

2/4/21/9/12

**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 2  
STRUCTURE OF GOVERNMENT**

**THEME COMMITTEE MEETING**

Friday  
5 May 1995  
9h00  
M46

**STRUCTURE OF GOVERNMENT  
National Assembly, Presidency,  
Cabinet  
(block 2)**

**DRAFT REPORT  
(Compiled by Technical Committee)**

**THEME COMMITTEE 2****DRAFT REPORT ON BLOCKS 2 AND 3****THE NATIONAL ASSEMBLY**

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	Terminology	'Parliament', 'National Assembly', 'Senate', 'Speaker' and other terms currently used in connection with legislature		Use of 'Parliament' in Constitution to be revisited after finality on kind of Senate
Section 46(1) 46(3) 57(3)	Summoning of NA and Parliament	1. Chief Justice convenes 10 days after election  2. President may summon for extraordinary sitting for urgent business  3. President may summon joint sitting when deemed desirable		
Section 46(1) 46(3)	Sittings and sessions	NA determines sessions and sittings		Place where NA sits (other TC)
Section 57	Joint sitting of two houses			Stand over until finality reached over Senate
Section 40(1)	Size of NA			1. More work needs to be done on this aspect  2. Size to be revisited

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	Constituencies			To be discussed in conjunction with electoral system in another block
	Election of members	Affected by two factors: 1. Electoral system 2. Senate		Further investigation needed
Section 42	Qualifications for membership	Qualifications contained in IC sec 42, subject to omission of subsec (1)(a) relating to first election under IC		
	Term and dissolution	1. 5 years, except for DP (4 years) 2. Fixed term, unless dissolved as result of vote of no-confidence 3. May only be dissolved by President following vote of no-confidence		1. Number of years to be revisited  3. See also section on President/cab-inet
Section 38(2) and (3)	Continuation of NA and membership after dissolution	Parliament and members continue until day before next election		
Section 45	Oath of office	Oath and person before whom made		

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 43	Vacation of seat	1. Become disqualified i t o IC sec 42  2. Resignation  3. Membership of Senate, provincial legislature or local govt		Revisit:  1. Cease to be member of nominating party, right of recall and free/imperative mandate  2. 15 consecutive days absence
Section 44	Filling of vacancy			Stand over for electoral system
Section 66	Rights of non-members entitled to be in NA	President, Deputy President, Minister and Deputy Minister may sit and speak but not vote in house of which he/she not member		Agreed subject to kind of Senate
Section 56	Disqualified person sitting	Knowingly sitting while disqualified subject to penalty stipulated by rules and orders		
Section 41	Presiding officers	Current provisions		
Section 41(8) 57(2)	Voting right of presiding officer	Presiding officer has only casting vote in event of equality of votes (in NA and joint sitting of two houses)		
Section 58	Committees	Agreed subject to -  1. question whether there should be duty to create committees  2. kind of Senate		To be revisited

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 55	Rights, immunities, privileges, benefits	Current provisions		
	Powers of NA			To be dealt with in conjunction with relationship between Parliament and provinces
Section 47 63	Quorum and majorities for decisions			To be revisited in view of following questions:  1. Should quorum be prescribed by Constitution?  2. Required majority for decisions?
Section 59, 60, 61 and 62	Types of legislation and procedure for passing	1. Ordinary bills 2. Money bills 3. Bills affecting certain provincial matters 4. Constitutional amendments		Money bills and constitutional amendments to be revisited: money bills pending further discussion; amendments when dealt with in later block
Section 64	Assent to bills	President has to assent and sign bill unless -  1. there is procedural irregularity; or  2. the bill has been referred for a ruling on constitutionality to the Constitutional Court, after first being referred back to Parliament and passed again		

