

2/4/21/1/30

TC2/24(1)

CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
STRUCTURE OF GOVERNMENT
THEME COMMITTEE MEETING

Wednesday
2 August 1995
9h00-17h00
M46

DOCUMENTATION

INCLUDING:
DRAFT FORMULATIONS ON NATIONAL ASSEMBLY
AND NATIONAL EXECUTIVE

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CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
STRUCTURE OF GOVERNMENT
THEME COMMITTEE MEETING

Please note that the above meeting has been scheduled as follows:

Date : **Wednesday 2 August 1995**
Time : **9h00-17h00**
Venue : **M46**

AGENDA

- 1. OPENING AND WELCOME**
- 2. CORE GROUP REPORT**
- 2. DRAFT FORMULATIONS ON NATIONAL EXECUTIVE AND NATIONAL ASSEMBLY**
Documentation:
 - i. National Assembly, Chapter Parliament: p 2-14
 - ii. National Executive, Chapter National Government: p 15-27
 - iii. Fourth Draft of Report on National Assembly, Presidency, and Cabinet: Separate Documentation Pack TC2/24(2)Decision required:
 - i. Approval for Referral to Constitutional Committee
- 4. ANY OTHER BUSINESS**
- 5. CLOSURE**

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CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
STRUCTURE OF GOVERNMENT

THE NATIONAL ASSEMBLY

CHAPTER:
PARLIAMENT

DRAFT FORMULATIONS
AS AT 2 AUGUST 1995

FIRST DRAFT - 31 JULY 1995

Status:- Draft by TC 2 technical advisers and CA law advisers. Prepared for consideration by TC 2.

Chapter ...

PARLIAMENT

Legislative power

1. ...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

¹ Legislative competencies are dealt with by TC 3.

² The question of a Senate is contentious. Consequently no provisions on the Senate are 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.

National elections

4. ...⁴

Duration of National Assembly

5. (1) The National Assembly as constituted in terms of a general election shall continue for a term of five years⁵ as from the date of such election, unless dissolved before the expiry of its term.

(2) The National Assembly may only be dissolved before the end of the term for which it was elected if a vote of no-confidence in the Cabinet is passed by the National Assembly.⁶

(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.⁷

⁴ To be dealt with under electoral system. The question of constituency will be addressed at the same time.

⁵ See Block 9 of the Report on Parliament. The DP proposes a term of four years. To be revisited.

⁶ There is uncertainty as to whether the State President should have the prerogative as in other democratic jurisdictions to dissolve the National Assembly at any time before the expiry of a term. Perhaps the TC should revisit this clause. See also section 6(3)(b) of the Draft on the National Government.

⁷ As per Block 10 of the Report on Parliament.

Speaker and Deputy Speaker⁸

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.

(2) The President of the Constitutional Court⁹ 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.¹⁰

(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.

(5) The Speaker or Deputy Speaker cease 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.

⁸ Section 6 is based on section 41 of the Interim Constitution as per agreement in Block 16 of Report on Parliament

⁹ 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.

¹⁰ The procedure referred to here is contained in Schedule 5 of the Interim Constitution. Alternatively the procedure should be prescribed by a national law.

Qualifications of members of National Assembly¹¹

7. (1) Only South African citizens qualified to vote 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.
- (b) Persons declared to be of unsound mind by the courts of the Republic.
- (c) Persons convicted after 27 April 1994¹² 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

¹¹ Drafted as per Block 8 of the Report on Parliament.

¹² 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 by the TC:

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

Another question that arises is whether persons who served prison sentences of more than 12 months should be disqualified for life. In previous constitutions the disqualification lapsed five years after a person's release from prison.

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.

- (d) Persons who are members of the Senate, a provincial legislature or a local government.
- (e) Persons holding office of profit under the Republic¹³, excluding-
 - (i) the Deputy State President;
 - (ii) Ministers and Deputy Ministers;
 - (iii) persons receiving a pension from public funds or from a pension fund aided by public funds;
 - (iv) justices of the peace and appraisers; and
 - (v) members of statutory bodies performing a public function or of committees of the National Assembly, who receive remuneration not in excess of their salaries as members of the National Assembly.

