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CONSTITUTIONAL ASSEMBLY

**CONSTITUTIONAL COMMITTEE
SUB-COMMITTEE**

**THURSDAY
24 AUGUST 1995
V454
14H00**

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY

MEETING OF THE CONSTITUTIONAL COMMITTEE SUB-COMMITTEE

Please note that a meeting of the above committee will be held as indicated below:

DATE: Thursday, 24 August 1995

TIME: 14H00 - 18H00

VENUE: V454

DRAFT AGENDA

1. Opening
2. National Executive*
3. National Assembly - Amended formulation - *Pages 1 - 21*
4. Any other Business
5. Closure

*N.B. * Please bring along the CC Sub-Committee document of 17 August on the National Executive entitled (Third draft).*

**HASSEN EBRAHIM
EXECUTIVE DIRECTOR**

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FOURTH DRAFT - 21 AUGUST 1995

Status: As processed after CC Subcommittee debate of 14 August 1995.

Chapter ...

PARLIAMENT

Legislative power

1. The legislative power of the Republic shall vest in Parliament.¹

Constitution of Parliament

2. Parliament consists of the National Assembly and²

THE NATIONAL ASSEMBLY

Composition of National Assembly

3. The National Assembly consists of ... members.³

National elections

4. The election of members of the National Assembly shall be conducted

¹ This is merely a provisional clause and its only purpose at this stage is to serve as an "opening statement" for what follows. Legislative competencies are dealt with by TC 3.

² The question of a Senate is contentious. Consequently no provisions on the Senate were included in this draft. Although there appears to be broad agreement that there should be a Senate further clarity is required whether the Senate should be part of "Parliament" or whether it should be a separate institution. Depending on what is agreed about the Senate, some of the provisions on the National Assembly may have to be rephrased and relocated to a joint section on the NA and the Senate (as, e.g. in the case of sections 55 - 67 of the Interim Constitution).

³ The size of the National Assembly is contentious. See Block 5 of the Report on Parliament. Contralesa proposed that the legislative chamber should include traditional leaders.

in accordance with an electoral system⁴ which shall be based on a common voters' roll and, in general, proportional representation as provided for by national law.⁵

Duration of National Assembly

5. (1) The National Assembly as constituted in terms of a general election shall continue⁶ for a term of five years⁷ as from the date of such election, unless dissolved before the expiry of its term in terms of this Constitution.⁷

(2) The National Assembly may be dissolved before the end of the term for which it was elected if a vote of no-confidence in the Cabinet is passed

⁴ The CC Subcommittee recommends that the electoral system be debated in the CA.

⁵ As approved by TC 2 Report of 7 August 1995 on electoral system. The majority of parties and public submissions favour a system which includes party lists and constituency elections resulting in proportional representation.

⁶ It was suggested in the CC that the word in bold brackets be replaced by "serve". The Law Advisor and the Technical Advisors recommended to the CC Subcommittee that the word "continue" be retained as an indication of the *duration* of the National Assembly.

⁷ See Block 9 of the Report on Parliament. The DP proposes a term of four years.

by the National Assembly.⁸

(3) When the term for which the National Assembly was elected expires or if the National Assembly is dissolved before its term expires, the National Assembly as then constituted shall remain competent to function, and its members shall continue as members, until the day before polling for the next National Assembly.⁹

⁸ In terms of section 20 of the Draft on the National Executive the State President may either resign or dissolve the NA if a motion of no confidence is passed in the Cabinet (including the President). See also section 6(3)(b) of the Draft on the National Executive.

The DP proposed that the words underlined be inserted in subsection (1) and that subsection (2) be deleted. In the CC Subcommittee it was observed that the question whether subsection (2) should be retained, is contingent upon a decision on votes of no-confidence (dealt with under the National Executive, section 20). As regards duplication, the Technical Advisors and the Law Adviser confirmed that they have discussed the matter, and that the question will most effectively be addressed when there is a more comprehensive draft. While every attempt should be made to avoid duplication, it is not always feasible.

The ANC posed the question of snap elections and whether provision should be made for the dissolution of Parliament otherwise than as a result of a motion of no confidence.

⁹ As per Block 10 of the Report on Parliament. As presently worded the National Assembly and its members remain competent to function after a dissolution up to the day before polling for the next NA. However, there was some discussion (and support) in the Theme Committee on whether this should be changed so that members of the NA only vacate their seats the day before the newly elected members take up their seats. However, in the CC debate concern was expressed that an extension of the National Assembly beyond an election may open the door for a government, after having lost an election, to legislate for instance on the validity of the election.

