

**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 2  
STRUCTURE OF GOVERNMENT**

**POLITICAL PARTIES SUBMISSIONS  
BLOCK 2/3  
(COMPOSITE EDITION)**

**SUBMISSIONS RECEIVED AS AT  
28 MARCH 1995**



**STRUCTURE OF GOVERNMENT****POLITICAL PARTY SUBMISSIONS**

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Constitutional Assembly  
Submission to Theme Committee:  
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Mr H. Ebrahim  
The Executive Director  
Constitutional Assembly  
Cape Town

23/03/95

Dear Mr Ebrahim

ANC SUBMISSIONS TO THEME COMMITTEES

We forward herewith the preliminary submission of the ANC for block 2 on the *Executive and Legislative Structures at the National Level of Government* to Theme Committee Two.

Yours sincerely,

Vivienne Smith



# MEMORANDUM

## AFRICAN NATIONAL CONGRESS

### *Submission to Theme Committee II*

### *Executive and Legislative Structure at the National Level of Government*

These proposals are of a preliminary nature. Technical and other details require to be addressed. In addition some proposals are dependant on the final provisions regarding electoral systems (e.g. size, vacation of seats) or provincial powers (the Senate).

#### *Introduction*

- 1 **South Africa shall be an undivided state in which there shall be a democratic government at local, regional and national levels. The Bill of Rights and principles of non-racialism, non-sexism and democratic accountability shall apply at all three levels of government.**



## ***National Assembly***

- 2** Parliament shall consist of the National Assembly and Senate. The National Assembly will be elected by universal suffrage on a common voter's roll according to proportional representation. It will control the national budget and have primary responsibility for the preparation and adoption of the country's main laws.

Note:

(The size of the National Assembly and the Electoral system will be the subject of further submission. The size of Parliament can not be separated from a discussion on the Electoral system. In the above submissions the ANC does not discount the possibility of a constituency form of representation as a basis of the Electoral system, provided that parties are represented in Parliament in proportion to their numerical support).

## ***Committees***

- 3** The ANC proposes the use of the Parliamentary Committee system structured to ensure executive accountability to an informed Parliament, a role for minority parties through such committees, and greater and informed public debate on legislation. The Committees will have a right to



consider forthcoming legislation and to conduct public inquiries into matters within their area of jurisdiction.

### *Remuneration*

- 4 Parliament shall decide on the remuneration and benefits of the President and, by Act of Parliament, its members including Ministers, the Deputy President and Deputy Ministers.
- 5 Other than Ministers or Deputy Ministers, a member of Parliament may not be a full-time member of the executive or the civil service, or a para statal, or simultaneously hold office or an executive position at another level of government.

### *Quorum*

- 6 The presence of at least one third, or when a vote is taken on a Bill, of at least one half of the members of the National Assembly other than the Speaker or the other presiding member shall be necessary to constitute a meeting of the National Assembly.

### *Decision Making*



- 7      **Amendments to the Constitution shall be effected only by a two thirds majority of both houses. In regard to other matters a decision of the National Assembly shall be by simple majority of those in attendance. Legislation amending the boundaries of a province will also require the approval of the provincial legislature concerned.**

***Vacation of Seat***

- 8      **The ANC, in general, endorses the current provisions regarding qualifications for members of the Assembly, and the vacation of the seat of a Member of Parliament.**

Note:

Should a constituency basis to the electoral system be accepted, even for some representatives, and should the proposals on the Senate be adopted, clauses 42(b) may be revisited.

***Speaker and Leader***



- 9 There shall be a Speaker and Deputy Speaker elected by Parliament from amongst its members. The majority party shall elect a Leader of Parliament who shall liaise with the Speaker and Cabinet and shall be responsible for the legislative programme of the government.

*Functioning*

- 10 The Parliament shall have the power to regulate its internal affairs and shall have such other powers, privileges and immunities as may be prescribed by an Act of Parliament, save that:

- 10.1 there shall be freedom of speech and debate in or before Parliament and any committee thereof;
- 10.2 sittings of the National Assembly or the Senate and joint sittings shall be held in public and the public shall have access to such sittings, subject to reasonable restrictions in the interest of the security of Parliament or for any other compelling State interest.
- 10.3 the President may summons the National Assembly for an extraordinary sitting or for the discharge of urgent business.



### ***Term***

- 11 There shall be regular elections for Parliament every 5 years or sooner if Parliament is dissolved in accordance with the Constitution.

### ***The Senate***

- 12 The provinces shall participate, through the Senate, in national legislation regarding the exercise of powers, and the performance of functions of the provinces.

### ***Composition***

- 13 The Senate shall consist of (50 or 100) members. Every province as well as the national government should be entitled to a delegation of 5 (10) Senators each. Senators shall be appointed and may be replaced at will by the provincial legislature or national government respectively.

### ***Powers***

- 14 The Senate will have the power to review and consent to legislation dealing with the exercise of such powers and



the performance of such functions as are performed or exercised by provinces (consent bills). The Senate will be able to review, but not veto, bills dealing with other matters (review bills). The Senate will have no powers over financial bills.

- 15 The Senate may refer legislation to the Constitutional Court for a determination on the constitutionality thereof.

*Functioning*

- 16 The Senate shall at its first meeting elect a President of the Senate and a Deputy President of the Senate.
- 17 The proposals regarding qualification of members, vacation of seats, quorum, requisite majorities and the functioning of the National Assembly are applicable, where appropriate, to the Senate.

Note:

Save where the Constitution otherwise prescribes, where the Senate has approved national legislation dealing with matters within the concurrent jurisdiction of provincial



and national government, such legislation shall override any provincial legislation inconsistent therewith.

The two alternatives to the above are: (1) retain the Senate approximately in its present form; (2) to do away with the Senate completely and reorganise the provincial list membership of the National Assembly as a voice for the provinces. A final submission in regard to this will depend on the agreed provision regarding the powers of provincial government.

#### ***The Executive***

#### ***The President***

19     **The ANC proposes that the Head of State be a President with both ceremonial and executive powers. The President shall vacate his/her seat in Parliament upon assumption of Office.**

**The President shall be elected by and from the national Assembly. He or she will have the same term of office as the National Assembly and be available for re-election for a second full term only.**



### ***Functions of the President***

- 20 The President shall, inter alia have the following powers to: summons Parliament; to confer honours and receiving dignitaries; to negotiate and sign international agreements; to assent to laws; to pardon and reprieve offenders; to manage and preside over Cabinet; to execute the policies of National Government; to declare war, martial law and to proclaim peace. He shall be the Commander-in-Chief of the Armed forces.