(3) 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.¹⁴

¹³ 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.

¹⁴ As per Block 15 of the Report on Parliament.

Vacation of seats¹⁵

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; or
 - (c) becoming a member of [the Senate]¹⁶ a provincial legislature or a local government.

Filling of vacancies¹⁷

9. ...

Oaths or affirmation by members¹⁸

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

¹⁵ As per Block 12 of the Report on Parliament. There are two outstanding issues:

- (a) The current requirement of section 43(b) of the Interim Constitution that a member vacates seat if he or she ceases to be a member of the party which nominated him or her.
- (b) Section 43(d) which requires vacation of seat after 15 consecutive days' absence.

¹⁶ Reference to Senate to be revisited.

¹⁷ Stands over for electoral system.

¹⁸ As per Block 11 of the Report on Parliament, The form of the oath/affirmation has been included in the clause to simplify the text. In the Interim Constitution all oaths/affirmations were contained in a schedule.

President of the Constitutional Court¹⁹ 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.)

(2) A member nominated²⁰ to fill a casual vacancy in the Assembly shall make and sign the oath or solemn affirmation before the Speaker.

Sittings and recess periods²¹

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 10 days²² after the election at a time and on a date determined by the President of the Constitutional Court.²³

¹⁹ The current position is that the oath is administered by the Chief Justice.

²⁰ To be revisited when filling of vacancies is dealt with.

²¹ As per Block 12 of the Report on Parliament.

²² The 10 days' period may be impractical. Alternative approaches may be a longer period of say 30 days or simply "as soon as possible".

²³ In terms of the Interim Constitution the Chief Justice convened the first sitting of the National Assembly.

(2) The State President²⁴ may at any time summon the National Assembly to an extraordinary sitting for the conduct of urgent business.²⁵

(3) The seat of the National Assembly is²⁶ 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.

Quorum

12. ...²⁷

²⁴ 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.

²⁵ 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 Government.

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

²⁶ Legislative seat to be dealt with by TC 1.

²⁷ It is a point of contention whether the minimum number of members required to constitute a meeting of the National Assembly should be prescribed in the Constitution or in the rules and orders. Section 47 of the Interim Constitution requires that at least one third, or, if a vote is taken on a Bill, at least one half of all the members of the NA should be present.

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.²⁸

(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.²⁹

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 sit and to speak in the National Assembly, but may not vote.³⁰

²⁸ See Block 21 of the Report on Parliament. Constitutional amendments, and the majorities required, are yet to be dealt with.

²⁹ As per Block 17 of the Report on Parliament.

³⁰ As per Block 14 of the Report on Parliament. Depending on the nature of the Senate, this provision may be extended to cover also Ministers and Deputy Ministers to sit and to speak in the House of which they are not members.

Internal autonomy

15. (1) The National Assembly shall determine its internal arrangements and make rules and orders in connection therewith.³¹

(2) The salaries, allowances and benefits of members of the National Assembly shall be as provided for by a national law.³²

Parliamentary privilege³³

16. (1) There is 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 freedom may not be limited by or questioned in the courts.

(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.

³¹ See Block 20 of the Report on Parliament. The question of committees should be revisited with a view to clarity whether there should be a constitutional duty to establish committees. Joint committees of the two Houses can only be finalised after a decision on the Senate has been taken.

Quaere: Should the power of committees to call witnesses and evidence be constitutionalised?

³² As per agreement in Block 19 of the Report on Parliament.

³³ As per Block 19 of the Report on Parliament.

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(3) Other privileges and immunities shall be as prescribed by a national law.

Ordinary Bills

17.³⁴

Money Bills

18.³⁴

Bills affecting provincial matters

19.³⁴

Bills amending Constitution

20.³⁵

³⁴ 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.

³⁵ The issue of constitutional amendments has not yet been attended to by the TC.

