

2/4/2/1/1/23

TC2/19

**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 2**

**STRUCTURE OF GOVERNMENT**

**THEME COMMITTEE MEETING**

**Monday**  
**22 May 1995**  
**9h00-17h00**  
**M46**

**DOCUMENTATION**

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**CONSTITUTIONAL ASSEMBLY**  
**THEME COMMITTEE 2**  
**STRUCTURE OF GOVERNMENT**  
**THEME COMMITTEE MEETING**

Please note that a meeting of TC2 will be held as indicated below:

**Date :** Monday 22 May 1995

**Time :** 9h00-17h00

**Venue :** M46

Please note that the Theme Committee at its meeting on 15 May agreed that this meeting shall be a full-day meeting.

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**AGENDA**

1. **Opening and Welcome**
2. **Minutes of Theme Committee Meetings**  
(documentation will be provided separately)
3. **Report on the National Assembly, The Presidency, and the Cabinet (block 2)**  
(see this documentation pack pp 1-52)
4. **The Senate (block 2)**  
(first draft in TC/16; second draft will be provided separately)
5. **Structure and Functioning of Government at Provincial Level (block 3)**  
(documentation will be provided separately)
6. **Any Other Business**
7. **Closure**

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**HASSEN EBRAHIM  
EXECUTIVE DIRECTOR  
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**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 2**

**STRUCTURE OF GOVERNMENT**

**REPORT ON BLOCK 2**  
**NATIONAL ASSEMBLY, PRESIDENCY,**  
**CABINET**

**(22 May 1995)**

## THEME COMMITTEE 2

### REPORT ON BLOCK 2

#### THE NATIONAL ASSEMBLY, THE PRESIDENCY AND THE CABINET

##### INTRODUCTION

This report deals with the National Assembly, the Presidency and the Cabinet. The section on the Senate, on which the views of the Commission of Provincial Government and further submissions by political parties had to be canvassed, will be submitted at the earliest possible opportunity.

The format of the report is as follows:

- 1 Each section consists of two parts. The first is a numbered, tabular summary of the conclusions reached by the Theme Committee on each of the matters listed. In other words, it reflects the most recent state of the discussion in the Theme Committee.
- 2 The second part of each section, also in summarised form and in the same sequence as in the table, contains the gist of the written submissions received by the Committee.
- 3 It should be noted that a position adopted by a political party in a written submission, as reflected in the second part of each section, may differ from that ascribed to the party in the table. During the discussion of the relevant issues and the various submissions in the Theme Committees, political parties had reserved the right to reconsider their position in order to ascertain areas of agreement and contention.
- 4 In the "Comment" column of the table, reference is made to the gist of the submissions of individuals and other organisations, where such submissions had been received. These references are made in italics.
- 5 A list of the abbreviations used is found in the Appendix to the report.
- 6 The reference "sec" or "section" is to sections of the Interim Constitution. The reference "cp" is to the constitutional principles contained in Schedule 4 of the Interim Constitution.

## THE NATIONAL ASSEMBLY

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	1. Terminology	'Parliament', 'National Assembly', 'Senate', 'Speaker' and other terms currently used in connection with legislature		1. Meaning of 'Parliament' in Constitution to be revisited after finality on kind of Senate  2. <i>Two organisations proposed differently named legislative structures</i>
Section 46(1) 46(3) 57(3)	2. Summoning of NA and Parliament	1. Chief Justice convenes 10 days after election  2. President may summon for extraordinary sitting for urgent business  3. President may summon joint sitting when deemed desirable		The NP would like the principle of a specified percentage or number of members of the NA requesting the NA to be convened while it is in recess, to be considered
Section 46(1) 46(3)	3. Sittings and sessions of the NA	NA determines its sessions and sittings		The seat of the National Assembly falls within the ambit of TC1
Section 57	4. Joint sitting of two houses			Stand over until finality reached over Senate

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 40(1)	5. Size of NA ;			<p>1. More work needs to be done on this aspect</p> <p>2. Size to be revisited</p> <p><i>3. The majority of individual submissions favoured a smaller NA. Some were specific, others indicated that Parliament should have fewer members. Two individuals were satisfied with the current 400 member NA.</i></p> <p><i>Contralesa proposed that the legislative chamber should include traditional leaders.</i></p>



CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	6. Constituencies			<p>1. To be discussed in conjunction with electoral system in another block</p> <p>2. <i>Individual submissions indicated a clear preference for some form of constituency representation.</i></p> <p><i>A number of respondents also supported a free mandate and the right to recall.</i></p>
	7. Election of members	<p>Affected by two factors:</p> <p>1. Electoral system</p> <p>2. Senate</p>		Further investigation needed
Section 42	8. Qualifications for membership	Qualifications contained in IC sec 42, subject to omission of subsect (1)(a) relating to first election under IC		<p>1. <i>One individual referred to the constitutional entrenchment of qualifications; a group of students were in favour of members of NA being at least 30 years of age.</i></p>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	9. Term and dissolution	1. 5 years, except for DP 2. Fixed term, unless dissolved as result of vote of no-confidence 3. May only be dissolved by President following vote of no-confidence	The DP proposes a 4 year term	1. Number of years to be revisited 2. <i>One individual was in favour of 4 year term; two other submissions 5 years.</i> 3. See also section on President/cabinet
Section 38(2) and (3)	10. Continuation of NA and membership after dissolution	Parliament and members continue until day before next election		
Section 45	11. Oath of office	Oath and person before whom made		
Section 43	12. Vacation of seat	1. Become disqualified i t o IC sec 42 2. Resignation 3. Membership of Senate, provincial legislature or local govt	Cease to be member of nominating party, right of recall, free/imperative mandate	Revisit 15 consecutive days absence (sec 43(d))
Section 44	13. Filling of vacancy			Stand over for electoral system

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 66	14. Rights of non-members entitled to be in NA	President, Deputy President, Minister and Deputy Minister may sit and speak but not vote in house of which he/she not member		Agreed subject to kind of Senate
Section 56	15. Disqualified person sitting in NA	Knowingly sitting while disqualified subject to penalty stipulated by rules and orders		
Section 41	16. Presiding officers	Current provisions		
Section 41(8) 57(2)	17. Voting right of presiding officer	Presiding officer has only casting vote in event of equality of votes (in NA and joint sitting of two houses)		
Section 58	18. Committees	Agreed subject to -  1. question whether there should be constitutional duty to create committees  2. kind of Senate		1. To be revisited  <i>2. One individual proposed that committees should have a budget for a secretariat and research staff; another that specialised committees should be provided for.</i>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 55	19. Rights, immunities, privileges, benefits	Current provisions		<p><i>One individual proposed that the taxpayer should have a say in members' salaries; another that members should not receive and increase during their term of office, and should submit a statement of assets and liabilities to an ombudsman.</i></p>
	20. Powers of NA			<p>1. To be dealt with in conjunction with relationship between Parliament and provinces</p> <p>2. <i>One individual submitted that taxing power should be limited to purposes stated in the constitution; another that powers of NA be listed, the rest going to provinces; and a third listed 15 responsibilities or the "federal" Parliament.</i></p>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 47 63	21. Quorum and majorities for decisions			To be revisited in view of following questions: a. Should quorum be prescribed by Constitution? b. Required majority for decisions?
Section 59, 60, 61 and 62	22. Types of legislation and procedure for passing	<ol style="list-style-type: none"> <li>1. Ordinary bills</li> <li>2. Money bills</li> <li>3. Bills affecting certain provincial matters</li> <li>4. Constitutional amendments</li> </ol>		Money bills and constitutional amendments to be revisited: money bills pending further discussion; amendments when dealt with in later block