### ***Cabinet***

- 21 Coalitions between parties of the Cabinet will be based on voluntary political pacts and will not be compulsory nor required by the Constitution.
- 22 The President will appoint, supervise the functioning of, and preside over the Cabinet. The President shall appoint and dismiss Ministers, and Deputy Ministers at his or her discretion.



- 23 A Minister or Deputy Minister shall not during his/her tenure of office hold or take up other paid employment or engage in activities inconsistent with his/her position as a Minister.
- 24 The President shall consult with her or his Cabinet when taking important decisions.
- 25 The members of the Cabinet shall be accountable to Parliament and the President for the administration of the portfolio entrusted to him or her, and shall be collectively accountable for the performance of the functions of national government.
- 26 The members of the Cabinet shall advise the President, be responsible for the administration of the portfolio allocated to them, and shall be responsible for introducing legislation into Parliament.

*Deputy President*

- 27 The National Assembly will elect from amongst its members a Deputy President who will be a member of the Cabinet. He or she will act as President in the President's



temporary absence or temporary incapacity. He/she will be accountable to both the President and Parliament, and will perform such duties and functions as the President assigns him or her.

### *Motion of No-Confidence*

- 28 Parliament may pass a vote of no confidence in the Cabinet alone, in which event the President may reconstitute the Cabinet, or call a new general election. Should Parliament pass a vote of no confidence in the President he or she shall dissolve Parliament and call a new election.

### *Vacancy in the Office of the President*

- 29 Should the President resign or otherwise be unable to continue in office, the National Assembly shall elect a new President for the remainder of the un-expired part of the President's period of office.

### *Impeachment*

- 30 The President or Deputy President may be impeached on a resolution of both houses with a 2/3 majority, on the



grounds of a serious violation of the Constitution or other laws or inability to perform the functions of his or her office, in which event the National Assembly will elect a new President.





To: Mr Hassen Ebrahim  
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22 March 1995

**DEMOCRATIC PARTY: SUBMISSION TO THEME COMMITTEE 2  
BLOCKS 2 & 3 ON  
"THE STRUCTURE AND FUNCTIONING OF THE  
GOVERNMENT AT NATIONAL LEVEL, INCLUDING CHECKS  
AND BALANCES TO ENSURE ACCOUNTABILITY,  
RESPONSIVENESS AND OPENNESS"  
(Ref T.C. 2 no 2)**

**INTRODUCTION**

This submission by the Democratic Party should be considered in the context of the DP's overall approach to the character and content of a new Constitution best suited to the needs of our people and our country.

This approach - identified by the words "liberal, democratic, federal" - has been set out in "Initial Submission on the new Constitution - January 1995" and in the submissions that the DP has already made to the Block One of the Work Programmes of the various Theme Committees.

**THE LEGISLATURE**

1. The legislature (Parliament) shall consist of a National Assembly and a Senate.
2. **The National Assembly**
  - 2.1 The National Assembly shall consist of 300 members elected by all adult citizens at intervals of four years unless it is dissolved prior to four years as a consequence of a vote of no confidence in the Government.
  - 2.2 240 members of the National Assembly will be elected on the basis of multi-member constituencies; 60 members will be elected on the basis of national lists provided by political parties in such a manner that the total composition of the National Assembly reflects the proportionality of the votes cast for each party.
  - 2.3 The NA will make decisions by a simple majority except in relation to amendments to the constitution where a special majority will be required.



### **3. The Senate**

- 3.1 The Senate shall consist of from 7 members from each Province.
- 3.2 The members shall be elected by members of the Provincial Legislatures through a system of proportional representation at intervals of four years following upon the election of the provincial legislature concerned.
- 3.3 The Senate will make decisions by a simple majority except in
- 1) relation to amendments to the constitution
  - 2) legislation affecting the powers, functions and boundaries of provinces, where special majorities will be required.

### **4. Powers and Functions**

- 4.1 Legislature authority in terms of the Constitution shall be vested in Parliament.
- 4.2 The NA and the Senate shall have co-equal legislative powers except
- 1) in respect of the budget and money bills, other than money bills relating to the allocation of financial resources between the provinces and the central governments, where the NA will have overriding powers and
  - 2) in respect of legislation affecting the powers, functions and boundaries of the provinces.
- 4.3 The NA shall be primarily, but not exclusively, the house where legislation is initiated.
- 4.4 The Senate shall be primarily, but not exclusively, the house where
- 1) legislation which has been initiated in the NA is reviewed and
  - 2) which has a special responsibility for representing the interests of the Provinces in the Parliament.
- For this latter purpose the Senate shall set up Standing Consultative Committees with the Provinces.
- 4.5 Parliament shall have the right to hold the Executive accountable for its policies and actions and in respect of this may establish Portfolio Committees and draw up rules relating to their powers and functions.



4.6 Parliament through Joint Parliamentary Committees of the NA and the Senate shall ratify *inter alia*

- 1) Treaties
- 2) International Agreements
- 3) The Appointment of Ambassador and High Commissioners
- 4) The Appointment of key personal in the Security Services.



## THE EXECUTIVE

1. The President shall combine the functions of Head of State and Head of Government.
  - 1.1 The President shall be elected by all adult citizens at an election that will take place on the same day(s) as the election of members of the National Assembly, ie at intervals of four years unless the National Assembly is dissolved prior to four years as the consequence of a vote of no confidence in the Government.
  - 1.2 No person shall be elected unless he has received more than fifty percent of the votes cast, and the necessary number ballots shall be conducted until such a result is obtained.
  - 1.3 Upon being elected, the President will cease to be a member of any National, Provincial or Local Government legislature.
  - 1.4 A person may not hold office as President for more than two terms.
  - 1.5 The President may be impeached for misconduct by a resolution adopted by a 2/3 majority of each of the National Assembly and the Senate.
2. **Head of State**
  - 2.1 The powers, duties and prerogatives normally associated with the office of Head of State shall be entrusted to the President.
  - 2.2 In the execution of his duties as Head of State the President shall be assisted by a Vice President nominated by the President and endorsed by a majority of the members of the N.A. and the Senate at a joint sitting.
3. **Head of Government**
  - 3.1 Executive authority in terms of the Constitution shall be vested in the President and the Cabinet.
  - 3.2 The President shall preside at meetings of the Cabinet.
  - 3.3 Except where otherwise provided in the Constitution, the President shall act on the advice of the cabinet.
  - 3.4 The President shall appoint a Prime Minister to assist him in the execution of the functions of Government.
  - 3.5 The Prime Minister shall be the leader of Government business in Parliament; he/she shall coordinate the work of the Cabinet and, in the absence of the President he/she shall preside at meetings of the Cabinet.