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 65	Enrolment and public access to laws	<p>1. Copies in required official languages to be kept by Registrar of Court</p> <p>2. Signed copy prevails in event of conflict</p> <p>3. Subject of Act protecting safety and durability of Acts, public have access</p>		To be revisited: whether Act should be kept at Appellate Division or Constitutional Court
Section 67	Public access to NA	Public and media have right to access subject to reasonable measures, including search, refusal and removal		
	Relationship towards the Executive			To be revisited in conjunction with Presidency and Cabinet
	Relationship towards other chamber			To be revisited in conjunction with kind of Senate and relationship between national and provincial levels of government
	Role of minority parties		Contentious for National Party	<p>Other aspects subject of continuing debate, considering that:</p> <p>1. minorities are not necessarily a matter for the Constitution, and</p> <p>2. other political parties are not opposed to voluntary coalitions</p>

## **REPORT ON SUBMISSIONS : THE NATIONAL ASSEMBLY**

### **1 Introduction**

This part of the report should be read with the tabular analysis above, and the sections on the Senate, the Presidency and the Cabinet. It deals with the National Assembly under the following headings, which were identified on the basis of submissions received and discussions in the Theme Committee:

- 1 Terminology
- 2 Summoning of National Assembly and Parliament
- 3 Sittings and sessions
- 4 Joint sitting of two houses
- 5 Size of National Assembly
- 6 Constituencies
- 7 Election of members
- 8 Qualifications for membership
- 9 Term and dissolution
- 10 Continuation of NA and membership after dissolution
- 11 Oath of office
- 12 Vacation of seat
- 13 Filling of vacancy
- 14 Rights of non-members entitled to be in National Assembly

- 15 Disqualified person sitting
- 16 Presiding officer(s)
- 17 Voting rights of presiding officers
- 18 Committees
- 19 Rights, immunities, privileges, benefits of members
- 20 Powers of National Assembly
- 21 Quorum and majorities for decision
- 22 Types of legislation
- 23 Assent to bills
- 24 Enrolment and public access to laws
- 25 Public access to National Assembly
- 26 Relationship towards the Executive
- 27 Role of minority parties



Certain issues addressed here would apply equally to a second chamber of Parliament, or Parliament as a whole, and will be referred to in the discussion of the Senate.

The purpose of this part of the report is to summarise the gist of submissions received. It should be noted that the IFP was not present during the discussion of of this part of the report.

## **2 Submissions**

Submissions on the National Assembly were received from -

1 Parliamentary political parties

2 Other organisations (including non-parliamentary parties)

3 Individuals

## **3 Constitutional Principles**

The following Constitutional Principles have a direct bearing on the aspects of the National Assembly dealt with in this report: IV (Constitution supreme law of the land, binding all organs at state at all levels of government); VI (separation of powers and checks and balances); VIII (representative government and proportional representation in general); X (formal legislative procedures); XIV (participation of minority political parties in the legislative process); XVII (democratic representation at each level of government).

## **4 Submissions received on the aspects of the National Assembly listed above**

#### 4.1 Terminology

Insofar as they have expressed a view, all parliamentary parties are of the opinion that the 'lower house' or 'first chamber' should be called the National Assembly, as at present. The Constitutional Principles are silent on this matter. There was no serious challenge to the expression 'National Assembly' in other submissions.

The same would appear to apply to the titles of office bearers ('Speaker' and 'Parliament', e.g.).

Two organisations proposed different legislative structures [*People's Cultural Organisation - replace parliament by People's Congress/Chamber; House of Royal - number of proposals for substantially different parliamentary organisation for United Kingdom of South Africa to operate in conjunction with existing system*].

#### 4.2 Summoning of National Assembly and Parliament

No submissions received.

#### 4.3 Sittings and sessions

No submissions received.

#### 4.4 Joint sittings of two houses

No submissions received.

#### 4.5 Size of the National Assembly

On the size of the National Assembly there is no unanimity, not only among political parties, but also individuals. No other organisation expressed itself on the size of the NA.

Among political parties, the spectrum ranges from the PAC, which is not in favour of a reduction in membership, over the ANC (which promised a further submission and suggested that the size of the National Assembly is linked to the electoral system, the NP (in favour of the current structure, but also suggesting a possible reduction), the IFP (proposing the current system for 10 years, then a reduction to 170 members, to the DP (which proposes a 300 member NA, 240 in multi-member constituencies, 60 on party lists nationwide). According to the FF, the size of the NA will depend on the powers of the provinces, but it would probably be satisfied with the current arrangement, or an NA of between 350-400 members.