Assent to Bills³⁶

21. (1) A Bill duly passed by Parliament in accordance with the Constitution shall be assented to and signed by the State President.

(2) The State President may withhold assent to a Bill where he or she has referred the Bill back to Parliament for reconsideration or to the Constitutional Court for a ruling on its constitutionality.

(3) A Bill may be referred back to Parliament for reconsideration only on the ground that it is inconsistent with, or that it has not been passed in accordance with, the Constitution. And a Bill may be referred to the Constitutional Court for a ruling on its constitutionality only after the Bill has been reconsidered and again passed by Parliament without correcting the defect.

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

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.³⁷

³⁶ As per agreement in Block 23 of the Report on Parliament. The State President's proposed power to withhold assent to a Bill and to refer it to the Constitutional Court for a ruling on constitutionality should be a matter of interest also to TC 5. See also section 6(3)(d) of the Draft on the National Government.

³⁷ As per agreement in Block 24 of the Report on Parliament. Acts of Parliament are presently kept by the Registrar of the Appellate Division. To be revisited by TC in view of foot note 9.

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(2) The signed copies of the Acts of Parliament entrusted to the Constitutional Court shall be conclusive evidence of the provisions of the Acts.³⁸

(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.³⁹

³⁸ 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. The issue of official and conflicting texts must consequently stand over.

³⁹ As per agreement in Block 24 of the Report on Parliament.

CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
STRUCTURE OF GOVERNMENT

THE NATIONAL EXECUTIVE

CHAPTER:
THE NATIONAL GOVERNMENT

DRAFT FORMULATIONS
AS AT 2 AUGUST 1995

FIRST DRAFT - 31 JULY 1995

Status:- Draft by TC 2 technical advisers and CA law advisers. For consideration and approval by TC 2.

Chapter ...

THE NATIONAL GOVERNMENT

Executive power

1. The executive power [at national level] is vested in the national government consisting of the State President¹ and the Cabinet.²

The State President

Head of State and Government

2. (1) The State President is the Head of State, the Head of the Government and the Commander-in-Chief of the National Defence Force.³

(2) The State President shall at all times uphold, defend and respect the Constitution as the supreme law of the land and shall be responsible for the observance of the Constitution by the national government.⁴

¹ The term "State President" agreed to as per Block 1 of the Report on the Presidency.

² As per Block 7 of the Report on the Presidency. This clause should be revisited when the powers and functions of provinces have been resolved.

³ As per agreement in Block 2 of the Report on the Presidency except that the IFP prefers a split between the offices of the head of state and the head of government. Point 12 in Block 7 reflects the agreement that the State President should also be Commander-in-Chief of the Defence Force. This agreement is also borne out by the report of TC 6.4.

Quaere: Is the distinction between Head of State and Head of Government still valid?

⁴ See point 10 in Block 7 of the Report on the Presidency.

Election of State President

3. (1) The National Assembly⁵ shall at its first sitting⁶ after a national election, and thereafter as and when it becomes necessary to fill a vacancy during the term for which it was elected, elect a member of the National Assembly as the State President.⁷

(2) The President of the Constitutional Court,⁸ or a judge designated by him or her, shall preside over the election of the State President. The procedure set out in Schedule ... shall apply to the election of the State President.⁹

(3) A member of the National Assembly shall upon being elected as the State President vacate his or her seat in the National Assembly.¹⁰

⁵ The role of the Senate in the election of the President will be revisited when finality is reached on the question of a second House.

⁶ The first sitting of Parliament will in terms of section 11(1) of the Draft on Parliament be convened by the President of the Constitutional Court within 10 days of a general election.

⁷ As per agreement in Block 3 of the Report on the Presidency. The DP prefers a directly elected President.

⁸ The President of the Constitutional Court appears to be more appropriate than the Chief Justice to preside over presidential elections. The matter should be revisited. See also foot note 9 in the Draft on Parliament.

⁹ The procedure referred to here is contained in Schedule 5 of the Interim Constitution. Alternatively the procedure should be prescribed by a national law.