#### **4. The Cabinet**

- 4.1 The Cabinet shall consist of the President, and the Prime Minister and Cabinet Ministers, appointed by the President from amongst the members of the National Assembly and/or the Senate.
- 4.2 All ministers shall be accountable individually for the administration of their own ministries and collectively for the performance of the functions of the Cabinet, both to the President and to Parliament.
- 4.3 Should the National Assembly express its no confidence in the Government i.e. in the Prime Minister and the Cabinet Ministers, the President shall terminate their office and either
  - 1) Appoint a new Prime Minister and Cabinet Ministers who enjoy the confidence of the National Assembly or
  - 2) Dissolve the National Assembly and proclaim a general election.



## **CHECKS AND BALANCES TO ENSURE ACCOUNTABILITY RESPONSIVENESS AND OPENNESS**

### **1. General**

- 1.1 All organs of state, including the legislatures and executives at all levels, are subject to the provisions of the constitution, including the Bill of Rights and, to the jurisdiction of the Constitutional Court.
- 1.2 The provisions in the 1993 Constitution which relate to structures e.g. a Human Rights Commission, a Public Protector etc, designed ensure accountability, responsiveness and openness, provide a sound base from which to develop further the concept of checks and balances.

### **2. Parliament**

- 2.1 The most important "check and balance to ensure accountability etc" is the holding of regular free and fair elections.
- 2.2 To ensure that the elections are free and fair and comply with the criteria of openness and transparency, an Independent Electoral Commission will monitor and adjudicate on the conduct of the election.
- 2.3 The accountability of members of parliament to the voters on a continuing basis between elections will be made more effective by having MP's directly elected on a constituency basis.
- 2.4 Vital to the concept of "accountability" is the public's right of access to information, freedom of expression and the media.
- 2.5 A vigorous civil society including, *inter alia*, an effective party political system should be encouraged as an additional instrument for strengthening grass roots accountability.

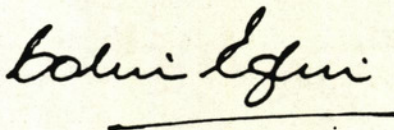
### **3. The Executive**

- 3.1 Apart from the matters referred to in 1.1 and 1.2 above, the most important "checks and balances" are to be found in the relationship between the Executive, ie the President and his Cabinet, and the Legislature, ie Parliament.
- 3.2 The Executive must be accountable to Parliament (see *inter alia* 4.2 and 4.3 ).

4.2 *All ministers shall be accountable individually for the administration of their own ministries and collectively for the performance of the functions of the Cabinet, both to the President and to Parliament.*



- 4.3 *Should the National Assembly express its no confidence in the Government i.e. in the Prime Minister and the Cabinet Ministers, the President shall terminate their office and either*
- 1) *Appoint a new Prime Minister and Cabinet Ministers who enjoy the confidence of the National Assembly or*
  - 2) *Dissolve the National Assembly and proclaim a general election.*
- 3.3 Parliament shall have the right to discuss, amend, approve or reject the annual budget.
- 3.4 No money shall be withdrawn from the National Revenue Fund except under appropriation made by an Act of Parliament.
- 3.5 The President shall appoint a person nominated and approved by Parliament to serve as Auditor General. The Auditor General will report directly to parliament on the work that he has carried out.
- 3.6 There shall be a South African Reserve Bank, which shall be the central bank of the Republic, whose primary objectives shall be to protect the internal and external value of the currency in the interest of balanced and sustainable economic growth in the Republic.



**Colin Eglin MP**  
**Democratic Party**





# INKATHA

Inkatha Freedom Party

IQembu leNkatha Yenkululeko

## THEME COMMITTEE No. 2 STRUCTURES OF GOVERNMENT

### BLOCK No. 2 STRUCTURES OF GOVERNMENT

#### A Necessary Premise

Any further submission on the structures of government requires the prior determination of a general framework related to the "form of government" along the lines of the submission which the IFP made for Block No. 1 of this Theme Committee. It may be fruitless to continue to make submission if there is no clarity on the most fundamental aspects of the form of government, such as whether the offices of head of state and head of government should be separate, whether there should be a parliamentary rather than an executive form of government, and whether there should be bi-cameralism with the Senate which represents Provinces rather than the people.

The general framework must also include items related to the form of state along the lines of the submission which the IFP made in Theme Committees Nos. 2 and 3. In fact, there is quite a difference if the structure of government relate to a strong central government operating within the parameters of a unitary state with limited provincial devolution, or if alternatively such structures and functions relate to a federal system in which Provinces are the primary government of the people and central government's functions are few and limited. In a federal system there is a lesser need for checks and balances to be placed within the structures of the form of government, because of the countervailing effect of provincial executives and legislatures.

Since September 1994 the IFP had indicated that there is logical and constitutional necessity that the process proceeds from a preliminary determination of the form of state<sup>1</sup>, to be finalized by means of international mediation. In the absence of any clarity, this process is turning into a meaningless facade aimed at justifying a final constitution which will not be the result of discussion on, and full analysis of the merits of parties' inputs.

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<sup>1</sup>. More accurately, it can be noted that the IFP has been putting this demand forward since December 10, 1992 when Prince M. Buthelezi met with then State President F.W. de Klerk for the first time after the signature of the Record of Understanding.



The IFP is serious in its desire to participate in the constitution-making process, and therefore this submission is drafted starting from the premises of the unresolved framework issues which should have been dealt in Block No. 1, which are hereinafter re-proposed here in a smaller typeface.