The Technical Advisers reported that among 15 other jurisdictions, three were found with a provision resembling section 5(3) (Botswana, Bangladesh and Namibia). None was found that provided for the continuation of membership or the functioning of Parliament between the day of the election and the first session of the newly elected Parliament. It was agreed in the CC Subcommittee that if such provision was required, stringent safeguards would have to be built in to prevent the "dissolved" parliament from abusing its ability to sit after the day of the next election (e.g. by legislating on the election, changing the Constitution, voting its members undue privileges and benefits).

Speaker and Deputy Speaker¹⁰

6. (1) The National Assembly shall at its first sitting after a general election, and thereafter as and when it becomes necessary to fill a vacancy, elect a Speaker and a Deputy Speaker from amongst its members.¹¹

(2) The Chief Justice¹² or a judge designated by him or her shall preside over the election of a Speaker, and the Speaker shall preside over the election of a Deputy Speaker.

(3) The procedure set out in Schedule ... shall apply to the election of the Speaker and the Deputy Speaker.¹³

(4) The Speaker and the Deputy Speaker have the powers and functions assigned to them by this Constitution and the law, including the rules and orders of the National Assembly.¹⁴

¹⁰ Section 6 is based on section 41 of the Interim Constitution as per agreement in Block 16 of Report on Parliament.

¹¹ Agreed to in the CC.

¹² In terms of the Interim Constitution the Chief Justice presides over the election of a Speaker. As the Constitutional Court is the highest court as far as constitutional matters are concerned the question arises whether the President of the Constitutional Court rather than the Chief Justice should not fulfil constitutional functions such as presiding at the election of a Speaker. The TC is of the view that this function should remain vested in the Chief Justice.

The CC agreed that it was not vital to decide this issue at this stage. It should be settled in private discussions between the parties.

¹³ The procedure referred to here is similar to that contained in Schedule 5 of the Interim Constitution. The CC agreed to this clause.

¹⁴ Agreed to in the CC.

(5) The Speaker or Deputy Speaker ceases to hold office if he or she resigns from office or ceases to be a member of the National Assembly. The Speaker or Deputy Speaker may be removed from office by resolution of the National Assembly.¹⁵

Qualifications of members of National Assembly¹⁶

7. (1) Only South African citizens qualified to vote¹⁷ in elections of the National Assembly and who are not otherwise disqualified in terms of this section are eligible to be members of the National Assembly.

(2) The following persons are disqualified from being members of the National Assembly:

- (a) Unrehabilitated insolvents.¹⁸
- (b) Persons declared to be of unsound mind by the courts of the Republic.¹⁸

¹⁵ Agreed to in the CC.

¹⁶ Drafted as per Block 8 of the Report on Parliament.

¹⁷ The franchise is dealt with by TC 1. Discussion of clause stands over pending TC 1's report.

¹⁸ Agreed to in the CC.

- (c) Persons convicted [after 27 April 1994]¹⁹ of an offence in the Republic, or outside the Republic if the conduct constituting the

¹⁹ The formulation of this paragraph is based on section 42(1)(b) of the Interim Constitution which applied only to convictions after promulgation of the Interim Constitution, i.e. 27 April 1994.

This formulation does not cover persons convicted of serious crimes before 27 April 1994 and who at the commencement of the new Constitution are still serving imprisonment. Inclusion in the above section of the following additional paragraph (based on section 42(1)(a) of the Interim Constitution) should perhaps be considered:

"Persons who at the commencement of the Constitution are serving a sentence of more than 12 months' imprisonment without the option of a fine."

In the CC debate there was a suggestion that the date could be deleted if "amnesty" is added at the end of the paragraph. However, it would appear that the inclusion of a reference to amnesty in the paragraph is inappropriate as the paragraph only deals with convicted persons. This provision should be understood against the background of the amnesty process which may indemnify persons who would otherwise have been convicted.

Secondly, the deletion of the date would not cover persons who completed sentences, also for political offences, before 27 April 1994.

It is suggested that par. (c) be replaced by the following paragraphs:

- (c) Persons who at the commencement of the Constitution are serving a sentence of more than 12 months' imprisonment without the option of a fine.
- (d) Persons convicted after the commencement of the Constitution of an offence in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, and sentenced to more than 12 months' imprisonment without the option of a fine. A person shall not be regarded as convicted until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired, or if such person has received a pardon.

