

2/4/21/91

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2

STRUCTURE OF GOVERNMENT

REPORT ON THE SENATE
(Second Draft)

DOCUMENTATION

THEME COMMITTEE 2

DRAFT REPORT ON BLOCKS 2 AND 3

THE SENATE (SECOND CHAMBER)

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	Terminology	Senate		
	<p>Nature and purpose of the Senate</p> <p>1. The ANC proposes, within the context of "cooperative governance", and with a view to "good government", the senate as a perpetual body and a forum for provinces to bear co-responsibility for the management of the country as a whole. The Senate should be the main player in the relationship between the national and provincial levels. The Senate should be a working, as opposed to a reasoning and debating, body.</p> <p>2. The DP proposes the Senate as second chamber of Parliament, with as primary but not exclusive functions review of legislation and representation of provincial interests.</p> <p>3. The FF proposes that the Senate should reflect the diverse nature of the country and society, and that its primary function should be to look after provincial and cultural interests.</p> <p>4. The IFP proposes that the Senate should represent the provinces, and should monitor the Executive in certain activities which fall outside provincial competencies.</p>			

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	<p>5. The NP proposes the Senate as the second chamber of Parliament with as main purpose representation of provinces, and control and revision and the promotion of good government as secondary purposes. The Constitution should contain an express reference to the main purpose of the Senate.</p> <p>6. The PAC is in favour of the abolition of the Senate.</p> <p>7. The CPG is in favour of a second chamber if it is designed to provide internal control over government and broaden representation of e g provinces or other significant interest in society.</p> <p>1. The ANC submission raises the question whether, in view of the "completely new character" of the Senate, the term "Parliament" should be confined to the NA; and whether the Executive should be accountable to the NA only (see also "Relationship towards the Executive").</p> <p>2. A submission was also received from the DP (Gauteng region) in which it is proposed that the Senate should be more powerful, not merely representing provincial interests, but also interacting with the provinces on a meaningful basis.</p>			
	<p><i>Individual submission:</i> <i>O Bothma: Provinces to send delegates to second chamber to advise State President</i></p>			

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	<p>Composition and size: 5, 7, 8 and 10 per province</p> <ol style="list-style-type: none"> 1. The ANC proposes a senate of 5 or 10 members per province, drawn from provincial legislatures and/or executives, and possibly local government, as a single delegation. 2. The DP is in favour of 7 members from each province. 3. According to the FF, the size of the Senate would depend on its functions: it specifically proposes 8 Senators per province nominated by parties in the provincial legislature; 8 nominated by the "National Council of Traditional Authorities"; 8 elected by voters on the "community voters roll" (at least the Afrikaner one); an undefined number for other "cultural self-determination" entities. (In an earlier proposal, reference was also made to representation for "corporate entities", such as organised labour, organised business and organised culture.) 4. The IFP proposes equal representation of provinces (number unnamed). 5. The NP proposes 10 Senators per province. 6. The CPG is satisfied with equal representation of provinces, and would appear to favour the current 10 per province; it does not express an opinion on the representation of other interest groups, but draws the attention of the CA to this matter. 			<p>1. The DP (Gauteng region) proposes equal representation for each province.</p> <p><i>For individual submissions on the size of Parliament, see report on the NA</i></p>

How to apply it is a matter for leg/Depts
 depends on the composition of seats + system of election

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	<p>Appointment/election:</p> <p>1. The ANC proposes that senators be appointed from the members of the Provincial Legislature and/or Executive. 2. The DP proposes indirect election by the provincial legislatures on a proportional basis for 4 years.</p> <p>3. The FF suggests that 8 senators per province be nominated by the parties represented in the Provincial Legislature.</p> <p>4. The IFP supports election by the provincial legislatures for 5 years, in consultation with provincial cabinet.</p> <p>5. The NP is in favour of indirect election by the provincial legislatures on proportional basis, with a change in the present formula in favour of smaller parties. If ANC get 2, 8 must go to</p> <p>6. The CPG proposes that senators be elected members of the provincial legislatures, nominated by the legislatures on a proportional basis.</p>	<p>Equal number of senators per province</p> <p>Free the 1 stand rep. other category =</p> <p>Agree that elected by provincial legislatures</p> <p>NP's will vote on the basis of proportional representation</p>	<p>of province</p> <p>no complete agreement</p>	<p>1. The DP (Gauteng region) proposes direct election on a list system.</p>
	<p>Recall</p> <p>The ANC is in favour of the principle of recall of Senators by the provincial legislatures and/or executives.</p>	<p>Constitutional</p>	<p>where from elected.</p>	<p>will they be</p>