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 64	23. Assent to bills	<p>President has to assent and sign bill unless -</p> <p>1. there is procedural irregularity; or</p> <p>2. the bill has been referred by the President for a ruling on constitutionality to the Constitutional Court, after first being referred back to Parliament and passed again</p>		
Section 65	24. Enrolment and public access to laws	<p>1. Copies in required official languages to be kept by Registrar of Court</p> <p>2. Signed copy prevails in event of conflict</p> <p>3. Subject to Act protecting safety and durability of Acts, public have access</p>		To be revisited: whether Act should be kept at Appellate Division or Constitutional Court

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 67	25. Public access to NA	Public and media have right to access subject to reasonable measures, including search, refusal and removal		
	26. Relationship towards the Executive			<p>1. To be revisited in conjunction with Presidency and Cabinet</p> <p>2. <i>An individual proposed that the Cabinet should be elected by the NA by STV.</i></p>
	27. Relationship towards other chamber			<p>1. To be revisited in conjunction with kind of Senate and relationship between national and provincial levels of government</p> <p>2. <i>One individual submitted that the Senate should have a veto iro provincial matters, another that money bills should be introduced at a joint sitting of the NA and the Senate.</i></p>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	28. Role of minority parties in the Legislature			<p>1. Subject of continuing debate, considering that:</p> <p>a. minorities are not necessarily a matter for the Constitution, and</p> <p>b. the NP would like to revisit depending on clarity about the role of minority parties in the Executive.</p> <p>2. <i>One individual submission favoured strengthened minority power-sharing; another entrenched representation for minorities; and another that minority party protection should take place through the bill of rights.</i></p>



## **REPORT ON SUBMISSIONS : THE NATIONAL ASSEMBLY**

### **1 Introduction**

This part of the report should be read with the tabular analysis above, and the sections on the Senate, the Presidency and the Cabinet. It deals with the National Assembly under the following headings, which were identified on the basis of submissions received and discussions in the Theme Committee:

- 1 Terminology
- 2 Summoning of National Assembly and Parliament
- 3 Sittings and sessions
- 4 Joint sitting of two houses
- 5 Size of National Assembly
- 6 Constituencies
- 7 Election of members
- 8 Qualifications for membership
- 9 Term and dissolution
- 10 Continuation of NA and membership after dissolution
- 11 Oath of office
- 12 Vacation of seat
- 13 Filling of vacancy
- 14 Rights of non-members entitled to be in National Assembly
- 15 Disqualified person sitting
- 16 Presiding officer(s)
- 17 Voting rights of presiding officers
- 18 Committees
- 19 Rights, immunities, privileges, benefits of members
- 20 Powers of National Assembly

- 21 Quorum and majorities for decision
- 22 Types of legislation
- 23 Assent to bills
- 24 Enrolment and public access to laws
- 25 Public access to National Assembly
- 26 Relationship towards the Executive
- 27 Role of minority parties

Certain issues addressed here would apply equally to a second chamber of Parliament, or Parliament as a whole, and will be referred to in the discussion of the Senate.

The purpose of this part of the report is to summarise the gist of submissions received. It should be noted that the IFP was not present during the discussion of this part of the report.

## **2 Submissions**

Submissions on the National Assembly were received from -

- 1 Parliamentary political parties
- 2 Other organisations (including non-parliamentary parties)
- 3 Individuals

## **3 Constitutional Principles**

The following Constitutional Principles have a direct bearing on the aspects of the National Assembly dealt with in this report: IV (Constitution supreme law of the land, binding all organs at state at all levels of government); VI (separation of powers and checks and balances); VIII (representative government and proportional representation in general); X (formal legislative procedures); XIV (participation of minority political parties in the legislative process); XVII (democratic representation at each level of government).

## **4 Submissions received on the aspects of the National Assembly listed above**

### **4.1 Terminology**

In so far as they have expressed a view, all parliamentary parties are of the opinion that the 'lower house' or 'first chamber' should be called the National Assembly,

as at present. The Constitutional Principles are silent on this matter. There was no serious challenge to the expression 'National Assembly' in other submissions.

The same would appear to apply to the titles of office bearers ('Speaker' and 'Parliament', e g).

Two organisations proposed different legislative structures [*People's Cultural Organisation - replace parliament by People's Congress/Chamber; House of Royal - number of proposals for substantially different parliamentary organisation for United Kingdom of South Africa to operate in conjunction with existing system*].

#### *4.2 Summoning of National Assembly and Parliament*

No submissions received.

#### *4.3 Sittings and sessions*

No submissions received.

#### *4.4 Joint sittings of two houses*

No submissions received.

#### *4.5 Size of the National Assembly*

On the size of the National Assembly there is no unanimity, not only among political parties, but also individuals. No other organisation expressed itself on the size of the NA.

Among political parties, the spectrum ranges from the PAC, which is not in favour of a reduction in membership, over the ANC (which promised a further submission and suggested that the size of the National Assembly is linked to the electoral system), the NP (in favour of the current structure, but also suggesting a possible reduction), the IFP (proposing the current system for 10 years, then a reduction to 170 members, to the DP (which proposes a 300 member NA, 240 in multi-member constituencies, 60 on party lists nationwide). According to the FF, the size of the NA will depend on the powers of the provinces, but it would probably be satisfied with the current arrangement, or an NA of between 350-400 members.

The majority of individuals who addressed the issue of size, was in favour of a smaller NA. Some were specific in their proposals, others merely indicate that there should be fewer members of Parliament. Two individuals expressed satisfaction with the current 400 members of the NA.

The following is a brief summary of the viewpoints of individuals:

CA Spero - 10 members per province; O Bothma - size confined to number of ministers; K Gottschalk - total parliamentary membership not more than 300; PJ Knock - fewer legislators; HJ Smith - small legislature appointed by provinces; MS

Kamedien - fewer members;

J Luus - too many members; CG Schmidt - reduce to 200; GJ Selikow - content with size; IE Watson - fewer members [300]; AH Taute - fewer members (300); MC D'arcy - not more than 200 MPs; PI du Preez - 400 members; TB Kourie - fewer members; EJ Sayer and others - not more than 300 members; PJ Sousa - too many MPs (360 proposed); JF Theunissen - too many MPs; combine with senate into not more than 100 plus ministers; GC Bydawell - not more than 100 MPs; PS Clark - number of members related to 'world average'; JW Conroy - 200 members; CG Snyman - 200 members.