## A Necessary Framework (Our Block No. 1 submission)

### SUPREMACY OF THE CONSTITUTION:

1. The Constitution in its entirety shall be the supreme law of the land. Therefore, the Constitution shall be fully and entirely justiciable by means of a Constitutional Court, and shall be the parameter for the validity and legality of the legislation of Parliament.
2. The constitution shall bind not only all organs of the Republic but shall also apply to all legal relations.
3. In relation to their respective areas of constitutionally recognized autonomy, the Constitution shall be implemented not by the national government but rather by the Provinces, and by social and cultural formations, or by individuals, respectively. For instance, the constitutional right to health entrenched in the national constitution shall be implemented exclusively by the provincial legislation and administrative action.

### SEPARATION OF POWERS (Form of State):

1. There shall separation of powers between national and provincial levels of government.
2. Provinces shall be the primary government of the people and shall be entitled to exercise any type of power and function which can adequately and properly be exercised at provincial level.
3. Only the powers of the national government ought to be listed in the constitution, while all other powers should be left to the Provinces.
4. Provinces shall have full judicial powers in all matters of their competence.
5. National government shall have no overrides and, as a rule, Provinces shall have exclusive powers. Both the national and the provincial levels of government shall enjoy exclusive powers. Relations between the two levels of government shall be regulated by checks and balances, intended as a predetermined set of mutual interferences among the powers of each level of government, also based on the extension by relevancy or implication of the exclusive powers of the national level of government into the areas of competence of the Provinces, as in theory is the case in the U.S. system (i.e.: interstate commerce). In specific areas of provincial competence, the techniques of national framework legislation regulating exclusive provincial powers could also be used in matter which requires concurrence between the national and provincial levels of government, provided that national legislation shall not be so detail to actually regulate, or exercise the actual function in the matter concerned.
6. There shall be separation of powers between all levels of government and civil society.
7. Individuals as well as social, cultural, political and economic formations shall be recognized and guaranteed a sphere of protected constitutional autonomy defined by the interests which they are capable of self-regulating and administering and in respect of which no government has a compelling reason of public interest to intervene.

### WHAT TYPE OF DEMOCRACY:

1. The principle of participatory and/or direct democracy should be constitutionally entrenched in addition to the principle of representative democracy [see *infra*].
2. The principle of the autonomy of individuals as well as of economic, social, political and cultural formations should also be entrenched with respect to all activities for which any level of government does not have a compelling justification of public or national interest to regulate, control or directly exercise. *Inter alia*, the foregoing principle recognizes the autonomy of churches, political parties, professional associations, chambers of commerce, universities, arts and culture organization, family structures, traditional communities, economic enterprises, civics, private contractual autonomy in economic and personal matters, et cetera.
3. The principles of (a) transparency, (b) political accountability and (c) civil accountability of governmental



structures shall be constitutionally entrenched.

#### **SEPARATION OF POWERS (Form of Government):**

1. There shall be a pure parliamentary form of government.
2. Head of State and Head of Government shall be separate. Parliament shall sit for a five year term.
3. The President shall be elected by parliament in joint session for a seven year non renewable term and shall have the task to ensure the proper functioning of the constitutional and institutional machine.
4. The President shall appoint the head of government who shall form the cabinet in his/her discretion.
5. Cabinet shall be in a fiduciary relationship with Parliament which shall freely exercise its no-confidence vote without being dissolved.

#### **HEAD OF STATE AND HEAD OF GOVERNMENT**

1. In order to secure greater democracy and improve checks and balances, the office of the Head of State and that of the Head of Government should be separate.
2. The Head of State should ensure the preservation of the constitutional order and the proper functioning of the constitutional machinery while the Head of Government shall be in charge of the daily operation of Government.
3. Important functions related to the composition of other constitutional organs, such as the Constitutional Court and the defense forces<sup>2</sup> could be ascribed to the Head of State rather than to the Head of Government.
4. The Head of State shall own exercise functions with respect to the representation of the state in international relations, ceremonial functions, the political resolution of conflicts within the institutional machine, and clemency and granting of honours.

#### **EXECUTIVE AND PARLIAMENTARY FORM OF GOVERNMENT**

1. South Africa should have a pure parliamentary system in which cabinet is collegially responsible to parliament, with which cabinet is to entertain a fiduciary relation.
2. Parliament's vote of no-confidence should not be impaired.
3. After consultation with the leaders of the political parties the Head of Government (Prime Minister) shall be appointed by the Head of State (President).
4. The Head of Government shall form the Cabinet and submit it for ratification by means of a vote of confidence of both Houses of in joint session.

#### **MONO-CAMERALISM OR BI-CAMERALISM**

1. There shall be a bicameral system and the Senate shall represent the Provinces.
2. The Senate shall have as much legislative power as the National Assembly.

#### **RECONCILIATION OF DIFFERENT TEXTS ADOPTED BY THE TWO HOUSES**

1. Differences between the texts adopted by the two Houses should be reconciled by a Joint Standing Committee of the two Houses in which the Senate and the National Assembly have an equal number of representatives.
2. The text so reconciled shall be approved by both Houses separately.
3. If one of the Houses does not approve it, the legislation is not enacted.

#### **THE SENATE**

1. The Senate should not have less legislative authority than the one given to the National Assembly.
2. The Senate should represent the provinces and its members should derive directly from the provinces either through appointment or through indirect elections.
3. Each province shall be equally represented in the Senate.

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<sup>2</sup> The IFP has proposed that the Defense Force be under the control of a collegial civilian body headed by the Head of State, who is also the Commander-in-Chief of the Defense Forces.



4. Legislation affecting the powers, functions and boundaries of Provinces may only be introduced in the Senate. Legislation affecting one or more specific Provinces must be approved by the senators of the Province(s) concerned.

#### **COMPOSITION AND APPOINTMENT/ELECTION OF THE SENATE**

1. Senators should be elected for a five year term by the Provincial Legislatures in consultation with the provincial Cabinet.
2. The Premiers of the Provinces shall have the privilege of the floor for themselves and/or for their ministers or designees.

#### **ROLE OF SENATE WITH RESPECT TO SOME EXECUTIVE FUNCTIONS**

1. The Senate should have a special role in monitoring the function of the Executive branch of government with respect to some activities which are outside the competence of the Provinces such as defense and armed forces<sup>3</sup>.

#### **COMPOSITION OF CABINET**

1. Members of Cabinet shall be appointed by the Head of Government and shall serve at his or her pleasure, subject to the power of Parliament to vote its no confidence with respect to Cabinet in its entirety.