The majority of individuals who addressed the issue of size, was in favour of a smaller NA. Some were specific in their proposals, others merely indicate that there should be fewer members of Parliament. Two individuals expressed satisfaction with the current 400 members of the NA.

The following is a brief summary of the viewpoints of individuals:

CA Spero - 10 members per province; O Bothma - size confined to number of ministers; K Gottschalk - total parliamentary membership not more than 300; PJ Knock - fewer legislators; HJ Smith - small legislature appointed by provinces; MS Kamedien - fewer members; J Luus - too many members; CG Schmidt - reduce to 200; GJ Selikow - content with size; IE Watson - fewer members [300]; AH Taute - fewer members (300); MC D'arcy - not more than 200 MPs; PI du Preez - 400 members; TB Kourie - fewer members; EJ Sayer and others - not more than 300 members; PJ Sousa - too many MPs (360 proposed); JF Theunissen - too many MPs; combine with senate into not more than 100 plus ministers; GC Bydowell - not more than 100 MPs; PS Clark - number of members related to 'world average'; JW Conroy - 200 members; CG Snyman - 200 members.

Contralesa proposed that the 'legislative chamber' include traditional leaders.

#### 4.6 Constituencies

The question of constituencies will have to be dealt with under the electoral system. Although political parties expressed themselves briefly on this aspect (e g ANC and DP), the majority of submissions so far came from individuals. A clear preference for the reintroduction of constituencies (pure or in conjunction with lists) was expressed; a number of respondents also indicated a preference for a free mandate and the right of recall: Griggs - constituencies and recall; Gary Ninow - constituencies, no lists;

K Gottschalk - mix of constituencies and proportional representation; PJ Knock - constituencies; R Shea - right of recall; H de Villiers - proportionality failed (probably meant list system); BS Hiddleston - partially constituencies (up to 20%); resigning from party should not disqualify member; salaries of MP by independent and impartial committee; GJ Selikow - mixed STV and constituency system; AH Taute - mixed constituency and list; free mandate; MC D'arcy - minimum educational qualifications for MPs; PI du Pr ez - constituencies; 4 year term with maximum of 3; J Glyn - mixed list and constituency; independent candidates to be allowed; Joy Macnab - constituencies; UA Naicker - minimum qualifications for public office; D Rabie - constituencies; EJ Sayer and others - constituencies; A Smith - constituencies; audited disclosure of finances of MPs; FLE Watermeyer - (by inference in favour of) constituencies; MP should be allowed to cross floor after consulting constituency; MPs reside in constituency; H Voges - constituencies and list; allow crossing of floor; PS Clark - minimum qualifications; constituencies; D Shepherd - constituencies.

#### 4.7 Election of members

No submissions received.

#### 4.8 Qualifications for membership

Political parties have not expressed themselves on this issue.

N Shepstone would want qualifications of voters and elected constitutionally entrenched, while a group of St 8 pupils from Motse Maria High School suggest that members of the National Assembly should be 30 years old.

#### 4.9 Term and dissolution

The DP proposes a 4 year term. The other parties are in favour of 5 years (ANC; FF; IFP; NP).

Individuals and others also reacted: PS CLark 4 year term; RM Longden-Thurgood - 5 year period; St 8 pupils from Motse Maria High School - 5 year term.

#### 4.10 Continuation of NA and membership after dissolution

No submissions received.

#### 4.11 *Oath of office*

No submissions received.

#### 4.12 *Vacation of seat*

No submissions received.

#### 4.13 *Rights of non-members entitled to be in NA*

No submissions received.

#### 4.14 *Disqualified person sitting*

No submissions received.