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	<p>Powers and functions:</p> <p>1.1 The ANC proposes a fourfold function for the Senate:</p> <ul style="list-style-type: none"> a. To have a close and ongoing relationship with the provinces b. To have real say over NA bills relating to provinces, and articulate provincial interests at national level c. Initiate legislation relating to provincial interests, and be co-responsible for the country as a whole d. Less influence over national legislation dealing with exclusive national competencies. <p>1.2 The ANC specifically proposes the following i r o legislative competence:</p> <ul style="list-style-type: none"> a. disputes between the national and provincial levels on concurrent legislative powers: <ul style="list-style-type: none"> i. if approved by the Senate, such a bill will be deemed necessary for and desirable for the purposes of the "national interest, norms and standards" ii. if a dispute cannot be resolved by judicial interpretation of the Constitution, precedence will be given to national legislation; b. specific role for Senate in the approval of framework legislation i r o exclusive executive functions for provinces c. Senate's consent to be obtained i r o allocation of resources to provinces. 			<p>1. The ANC would like to see the judicial determination of the pre-eminence of national legislation replaced by the provinces themselves through the Senate determining the desirability of the national legislation.</p>

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	<p>1.3 The ANC further proposes that the Senate should have a say over the content of national subordinate legislation affecting the provinces.</p> <p>1.4 The Senate should also be the channel through which the provinces participate in fiscal matters, in particular the budget.</p> <p>1.5 The Senate would have no legislat power to block financial legislation.</p> <p>1.6 The Senate would have the power to block or delay bills dealing with provincial matters, and to review other legislation.</p> <p>2. The DP is in favour of equal powers with the NA, except i r o money bills (excluding money bills allocating funds to provinces) and legislation affecting powers, functions and boundaries of provinces.</p>			

for both senate + National Assembly

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	<p>3. The FF proposes that the Senate be empowered to interact with provinces and/or corporate groups, and review, revise and veto legislation relating to the provinces; also to initiate judicial review of legislation; to seek consensus and dialogue; to protect the Constitution; to protect minorities and minority rights.</p> <p>4. The IFP maintains that the Senate must have concurrent legislative power with the National Assembly.</p> <p>5. The NP would see the Senate: a. consider all bills b. in the case of ordinary bills that after disagreement with the NA have been considered by a joint committee, consider the bill separately again c. retain its powers i t o sec 61 i r o provincial boundaries d. have the same powers i r o money bills as in the case of ordinary bills e. retain its current powers i t o bills relating to provincial finance and constitutional amendments f. be the chamber where bills affecting the provinces should be introduced (also for the provinces) on bills referred to in e.</p>			

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	<p>g. having an extended role in certain appointments</p> <p>h. be represented in the CPG and Financial and Fiscal Commission</p> <p>i. be a watchdog over constitutionality of bills.</p> <p>6. The CPG -</p> <p>a. supports the present sec 59(1) on separate adoption of bills</p> <p>b. in the case of disagreement between the NA and the Senate, proposes that if the joint committee's proposals are rejected, the bill be introduced in both houses after six months, and only then, failing agreement, be submitted to the houses sitting together</p> <p>c. is in favour of the current arrangement on money bills, but proposes that administrative processes be strengthened to provide for dispute resolution before the introduction of bills</p> <p>d. proposes that bills i r o the functional areas of provinces be introduced in the Senate first, and only be passed with the concurrence of the majority of a province's senators if the matter relates to a specific province</p> <p>e. supports the current provisions on constitutional amendment</p> <p>f. proposes the incorporation of CP XVI, XX, XXI, XXII, XXIII AND XXVI into the final Constitution.</p>			