Contralesa proposed that the 'legislative chamber' include traditional leaders.

#### *4.6 Constituencies*

The question of constituencies will have to be dealt with under the electoral system. Although political parties expressed themselves briefly on this aspect (e.g. ANC and DP), the majority of submissions so far came from individuals. A clear preference for the reintroduction of constituencies (pure or in conjunction with lists) was expressed; a number of respondents also indicated a preference for a free mandate and the right of recall: Griggs - constituencies and recall; Gary Ninow - constituencies, no lists;

K Gottschalk - mix of constituencies and proportional representation; PJ Knock - constituencies; R Shea - right of recall; H de Villiers - proportionality failed (probably meant list system); BS Hiddleston - partially constituencies (up to 20%); resigning from party should not disqualify member; salaries of MP by independent and impartial committee; GJ Selikow - mixed STV and constituency system; AH Taute - mixed constituency and list; free mandate; MC D'arcy - minimum educational qualifications for MPs; PI du Preez - constituencies; 4 year term with maximum of 3; J Glyn - mixed list and constituency; independent candidates to be allowed; Joy Macnab - constituencies; UA Naicker - minimum qualifications for public office; D Rabie - constituencies; EJ Sayer and others - constituencies; A Smith - constituencies; audited disclosure of finances of MPs; FLE Watermeyer - (by inference in favour of) constituencies; MP should be allowed to cross floor after consulting constituency; MPs reside in constituency; H Voges - constituencies and list; allow crossing of floor; PS Clark - minimum qualifications; constituencies; D Shepherd - constituencies.

#### *4.7 Election of members*

No submissions received.

#### *4.8 Qualifications for membership*

Political parties have not expressed themselves on this issue.

N Shepstone would want qualifications of voters and elected constitutionally entrenched, while a group of St 8 pupils from Motse Maria High School suggest that members of the National Assembly should be 30 years old.

#### **4.9 Term and dissolution**

The DP proposes a 4 year term. The other parties are in favour of 5 years (ANC; FF; IFP; NP).

Individuals and others also reacted: PS CLark 4 year term; RM Longden-Thurgood - 5 year period; St 8 pupils from Motse Maria High School - 5 year term.

#### **4.10 Continuation of NA and membership after dissolution**

No submissions received.

#### **4.11 Oath of office**

No submissions received.

#### **4.12 Vacation of seat**

No submissions received.

#### **4.13 Rights of non-members entitled to be in NA**

No submissions received.

#### **4.14 Disqualified person sitting**

No submissions received.

#### **4.15 Presiding officers**

Three parties expressed a view under this heading: the ANC proposed that a Speaker and Deputy Speaker should be elected from the members of the NA and that a leader of Parliament be elected by the majority party (to liaise with the Speaker and the Cabinet and to be responsible for the legislative programme). The IFP referred to a 'President' of the National Assembly, one of whose functions would be to call an election if the President of SA becomes permanently incapacitated. The FF supports the present constitutional arrangements. In terms of its stated position that unless indicated otherwise, it is in favour of the current provisions of the Constitution, the NP would agree to the existing measures.

Individuals and other organisations did not express themselves on this issue.

#### **4.16 Voting right of presiding officer**

Parties agreed during the discussion in the Theme Committee that the presiding officer should have a casting vote.

#### **4.17 Committees**

Four political parties offered a view on this aspect. The ANC sees the role of committees to enhance executive accountability to an informed parliament; to provide a role for minority parties; to allow for informed public debate on legislation; to consider legislation; and to hold public inquiries. The DP proposes Portfolio Committees to hold the executive accountable, while the PAC proposes that the committee system be strengthened. The FF supports the current system; as would the NP in terms of its stated position.

Two individual submissions contained references to committees: K Gottschalk - committees should have budget for secretariat and research staff; and HJ Smith - specialised committees should be provided for.

#### **4.18 Rights, immunities, privileges, benefits**

Only two political parties mentioned rights and immunities in their submissions. The ANC proposed that this matter be dealt with by Act of Parliament, subject to freedom of speech and debate in Parliament and in Committees. The IFP is in favour of privilege for statements made by members in and out of Parliament, subject to correction of factual error; and of some degree of immunity from legal proceedings. The NP would support the current arrangement.

Two individuals referred to an issue which could be classified under this heading: MS Kamedien - would like to give the tax payer a say in members' salaries, while JW Conroy suggested that MPs should receive no salary increase during their term of office, and they should submit a statement of assets and liabilities to an ombudsman.

#### **4.19 Powers of the National Assembly**

The question of powers of the NA can only be fully dealt with in conjunction with the relationship between the two houses of Parliament and between the national and the provincial levels of government. The following appeared from submissions received so far:

The ANC proposed that the NA control national budget, and that it takes primary responsibility for the preparation and adoption of 'main' laws. According to the DP, the NA should be the primary but not exclusive place for the initiation of legislation. The IFP would like the powers of the national government to be listed in the Constitution.

Individual submission dealing with the question of powers, covered the following: P Dickerson - the power of taxation should be limited to purposes listed in the Constitution; BS Hiddleston - the powers of the national government should be listed, the remainder going to the provinces; PI du Preez - listed 15 responsibilities/powers of the 'federal' parliament.

#### **4.20 Quorum and majorities for decisions**

The ANC proposes a quorum of 1/3; for passing of legislation 50% without the vote of the presiding officer; constitutional amendments, 2/3 of both houses; all other matters, simple majority of those present.

The DP is in favour of a simple majority except for amendments (no proposal for the latter). The FF, and the NP in terms of its stated position, support the existing quorum arrangement.

No submission on this score was received from individuals or other organisations.

#### **4.21 Types of legislation and procedure for passing**

The IFP came closest when it suggested that any member should be entitled to introduce a bill; that no difference should exist between public and private bills; that government bills should receive no special treatment; that a legislative proposal should be accompanied by a brief memorandum; that a bill should be assigned to a committee before introduction; and that rules and orders ('parliamentary law') should provide for specific matters.

#### **4.22 Assent to bills**

No submissions received.

#### **4.23 Enrolment and public access to laws**

No submissions received.

#### **4.24 Public access to NA**

The ANC proposed that sittings should be in public subject to reasonable restrictions in the interest of the security of Parliament or due to a compelling state interest. In terms of its stated position, the NP would support the current arrangement.

#### **4.25 Relationship towards the Executive**

The following aspects resorting under this heading, are covered in the sections on the Presidency and the Cabinet:

4.25.1 Executive accountability to the Legislature

4.25.2 Vote of no confidence in the Executive

4.25.3 Election and dismissal/impeachment of President

4.25.4 Powers of President i r o NA/Parliament

4.25.5 Other aspects: The DP proposed that with the Senate the NA ratifies treaties, international agreements, ambassadorial appointments and those of key personnel in the Security Services. The IFP recommended that the NA ratifies (with the other chamber) cabinet appointments; one house has to ratify the substitution of a minister; and Parliament may ask a minister for information or to resign. The NP proposed without further detail that the relationship between the legislature and the executive be defined in the Constitution.