The Technical Advisers raised the issue of pardon as foreseen by the proposed paragraph (d) as it may be superfluous. Pardon has three possible meanings. First a free pardon expunges the conviction and sentence (in terms of section 327 of the Criminal Procedure Act of 1977). A person receiving a free pardon would thus not be disqualified by section 7(2)(c) as there is no conviction or sentence. Second, a pardon may wipe out the sentence only (section 325 of the Criminal Procedure Act). Where there is no sentence, the disqualification does not apply either. Third, a pardon may reduce a sentence (usually referred to as remission of sentence of imprisonment). For example, a person's 20 year sentence may be reduced to 10 years. The judicially imposed sentence is not reduced, merely the length of execution. Whether a person is disqualified would depend on the length of the original sentence of imprisonment.

offence would have been an offence in the Republic, and sentenced to more than 12 months' imprisonment without the option of a fine. A person shall not be regarded as convicted until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired, or if such person has received a pardon or amnesty.

- (d) Persons who are members of [the Senate], a provincial legislature or a local government.²⁰

²⁰ Stands over pending decisions on the Senate.

- (e) Persons holding office of profit under the Republic²¹, excluding-
- (i) the Deputy State President;²²
 - (ii) Ministers and Deputy Ministers;²²
 - (iii) persons receiving a pension from public funds or from a pension fund aided by public funds;²²
 - (iv) justices of the peace and appraisers;²² and

²¹ Traditional leaders receiving payments from the State run the risk of being regarded as persons holding office of profit under the Republic in terms of this section, in which event they will be disqualified from being members of the National Assembly. Their inclusion in the above list should be considered.

The ad hoc committee on traditional authorities was instructed by the CC to go into this matter.

The Technical Advisers requested an opportunity to take another look at this paragraph. Inconsistency in the wording (e.g. that a pension from a public fund (subpar (iii) is hardly an office of profit) was pointed out. The Technical Advisers were instructed to produce an alternative wording.

The underlying principle of this disqualification is the separation of powers. Positions in the judiciary, civil service and other statutory bodies requiring political neutrality and judicial detachment are incompatible with the duties and functioning of members of Parliament. Moreover, lucrative positions in the executive or statutory bodies may undercut the independence of MPs. It may thus be incompatible for an MP to be a justice of the peace, an office which requires judicial impartiality before issuing warrants of arrest.

In all the Commonwealth constitutions surveyed, public office paid from state revenue is a disqualification for membership of Parliament. Exceptions to the rule are recognized but never exhaustively defined in the constitutions; instead reference is made to a law providing for a comprehensive list of exceptions. See e.g. Antigua, Bahamas, Bangladesh, Botswana, Cyprus, Dominica, Gambia, India, Jamaica, Kenya, United Kingdom. It is thus suggested that, apart from excluding the positions of the Deputy State President, Ministers and Deputy Ministers, further exceptions should be regulated by national law, possibly in the Electoral Act. Exceptions would be permissible only if such positions are not incompatible with the functions and duties of a member of Parliament. The following formulation is thus suggested:

"Persons holding office of profit under the Republic excluding

- (i) the Deputy State President;
- (ii) Ministers and Deputy Ministers; and
- (iii) any other office declared by national law not to be incompatible with the functions and duties of members of Parliament."

²² Agreed to in the CC.

(v) members of statutory bodies performing a public function who receive remuneration as such a member not more than their salaries as members of the National Assembly.²³

(3) The disqualification imposed by this section on a person who served a prison sentence of more than 12 months shall lapse 5 years after [his or her release from prison] completion of the sentence.²⁴

(4) A person not qualified to be a member of the National Assembly and who sits or votes in the National Assembly knowing that he or she is not qualified, shall be liable to a fine prescribed by the rules and orders of the National Assembly.²⁵

²³ CC Subcommittee was requested to consider as a matter of principle whether a member of Parliament should be permitted to receive additional remuneration as a member of a statutory body.

²⁴ The CC supported the principle that persons who served prison sentences of more than 12 months should not be disqualified for life. A five year ban was also supported, subject to a comparative study to be done by the Technical Advisers. The Technical Advisers reported that among the 15 foreign constitutions that they have surveyed, only two contained a provision resembling section 7(3) [Bangladesh (5 years) and Namibia (10 years)].

The words in bold brackets were replaced by the words underlined.

²⁵ Agreed to in the CC.