#### **POWER SHARING OR ROLE OF MINORITIES IN CABINET**

1. The IFP does not believe in constitutionally mandated power-sharing arrangements.
2. The IFP believes that the protection of minorities should be provided for by means of a federal system and by means of very effective protection of minorities in Parliament<sup>4</sup>.

#### **RELATION BETWEEN HEAD OF GOVERNMENT AND MINISTERS - COLLECTIVE OR PERSONAL RESPONSIBILITY OF CABINET**

1. The Ministers shall be chosen by the Head of Government and shall serve at his/her pleasure, provided that any substitution shall be ratified by a resolution of at least one House of Parliament.
2. Cabinet shall be collegially responsible to Parliament.
3. Each Minister shall be responsible to Cabinet for his/her Department, provided that Parliament may ask any Minister to provide information or to tender his/her resignation to Parliament.

#### **CONSTITUTIONAL COURT**

1. A portion of the justices of the Constitutional Court shall be appointed by the Provinces from their own judicial systems and legal fraternities.

#### **TRADITIONAL LEADERS AND THEIR STRUCTURES**

The separation of powers of government should be cross-referenced with the recognition of the role of traditional leaders and the preservation of traditional communities.

In fact, traditional communities are autonomous societies, organised by traditional and customary law and administered by traditional leaders. Within a traditional community, legislative and executive and judicial functions are exercised in terms of indigenous and customary law, which also determines the degree and the modalities of the separation of

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<sup>3</sup>. For instance, the Senate could be charged with the special task to authorize the execution by the Executive of international treaties or the employment of armed forces outside the country or even within the country for civil protection reasons.

<sup>4</sup>. In further submissions to this and other Theme Committees the IFP will address the issue of protection of political minorities in Parliament.



these powers. Among the most significant aspects which regard the exercise of these powers is the institution of communal property.

## **OUR BLOCK NO. 2 SUBMISSION**

### **SELECTION OF THE HEAD OF STATE (President)**

1. The Head of State (President) shall be elected by a Resolution of Parliament in joint session, if both Houses have the same or similar number of members, or by a separate resolution of each House.
2. Each resolution must be adopted by the two third majority of the members of Parliament (or of each House concerned).
3. If after three failed Resolutions on different candidates the required majority cannot be achieved, the President may be elected by absolute majority (50%).

### **POWERS OF THE HEAD OF STATE**

1. The President shall have only the following powers:
  - appointment of the Head of Government, subject to ratification of the entire Cabinet by Parliament
  - dissolution of one or both Houses of Parliament, in which case the President must call new elections to be held within two months from dissolution or provide for the reappointment of Senators, none of which powers may not be exercised in the last six months of the President's term of office.
  - accreditation of ambassadors and foreign delegations
  - approval and promulgations of the laws
  - civilian and military awards and honours as provided by the law
  - first convocation of the Parliament after elections and when appropriate
  - organization and operation of the President's office
  - clemency, indemnity and amnesty when so empowered by the law
  - other matters ascribed to the President by the constitution.
2. All actions of the Presidents must be countersigned by the competent Minister who shall bear joint responsibility for the actions of the President
3. Should the President be incapacitated, the functions ascribed by this constitution to the President are exercised by the President of the Senate while the Minister of Home Affairs shall also act as chief Minister of the Government. Should the President become permanently incapacitated the President of the National Assembly shall call an election.
4. The President may be removed from office before the end of his or her term by a resolution adopted by the absolute majority of Parliament in a joint session summoned by the President of the National Assembly. The President may be removed from office only on the grounds of mental incapacity, treason or felony. The Constitutional Court shall direct the investigation.

### **VETO POWERS:**

1. The Head of State, to be separate from the Head of Government, shall have the power to veto



legislation on a line-by-line basis.

#### **ACCOUNTABLE ADMINISTRATION:**

1. The notion of administrative justice and judicial reviewability of all administrative actions shall be constitutionally entrenched.
2. Public official shall be personally responsible for gross negligence and malice.
3. Provision shall be made for the recognition of the right to petition any government structure.
4. The constitution should entrench the notion of participation of the affected public interest in the formative process of an administrative action.
5. The right to access to all government information shall be recognized, with customary exclusions and qualifications.

#### **COMMISSIONS AND "REGULATORY AGENCIES"**

1. The Constitution should provide for the possibility that independent regulatory bodies, in the form of "commission" or "agencies" may be established by an Act of Parliament.
2. The Constitution shall entrench the principle that all rule-making must take place with the participation of the affected interests.
3. A court of law shall have the power to review the legitimacy, even if not the merits, of any adjudicatory process administered by regulatory bodies.

#### **PROVINCIAL LEGISLATIVE AND EXECUTIVE STRUCTURES**

1. In terms of CP XVIII (2) read together with section 160 (3) of the interim constitution, the next Constitution may not reduce the power of Provinces to determine their own legislative and executive structures and procedures by means of a constitution for the Province.
2. The Constitution should not provide for legislative and/or executive structures for the Provinces. The next Constitution will come into force with already operational Provinces, and therefore the Constitution needs merely to indicate that the existing provincial and legislative structures shall continue into force until otherwise modified by provincial constitutions.
3. No further detail on the provincial executive and legislative structures and procedures shall be contained in the Constitution.





**National Party**  
**Nasionale Party**

*Federal Council*  
*Federale Raad*

24 February 1995

Mr Hassen Ebrahim  
The Executive Director  
Constitutional Assembly  
Regis House  
Adderley Street  
CAPE TOWN

Dear Mr Ebrahim

Enclosed please find the National Party proposals regarding subject matters pertaining to Theme Committee 2, and included in the Work Schedule, Block 2.

Kind Regards

pp J A RABIE



THEME COMMITTEE 2

BLOCK 2 : AGENDA ITEM 2

PROPOSALS BY THE NATIONAL PARTY REGARDING STRUCTURE OF GOVERNMENT

1. GENERAL POINTS OF DEPARTURE

1.1 As a general point of departure, it is the position of the National Party that the structures of Government as set out in the Constitution of 1993, should be retained. Inasmuch as the current position should be amended, specific proposals will be submitted.

1.2 A clause which sets out that all state authority emanates from the people should be invoked. Such a clause will form the basis of the representative democracy, and shall state that the people will exercise their authority by means of elections and voting, according to prescribed procedures.