#### 4.15 *Presiding officers*

Three parties expressed a view under this heading: the ANC proposed that a Speaker and Deputy Speaker should be elected from the members of the NA and that a leader of Parliament be elected by the majority party (to liaise with the Speaker and the Cabinet and to be responsible for the legislative programme). The IFP referred to a 'President' of the National Assembly, one of whose functions would be to call an election if the President of SA becomes permanently incapacitated. The FF supports the present constitutional arrangements. In terms of its stated position that unless indicated otherwise, it is in favour of the current provisions of the Constitution, the NP would agree to the existing measures.

Individuals and other organisations did not express themselves on this issue.

#### 4.16 *Voting right of presiding officer*

Parties agreed during the discussion in the Theme Committee that the presiding officer should have a casting vote.

#### 4.17 *Committees*

Four political parties offered a view on this aspect. The ANC sees the role of committees to enhance executive accountability to an informed parliament; to provide a role for minority parties; to allow for informed public debate on legislation; to consider legislation; and to hold public inquiries. The DP proposes Portfolio Committees to hold the executive accountable, while the PAC proposes that the committee system be strengthened. The FF supports the current system; as would the NP in terms of its stated position.

Two individual submissions contained references to committees: K Gottschalk - committees should have budget for secretariat and research staff; and HJ Smith - specialised committees should be provided for.

#### 4.18 *Rights, immunities, privileges, benefits*

Only two political parties mentioned rights and immunities in their submissions. The ANC proposed that this matter be dealt with by Act of Parliament, subject to freedom of speech and debate in Parliament and in Committees. The IFP is in favour of privilege for statements made by members in and out of Parliament, subject to correction of factual error; and of some degree of immunity from legal proceedings. The NP would support the current arrangement.

Two individuals referred to an issue which could be classified under this heading: MS Kamedien - would like to give the tax payer a say in members' salaries, while JW Conroy suggested that MPs should receive no salary increase during their term of office, and they should submit a statement of assets and liabilities to an ombudsman.

#### 4.19 Powers of the National Assembly

The question of powers of the NA can only be fully dealt with in conjunction with the relationship between the two houses of Parliament and between the national and the provincial levels of government. The following appeared from submissions received so far:

The ANC proposed that the NA control national budget, and that it takes primary responsibility for the preparation and adoption of 'main' laws. According to the DP, the NA should be the primary but not exclusive place for the initiation of legislation. The IFP would like the powers of the national government to be listed in the Constitution.

Individual submission dealing with the question of powers, covered the following: P Dickerson - the power of taxation should be limited to purposes listed in the Constitution; BS Hiddleston - the powers of the national government should listed, the remainder going to the provinces; PI du Preez - listed 15 responsibilities/powers of the 'federal' parliament.

#### 4.20 Quorum and majorities for decisions

The ANC proposes a quorum of 1/3; for passing of legislation 50% without the vote of the presiding officer; constitutional amendments, 2/3 of both houses; all other matters, simple majority of those present.

The DP is in favour of a simple majority except for amendments (no proposal for the latter). The FF, and the NP in terms of its stated position, support the existing quorum arrangement.

No submission on this score was received from individuals or other organisations.

#### 4.21 Types of legislation and procedure for passing

The IFP came closest when it suggested that any member should be entitled to introduce a bill; that no difference should exist between public and private bills; that government bills should receive no special treatment; that a legislative proposal should be accompanied by a brief memorandum; that a bill should be assigned to a committee before introduction; and that rules and orders ('parliamentary law') should provide for specific matters.

#### 4.22 Assent to bills

No submissions received.

#### 4.23 *Enrolment and public access to laws*

No submissions received.

#### 4.24 *Public access to NA*

The ANC proposed that sittings should be in public subject to reasonable restrictions in the interest of the security of Parliament or due to a compelling state interest. In terms of its stated position, the NP would support the current arrangement.

#### 4.25 *Relationship towards the Executive*

The following aspects resorting under this heading, are covered in the sections on the Presidency and the Cabinet:

##### 4.25.1 Executive accountability to the Legislature

##### 4.25.2 Vote of no confidence in the Executive

##### 4.25.3 Election and dismissal/impeachment of President

##### 4.25.4 Powers of President i r o NA/Parliament

4.25.5 Other aspects: The DP proposed that with the Senate the NA ratifies treaties, international agreements, ambassadorial appointments and those of key personnel in the Security Services. The IFP recommended that the NA ratifies (with the other chamber) cabinet appointments; one house has to ratify the substitution of a minister; and Parliament may ask a minister for information or to resign. The NP proposed without further detail that the relationship between the legislature and the executive be defined in the Constitution.