Vacation of seats²⁶

8. A member of the National Assembly shall vacate his or her seat upon -
- (a) ceasing to be eligible to be a member;
 - (b) resigning as a member;
 - (c) becoming a member of [the Senate] a provincial legislature or a local government; or
 - (d) unauthorised absence for 15 consecutive parliamentary sitting days.

Filling of vacancies²⁷

9. Vacancies in the National Assembly shall be filled in accordance with a national law.

Oaths or affirmation by members

10. (1) Every member of the National Assembly, before taking his or her seat in the Assembly, shall make and sign an oath or solemn affirmation in the

²⁶ The CC approved paragraphs (a), (b) and (c) and inserted paragraph (d). It was pointed out in the CC Subcommittee that it was not agreed by the CC to insert subparagraph (d), and it is accordingly recommended that it be deleted.

The issue of including in the new Constitution the current requirement in section 43(b) of the Interim Constitution that a member vacates his or her seat upon ceasing to be a member of the party which nominated him or her, was referred to the CC Subcommittee. The CC Subcommittee is of the opinion that this question should be referred to the CA.

²⁷ Agreed to in the CC.

terms set out in Schedule ... before the Chief Justice or a judge designated by him or her, [in the following form:]

[I, A.B., do hereby swear/solemnly affirm to be faithful to the Republic of South Africa and solemnly promise to perform my functions as a member of the National Assembly to the best of my ability.

(In the case of an oath: So help me God.)²⁸

(2) A member [nominated to fill] filling a casual vacancy in the 36 National Assembly shall make and sign the oath or solemn affirmation before the Speaker.²⁹

Sittings and recess periods

11. (1) The National Assembly may determine the time and duration of its sittings and its recess periods. The first sitting of the National Assembly after a [general] election shall take place not more than 10 days after the declaration of

²⁸ Subsection (1) amended by the CC as indicated. Words in bold brackets deleted and words underlined inserted.

See foot note 11 for which judge to take the oath/affirmation.

²⁹ Agreed to in the CC as amended.

the result of the election at a time and on a date determined by the Chief Justice.³⁰

(2) The State President³¹ may at any time summon the National Assembly to an extraordinary sitting for the conduct of urgent business.³²

(3) The seat of the National Assembly is³³ where all sittings of the National Assembly shall ordinarily take place. Sittings at other venues are only permitted on the grounds of public interest, security or convenience and if provided for in the rules and orders of the National Assembly.

³⁰ Agreed to in the CC subject to the insertion of the underlined words. See foot note 11 as far as this subsection vests a function in the Chief Justice.

³¹ The TC prefers the term "State President" to distinguish the Head of State from the President of the Constitutional Court, President of the Senate etc. See Block 1 of the Report on the Presidency. Term generally supported in the CC.

³² As per Block 2 of the Report on Parliament. The National Party is in favour of a clause along the following lines:

"At the written request of ...% of its members, the Speaker shall convene a sitting of the National Assembly during a recess."

See also section 6(3)(a) of the Draft on the National Executive.

Joint sittings of the Houses of Parliament to be revisited once the role and status of the Senate have been clarified.

The CC decided that this provision should be shelved until states of emergencies are discussed.

³³ Legislative seat to be dealt with by TC 1. Subsection otherwise approved by the CC.

Quorum

12. ...³⁴

Decisions

13. (1) Except where the Constitution provides otherwise, all questions before the National Assembly shall be determined by a majority of the votes cast by the members present.³⁵

(2) The member of the National Assembly presiding in the Assembly has no deliberative vote, but does have and shall exercise a casting vote in the event of an equality of votes.³⁶

³⁴ Agreed in the CC that quorums must be prescribed in the rules of the NA. No provision required. See section 15. The question of a quorum was raised in the CC Subcommittee. It was agreed that section 13 be amended to provide for the presence of a prescribed number of members for the purpose of decision-making.

³⁵ Section 13 approved by the CC. Constitutional amendments, and the majorities required, are yet to be dealt with. Following the discussion on a quorum, it was agreed in the CC Subcommittee that section 13(1) should be reworded along the lines of section 47 of the Interim Constitution to provide for a prescribed number of members to be present for decisions. The Technical Advisers submit the following:

13. (1) Except where the Constitution provides otherwise, all questions before the National Assembly shall be determined by a majority of the votes cast by the members present. When, in terms of this section, a vote is taken on a Bill, a majority of all the members of the National Assembly shall be present, and when it is taken on any other matter, one third of all the members shall be present.