¹⁰ See Block 4 of the Report on the Presidency. The PAC prefers that the State President remains a member of the National Assembly.

(4) A sitting of Parliament to fill a vacancy in the office of State President shall take place within 30 days after the vacancy occurred, at a time and on a date determined by the President of the Constitutional Court.

Assumption of office

4. The State President-elect shall assume office within days of his or her election and shall, before assuming office, make and sign an oath or solemn affirmation before the President of the Constitutional Court or a judge designated by him or her, in the following form:

In the presence of those assembled here and in full realisation of the high calling I assume as State President in the service of the Republic of South Africa I, A.B., do hereby swear/solemnly affirm to be faithful to the Republic of South Africa, and do solemnly and sincerely promise at all times to promote that which will advance and to oppose all that may harm the Republic; to obey, observe, uphold and maintain the Constitution and all other Law of the Republic; to discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience; to do justice to all; and to devote myself to the well-being of the Republic and all its people.

(In the case of an oath: So help me God.)¹¹

¹¹ This formulation is the same as in Schedule 3 of the Interim Constitution.

Term of office

5. (1) The State President shall be elected for a term of office commencing when he or she assumes office and ending when the person elected as the State President after the next election of the National Assembly assumes office.¹²

(2) No person may hold office as State President for more than two terms of office exceeding a combined period of ... years.¹³

(3) The State President may resign from office by notice in writing to the Speaker.¹⁴

Powers and functions

6. (1) The State President has the powers and functions entrusted to him or her by the Constitution and the laws of the Republic.

(2) All powers and functions shall be discharged by the State President in consultation with the other members of the Cabinet, except where the

¹² See Block 5 of the Report on the Presidency. The life of Parliament generally determines the length of tenure. As the life of Parliament has a fixed term of 5 years, the term of office of the State President is limited to 5 years. The term of office may be shorter than 5 years where Parliament is dissolved before its full term or where the State President resigns or is removed from office. In order to ensure continuity the State President's term normally expires only when his or her successor assumes office.

The IFP prefers a seven year term for the State President.

¹³ The maximum number of terms a State President may serve needs further debate. See Block 5 of the Report on the Presidency.

¹⁴ Removal from office is dealt with in section 11 below.

Constitution provides or implies otherwise.¹⁵

(3) The following powers and functions are vested in the State President alone with due regard to any specific provisions of the Constitution pertaining to such powers and functions, and in the discharge of such powers and functions the State President shall not be obliged to act in consultation with the other members of the Cabinet:¹⁶

- (a) to summon the National Assembly to an extraordinary sitting for the conduct of urgent business;¹⁷
- (b) to dissolve the National Assembly after a motion of no confidence in the Cabinet has been passed by the National Assembly;¹⁸
- (c) to assent to and sign Bills passed by Parliament;¹⁹

¹⁵ As per agreement in point 9 of Block 7 of Report on the Presidency. In section 233(3) of the Interim Constitution the term "in consultation with" is defined to mean that the concurrence of the other functionary is required. This issue must be revisited for purposes of clarity.

¹⁶ The NP is not in favour of the State President acting alone, but prefers an arrangement whereby these powers are exercised in accordance with section 82(2) of the Interim Constitution, i.e. an obligation on the State President to consult the Executive Deputy Presidents.

¹⁷ See point 6 Block 7 of the Report on the Presidency and also section 11(2) of the Draft on Parliament. The issue of summoning the two Houses to a joint sitting to be dealt with upon clarification of the role of the Senate.

¹⁸ See point 7 Block 7 of the Report on the Presidency. See also section 5 and foot note 6 of the Draft on Parliament.

¹⁹ See point 1 Block 7 of the Report on the Presidency. See also section 21 of the Draft on Parliament. The IFP suggest a line by line veto for the President.