The PAC recommended that members of executive sit in the legislature; that the executive does not appoint persons to the legislature; that the executive does not decide over elections; that the executive does not convene or dissolve legislative assemblies; that it has no say over the remuneration of legislators; that the legislature decides over funds, and that the executive be held accountable for the handling of money; and finally that no delegation to executive takes place without retaining control.

The ACDP proposed that the executive should not be able to dissolve the legislature.

GJ Selikow proposed that Parliament should elect the cabinet by single transferable vote (STV).



#### *4.26 Relationship towards the other chamber (if any)*

The following political parties referred to the relationship between the NA and a second chamber, thereby either implying or expressly proposing a two chamber parliament:

ANC (the NA should have final power i r o financial bills; equal powers i r o provincial matters; subject to review by the second chamber (without veto) of all other matters); DP (equal powers except budget and money bills, where NA will override; i r o provincial powers, functions and boundaries, and distribution of financial resources between provincial and national levels, DP would appear to imply overriding power for second chamber); IFP (equal powers for the two chambers, with a joint standing committee for the resolution of differences); FF (legislation relating to provinces subject to revision, review and even veto by the Senate); NP in terms of stated position in favour of status quo.

As far as submissions from individuals are concerned, N Athinodorou would like to give the Senate a veto i r o provincial matters, while KT Sonjica proposed that money bills be introduced at a joint sitting of the NA and the Senate.

#### *4.27 Role of minority parties*

Two political parties referred to minority parties in their submissions. The ANC proposed an undefined role for them in committees of the NA, while the IFP foresaw that they could introduce laws, and be protected by parliamentary rules and orders. In terms of its stated position, the NP would be in favour of the current dispensation.

The following individual submissions referred to minorities/minority parties: BS Hiddleston, who merely stated that power-sharing by minorities should be strengthened; MC D'arcy, who suggested entrenched representation for minorities; and N Shepstone, who felt that minority protection should take place through the bill of rights.

#### **POSTSCRIPT**

The Free Africa Foundation (Washington), the People's Cultural Organisation, the House of Royal, the Conservative Party, and RB Mattes, all proposed something significantly different from the current system, aspects of which might be dealt with under the Volkstaat block and Traditional Leaders.

## THE PRESIDENCY

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	Combined or split office: head of state and head of government	Combined office		<ol style="list-style-type: none"> <li>1. The IFP prefers separate offices</li> <li>2. The majority of individual submissions received expressed preference for non-executive head of state</li> </ol>
Section 77(1), (2) and (3); Sched 5	Election of President	The majority of parties support an indirectly elected President		<ol style="list-style-type: none"> <li>1. The DP prefers a directly elected President</li> <li>2. The NP is not against a directly elected President</li> <li>3. Whether election should be by the NA or Parliament to be revisited when finality reached on composition of the Legislature</li> </ol>
Section 77(4)	President member of Legislature?	Not member of Legislature		The PAC prefers President to be member of legislature
Section 80	Tenure of office and number of terms	Tenure of office linked to term of legislature		<ol style="list-style-type: none"> <li>1. Number of terms that President may serve to be revisited</li> <li>2. IFP prefers one 7 year term</li> </ol>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 93	Motion of no-confidence by legislature	The legislature may pass a motion of no-confidence (the DP reserving its position)	Consequences of motion of no-confidence	<p>1. Section 93 of the Interim Constitution provides for a motion of no-confidence in the President and/or Cabinet</p> <p>2. In view of section 93(2) - after a successful vote of no-confidence in the President by ordinary majority he/she has to resign - the question arises whether impeachment by a two-thirds majority (section 87) serves any purpose</p>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 82	Powers and functions	<p>1. Convene the Legislature for urgent business (see section 46(3) and 53(3) of the Interim Constitution; and request joint sitting of houses when he/she deems it desirable (section 57(3))</p> <p>2. In view of fixed term of Legislature, may only dissolve Legislature in circumstances provided for by Constitution</p> <p>3. Has to assent to bills and sign unless:</p> <p>a. there is procedural irregularity; or</p> <p>b. the bill has been referred for a ruling on constitutionality to the Constitutional Court, after first being referred back to Parliament and passed again</p>		<p>1. The IFP favours a Prime Minister as head of government</p> <p>2. Declaration of war, martial law and conclusion of peace to be revisited</p> <p>3. Acts in consultation with Cabinet to be revisited</p>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
		<p>4. President has right to appoint and dismiss ministers and deputy ministers</p> <p>5. Manage, and preside over cabinet</p> <p>6. Acts in consultation with Cabinet</p> <p>7. Ensures upholding of constitutional order and proper functioning of constitutional machinery</p> <p>8. Confers honours</p>	<p>Whether President acts in sole discretion or in accordance with provisions of the Constitution</p>	
		<p>9. International relations</p> <p>10. Reprieve and pardon</p> <p>11. Commander-in-chief of armed forces</p>		