³⁶ Agreed to in the CC. Depending on the nature of the Senate, this provision may be extended to entitle also Ministers and Deputy Ministers to sit and to speak in the House of which they are not members.

With regard to section 14, it was agreed in the CC Subcommittee that the word 'sit' be replaced with 'attend'.

Note: The provisions following below (i.e. sections 14 - 22) will apply to both the National Assembly and the Senate should agreement be reached on a second House of Parliament.

State President's rights in National Assembly

14. The State President is entitled to attend [sit] and to speak in the National Assembly, but may not vote.³⁶

Internal autonomy

15. (1) The National Assembly shall determine its internal arrangements and make rules and orders in connection therewith.³⁷

(2) The salaries, allowances and benefits of members of the National Assembly shall be as provided for by a national law.³⁷

Parliamentary privilege

16. (1) [There is] Members of the National Assembly shall have freedom of speech and debate in [and before] the National Assembly and its committees subject to the rules and orders [of the National Assembly]. This

³⁷ Agreed to in the CC.

freedom may not be limited by or questioned in the courts.³⁸

(2) Members of the National Assembly are not liable to civil or criminal proceedings, arrest, imprisonment or damages as a result of anything they have said, produced or submitted in or before or to the National Assembly or its committees. The same immunity applies in respect of anything revealed as a result of what they have said, produced or submitted.³⁹

(3) Other privileges, immunities and powers of Parliament shall be as prescribed by a national law.³⁹

Ordinary Bills

17.⁴⁰

Money Bills

18.⁴⁰

Bills affecting provincial matters

19.⁴⁰

³⁸ Amended in the CC. Words in bold brackets denote deletion and words underlined insertion.

³⁹ Agreed to in the CC.

⁴⁰ These provisions are dependent on the role of the Senate in the legislative process. Consideration should also be given to the inclusion here of a provision similar to section 98(9) of the Interim Constitution which provides for the referral to the Constitutional Court of Bills where at least one-third of the members of the NA petitions the Speaker to do so. This provision has already been agreed to in TC 5, and has for present purposes been included in the Draft on the Administration of Justice.

Bills amending Constitution

20.⁴¹

Assent to Bills

21. (1) A Bill duly passed by Parliament in accordance with the Constitution shall without delay be [forthwith] assented to and signed by the State President.⁴²

(2) If the State President is of the opinion that a Bill is inconsistent with the Constitution or that it has not been passed in accordance with the Constitution the State President may withhold assent to the Bill and refer it back to Parliament for reconsideration. If Parliament passes the Bill without correcting the defect the State President may again withhold assent and refer the Bill to the

⁴¹ The TC has not yet reported on constitutional amendments.

⁴² Agreed to in the CC as amended.

Constitutional Court for a ruling on its constitutionality.⁴³

(3) A Bill assented to and signed by the State President becomes an Act of Parliament upon its promulgation.

⁴³ Stands over for further discussion in the CC Subcommittee. The Technical advisers were instructed to make a comparative analysis as to how this matter is dealt with in other jurisdictions. In the CC Subcommittee it was agreed that the Technical Advisers would produce another draft formulation, with an explanation of the system under the Interim Constitution. The following was received from the Technical Advisers:

In terms of the Interim Constitution, section 64(1), the President *shall* assent to a bill *duly* passed by Parliament, subject to section 82(1)(b). The latter section provides that the President may refer a bill back to Parliament *in the event of a procedural shortcoming in the legislative process*. This a very limited power, with no discretion (opinion) involved, and it is hard to imagine how this power would be exercised in practice.

The proposed section 21(3) introduces a wider and more subjective element - in paraphrased form, "if the State President reckons that a bill would be unconstitutional or that the correct constitutional procedure has not been followed ...". From a random number of other constitutions surveyed, it would appear that there is no single or preferred way in which assent to bills by the president is handled. In cases where provision is made for the withholding of assent, or referral back to the legislature, the patterns also differ. These differences would generally appear to be unrelated to the type of constitutional system (i.e. presidential, parliamentary or mixed). See attached addendum.

