

2/4/2/1/9/3

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2

STRUCTURE OF GOVERNMENT

SEPARATION OF POWERS
(BLOCK 1)

REPORT AS AT 2 FEBRUARY 1995

1. INTRODUCTION

1.1 The Theme Committee 2 by 30 January 1995 had received submissions from the following parties, organisations and individuals.

PARTY SUBMISSIONS

ACDP
ANC
DP
FF
IFP
NP
PAC

ORGANISATION SUBMISSIONS:

ANCC
EFSA
ODISA

INDIVIDUAL SUBMISSIONS:

Bothma, O
Brijraj, R
Carser, A
Dimba, MS
Gottschalk, K
Stratten P & N

1.2. The constitutional Principle to which the Constitutional Assembly is required to give effect to in the new Constitutional Text is the following:

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"There shall be separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness."

- 1.3. It was understandable that many submissions on the "Separation of Powers" also focused on aspects of the "Structure of Government," which is the next subject for detailed information-gathering and report by Theme Committee 2. The Theme Committee will not report on this latter aspect of the submissions at this stage but will confine its report to the issue of "Separation of Powers".

2. AREAS OF AGREEMENT

2.1. SEPARATION OF POWERS

- 2.1.1. There was general agreement in the submissions that the new Constitution must contain specific provisions in which the separate legislative, executive and judicial powers are vested.

2.2. LEGISLATURE

- 2.2.1. There should be a parliamentary form of government.
- 2.2.2. Parliament shall be the expression of the will of the people.
- 2.2.3. The Legislative authority of the Republic shall, subject to the Constitution, vest in Parliament, which shall have the Supreme power to make laws for the Republic.

2.3. EXECUTIVE

- 2.3.1. The Constitution shall make specific provision for an executive authority.
- 2.3.2. The executive shall be accountable to Parliament.

2.4. JUDICIARY

- 2.4.1. There shall be an independent, impartial judiciary, subject to the Constitution.
- 2.4.2. There shall be an independent Constitutional Court with the powers to nullify any Act of Parliament if such Act is in conflict with the Constitution.

2.5. CHECKS AND BALANCES

- 2.5.1. There shall be checks and balances that will restrain each branch of government. (Checks and balances to be revisited and tabulated under block 2 and 3)