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- (d) to refer a Bill back to Parliament for reconsideration or to the Constitutional Court for a ruling on its constitutionality;²⁰
- (e) to confer honours;²¹
- (f) to appoint, accredit, receive and recognise diplomatic representatives;²²
- (g) to negotiate, sign and ratify international agreements, and to delegate such power;²²
- (h) to reprieve and pardon offenders and to remit fines, penalties and forfeitures;²³
- (i) to appoint and dismiss Ministers and Deputy Ministers;²⁴
- (j) to convene Cabinet meetings;
- (k) to proclaim referenda or plebiscites; and²⁵
- (l) to appoint commissions of enquiry.²⁶

²⁰ See also section 21 of the Draft on Parliament.

²¹ See point 3 Block 7 of the Report on the Presidency.

²² See point 4 Block 7 of the Report on the Presidency. It is advisable for practical reasons that provision also be made for delegation of the power to negotiate, sign and ratify international agreements.

²³ See point 5 Block 7 of the Report on the Presidency.

²⁴ See point 8 Block 7 of the Report on the Presidency. See also section 13 below. NP prefers appointment and dismissal of Ministers and Deputy Ministers to be the same as in section 88 of the Interim Constitution (which would require a government of national unity with minority parties forming part of the Cabinet).

²⁵ See section 82(i)(j) of Interim Constitution. No direct submissions on this point.

²⁶ See section 82(1)(g) of Interim Constitution. No direct submissions on this point.

Confirmation of executive acts of State President²⁷

7. (1) Decisions of the State President taken in the discharge of his or her powers and functions shall be expressed in writing under his or her signature.

(2) Decisions of the State President taken in consultation with the other members of the Cabinet shall be countersigned by a Minister.

(3) The signature of the State President on any instrument shall be confirmed by [the Seal of the Republic].²⁸

Remuneration

8. (1) The salary, allowances and benefits of the State President shall be determined by Parliament.

(2) The State President may not hold any other public office or perform any other remunerative work.²⁹

Deputy State President(s)/Prime Minister

9.³⁰

²⁷ See section 83 of the Interim Constitution. There were no direct submissions on this issue. Included for purposes of debate in TC 2. The counter-signing of instruments by Ministers is contentious. ANC wants to revisit this clause.

²⁸ The Seal of the Republic is an issue for TC 1.

²⁹ See sections 79 and 81(3) of the Interim Constitution.

³⁰ The question whether there should be a Deputy President or a Prime Minister or more than one Deputy Presidents is in contention. Further clarity is needed before any provisions can be drafted. See Blocks 3 and 6 of the Report on the Cabinet.

Acting President³¹

10. (1) If the State President is absent from the Republic or is otherwise unable to fulfil the duties of the office, or if the office of State President is vacant, an office-bearer in the order mentioned below shall act as the State President during the State President's absence or inability or until the vacancy is filled:

- (a) The Deputy State President.
- (b) If the Deputy State President is not available or if the office of Deputy State President is vacant, a Minister of the Cabinet designated by the State President.
- (c) If the designation of a Minister by the State President is for any reason not possible, a Minister designated by the other members of the Cabinet.
- (d) If the designation of a Minister by the other members of the Cabinet is not possible, the [Speaker].

(2) An acting State President has all the responsibilities, powers and functions of the State President.

³¹ The Acting President not dealt with in the Reports. The above formulation is included for purposes of debate in the TC. The formulation may have to be adjusted depending on how the issue of more than one Deputy President and a possible Prime Minister is resolved.

Removal of State President or Deputy State President³²

11. The National Assembly may remove from office the State President or the Deputy State President by resolution adopted by a majority of at least two-thirds of its members, but only on the grounds of a serious violation of the Constitution or the laws of the Republic, or of serious misconduct or inability rendering him or her unfit to exercise and perform his or her powers and functions.

Cabinet

12. (1) The Cabinet consists of the State President, the Deputy State President³³ and the Ministers.³⁴

(2) The State President or, in his or her absence, the Deputy State President or another member of the Cabinet designated by the President shall preside at meetings of the Cabinet.

³² No agreement on whether it is necessary to provide for the impeachment of the State President in view of the possibility of adopting a motion of no confidence in the State President. See section 20 below.

³³ The NP prefers two Deputy Presidents.

