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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2 STRUCTURE OF GOVERNMENT

**CORE GROUP/THEME COMMITTEE
MEETINGS (18-21 APRIL 1995)**

**STRUCTURE AND FUNCTIONING OF
GOVERNMENT (NATIONAL LEVEL)**

**TECHNICAL COMMITTEES' DRAFT
REPORT: THE PRESIDENCY**

PRELIMINARY REPORT ON PARTY SUBMISSIONS TO THEME COMMITTEE TWO

A. THE PRESIDENCY

1. NATURE OF PRESIDENCY: EXECUTIVE PRESIDENT (HEAD OF STATE AND GOVERNMENT) OR ONLY HEAD OF STATE

ISSUE: Combined or Split Office

ANC: President with both ceremonial and executive powers (par 19).

NP: An executive president combining the powers of head of state and head of government (par A.1).

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

DP: President combine the function of Head of State and Head of Government (par 1). A distinction is, however, made when persons are appointed to assist the President in the execution of his or her duties.

(a) Vice-President to assist in the execution of the duties as Head of State which include the powers, duties and prerogatives normally associated with the office of Head of State.

(b) Prime Minister to assist in the executions of functions of government, namely, to coordinate the work of the cabinet and in the absence of the President preside over the cabinet.

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

CONSTITUTIONAL PRINCIPLE: VI

CONTENTIOUS: Split between office of head of state and head of government

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

2. ELECTION OF PRESIDENT

2.1. ISSUE: Method of election

ANC: President shall be elected by and from the National Assembly (par 19).

NP: Elected by Parliament as at present, that is to say, from among its members (par A.3).

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

FF: Elected by Parliament in joint sitting from among its members (par 10.1).

PAC: Elected by NA among its members.

DP: Direct election on same day as election of NA. President need not be member of Parliament (par 1.2)

CONSTITUTIONAL PRINCIPLE: VI

CONSENSUS/ NON-CONTENTIOUS: None

CONTENTION: Two views: 1. Parliamentary elected
2. Directly elected

2.2. ISSUE: President member of Parliament

ANC: On election President vacates his or her seat in Parliament (par 19).

NP: On election President vacates his or her seat (par D.2).

IFP: Not stated

FF: On election president vacates seat in NA (par 10.2).

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

PAC: President remains member of Parliament.

CONSTITUTIONAL PRINCIPLE: VI

CONSENSUS/ NON-CONTENTIOUS: None

CONTENTION: Two views: 1. Vacates seat in Parliament

2. Retains seat in Parliament

3. LENGTH OF TENURE

ISSUE: Limited or unlimited length of tenure

ANC: Term of office is linked to that of National Assembly. After dissolution of NA, the president could be re-elected for a second full term only (par 19). A maximum of 10 years.

NP: Term of office linked to that of NA. No limited on number of terms (par A.5).

IFP: One seven year term.

FF: No limitation on length (par 11.3)

DP: Tenure limited to two terms of 4 years each (par 1.1 & 1.4). Maximum of 8 years.

CONSTITUTIONAL PRINCIPLE: VI

CONSENSUS/ NON-CONTENTIOUS: None

CONTENTION: Two views: 1. Limited term of office (varying from 7 to 10 years)
2. Unlimited terms in office

4. REMOVAL / ACCOUNTABILITY TO PARLIAMENT

4.1. ISSUE: Motion of no-confidence

ANC: Parliament may pass a motion of no-confidence in the President. The President shall then dissolve Parliament and call a new election (par 28).

NP: After adoption of motion of no-confidence, President resigns or calls an election (par D.2).

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

FF: After adoption of motion of no confidence in President and cabinet, the president may resign or dissolve Parliament and call an election. If a no confidence motion pertains only to the President, he or she shall resign (par 19).

DP: After adoption of a motion of no-confidence in the prime minister and cabinet, President may dissolve Parliament, terminating also the presidency (par 1.1 & 4.3.2).

CONSTITUTIONAL PRINCIPLE: VI

CONSENSUS/ NON-CONTENTIOUS: Parliament should be able to pass a motion of no confidence in President and cabinet.

CONTENTION: The precise consequences of a motion of no confidence: dissolution of Parliament, or resignation of President only.

4.2. ISSUE: Impeachment

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

NP: Parliament may impeach members of the executive (par D.2).

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

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

DP: Impeachment for misconduct by resolution adopted by a 2/3 majority of each house in Parliament (par 1.5).

CONSTITUTIONAL PRINCIPLE: VI

CONSENSUS/ NON-CONTENTIOUS:

Parliament should be able to impeach President. Grounds for impeachment are substantially the same.

CONTENTION: Required majority: a) 2/3 majority
b) simple majority

5. POWERS OF THE PRESIDENT

5.1. ISSUE: Powers of combined office

5.1.1. Convening parliament:

ANC: President may summon National Assembly for an extraordinary sitting or for the discharge of urgent business (par 10.3).

IFP: (H of S) Convene parliament after elections

5.1.2. Dissolving Parliament

ANC: President has no power to dissolve Parliament before the expiry of 5 years, unless there is a vote of no-confidence in the cabinet or in the President (par 28).

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

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

5.1.3. Assent to laws

ANC: Yes

NP: Power to confirm bills of Parliament, but no substantive veto. Refer bill back to Parliament because of a procedural shortcoming. When doubting constitutionality of a bill, may refer it to Constitutional Court (par A.4(e)).