The PAC recommended that members of executive sit in the legislature; that the executive does not appoint persons to the legislature; that the executive does not decide over elections; that the executive does not convene or dissolve legislative assemblies; that it has no say over the remuneration of legislators; that the legislature decides over funds, and that the executive be held accountable for the handling of money; and finally that no delegation to executive takes place without retaining control.

The ACDP proposed that the executive should not be able to dissolve the legislature.

GJ Selikow proposed that Parliament should elect the cabinet by single transferable vote (STV).

#### *4.26 Relationship towards the other chamber (if any)*

The following political parties referred to the relationship between the NA and a second chamber, thereby either implying or expressly proposing a two chamber parliament:

ANC (the NA should have final power i r o financial bills; equal powers i r o provincial matters; subject to review by the second chamber (without veto) of all other matters); DP (equal powers except budget and money bills, where NA will override; i r o provincial powers, functions and boundaries, and distribution of financial resources between provincial and national levels, DP would appear to imply overriding power for second chamber); IFP (equal powers for the two chambers, with a joint standing committee for the resolution of differences); FF (legislation relating to provinces subject to revision, review and even veto by the Senate); NP in terms of stated position in favour of status quo.

As far as submissions from individuals are concerned, N Athinodorou would like to give the Senate a veto i r o provincial matters, while KT Sonjica proposed that money bills be introduced at a joint sitting of the NA and the Senate.

#### *4.27 Role of minority parties*

Two political parties referred to minority parties in their submissions. The ANC proposed an undefined role for them in committees of the NA, while the IFP foresaw that they could introduce laws, and be protected by parliamentary rules and orders. In terms of its stated position, the NP would be in favour of the current



dispensation.

The following individual submissions referred to minorities/minority parties: BS Hiddleston, who merely stated that power-sharing by minorities should be strengthened; MC D'arcy, who suggested entrenched representation for minorities; and N Shepstone, who felt that minority protection should take place through the bill of rights.

#### **POSTSCRIPT**

The Free Africa Foundation (Washington), the People's Cultural Organisation, the House of Royal, and the Conservative Party, all made proposals significantly different from the current system, aspects of which might be dealt with under the Volkstaat block and Traditional Leaders block. RB Mattes proposed an independent legislature, i.e. one not linked to the executive. Traditional Leaders.

## THE PRESIDENCY

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	1. Terminology	State President		Agreed upon at TC meeting of 15 May 1995
	2. Combined or split office: head of state and head of government	Combined office (except for the IFP)	The IFP prefers a separation between head of state and head of government	<i>Except for one, the individual submissions expressed preference for non-executive head of state</i>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 77(1), (2) and (3); Sched 5	3. Election of President	The majority of parties (except the DP) support an indirectly elected President	The DP prefers a directly elected President	<p>1. The NP prefers an indirectly elected President, but would not be against a directly elected President</p> <p>2. Whether election should be by the NA or Parliament to be revisited when finality reached on composition of the Legislature</p> <p><i>3. A slight majority of individual submissions supported a directly elected President. Two submissions proposed special majorities for election.</i></p>
Section 77(4)	4. President member of Legislature?		<p>1. The DP favours a directly elected President</p> <p>2. The PAC prefers the President to be a member of the Legislature</p>	<p>1. The PAC prefers President to be member of legislature</p> <p><i>2. One individual submission submitted that the President should not be a member of the Legislature; another that the Executive should not be part of the Legislature.</i></p>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 80	5. Tenure of office and number of terms	1. Tenure of office linked to term of legislature  2. Maximum of 2 terms (except for IFP)	The IFP prefers one 7 year term	<i>Three individual submissions supported limited number of terms; one an unlimited number</i>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 93	6. Motion of no-confidence by legislature	The legislature may pass a motion of no-confidence (except for the DP)	<p>1. Consequences of motion of no-confidence</p> <p>2. Due to its preference for a directly elected President, the DP is not in favour of the President vacating his/her office as a result of a motion of no-confidence</p>	<p>1. Section 93 of the Interim Constitution provides for a motion of no-confidence, with differing consequences, in -</p> <p>a. the Cabinet (incl President);</p> <p>b. the President alone; or</p> <p>c. the Cabinet (excl President)</p> <p>2. If sec 93(2) - after a successful vote of no-confidence in the President by ordinary majority he/she has to resign - is accepted, the question arises whether impeachment by a two-thirds majority (section 87) serves any purpose</p> <p><i>3. Three individual submissions supported removal from office by legislature.</i></p>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 82	7. Powers and functions	<p>1. Assent to bills and sign (see item 23 in section on NA above) (cf sec 82(1)(a) and (b))</p> <p>2. Manage, and preside over cabinet (sec 82(1)(c))</p> <p>3. Confers honours (sec 82(1)(e))</p> <p>4. International relations (cf sec 82(1)(f) and (i))</p> <p>5. Reprieve and pardon offenders (sec 82(1)(k))</p> <p>6. Convene the Legislature for urgent business (see sec 46(3) and 53(3) of the IC); and request joint sitting of houses when he/she deems it desirable (sec 57(3))</p>	<p>Appointment of ministers (item 8 under "Agreement"): The NP not in favour of the President acting in his/her sole discretion, but in accordance with provisions of the Constitution</p>	<p>1. In terms of sec 82(2) and (3), the President has to consult the Executive Deputy Presidents in the exercise of certain powers, and to act "in consultation with" the Cabinet in the exercise of other powers. This matter is to be revisited</p> <p>2. The question of declaration of war, martial law and the conclusion of peace (not mentioned in the IC) and other so-called "prerogative powers" to be revisited</p> <p>3. Powers in sec 82(1) not referred to in submissions: referring constitutional dispute to Constitutional Court (sec 82(1)(d); appointment of commissions of inquiry (sec 82(1)(e); making of appointments i t o Constitution or other law (sec 82(1)(h); proclaim referenda/</p>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
		<p>7. In view of the fixed term of the Legislature, may only dissolve Legislature in circumstances provided for by Constitution following a successful vote of no-confidence</p> <p>8. President has right to appoint and dismiss ministers and deputy ministers (for position of the NP, see under "Contention")</p> <p>9. Acts in consultation with Cabinet</p> <p>10. To ensure upholding of constitutional order and proper functioning of constitutional machinery</p> <p>11. Commander-in-chief of armed forces (cf sec 82(4))</p>		<p>plebiscites (sec 82(1)(k))</p> <p><i>4. Individual submissions:</i></p> <p><i>a. Two supported veto that can be overridden by two-thirds majority.</i></p> <p><i>b. Appointment of ministers: one submission supported appointment of ministers with expertise, also from outside politics; another appointment of minister with approval of both houses of Parliament.</i></p> <p><i>c. Pardoning of offenders: one supported pardoning at end of term, with court having power to overturn pardoning a criminal.</i></p> <p><i>d. Commander-in-chief: one submission mentioned this.</i></p> <p><i>e. Other aspects: Head of state not involved in political appointments; prime minister to appoint ministers.</i></p>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	8. Deputy President/Prime Minister			See under Cabinet



## **REPORT ON SUBMISSIONS: THE PRESIDENCY**

### **1. Introduction**

This part of the report should be read with the tabular analysis above, and the sections on the National Assembly and the Cabinet. It deals with the Presidency under the following headings, which were identified on the basis of submissions received and discussions in the Theme Committee:

- 1 Combined or split office: head of state and head of government
- 2 Election of President
- 3 President member of Legislature?
- 4 Tenure of office and number of terms
- 5 Motion of no-confidence by Legislature
- 6 Powers and functions.