## THE CABINET

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
XXXII	Constitution has to provide that until 30 April 1999 the executive at national level to remain substantially the same as under the Interim Constitution			
XXXIII	Constitution has to provide that in the absence of a vote of no-confidence in the Cabinet, there may not be a national election before 30 April 1999			
	Nomenclature	Cabinet; president; deputy president (not 'executive' deputy president); minister; deputy minister		The DP and the IFP propose the office of 'prime minister'
88(1)	Composition	1. President 2. Deputy President 3. Ministers		To be revisited after report by Technical Advisors on the position of the President
88(1)	Size of Cabinet		Contention as to whether number of members should be in the Constitution	The FF proposed that the number of ministers should be limited to 24

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	Appointment of Deputy President/Prime Minister		Whether there should be more than one Deputy President, involving other parties	
	Appointment of ministers	The President has the right to appoint ministers and deputy ministers.	Manner of appointment (see also under 'The Presidency')	The IFP proposed that Ministers should be appointed by the head of government (Prime Minister), subject to ratification by Parliament
	Ministers to be appointed from Legislature	Ministers should be drawn from the legislature		1. Question whether ministers may be appointed from both houses of Parliament to be revisited when clarity obtained on nature of Senate. 2. The NP is prepared to support limited appointment from outside the legislature.
	Term of office/dismissal	Term of office determined by:  1. Membership of parliament;  2. vote of no-confidence by Parliament in the Cabinet or in the President	Whether dismissal to be in the discretion of the President (see under 'The Presidency - Powers and Functions')	

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	Accountability to Parliament	Executive individually and collectively accountable to Parliament		
93	Vote of no confidence in the Cabinet by the Legislature	May be passed	Consequences of vote of no confidence	See also under 'The Presidency - motion of no confidence by Legislature'
92(1)	Ministers to be responsible to the President	Principle accepted		
	Role of minority parties		Whether participation of minority parties in the Executive should be enshrined in the Constitution	
	Code of conduct for members of the Cabinet	Principle should be stated in Constitution, details to be contained Act of Parliament		
	Consultation between President and Cabinet			1. See 'The Presidency - Powers and Functions'. 2. To be revisited
	Decision-making		Contentious	
83(2)	Counter-signing by ministers		Contentious	



CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	Other issues			
88(7)	1.Oath/affirmation	Agreed		
88(10)	2. Remuneration	Agreed		
90	3. Temporary assignment of powers/functions to another minister	Agreed		
91	4. Transfer of minister's powers/functions to another minister	Agreed		

## REPORT ON SUBMISSIONS : THE CABINET

### Introduction

This part of the report should be read with the tabular summary above and the sections on the presidency and the legislature. It deals with the cabinet under the following headings, which were identified on the basis of relevant Constitutional Principles, submissions received, and after discussion by the Theme Committee:

