence and sentenced to more than 12-months imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic; but, no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.	The last sentence of this paragraph contains a small amendment.
37	s50 & 51		Side bar deleted
39	s54(2)(c)	<i>replace with:</i> If Parliament disagrees with the President's reservations and confirms the Bill or passes it again but without fully accommodating the President's reservations, the President must, without delay, either assent to and sign the Bill or refer it to the Constitutional Court for a decision on its constitutionality.	
41	s62(3)	<i>the second sentence is added:</i> The SENCOP may remove the President/ Chairperson from office by resolution. A majority of the members of the National Assembly must be present when the resolution is adopted.	
43	SENCOP	<i>Option 2</i>	

	and the legislative process	SENCOP may submit comments on all Bills to the National Assembly, and, with respect to Bills concerning the functional areas of the provinces, may, in addition, propose amendments or request their withdrawal. <u>SENCOP may also initiate Bills in the National Assembly. If SENCOP ...</u>	
45	s68	<p><i>Option 1</i> <i>delete 'Republic'</i></p> <p><i>Option 2</i> <i>delete 'Republic'</i></p>	
45/47	s69(3)	The President may act alone when -	
47	s70(1)	<i>delete 'it's' and replace with 'its'</i>	
47	s70	<p>(1) At its first sitting after its election, and whenever necessary to fill a vacancy. the National Assembly must elect a woman or a man from among its members to be President.</p> <p>(2) An election to fill a vacancy in the office of President must be held at a time and on a date determined by the President of the Constitutional court, but not more than 30 days after the vacancy occurs.</p> <p>(3) The President of the Constitutional Court must preside over the election of the President, or designate another judge to do so. The procedure set out in Schedule 3 applies to the election of the President.</p>	This amendment includes s73(2) in s70 for greater coherence.
47	s73	<i>delete entire section.</i>	This section is deleted because: (i) subsection (1) is unnecessary, it is self-evident; (ii) subsection (2) has been incorporated in s70.
49	s75(2)	<i>delete 'to be elected to' and replace with 'serve in'.</i>	

51	s81(2)(b)	<p><i>delete 'engage in activities' and replace with 'act in any way that is':</i></p> <p>Members of the Cabinet and Deputy Ministers may not -</p> <p>(a) undertake any other paid work;</p> <p>(b) act in any way that is inconsistent with their office or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or</p> <p>(c) use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.</p>	
51	s84(4)	<p><i>add:</i></p> <p>A majority of the members of the National Assembly must be present when a vote of no confidence is passed.</p>	
55	89(3)(b)	<p><i>add the words missing in the refined draft:</i></p> <p>All other courts have jurisdiction as determined by an Act of Parliament; but, no Act of Parliament may grant jurisdiction -</p> <p>(a) in matters which only the Constitutional Court may decide; or</p> <p>(b) to enquire into or rule on the validity of any legislation or any <u>conduct of the President.</u></p>	
65	s103(2) & (3)		These are new provisions and should be in bold.
65	s104	<p><i>amended to read:</i></p> <p>The Electoral Commission must be composed of at least three persons.</p> <p>The number of members and their terms of office must be prescribed by national legislation.</p>	
69	s107(1)(c)	<i>replace 'Mphumalanga' with 'Mpumalanga'.</i>	

69	s108	<p><i>replace section with:</i></p> <p>The provisions of this Chapter apply to all provinces except to the extent that they are modified by a provincial constitution adopted and certified in terms of this Constitution.</p>	
69	s111(b)	<p><i>replace with:</i></p> <p>members of the National Assembly, [the second house] or a local government;</p>	
69	s111(e)	<p>anyone who, after this section takes effect, has been convicted of an offence and sentenced to more than 12-months imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic; but, no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.</p>	<p>the last sentence of this paragraph contains a small change.</p>
75	s123	<p><i>side bar added.</i></p>	<p>When provisions relating to the structure of the National Executive have been finalised these provisions will be brought into line. At present they do not include the GNU and Prime Minister options found in s76.</p>
77	s124(3)	<p><i>delete 'In performing the following functions' and add 'when':</i></p> <p>The Premier may act alone when -</p>	<p>Replace opening line of subsection with these words.</p>
77	s125	<p>(1) At its first sitting after its election, and whenever necessary to fill a</p>	<p>s128(2) becomes s125(2)</p>

		<p>vacancy, a provincial legislature must elect a woman or a man from among its members to be Premier.</p> <p>(2) An election to fill a vacancy in the office of Premier must be held at a time and on a date determined by the President of the Constitutional Court, but not later than 30 days after the vacancy occurs.</p> <p>(3) A judge designated by the President of the Constitutional Court must preside over the election of the Premier. The procedure set out in Schedule 2 applies to the election of the Premier.</p>	s125(2) becomes s125(3)
77	s128	<i>delete</i>	<p>This section has been deleted because:</p> <p>(i) subsection (1) is unnecessary; it is self-evident</p> <p>(ii) subsection (2) has been incorporated in s125.</p>
79	134(2)(b)	<p><i>delete 'engage in activities' and replace with 'act in any way that is':</i></p> <p>act in any way that is inconsistent with their office or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or</p>	
81	s137(4)	<i>this subsection has been added and should be bold.</i>	
95	s152(2)	<i>side bar</i>	DP wants 'public administration' to be replaced in this subsection by 'public service'.
103	s166(c)	<i>delete 'in the Republic' and add the words in bold:</i>	

		co-ordination of all intelligence services, including any intelligence divisions of the defence force and the police service.	
111	s180 & s181	<p>International agreements</p> <p>180.(1) The Republic may be bound by international agreements which require ratification or accession under international law only if Parliament agrees by resolution in both the National Assembly and the second House. In both the National Assembly and the second house, a majority of the members must be present for the resolution to be passed.</p> <p>(2) An international agreement to which the Republic becomes a party and which does not require ratification or accession under international law must be tabled in the National Assembly and the second house within a reasonable time; but, an Act of Parliament may provide that an agreement that is published in the national Government Gazette need not be tabled.</p> <p>(3) An international agreement becomes law in the Republic when it is enacted as law in terms of an Act of Parliament and published in the national Government Gazette.</p> <p>Customary international law</p> <p>181. Customary international law forms part of the law of the Republic except when it is inconsistent with the Constitution or an Act of Parliament.</p> <p>Application of international law</p> <p>182. Every court must presume that the law is consistent with customary international law and South Africa's obligations under any international agreement binding on the Republic, unless it is established that it is not.</p>	Note: These provisions replace ss180 & 181. Certain technical changes were made after consultation with the ad hoc technical committee.