1.3 The concept of a representative democracy entails that the duly elected representatives of the people shall take decisions on behalf of the people (as opposite to a direct democracy where the people rule by plebiscite or referendum).

1.4 The envisaged democracy shall, furthermore, be a parliamentary democracy which entails that the executive is directly accountable to the



legislature and, within certain parameters, depends on statutory authorization.

- 1.5 The envisaged democracy shall also be a participatory democracy based on the principle of inclusiveness. The latter principle is reflected by elements which are encapsulated by the letter and spirit of the Constitutional Principles and which inter alia include: proportional representation; a multi-party system and the protection of the role of minority parties; the promotion of conditions for the encouragement of the diversity of language and culture; and the protection of the organs of civil society.

Hence, government (i.e. legislature and executive) shall be structured in a way that gives full effect to the principle of inclusiveness and accordingly broadly reflects all interest groups at all levels of government.

In order to realise these objectives, it may be necessary to draw a distinction between political representation on the one hand, and the need for non-party political representation on the other hand. Party political interests will be served by means of participation in the formal structures of government (i.e. legislative and executive) on a proportional basis. Non-party political interests, on the other hand, will obviously be served through the usual means



of the structures of civil society. However, given the diversity of, in particular, language and culture, mechanisms should be devised to give additional promotion to those interests through the means of formalised statutory bodies which will receive financial assistance from the State. Such a step would be in accordance with the letter and spirit of Constitutional Principle XI, and may also, arguably, comply with the "any other recognised way" envisaged in Constitution Principle XXXIV (1).

## 2. NATIONAL LEVEL

### 2.1 Legislative Structures

2.1.1 The legislature shall consist of two houses viz a National Assembly and a Senate (the exact powers of each and the relationship between the two houses, will be dealt with at the appropriate stage of the process).

2.2.2 Section 48 should be revised, inter alia, regarding the following aspects

- senators should be directly elected
- the terms of office of senators should differ from those of members of the National Assembly, and should coincide with elections for provincial governments.

2.2.3 Apart from the foregoing, the legislative structures established by the current Constitution, should be retained.



## 2.2 Executive Structures

Based on the particular circumstances of South Africa and the principle of inclusiveness, the National Party regards it necessary that the concept of multi-party participation in decisionmaking at executive level be provided for at national and provincial levels.

## 3. PROVINCIAL LEVEL

### 3.1 Legislature

- 3.1.1 Constitutional Principle XVIII(1) inter alia provides that the powers and functions of provincial governments shall be defined in the Constitution, which implies that provincial legislatures shall have autonomous and original powers.
- 3.1.2 In accordance with Principle XXI(1) it is the National Party's view that the lowest level of government at which decisions can be taken most effectively should be held responsible for such powers and functions.
- 3.1.3 The principles laid down by ss 125, 127, 131 and 132 shall be retained.
- 3.1.4 Mechanisms shall be developed to provide for



formal and informal liaison between provincial governments and the Senate, jointly and individually. The formal mechanism could be structures along the lines of the current Commission on Provincial Government (the latter being a transitional body) and could be bestowed with similar powers and could function with a view to attain similar objectives as those currently exercised by the Commission on Provincial Government. For reasons which are obvious, certain adaptations (compared to the role and functions of the CPG) will have to be made e.g. the members of such a body will not be appointed by the President (see s 163) but will come from democratically elected representatives (i.e. members of the Senate and the Provincial Governments).

### 3.2 Executive

See the comments under Paragraph 2.2.

## 4. GENERAL COMMENTARY

4.1 As the Constitutional Principles provide for government to be structured at national, provincial and local levels (XVI) and as the Principles



furthermore state that the powers of provincial governments shall be defined in the Constitution (XVIII(2)) and shall include exclusive and concurrent powers (XIX), it is inevitable that the Constitution will refer to those structures and institutions to the extent which will be necessary in order to attain the objectives set by the Constitutional Principles. It is also necessary that clear legal understanding be given to the definition of norms and standards and overriding powers where applicable.

4.2 To the extent that provincial structures and institutions need not be defined in the Constitution, provinces may elect to deal with such details in provincial constitutions.



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**01 MAR 1995**

1 March 1995

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**PAC PRELIMINARY SUBMISSION  
THEME COMMITTEE 2 BLOCK 2/3**

**STRUCTURE OF GOVERNMENT**

**NATIONAL LEVEL**

**The Legislature**

The PAC stands for a unicameral legislature. In South Africa the case for a second chamber has not been made. If it has been made, it certainly has not been proved. Our present Senate obviously does not as yet represent provinces. It is a mirror image of the National Assembly.

It cannot be said that Senators are doing a better job of reviewing legislation than the Select Committees of the National Assembly. Rather than reducing the number of the members of the National Assembly, the PAC would suggest instead that we strengthen the Select Committees of the National Assembly, and abolish the Senate, because it is a very expensive duplication!

**The Executive**

The PAC stands for a strong presidency and a president who is a member of the National Assembly and the leader of the majority party.

Ministers must be appointed by the President. They must be members of Parliament and should be responsible to Parliament. We are, of course, opposed to constitutionally enforced coalitions or enforced power-sharing. Coalitions must be a



voluntary consequence of the political process.

#### **At Provincial Level**

- (i) The PAC support provincialism with purely administrative centres, and with very soft borders. This will bring government and services closer to the people.
- (ii) While we accept that provinces can play a role in economic management and development, the PAC believes that they should not have any taxation powers.
- (iii) Equally they should have delegated powers from central government and no exclusive powers. The present nine provinces should be reviewed with a view to reducing their number. We have too many structures which are sapping the resources that should build houses, roads and schools.

In drawing the boundaries, we also need to take into account the question of land claims. We do not want to have tribal border wars in this country again.

**A G Ebrahim**

**MP**





# VRYHEIDSFRONT

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TK2-06A

*Mr Hassen Ebrahim,  
The Executive Director,  
Constitutional Assembly,  
Regis House,  
Adderley Street,  
Cape Town.*

20 March 1995

*Dear mr. Ebrahim,*

**FREEDOM FRONT PROPOSAL:  
BLOCKS 2 AND 3 - THEME COMMITTEE 2**

*Please find enclosed the Freedom Front proposals for Theme Committee 2  
on the Structures of Government, Blocks 2 and 3.*

*Yours truly,*

*[Senator P.H. Groenewald] Maj-genl*



DRAFT: FOR DISCUSSION PURPOSES ONLY

**FREEDOM FRONT  
SUBMISSION TO THEME COMMITTEE-2:  
BLOCK 2 AND 3: STRUCTURES OF GOVERNMENT**

**INTRODUCTION**

1. This proposal by the Freedom Front may be influenced by the proposals which the Volkstaat Council will make. It is however, not expected that the Volkstaat Council's proposal will have any significant influence on the structures of government proposed here.