³⁴ As per Block 4 of the Report on the Cabinet. See also Blocks 7, 8, 9 and 13 of the Report on the Cabinet. Some of the parties propose provision also for a Prime Minister. It is a contentious issue whether the number of Ministers should be prescribed by the Constitution and whether the Cabinet should proportionally include members of minority parties.

Appointment and dismissal of Ministers and Deputy Ministers

13.³⁵

Oath or solemn affirmation³⁶

14. A person appointed as a Minister or Deputy Minister shall before assuming office make and sign an oath or solemn affirmation before the President of the Constitutional Court 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 undertake before those assembled here to hold my office as Minister/Deputy Minister with honour and dignity; to respect and uphold the Constitution and all other Law of the Republic

³⁵ See point 8 Block 7 of the Report on the Presidency. There are two approaches; one basically in line with sections 88(2) to (6) and 94 of the Interim Constitution, the other more or less as follows:

- "(1) The State President shall appoint the Ministers of the Cabinet from amongst the members of the National Assembly* to administer the various portfolios for which the national government is responsible.**
- (2) The State President may appoint Deputy Ministers from amongst the members of the National Assembly* to assist in the administration of portfolios for which the national government is responsible.**
- (3) A Minister and a Deputy Minister hold office for as long as it pleases the State President, but shall vacate office if he or she resigns from office or ceases to be a member of the National Assembly.*"**

*** Appointment of Ministers and Deputy Ministers from the Senate will depend on the role and function of the Senate. Furthermore, the NP favours the appointment of a limited number of Ministers from outside Parliament. The IFP proposed that Ministers should be appointed by the Prime Minister subject to ratification by Parliament.**

³⁶ As per Block 18 of the Report on the Cabinet.

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of South Africa; to be a true and faithful counsellor; not to divulge directly or indirectly any matters which are entrusted to me under secrecy; and to perform the duties of my office conscientiously and to the best of my ability.

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

Accountability of Ministers and Cabinet³⁷

15. (1) Ministers are individually accountable both to the State President and the National Assembly for the administration of the portfolios entrusted to them, and all members of the Cabinet are collectively accountable to the National Assembly for the performance of the functions of the national government and its policies.

(2) All Ministers shall administer their portfolios in accordance with the policies of the Cabinet.

Conduct of Ministers and Deputy Ministers³⁸

16. Ministers and Deputy Ministers shall at all times act in accordance with a code of ethical conduct which shall be prescribed by a national law. It shall be particularly forbidden for Ministers and Deputy Ministers -

(a) to take up any other paid employment;

³⁷ As per agreement in Blocks 10 and 12 of the Report on the Cabinet.

³⁸ As per agreement in Block 14 of the Report on the Cabinet.

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- (b) to engage in activities inconsistent with that of their office or to expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; and
- (c) to use their position, or any official information entrusted to them, to enrich themselves or any other person.

Remuneration³⁹

17. The salaries, allowances and benefits of Ministers and Deputy Ministers shall be as provided for by a national law.

Temporary assignment of Minister's powers and functions to another Minister³⁹

18. Whenever a Minister is absent or for any reason unable to exercise and perform any of the powers and functions entrusted to him or her, or whenever a Minister has vacated his or her office and a successor has not yet been appointed, the State President may appoint any other Minister to act in the said Minister's stead, either generally or to exercise or perform any specific power or function.

³⁹ As per Block 18 of the Report on the Cabinet.

Transfer of Minister's powers and functions to another Minister³⁹

19. The State President may assign the administration of a law entrusted to a particular Minister, or the discharge of any power or function entrusted by a law to a particular Minister, to any other Minister.

Votes of no confidence⁴⁰

20. (1) If the National Assembly passes a vote of no confidence in the Cabinet, the State President shall resign or shall dissolve the National Assembly and call an election of the National Assembly.

(2) If the National Assembly passes a vote of no confidence in the State President alone, he or she shall resign.

⁴⁰ As per Block 9 of the Report on the Cabinet. See also Block 9 of the Report on Parliament.