- 1.1 Terminology
- 1.2 Composition
- 1.3 Size of Cabinet
- 1.4 Appointment of Deputy President/Prime Minister
- 1.5 Appointment of Ministers
- 1.6 Ministers to be appointed from Legislature

- 1.7 Term of office
- 1.8 Accountability to Parliament
- 1.9 Vote of no-confidence in the Cabinet by the Legislature
- 1.10 Ministers to be responsible to the President
- 1.11 Role of minority parties
- 1.12 Code of conduct for members of the Cabinet
- 1.13 Consultation between President and Cabinet
- 1.14 Decision-making
- 1.15 Counter-signing by ministers
- 1.16 Other issues
  - 1.16.1 Oath/affirmation
  - 1.16.2 Remuneration
  - 1.16.3 Temporary assignment of powers/functions to another minister
  - 1.16.4 Transfer of minister's powers/functions to another minister

The purpose of this part of the report is to give an indication of the contents of submissions received. Areas of agreement and disagreement among the parties represented in the Theme Committee can be found in the preceding table. It should be noted that the IFP was absent from the sittings of the Committee when it dealt with the subject under consideration. Where applicable, the position of the IFP was given in the column marked 'Comment'.

## **2 Submissions**

Submissions were received from -

1 Parliamentary political parties

2 Other organisations (including non-parliamentary parties)

3 Individuals.

### **3 Constitutional Principles**

The following Constitutional Principles have a direct or indirect bearing on the aspects of the Cabinet dealt with in this report: IV (Constitution supreme law of the land, binding all organs of state at all levels of government); VI (separation of powers and checks and balances to ensure accountability, responsiveness and openness); VIII (representative government and proportional representation in general); XVI (government to be structured at national, provincial and local levels); XVII (democratic representation at each level of government); XX (each level of government to have adequate legislative and executive powers and functions to enable it to function effectively); XXII (national government not to exercise powers so as to encroach on integrity of provinces); XXVI (each level of government entitled to equitable share of revenue to enable it to provide basic services and execute functions allocated to it); XXXII (Constitution to provide that until 30 April 1999 the national executive should be composed and should function substantially in the manner provided for in Chapter 6 of the Interim Constitution); XXXIII (Constitution to provide that, unless Parliament is dissolved as a result of a vote of no-confidence in the Cabinet, no national election to be held before 30 April 1999).

### **4 Submissions received on the listed aspects relating to the Cabinet**

In the following analysis, reference is made not only to the submissions of political parties, but also to those received from individuals and other organisations.

#### **4.1 Terminology**

The following political parties referred to 'the Cabinet' in their submissions: ANC; DP; IFP; FF. The NP expressed itself in favour of the structures created by the Interim Constitution; in other NP submissions, reference is made to the cabinet. The PAC and the ACDP have not used the term 'cabinet' in their references to the executive. 'Minister' and 'Deputy Minister' would also appear to be non-contentious terms; likewise 'President' for the head of state/government, and 'Deputy President'. The DP and the IFP proposed a 'Prime Minister', and the FF either a Deputy President or a Prime Minister.

#### **4.2 Composition**

Few party submissions were explicit in this regard (DP and FF), but it was subsequently agreed in the Theme Committee that the Cabinet would consist of the President, Deputy President(s) and Ministers. The matter would be revisited, however, in view of possible inconsistencies in the wording of the relationship between the President and the Cabinet in the Interim Constitution.

Individual submissions: RM Longden-Thurgood, RJ Thompson and JM Vosloo proposed a Prime Minister.

#### *4.3 Size of the Cabinet*

The FF proposed that the number of ministers should be limited to 24.

Individual submission: JW Conroy proposed a cabinet of not more than 10; JM Vosloo favoured 11. J Luus merely said structures have too many members.

#### *4.4 Appointment of Deputy President/Prime Minister*

The ANC proposed an elected Deputy President; the NP favoured one or more Deputy Presidents, involving other parties as well; the DP supported a Deputy President nominated by the President and endorsed by Parliament; while the FF would also like to see one or two Deputy Presidents (or a Prime Minister), apparently from the ranks of Parliament.