**CONSTITUTIONAL PRINCIPLES**

2. The Constitutional Principles to be adhered to are the following:
  - 2.1 Principle X:

Formal legislative procedures shall be adhered to by legislative organs at all levels of government.
  - 2.2 Principle XII:

Collective rights of self-determination in forming, joining and maintaining organs of civil society, including the linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected.
  - 2.3 Principle XVI:

Government shall be structured at national, provincial and local levels.
  - 2.4 Principle XVIII[2]:

The powers and functions of the provinces defined in the Constitution, including the competence of a provincial legislature to adopt a constitution, shall not be substantially less than or substantially inferior to those provided for in this Constitution. [Read with Section 160[3][a] of the constitution].
  - 2.5 Principle XXXII.



The Constitution shall provide that until 30 April 1999 the national executive shall be composed and shall function substantially in the manner provided for in Chapter 6 of this constitution.

## THE LEGISLATURE

### CONSTITUTION OF PARLIAMENT

3. Parliament should consist of two chambers, the National Assembly and the Senate.

### THE NATIONAL ASSEMBLY

4. The Composition of the National Assembly.

4.1 The number of representatives in the National Assembly should be determined by:

a. The functions of the central government. If more power is devolved to the provinces, the number of representatives in the National Assembly should be decreased in favour of more substantial representation in the provinces.

b. The role played by Select Committees. At present Select Committees play a vital role and their role should not be changed. Smaller political parties find it difficult, but very important, to participate in all the activities of the Select Committees and should the representation become smaller, the role of the Select Committees would decrease in importance. Effective central government therefore also requires a minimum strength.

c. With the present functions of the central government, the number of representatives in the National Assembly should not be less than 350 and not more than the present 400.

4.2 The following sections of the present constitution should be maintained:

a. Section 40,[1] to [5]: Composition of the National Assembly. [see 4.1 above].

b. Section 41: Speaker and Deputy Speaker of the National Assembly.



- c. Section 42: Qualification for membership of the National Assembly.
- d. Section 43: Vacation of Seats.
- e. Section 44: Filling of Vacancies.
- f. Section 45: Oaths or Affirmation by members of the National Assembly.
- g. Section 46: Sittings of the National Assembly.
- h. Section 41: Quorum.

## THE SENATE

### 5. Introduction.

- 5.1 At present, the Senate in South Africa is very much a replica of the National Assembly. Provincial interests are not significantly represented by the Senate and the Senate does not have the power to properly review legislation passed by the National Assembly.
- 5.2 South Africa should have a second chamber because of the following reasons:
  - a. The ethnic, racial, regional and linguistic differences in South Africa. In most countries where these conditions exist, a second chamber was structured to be a watchdog over the interests of cultural and corporate groups.
  - b. The conflicting interests that cannot be reconciled at national assembly level and the necessity to recognize provincial centres of power. A second chamber is normally designed to protect regional centres of power.
- 5.3 The Senate should therefore reflect the truly diverse nature of the country and society, and represent the different peoples of South Africa. Such a chamber is required to act as nation building institution, to reconcile the differences mentioned above and to reduce the potential for political conflict.



- 5.4 The role of the Senate within the overall political process must be defined in such a way that it becomes a cost effective goal orientated institution which will command respect and earn dignity in fulfilling a crucial role in government. It should not frustrate democracy but play an indispensable role in facilitating not only effective and stable government but also the building of culture and common purpose in South Africa. Constitutionally, the South African Senate should give the world an instrument for reconciliation which is truly South African.

6. Composition and Mandate of the Senate. The number of representatives in the Senate should be determined by the functions allocated to the Senate. The FF proposes that the composition should be as follows:

- 6.1 8 Senators from each province, nominated by the parties represented in the provincial legislature within 10 days of an election held in pursuance of the dissolution of parliament. The Senate should, as its first and primary function, look after provincial and cultural interests. In order to do this, the constitution should give the Senate an original mandate and power to:

- a. Interact with the Provinces, and/or representatives of corporate groups.
- b. Review, revise and even veto legislation related to the Provinces.

Section 61 of the present constitution should be amended accordingly.

- 6.2 8 Senators nominated by the "National Council of Traditional Authorities". These Senators should form the Executive of the National Council of Traditional Authorities. Note. This proposal should be finalised in Block 4 [Traditional Authorities]. The specific functions of the Senate in respect of Traditional Authorities should also be determined in Block 4.

- 6.3 8 Senators elected by voters registered on the community voters role as Afrikaner community voters. The number of Senators should be determined by a formula based on percentage voters represented by the Afrikaners seeking self-determination. Note. The "community voters role" referred to will be part of the FF proposal for self-determination.



- 6.4 Should other ethnic groups seek cultural self-determination, they could also be given representation in the Senate.
- 6.5 As in the case of provincial interests, the Senate should have a special mandate to protect the cultural interests of all the language and cultural communities in South Africa.

Note. The formulation of the proposed constitutional changes to the second chamber should be referred to the constitutional experts.

7. Functioning of the Senate. The following sections of the 1993 Constitution should be retained in the new Constitution in as much as they do not contradict the alterations proposed in paragraph 6:

- 7.1 Section 49: President and Deputy President of the Senate.
- 7.2 Section 50: Qualification for membership of the Senate.
- 7.3 Section 51: Vacation of seats by Senators and filling of vacancies.
- 7.4 Section 52: Oaths of affirmation by Senators.
- 7.5 Section 53: Sittings of the Senate.
- 7.6 Section 54: Quorum.

## THE NATIONAL EXECUTIVE

### THE HEAD OF STATE AND THE HEAD OF GOVERNMENT

8. The FF proposes that the following Sections in the 1993 Constitution, should be maintained:

- 8.1 Section 75: "The executive authority of the Republic with regard to matters falling within the legislative competence of Parliament shall vest with the President, who shall exercise and perform his or her powers and functions subject to and in accordance with this Constitution".
- 8.2 Section 76: "The President shall be the Head of State".