### **2 Submissions**

Submissions on the Presidency were received from -

- 1 Parliamentary political parties
- 2 Other organisations
- 3 Individuals

### **3 Constitutional principles**

The following Constitutional Principles have a direct bearing on the aspects of the Presidency dealt with in this report: IV (Constitution supreme law of the land, binding on all organs of state at all levels of government); and VI (separation of powers and checks and balances).

### **4 Submissions received on the aspects of the Presidency listed above**

#### **4.1 *Combined or split office: head of state and head of government***

Parliamentary parties expressed the following views:

ANC: President with both ceremonial and executive powers.

**NP:** An executive president combining the powers of head of state and head of government.

**IFP:** Two separate offices; head of state (president) and head of government (prime minister).

**DP:** President combine the function of Head of State and Head of Government. A distinction is, however, made when persons are appointed to assist the President in the execution of his or her duties:

- (a) Vice-President to assist in the execution of the duties as Head of State which include the powers, duties and prerogatives normally associated with the office of Head of State;
- (b) Prime Minister to assist in the executions of functions of government, namely, to coordinate the work of the cabinet and in the absence of the President preside over the cabinet.

[REMARK: Although the IFP and FF propose a split between the two offices, an analysis of the powers proposed for the President suggests that he or she is in effect more than a head of state. The power of vetoing legislation on a line by line basis, which the IFP proposes, is usually associated with an executive president. From the FF proposals it appears that the president is indeed an executive president. He or she should merely be assisted by one or two officers in the discharge of the many duties which the combined office carries].

**FF:** The functions of the head of state and head of government cannot be executed efficiently by one person. The president should thus be assisted by two deputy presidents or a prime minister.

The Conservative Party made a submission on a constitution for the Afrikaner/Boer People. As such the document does not address itself on the organization of the central state.

With the exception of one, the public submissions favour a non-executive head of state separate from the head of government:

Cooke (vol 3): Head of state should be non-executive

Longden-Thurgood (vol 3): Non-executive head of state separate from head of government. The latter should be the Prime Minister

Mathias (vol 3): Council of Wisemen, including the State President

Smith (vol 3): State president without legislative powers

Thompson (vol 3): Head of state separate from head of government.

Vosloo (vol 3): There shall be a State President and Prime Minister

Du Preez (vol 4): Executive President.

#### **4.2 Election of President**

Political parties expressed the following views:

ANC: President shall be elected by and from the National Assembly.

NP: Elected by Parliament as at present, that is to say, from among its members.

IFP: Elected by resolution of Parliament, sitting jointly or separately, by 2/3 majority. If no candidate after three attempts achieve that majority, then a simple majority will suffice.

FF: Elected by Parliament in joint sitting from among its members.

PAC: Elected by NA from amongst its members.

DP: Direct election on same day as election of NA. President need not be member of Parliament.

The majority of submissions support a directly elected president. Two submissions suggest that the president should also obtain special majorities:

Cooke (vol 3): Appointed by body representative of people of country

Longden-Thurgood (vol 3): Appoint by government of day, selected for their special non-party services to the State

Phakhathi (vol 3): People elect president

Shea (vol 3): People elect president

Thompson (vol 3): Appointed by parliament, after consultation among all parties, by a special majority of 60%

Du Preez (vol 4): Directly elected by people. Must receive 66% support in all 9 provinces

Shepstone (vol 5): Directly elected by people.

#### **4.3 President member of Legislature?**

Political parties had the following views:

ANC: On election President vacates his or her seat in Parliament.

NP: On election President vacates his or her seat.

FF: On election president vacates seat in NA.

DP: On election the President vacates any seat in a legislature. No requirement to be a member of Parliament.

The IFP did not express itself on this matter.

PAC: President remains member of Parliament.

Two submissions from individuals support a separation of powers between the president and the legislature:

Steenekamp (vol 3): Executive not part of the legislature

Longden-Thurgood (vol 3): President should not be a member of the legislature.

#### *4.4 Tenure of office and number of terms*

The following submissions were received from political parties:

ANC: Term of office is linked to that of National Assembly. After dissolution of NA, the president could be re-elected for a second full term only. A maximum of 10 years.

NP: Term of office linked to that of NA. No limit on number of terms.

IFP: One seven year term.

FF: No limitation on number of terms.

DP: Tenure limited to two terms of 4 years each. Maximum of 8 years.

The submissions from individuals were divided on the question.

Longden-Thurgood (vol 3): Maximum of two terms of 5 years

Du Preez (vol 4): Two 4 year terms only

Shepstone (vol 5): limited period

Motse Maria High School (vol 5): 5 years term, re-eligible for unlimited amount of terms.

#### *4.5 Motion of no-confidence by legislature*

Political parties offered the following views:

ANC: Parliament may pass a motion of no-confidence in the President. The President shall then dissolve Parliament and call a new election.

NP: After adoption of motion of no-confidence, President resigns or calls an election.

IFP: After adoption of motion of no confidence in the head of government and his or her cabinet, the Head of State shall appoint a new Prime Minister.

FF: After adoption of motion of no confidence in President and cabinet, the president may resign or dissolve Parliament and call an election. If a no- confidence motion pertains only to the President, he or she shall resign.

DP: After adoption of a motion of no-confidence in the prime minister and cabinet, President may dissolve Parliament, terminating also the presidency.

On impeachment (see 'comment 2' in block on 'motion of no-confidence'), parties expressed themselves as follows:

ANC: President may be impeached on resolution of both houses with 2/3 majority on grounds of a serious violation of the Constitution or other laws or inability to perform the functions of his or her office.

NP: Parliament may impeach members of the executive.

IFP: Removal by simple majority vote in both houses of Parliament on grounds of mental incapacity, treason or felony.

FF: Removal by 2/3 vote in joint sitting of houses of Parliament on grounds of serious violations of the Constitution or any other law or misconduct or inability rendering him or her unfit to exercise and perform functions.

DP: Impeachment for misconduct by resolution adopted by a 2/3 majority of each house in Parliament.

The submissions from individuals were in agreement that Parliament should have the power to impeach the President on specific grounds:

Longden-Thurgood (vol 3): President removed from office for conduct considered to be prejudicial to the interest of state, or mental deterioration or bankruptcy

Du Preez (vol 4): If president breaks the law and is found guilty, National Assembly has right to remove him from office

Clark (vol 5): impeachment on 2/3 vote of Parliament

#### *4.6 Powers and functions*

The following submissions were received from political parties:

##### **4.6.1 Convening of the legislature:**

ANC: President may summon National Assembly for an extraordinary sitting or for the discharge of urgent business.