IFP: Yes

5.1.4. Veto of legislation

IFP: line-by-line veto power

5.1.5. Conferring honours

ANC: Yes

IFP: Yes

5.1.6. International relation: ambassadors, agreements, negotiate and sign

ANC: Yes

IFP: Accreditation of ambassadors and foreign delegations.

5.1.7. Pardon and reprieve offenders

ANC: Yes

IFP: Yes

5.1.8. Cabinet

5.1.8.1 Ministers, appoint and dismiss

ANC: Appoint and dismiss ministers at his or her discretion (par 22).

Not stated whether ministers should be members of Parliament.

NP: Appoint ministers from among members of Parliament (par A.4(d)). Appointment of non party political experts from outside Parliament to be used sparingly (par C.2).

FF: Appoint ministers from among members of Parliament (par 13). Dismiss ministers in his or her discretion (par 14).

DP: Appoint ministers from among members of Parliament (par 4.1).

PAC: Appoint ministers from among members of Parliament.

5.1.2.8.2 Manage and preside over cabinet

ANC: Manage and preside over cabinet (par 20 & 22).

NP: Chairs the cabinet (par A.4(a)).

FF: Preside over cabinet (par 15).

DP: Preside over cabinet (par 3.2)

5.1.8.3 Relation to cabinet

ANC: Consult with cabinet when taking important decisions. Ministers to advise President (par 24).

NP: Powers exercised mainly in consultation with the cabinet (par A.4.(b)).

DP: Unless otherwise provided in Constitution, President shall act on advice of cabinet (par 3.3).

5.1.9. Execute policies of national government

NP: Yes

5.1.10. Commander-in-chief of armed forces

ANC: Yes

IFP: Yes

5.1.11. Declare war, martial law, proclaim peace

ANC: Yes

5.2. ISSUE: Powers of head of state

IFP: President's (head of state) function is to ensure the preservation of the constitutional order and the proper functioning of the constitutional machinery.

Appoint head of government

5.3. ISSUE: Powers of head of government

IFP: Appointment of cabinet, subject to ratification by Parliament

Function: daily operation of government

ISSUE: Powers of the President

CONSTITUTIONAL PRINCIPLE: VI

CONSENSUS: President should have the following powers:
Convene Parliament
Assent to laws
Bestow honours
International relations
Reprieve and pardon
Commander-in-chief of armed forces
Declare war, martial law, peace

CONTENTION: Ambit of the following powers:

Dissolution of Parliament -
a) after no confidence
b) at any time

Appointment of ministers from outside Parliament.

Existence of the following powers:

Referring a bill to Constitutional Court
Veto legislation on line-by-line basis

Appoint and dismiss ministers
Preside over cabinet
Execute policy

B. SECOND IN CHARGE: DEPUTY PRESIDENT / PRIME MINISTER

1. ISSUE: Who is second in charge?

ANC: Deputy President

NP: Deputy President, two or at least one (par B.1).

IFP: Prime Minister as head of government

FF: Deputy President

DP: Vice President (head of state functions); prime minister (head of government functions)

CONTENTION: The divergent views on whether there should be a split between the offices of head of state and head of government, are repeated with the office of deputy / vice president / prime minister.

2. ELECTION OF DEPUTY / VICE PRESIDENT

2.1 ISSUE: Method of elections

ANC: Elected by NA from amongst its members (par 27).

NP: One of deputy presidents should come from second largest party in Parliament (par B.2).

DP: Nominated by President and then endorsed by majority of members of Parliament (par 2.2).

CONSENSUS: Elected by Parliament from among members.

2.2. ISSUE: Remains member of Parliament

NON-CONTENTIOUS: Not stated but assumed

3. POWERS

ISSUES: Powers of the deputy / vice president

3.1. Deputizing for the President

ANC: Will act as President in the latter's temporary absence or incapacity (par 27).

NP: In case of a vacancy, one of deputy presidents, nominated by cabinet, acts as President until new one

elected (par A.6). Acts on President behalf in his absence, including chairing cabinet (par B.3).

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

FF: To deputize in case of incapacity or absence (par 11.5).

3.2. As executive deputy president

ANC: Member of cabinet. President may assign duties and functions to the Deputy President (par 27).

NP: Members of cabinet. President must assign substantial executive powers to them. Be consulted on important policy decisions, ministerial appointments, as provided in present constitution (par B.3).

FF: To perform some of the duties of the president (par 9).

3.3. Powers restricted to functions of head of state

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

CONTENTION: The powers of the deputy / vice president depend on the nature of the office of the president. If the powers of the President are those of a head of state, then his or her deputy would have similarly powers.

4. REMOVAL

4.1. ISSUE: Impeachment

ANC: Same as for President.

NP: Yes (par D.2).

FF: Same as for President.

CONSENSUS: Parliament should be empowered to impeach.

C. PRIME MINISTER

ISSUE: Appointment and powers of prime minister

IFP: Prime Minister appointed by President after consultation with the leaders of the political parties.

PM forms cabinet and submits it for ratification by means of vote of confidence to Parliament.

DP: Prime Minister appointed by President.

To assist in the executions of functions of government.

Leader of the Government business in Parliament:
coordinate the work of the cabinet and in the absence of the President preside over the cabinet.

CONTENTION: Where there is a formal split between the offices of the head of state and the head of government, then the head of government (PM) would perform those executive functions not performed by the President.