In order to accommodate the views expressed during the first debate on this subsection in the CC (see Minutes of the 24th Meeting of the CC, Friday 11 August, item 5.32), and the subsequent debate in the CC Subcommittee, the following reformulation is proposed:

(2) If the State President has reservations/concerns [NOTE: THE ONE OR THE OTHER] about the constitutionality of a Bill, or whether it has duly been passed by Parliament in accordance with the Constitution, the State President may refer the Bill back to Parliament with a clear indication of any defects. If the Bill is passed again, giving effect to the State President's reservations/concerns, the State President shall sign the Bill. If Parliament does not agree with the State President reservations/concerns, the Speaker may refer the Bill to the Constitutional Court for a ruling on the constitutionality of the Bill, or whether it has been duly passed in accordance with the Constitution. If the Constitutional Court finds the Bill to be consistent with the Constitution, the State President shall sign the Bill. If the Constitutional Court finds the Bill to be inconsistent with the Constitution, it shall be referred back to Parliament for further consideration, failing which, it shall lapse.

Safe keeping of and public access to Acts of Parliament

22. (1) All Bills duly signed by the State President shall immediately after their promulgation as Acts of Parliament be entrusted to the [Constitutional Court] for safe keeping.⁴⁴

(2) The signed copies of the Acts of Parliament entrusted to the Constitutional Court shall be conclusive evidence of the provisions of the Acts.⁴⁵

[(3) Members of the public shall have access to all Acts of Parliament entrusted to the Constitutional Court, subject to reasonable control imposed by a national law or the President of the Constitutional Court.]⁴⁶

Addendum: Section 21(2) Comparative Survey

In Argentina, art 69 of the Constitution provides that a bill approved by both chambers, is sent to the executive for examination; if it is approved, it is promulgated. In terms of art 70 a bill is considered approved if it is not returned within 10 working days. Art 72 provides that a bill may be rejected wholly or in

⁴⁴ Administration requested to obtain the views of the Constitutional Court and the AD on this matter. The CC Subcommittee agreed to propose that the words Appellate Division be inserted after Constitutional Court.

⁴⁵ The question of official languages and the language(s) in which laws are to be drawn up will be dealt with by TC 1, possibly in consultation with TC 2 and TC 5. Principle of the signed copy to be conclusive agreed to in the CC.

⁴⁶ Agreed in the CC that subsection (3) be deleted.

part by the executive, in which event it is returned to the legislature where the objections may be overridden by a 2/3 majority.

Australia: The 1986 Australia Act leaves the power of assent with the Governor General. He/she may refer a bill back with amendments, which Parliament *may consider*, as it is put in art 58.

In Austria the Federal President merely authenticates by signing the constitutional enactment of a law, which has to be countersigned by the federal chancellor. No provision is made for returning the bill to Parliament.

According to art 80(3) of the Bangladesh Constitution, the President must assent within 15 days; a bill may be referred back with amendments; failing which, he/she is deemed to have assented. In terms of section 47(4), if the bill is passed again, it must be assented to within 7 days, failing which, it is deemed to have been assented to.

Ireland: Art 13.3.1 of the Constitution provides that every bill passed or deemed to have been passed by the legislature "shall require the signature of the President for its enactment into law". Art 25.2 contains further details: the bill "shall be signed" by the President between the 5th and 7th day of submission to him/her; art 26. 1-3 governs in detail the procedure for referral to the Court of bills which the President, after consultation with the council of state, considers to be in

conflict with the Constitution; if the bill is found to be in conflict, the President has to refuse to sign, if not, the President has to sign. (Money bills and constitutional amendments may not be referred.) [The council of state is provided for in art 31 - it is a prestigious body which the President may consult].

In France art 10 of the Constitution provides that the President has to promulgate a bill within 15 days of it being transmitted to him/her; he/she may ask parliament for reconsideration, which may not be refused. It should also be pointed out that certain legislation (the so-called "organic law") has to be sent to the Constitutional Council [Court] to be tested for constitutionality before promulgation.

The Namibian Constitution, art 56, provides that a bill passed by 2/3 majority in the National Assembly and confirmed by the National Council ("senate") has to be signed by the President. If the bill was passed with a lesser majority, the President may withhold assent and inform the speaker. The National Assembly may reconsider, pass again or refuse to pass. If a 2/3 majority is not achieved, the President may again withhold assent, which leads to the lapsing of the bill. In terms of art 64 the President may withhold assent if he/she is of the opinion that the bill is in conflict with the constitution. The President informs the speaker, the speaker informs the national Assembly and the Attorney General (not to be confused with the SA kind of Attorney General). The Attorney General may take appropriate steps to have the matter decided by a competent court. If the court finds the bill constitutional, the President has to assent if the bill was passed by

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2/3 majority. If the bill was not passed by the required majority, the procedure of art 56 applies. If the court finds the bill unconstitutional, the bill is deemed to have lapsed and the President may not assent.