IFP: (Head of State) Convenes parliament after elections.

##### **4.6.3 Dissolving legislature**

ANC: President has no power to dissolve Parliament before the expiry of 5 years, unless there is a vote of no-confidence in the cabinet or in the President.

IFP: Power to dissolve Parliament, in which case President must call new election (including of President). Power not to be exercised in last six months of term of office.

DP: President has no power to dissolve Parliament before expiry of term. After a motion of no-confidence in prime minister and cabinet, President may dissolve NA and call a general election.

#### 4.6.3 Assent to laws

ANC: Yes

NP: Power to confirm bills of Parliament, but no substantive veto. Refer bill back to Parliament because of a procedural shortcoming. When doubting constitutionality of a bill, may refer it to Constitutional Court.

IFP: Yes, but with a 'line-by-line' power of veto.

Two individual submissions expressed themselves on this matter:

Du Preez (vol 4): May veto any legislation for one session. Both houses of Parliament may overturn veto by 66% vote

Clark (vol 5): Veto, but by 2/3 vote override.

#### 4.6.4 Power to appoint and dismiss ministers and deputy ministers

ANC: To appoint and dismiss ministers at his or her discretion. Not stated whether ministers should be members of Parliament.

NP: To appoint ministers from among members of Parliament. Appointment of non-party political experts from outside Parliament to be used sparingly.

FF: To appoint ministers from among members of Parliament. May dismiss ministers in his or her discretion.

DP: May appoint ministers from among members of Parliament.

PAC: May appoint ministers from among members of Parliament.

Two individual submissions:

D'Arcy (vol 4): President appoints ministers who have expertise in their posts. Appoint also from outside party-political scene

Du Preez (vol 4): Appoints any office bearers in his government, with approval of both Houses of Parliament.

#### **4.6.5 Manage and preside over cabinet**

**ANC: To manage and preside over cabinet.**

**NP: Chairs the cabinet.**

**FF: Presides over cabinet.**

**DP: Presides over cabinet.**

#### **4.6.6 Relation to cabinet**

**ANC: Consults with cabinet when taking important decisions. Ministers to advise President.**

**NP: Powers exercised mainly in consultation with the cabinet.**

**DP: Unless otherwise provided in Constitution, President shall act on advice of cabinet.**

#### **4.6.7 President (head of state) to ensure the preservation of the constitutional order and the proper functioning of the constitutional machinery.**

**IFP: Yes**

#### **4.6.8 Conferring honours**

**ANC: Yes**

**IFP: Yes**

#### **4.6.9 International relations: ambassadors, sign and negotiate agreements**

**ANC: Yes**

**IFP: Accreditation of ambassadors and foreign delegations.**

#### **4.6.10 Pardon and reprieve offenders**

**ANC: Yes**

**IFP: Yes**

**Du Preez (vol 4): May pardon any person at the end of his term of office. In criminal cases the appeal court can overturn a pardon.**

**4.6.11 Commander-in-chief of armed forces**

**ANC: Yes**

**IFP: Yes**

**Du Preez (vol 4): President commander-in-chief.**

**4.6.12 Declare war, martial law, proclaim peace**

**ANC: Yes**

**4.6.13 Execute policies of national government**

**ANC: Yes**

**NP: Yes**

**4.6.14 Other individual submissions:**

**Cooke (vol 3): Head of State should not be involved in appointment to non-political posts.**

**Longden-Thurgood (vol 3): Prime minister appoints cabinet.**



## THE CABINET

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
XXXII	1. Constitution has to provide that until 30 April 1999 the executive at national level to remain substantially the same as under the Interim Constitution			
XXXIII	2. Constitution has to provide that in the absence of a vote of no-confidence in the Cabinet, there may not be a national election before 30 April 1999			
	3. Terminology	Cabinet; Deputy State President (not 'executive' deputy president); minister; deputy minister		The DP and the IFP in addition propose the office of 'prime minister'

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
88(1)	4. Composition	1. President 2. Deputy President (2 for the NP) 3. Ministers		1. To be revisited after report by Technical Advisors on the position of the President  <i>2. Three individuals proposed a prime minister.</i>
88(1)	5. Size of Cabinet		Contention as to whether number of members should be in the Constitution	1. The FF proposed that the number of ministers should be limited to 24  <i>2. One individual proposed not more than 10 members; another 11; while yet another merely said structures had too many members.</i>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	6. Appointment of Deputy President and/or Prime Minister		Whether there should be more than one Deputy President, involving other parties, and/or a prime minister	<i>Two individual submissions favoured one Deputy-President; one submission favoured two Deputy-Presidents.</i>
	7. Appointment of ministers	See "Agreement" (item 8) of "7. Powers and functions" under "Presidency" above, and "Contention" under same point	See 7. under "Presidency")	<p>1. The IFP proposed that Ministers should be appointed by the head of government (Prime Minister), subject to ratification by Parliament</p> <p>2. <i>Three individual submissions favoured appointment by President; one by Parliament; and one by a prime minister.</i></p>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	<p>8. Ministers to be appointed from Legislature</p>	<p>Ministers should be drawn from the legislature (except for NP - see "Comment 2")</p>		<p>1. Question whether ministers may be appointed from both houses of Parliament to be revisited when clarity obtained on nature of Senate.</p> <p>2. The NP is prepared to support limited appointment from outside the legislature.</p> <p>3. <i>Three non-party submissions supported appointment from legislature (Contralesa in favour of inclusion of traditional leaders);</i></p>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
				<i>one in favour of the most competent persons from outside parliament as well; another proposed a council of ministers as the Senate.</i>
	9. Term of office/dismissal	Term of office determined by:  1. Membership of parliament (except for NP - see "Comment 2" under previous point);  2. vote of no-confidence by Parliament in the Cabinet or in the President	Whether dismissal to be in the discretion of the President (see under 'The Presidency - Powers and Functions')	
	10. Accountability to Parliament	Members of Cabinet individually and collectively accountable to Parliament		<i>Individual submissions mostly supported accountability.</i>
93	11. Vote of no confidence in the Cabinet by the Legislature	May be passed	Consequences of vote of no confidence	See also under 'The Presidency - motion of no confidence by Legislature'

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
92(1)	12. Ministers to be accountable to the President	Principle accepted (the NP supporting the position as under the IC)		<i>One submission from students proposed that ministers should be entitled to criticize the President on behalf of the people.</i>
	13. Role of minority parties		Whether participation of minority parties in the Executive should be enshrined in the Constitution	<p>1. Political parties are not opposed to voluntary coalitions</p> <p>2. <i>Three individual submissions supported government of national unity and power-sharing; one favoured majority party executive.</i></p>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	14. Code of conduct for members of the Cabinet	Principle should be stated in Constitution, details to be contained Act of Parliament		<i>One individual proposed that ministers should submit a statement of assets and liabilities to ombudsman at beginning and end of term.</i>
	15. Consultation between President and Cabinet			1. See 'The Presidency - Powers and Functions'. 2. To be revisited
	16. Decision-making		Contentious	<i>One individual proposed 75% majority of power-sharing executive.</i>
83(2)	17. Counter-signing of acts of President by ministers		Contentious	ANC would like to revisit