9. The FF is of the opinion however, that the functions of Head of State and Head of Government cannot be executed efficiently by one person only. The



workload of the President must therefore be lightened by the appointment of one or two Deputy Presidents or a Prime Minister.

10. Election of the President.

10.1 The National Assembly and the Senate shall at a joint sitting, which must be their first sitting after Parliament has been convened, elect one of the members of Parliament as President.

10.2 Sections 77[2],[3],[4] and [5] should be maintained.

11. The following Sections in the 1993 Constitution should also be maintained:

11.1. Section 78: Oath of Affirmation.

11.2 Section 79: Remuneration of the President.

11.3 Section 80: Tenure of Office of the President.

11.4 Section 83: Confirmation of executive acts of the President.

11.5 Section 86: Acting President.

11.6 Section 87: Removal from office of President and Deputy President/Prime Minister.

## THE CABINET

12. Composition of the Cabinet. The Cabinet shall consist of the President, Deputy Presidents/Prime Minister and not more than 24 Ministers appointed by the President.

13. Appointment of Cabinet Members. The President shall appoint members of the Cabinet, or fill any vacancy if required, from the National Assembly or the Senate.

14. Terminating a Cabinet Appointment. The President shall terminate any appointment to the Cabinet if, in his opinion, it becomes necessary to comply with the spirit and the letter of the Constitution or it is deemed to be in the interest of good government.

15. Cabinet Procedure. Meetings of the Cabinet shall be presided over by the President or by a Deputy President.



16. Temporary assignment of Minister's powers and functions to another Minister. Section 90 should be maintained.

17. Transfer of Minister's power and functions to another Minister. Section 91 should be maintained.

18. Accountability of Ministers and Cabinet. Section 92, [1] to [4] should be maintained.

19. Votes of no confidence. Maintain Section 93.

20. Appointment of Deputy Ministers. Section 94 should be maintained.

## THE PROVINCIAL LEGISLATURE

### THE LEGISLATURE

21. There shall be a legislature for each province. The following sections in the 1993 Constitution should be maintained:

21.1 Section 125: Provincial Legislature.

21.2 Section 127: Composition of Provincial Legislature. The number of MPC's should be determined by the functions and powers allocated to provinces.

21.3 Section 128: Duration and dissolution of provincial legislatures.

21.4 Section 130: Sittings of Provincial legislature.

21.5 Section 131: Speaker and Deputy Speaker of provincial legislature.

21.6 Section 132: Qualification for membership of provincial legislature.

21.7 Section 133: Vacation of seats and filling of vacancies. Sub-section 133[2] to be scrapped.

21.8 Section 138: Oath or affirmation by members.

21.9 Section 135: Powers, privileges and immunities of provincial legislatures and benefits of members.



- 21.10 Section 136: Penalty for sitting or voting when disqualified.
- 21.11 Section 137: Rules and orders.
- 21.12 Section 138: Quorum.
- 21.13 Section 139: Requisite majorities.
- 21.14 Section 140: Assent to Bills.
- 21.15 Section 141: Signature and enrolment of provincial laws.
- 21.16 Section 142: Public access to provincial laws.
- 21.17 Section 143: Administration of provincial legislatures.

#### **PROVINCIAL EXECUTIVE AUTHORITY**

22. The executive authority of a province shall vest in the Premier of the province who shall exercise and perform his or her powers and functions subject to and in accordance with the constitution of South Africa.

23. The following sections of the 1993 Constitution should be maintained:

- 23.1 Section 145: Election of Premiers.
- 23.2 Section 146: Tenure of and removal from office of Premiers.
- 23.3 Section 148: Acting Premiers.

#### **EXECUTIVE COUNCILS**

24. The Executive Council of a province shall consist of the Premier and not more than 10 members appointed by the premier.

25. The Premier shall determine portfolios, appoint members to Executive Councils, terminate appointments for the purposes of the constitution and in the interest of good government, and fill vacancies when necessary.

26. The following sections of the 1993 Constitution should be maintained:

- 26.1 Section 150: Executive Council procedure.



- 26.2 Section 151: Temporary assignment of powers and functions to executive council members.
- 26.3 Section 152: Transfer of powers and functions from one member to another member.
- 26.4 Section 153: Accountability of members of the executive council.
- 26.5 Section 154: Votes of no confidence.

oooOOOooo

**FREEDOM FRONT**  
**20 MARCH 1995**



PARLIAMENT

CLAIM FOR REFUND OF TRAVELLING EXPENSES

NAME OF MEMBER : Eia Gandhi
RESIDENTIAL ADDRESS: 22 Gessinghall 57 Russell St. Durban

A. MOTOR TRANSPORT BETWEEN RESIDENCE AND CAPE TOWN

Residence ( ) to Cape Town : km
Date of journey
Cape Town to residence ( ) : km
Date of journey

B. TRANSPORT TO AND FROM AIRPORTS

Residence ( 26/2/95 ) to airport ( Trip to Johannesburg - Block booking by Constitutional Committee for public event. I do not have the ticket. ) : km R. 70,00
or cost of taxi, bus, etc (proof of payment required)
D F Malan Airport to Cape Town : km R.
or cost of taxi, bus, etc (proof of payment required)
Date of journey
Cape Town to D F Malan Airport : km R.
or cost of taxi, bus, etc (proof of payment required)
( ) airport to residence ( ) : km R.
or cost of taxi, bus, etc (proof of payment required)
Date of journey

I certify that the above particulars are correct.

15. 3. 95
Date

E. Gandhi
Signature

OK
Mahomed

FOR OFFICE USE ONLY

A. REFUND OF MOTOR TRANSPORT BETWEEN RESIDENCE AND CAPE TOWN

Residence to Cape Town : R.
km @ cent per km ( )
Cape Town to residence : R
km @ cent per km ( )
TOTAL : R

B. REFUND OF TRANSPORT TO AND FROM AIRPORTS

Residence to airport / D F Malan Airport to Cape Town : R.
km @ cent per km ( )
or cost of taxi, bus, etc : R.
Cape Town to D F Malan Airport / airport to residence : R
km @ cent per km ( )
or cost of taxi, bus, etc : R
TOTAL : R
GRAND TOTAL : R