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	<p>Relationship towards the executive</p> <p>1. ANC: Proposes that the Executive should not be accountable to the Senate.</p> <p>2. Other parties propose accountability to Parliament (see "Relationship towards the Executive" in report on NA).</p>			
	<p>Relationship towards provinces (see also "Nature and purpose of the Senate" and "Powers and functions" above)</p> <p>1. The ANC proposes a close and ongoing relationship between the Senate and the provinces by virtue of the composition of the Senate.</p> <p>2. The DP proposes Standing Consultative Committees with the provinces.</p> <p>3. The FF proposes a constitutional mandate for the Senate to interact with the provinces</p> <p>4. The IFP would give the provincial premiers and/or their ministers the of designees the "privilege of the floor" in the Senate.</p>			<p>The DP (Gauteng region) is in favour a constitutional requirement of meaningful interaction; constitutionally provided committees of the Senate to .</p>
	<p>Party discipline</p> <p>1. The ANC proposes that in order to avoid voting along party lines, the Executive should not be accountable to the Senate.</p> <p>2. The NP proposes that a convention be developed that senators are not required to vote along line on matters directly affecting the provinces.</p>			

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Section 49	<p>President and Deputy President:</p> <ol style="list-style-type: none"> 1. The FF proposes retention of the current provision. 2. The CPG is also in favour of a provision resembling sec 49. <p>This issue has not been discussed by other parties, and one can only assume that there is no contention.</p>			
Section 50	<p>Qualifications for membership:</p> <ol style="list-style-type: none"> 1. ANC: A senator has to be a member of a provincial legislature/executive 2. DP 3. FF: Current provision 4. NP: same as for NA, with requirement of ordinary residence in the province. 5. CPG: Unless its proposal of Senators being members of provincial legislatures is accepted, it is in favour of the current provision, coupled with the requirement of ordinary residence. 			<ol style="list-style-type: none"> 1. The DP (Gauteng region) proposes a residential requirement in addition to any other qualifications.

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Section 51	<p>Vacation of seat and filling of vacancy:</p> <ol style="list-style-type: none"> 1. ANC: In support of recall and replacement by provincial legislatures/excutives. 2. FF: Current provision. 3. NP: Current provision, in terms of stated position. 4. CPG: a. Would retain sec 51(1) (resignation etc) b. In favour of free mandate (i e change of party does not terminate membership of Senate) c. Following a dissolution of a provincial legislature, the Senators concerned should resign and be replaced i t o CPG proposals for nomination of senators d. Vacancy to be filled for remainder of term. 			
Section 53	<p>Sittings of Senate:</p> <ol style="list-style-type: none"> 1. The ANC's proposal of the Senate as a perpetual body, may affect the question of sessions/sittings. 2. FF: Current provision. 3. NP: current provision, i t o stated position. 4. CPG: Current provision. <p>The matter would appear not to be contentious.</p>			

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Section 54	<p>Quorum:</p> <ol style="list-style-type: none"> 1. FF: Current provision 2. NP: Current provisions i t o stated position. 3. CPG: Current provision. <p>This matter might be contentious depending on which powers are given to the Senate. If the IFP model is followed of concurrent legislative power then the same quorum as that of the National Assembly might be required.</p>			
Section 55	<p>Powers, privileges, immunities and benefits:</p> <ol style="list-style-type: none"> 1. CPG: Current provision <p>The parties did not address this and we assumed that there is satisfaction with what is contained in Section 55 of the Interim Constitution</p>			
Section 56	<p>Sitting when disqualified:</p> <ol style="list-style-type: none"> 1. CPG: Current provision. <p>This matter was not addressed by the political parties.</p>			
Section 57	<p>Joint sittings:</p> <ol style="list-style-type: none"> 1. CPG: Current provision. <p>This matter was not addressed by political parties (but see report on NA).</p>			

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Section 58	<p>Rules and orders:</p> <p>1. CPG: Current provision.</p> <p>We assume that the parties are satisfied with what is contained in Article 58 of the IC.</p>			
	<p>Oath or affirmation</p> <p>1. FF: Current provision</p>			
	<p>Other issues not addressed by parties, but dealt with under National Assembly (see report on NA):</p> <ol style="list-style-type: none"> 1. Summoning of Senate 2. Sessions 3. Term and dissolution (see also "Sittings of Senate") 4. Continuation of membership after dissolution of Senate 5. Rights of non-members entitled to be in Senate (see also "Relationship towards provinces") 6. Voting right of presiding officer 7. Committees (see also "Relationship towards provinces") 8. Majorities for decisions (but see "Powers and functions") 9. Assent to bills 10. Public access to the Senate 11. Role of minority parties (see also "Composition", "Appointment/election", "Powers and functions"). 			