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	18. Other issues			
88(7)	18.1. Oath/affirmation	Agreed		
88(10)	18.2. Remuneration	Agreed		
90	18.3. Temporary assignment of powers/functions to another minister	Agreed		
91	18.4. Transfer of minister's powers/functions to another minister	Agreed  Pinciple of current provisions of IC on these matters		



## **REPORT ON SUBMISSIONS : THE CABINET**

### **Introduction**

This part of the report should be read with the tabular summary above and the sections on the presidency and the legislature. It deals with the cabinet under the following headings, which were identified on the basis of relevant Constitutional Principles, submissions received, and after discussion by the Theme Committee:

- 1.1 Terminology
- 1.2 Composition
- 1.3 Size of Cabinet
- 1.4 Appointment of Deputy President/Prime Minister
- 1.5 Appointment of Ministers
- 1.6 Ministers to be appointed from Legislature
- 1.7 Term of office
- 1.8 Accountability to Parliament
- 1.9 Vote of no-confidence in the Cabinet by the Legislature
- 1.10 Ministers to be responsible to the President
- 1.11 Role of minority parties
- 1.12 Code of conduct for members of the Cabinet
- 1.13 Consultation between President and Cabinet
- 1.14 Decision-making
- 1.15 Counter-signing by ministers
- 1.16 Other issues
  - 1.16.1 Oath/affirmation
  - 1.16.2 Remuneration
  - 1.16.3 Temporary assignment of powers/functions to another minister

#### 1.16.4 Transfer of minister's powers/functions to another minister

The purpose of this part of the report is to give an indication of the contents of submissions received. Areas of agreement and disagreement among the parties represented in the Theme Committee can be found in the preceding table. It should be noted that the IFP was absent from the sittings of the Committee when it dealt with the subject under consideration. Where applicable, the position of the IFP was given in the column marked 'Comment'.

### **2 Submissions**

Submissions were received from -

- 1 Parliamentary political parties
- 2 Other organisations (including non-parliamentary parties)
- 3 Individuals.

### **3 Constitutional Principles**

The following Constitutional Principles have a direct or indirect bearing on the aspects of the Cabinet dealt with in this report: IV (Constitution supreme law of the land, binding all organs of state at all levels of government); VI (separation of powers and checks and balances to ensure accountability, responsiveness and openness); VIII (representative government and proportional representation in general); XVI (government to be structured at national, provincial and local levels); XVII (democratic representation at each level of government); XX (each level of government to have adequate legislative and executive powers and functions to enable it to function effectively); XXII (national government not to exercise powers so as to encroach on integrity of provinces); XXVI (each level of government entitled to equitable share of revenue to enable it to provide basic services and execute functions allocated to it); XXXII (Constitution to provide that until 30 April 1999 the national executive should be composed and should function substantially in the manner provided for in Chapter 6 of the Interim Constitution); XXXIII (Constitution to provide that, unless Parliament is dissolved as a result of a vote of no-confidence in the Cabinet, no national election to be held before 30 April 1999).

### **4 Submissions received on the listed aspects relating to the Cabinet**

In the following analysis, reference is made not only to the submissions of political parties, but also to those received from individuals and other organisations.

#### **4.1 Terminology**

The following political parties referred to 'the Cabinet' in their submissions: ANC; DP; IFP; FF. The NP expressed itself in favour of the structures created by the Interim Constitution; in other NP submissions, reference is made to the cabinet. The

PAC and the ACDP have not used the term 'cabinet' in their references to the executive. 'Minister' and 'Deputy Minister' would also appear to be non-contentious terms; likewise 'President' for the head of state/government, and 'Deputy President'. The DP and the IFP proposed a 'Prime Minister', and the FF either a Deputy President or a Prime Minister.

#### *4.2 Composition*

Few party submissions were explicit in this regard (DP and FF), but it was subsequently agreed in the Theme Committee that the Cabinet would consist of the President, Deputy President(s) and Ministers. The matter would be revisited, however, in view of possible inconsistencies in the wording of the relationship between the President and the Cabinet in the Interim Constitution.

Individual submissions: RM Longden-Thurgood, RJ Thompson and JM Vosloo proposed a Prime Minister.

#### *4.3 Size of the Cabinet*

The FF proposed that the number of ministers should be limited to 24.

Individual submission: JW Conroy proposed a cabinet of not more than 10; JM Vosloo favoured 11. J Luus merely said structures have too many members.

#### *4.4 Appointment of Deputy President/Prime Minister*

The ANC proposed an elected Deputy President; the NP favoured one or more Deputy Presidents, involving other parties as well; the DP supported a Deputy President nominated by the President and endorsed by Parliament; while the FF would also like to see one or two Deputy Presidents (or a Prime Minister), apparently from the ranks of Parliament.

Individual submission: O Bothma proposed that two Vice-President be chosen from the largest parties; Ablot (vol 4) and Du Preez (vol 4) are in favour of one deputy president.

The submissions contained the following detail about the Deputy President(s):

##### *4.4.1 Election/appointment*

ANC: Elected by NA from amongst its members.

NP: One of deputy presidents should come from second largest party in Parliament.

DP: Nominated by President and then endorsed by majority of members of Parliament.

#### 4.4.2 Powers

##### 4.4.2.1 Deputizing for the President

**ANC:** Will act as President in the latter's temporary absence or incapacity.

**NP:** In case of a vacancy, one of deputy presidents, nominated by cabinet, acts as President until new one elected. Acts on President behalf in his absence, including chairing cabinet.

**IFP:** In case of incapacity, President of the Senate shall exercise President's functions.

**FF:** To deputize in case of incapacity or absence.

Only one individual submission referred to this matter: Du Preez (vol 4), who is in favour of the Deputy President deputizing for the President.

##### 4.4.2.2 As executive deputy president

**ANC:** Member of cabinet. President may assign duties and functions to the Deputy President.

**NP:** Members of cabinet. President must assign substantial executive powers to them. Be consulted on important policy decisions, ministerial appointments, as provided in present constitution.

**FF:** To perform some of the duties of the president.

**DP:** Vice-President to assist President in the execution of his duties as Head of State which include the powers, duties and prerogatives normally associated with the office of Head of State.

#### 4.4.3 Removal

**ANC:** Same as for President.

**NP:** Can be impeached.

**FF:** Same as for President.

#### 4.4.5 Prime Minister

**IFP:** Prime Minister appointed by President after consultation with the leaders of the political parties. PM forms cabinet and submits it for ratification by means of vote of confidence to Parliament.

DP: Prime Minister appointed by President. To assist in the executions of functions of government. Leader of the Government business in Parliament: coordinate the work of the cabinet and in the absence of the President preside over the cabinet.

#### *4.5 Appointment of ministers*

Most political parties agreed that ministers of the Cabinet should be appointed by the President. The IFP proposed that they should be appointed by the head of government (Prime Minister), subject to ratification by Parliament.

Among the parties supporting appointment by the President, the procedure is contentious: the ANC, the DP, the PAC and the FF, favoured appointment by the President in his/her discretion. The NP favoured a multi-party cabinet, requiring a different method of appointment.

GJ Selikow proposed that Parliament should elect the cabinet by single transferable vote (STV). RM Longden-Thurgood was in favour of a Prime Minister appointing ministers. The Free Africa Foundation (Washington) and RA Griggs proposed a cabinet chosen by the President/head of state. O Bothma supported a cabinet appointed by the President, and deputy ministers proportionally drawn from the two largest parties. PI du Preez supported the idea of the President appointing ministers, with approval by both houses of Parliament.

#### *4.6 Ministers to be appointed from Legislature*

There is agreement that ministers should be drawn from the legislature (the NP was prepared to support limited appointment from outside the ranks of MPs). Submissions were not clear on the question whether they may be from both houses of the legislature (if there are more than one). The DP, the PAC and the FF left room for appointment from both.

Other submissions: K Gottschalk and RM Longden-Thurgood proposed that ministers should only come from the Legislature. Contralesa supported this and would include traditional leaders. MC D'arcy was in favour of the most capable persons, drawn from the broad population as well. JS du Plessis proposed that a Council of Ministers should form the Senate.

#### *4.7 Term of office*

There is agreement among political parties that the following factors would determine the term of office of a member of the Cabinet (excluding the President):

- a. membership of parliament
- b. vote of no-confidence by Parliament in the Cabinet or in the President.

The question whether termination of membership of a minister is in the discretion of President (head of government in the case of the IFP) is contentious in view of the NP position on the multi-party nature of the Cabinet.

#### ***4.8 Accountability to Parliament***

All parliamentary parties support accountability of the executive to Parliament: ANC; DP; IFP, albeit in the somewhat different language of the cabinet being in a 'fiduciary' relationship with parliament and collegially responsible; NP; PAC.

Submissions from organisations and individuals supporting accountability to the Legislature, were received from the following: Contralesa, proposing that the Executive comes from the legislature, implying accountability; Organisation Development Institute of Southern Africa. In a useful analysis LB Hill argued for an interpretation of Constitutional Principle VI (separation of powers) which would allow for parliamentary government and cabinet responsibility.

JJ Steenkamp proposed a non-parliamentary executive.

#### ***4.9 Vote of no-confidence in the Cabinet by the Legislature***

The following parties expressed an opinion on this aspect: ANC -President may reconstitute Cabinet or call an election; DP - in the event of a vote of no confidence, a new Prime Minister and Cabinet have to appointed, or the NA has to be dissolved; IFP - Parliament should be free to adopt votes of no confidence without having to be dissolved; NP - motion of no-confidence and impeachment; FF - would retain sec 93 of Interim Constitution.

#### ***4.10 Ministers to be responsible to the President***

The ANC, DP, FF and NP, in terms of its stated approach, supported responsibility towards the President.

Individual submission: Pupils from the Motse Maria High School suggested that ministers should have the power to criticize the President on behalf of the people.

#### ***4.11 Role of minority parties***

The role of minority parties in the Cabinet is contentious. The NP supported a constitutionally provided multi-party cabinet. Other parties were either silent on this issue (FF; DP) or against the idea (ANC; IFP; PAC). This does not rule out voluntary coalitions. (The PAC expressed itself in favour of concept of government of national unity in principle, but on voluntary basis).

Individual submissions: PJ Knock would like to see measures to oblige the largest party to form coalition administrations; M Seal and R Shea supported the notion of a government of national unity; RM Longden-Thurgood and R Martin were in favour of a majority party executive. BS Hiddleston proposed power-sharing as a permanent feature of the Constitution.

#### **4.12 Code of conduct for members of the Cabinet**

The ANC referred to this aspect: no other paid employment or activities inconsistent with the position of minister; the NP in terms of stated approach also in favour. (See Interim Constitution sec 88(8) and (9)).

Individual submission: JW Conroy proposed that Ministers should submit a statement of gross assets and liabilities to an ombudsman at the beginning and the end of their term of office.

#### **4.13 Consultation between President and Cabinet**

The ANC proposed consultation by the President when taking important decisions, and the Cabinet to advise President; the NP, in terms of stated approach, in favour of President acting 'in consultation with' ministers (Interim Constitution sec 82(3) read with sec 233(3)). The DP proposed that the President should act 'on the advice' of the Cabinet.

#### **4.14 Decision-making**

The NP favours consensus-seeking spirit underlying the concept of a government of national unity and the need for effective government (Interim Constitution sec 89(2), subject to certain qualifications.

Individual submission: BS Hiddleston proposed at least a 75% majority of power-sharing executive.

#### **4.15 Counter-signing by ministers**

The IFP expressed itself in favour of this; in terms of its stated approach, the NP would also be in support of countersigning of presidential action. The DP is by implication in favour of this by endorsing sec 75 of the Interim Constitution.

#### **4.16 Other issues identified**

4.16.1 Oath/affirmation (Interim Constitution sec 88(7))

4.16.2 Remuneration (sec 88(10))

4.16.3 Temporary assignment of powers/functions to another minister (sec 90; see FF submissions)

- 4.16.4 Transfer of minister's powers/functions to another minister (sec 91; see FF submissions).
- 4.16.5 Qualifications: the Organisation Development Institute of Southern Africa proposed that executive staff need to be appointed on the basis of ability. PS Clark suggested that all members of the executive should be tertiary graduates and at least 30 years of age. UA Naicker proposed along similar lines and felt that ministers earned too much. MC D'arcy felt that ministers should only be appointed to portfolios for which they are qualified, and was also in favour of a declaration of assets.
- 4.16.6 BAL Hellryd proposed the institution of 'independent central agencies' to perform actual state administration, while ministers should deal with policy and parliamentary matters (including legislation).
- 4.16.7 The House of Royal and the Conservative Party also made submissions which were fundamentally different from the overwhelming trend of all other submissions, and which might be dealt with under traditional authorities and the volkstaat respectively.
- 4.16.8 In two identical submissions (P Dickerson, G du Toit, vol 3) it was proposed that taxes should be used for purposes listed in the Constitution.



## APPENDIX: LIST OF ABBREVIATIONS

ACDP	:	African Christian Democratic Party
ANC	:	African National Congress
CP	:	Constitutional Principle (in summary of submissions, where context indicates, Conservative Party)
DP	:	Democratic Party
FF	:	Freedom Front
GNU	:	Government of National Unity
IC	:	Interim Constitution
IFP	:	Inkatha Freedom Party
ito	:	in terms of
iro	:	in respect of
NA	:	National Assembly
NP	:	National Party
PAC	:	Pan Africanist Congress
STV	:	Single Transferable Vote