Individual submission: O Bothma proposed that two Vice-President be chosen from the largest parties.

#### *4.5 Appointment of ministers*

Most political parties agreed that ministers of the Cabinet should be appointed by the President. The IFP proposed that they should be appointed by the head of government (Prime Minister), subject to ratification by Parliament.

Among the parties supporting appointment by the President, the procedure is contentious: the ANC, the DP, the PAC and the FF, favoured appointment by the President in his/her discretion. The NP favoured a multi-party cabinet, requiring a different method of appointment.

GJ Selikow proposed that Parliament should elect the cabinet by single transferable vote (STV). RM Longden-Thurgood was in favour of a Prime Minister appointing ministers. The Free Africa Foundation (Washington) and RA Griggs proposed a cabinet chosen by the President/head of state. O Bothma supported a cabinet appointed by the President, and deputy ministers proportionally drawn from the two largest parties. PI du Preez supported the idea of the President appointing ministers, with approval by both houses of Parliament.

#### *4.6 Ministers to be appointed from Legislature*

There is agreement that ministers should be drawn from the legislature (the NP was prepared to support limited appointment from outside the ranks of MPs). Submissions were not clear on the question whether they may be from both houses of the legislature (if there are more than one). The DP, the PAC and the FF left room for appointment from both.

Other submissions: K Gottschalk and RM Longden-Thurgood proposed that ministers should only come from the Legislature. Contralesa supported this and would include traditional leaders. MC D'arcy was in favour of the most capable persons, drawn from the broad population as well. JS du Plessis proposed that a Council of Ministers should form the Senate.

#### *4.7 Term of office*

There is agreement among political parties that the following factors would determine the term of office of a member of the Cabinet (excluding the President):

- a. membership of parliament
- b. vote of no-confidence by Parliament in the Cabinet or in the President.

The question whether termination of membership of a minister is in the discretion of President (head of government in the case of the IFP) is contentious in view of the NP position on the multi-party nature of the Cabinet.

#### *4.8 Accountability to Parliament*

All parliamentary parties support accountability of the executive to Parliament: ANC; DP; IFP, albeit in the somewhat different language of the cabinet being in a 'fiduciary' relationship with parliament and collegially responsible; NP; PAC.

Submissions from organisations and individuals supporting accountability to the Legislature, were received from the following: Contralesa, proposing that the Executive comes from the legislature, implying accountability; Organisation Development Institute of Southern Africa. In a useful analysis LB Hill argued for an interpretation of Constitutional Principle VI (separation of powers) which would allow for parliamentary government and cabinet responsibility.

JJ Steenkamp proposed a non-parliamentary executive.

#### *4.9 Vote of no-confidence in the Cabinet by the Legislature*

The following parties expressed an opinion on this aspect: ANC -President may reconstitute Cabinet or call an election; DP - in the event of a vote of no confidence, a new Prime Minister and Cabinet have to be appointed, or the NA has to be dissolved; IFP - Parliament should be free to adopt votes of no confidence without having to be dissolved; NP - motion of no-confidence and impeachment; FF - would retain sec 93 of Interim Constitution.

#### *4.10 Ministers to be responsible to the President*

The ANC, DP, FF and NP, in terms of its stated approach, supported responsibility towards the President.

Individual submission: Pupils from the Motse Maria High School suggested that ministers should have the power to criticize the President on behalf of the people.

#### *4.11 Role of minority parties*

The role of minority parties in the Cabinet is contentious. The NP supported a constitutionally provided multi-party cabinet. Other parties were either silent on this issue (FF; DP) or against the idea (ANC; IFP; PAC). This does not rule out voluntary coalitions. (The PAC expressed itself in favour of concept of government of national unity in principle, but on voluntary basis).

Individual submissions: PJ Knock would like to see measures to oblige the largest party to form coalition administrations; M Seal and R Shea supported the notion of a government of national unity; RM Longden-Thurgood and R Martin were in favour of a majority party executive. BS Hiddleston proposed power-sharing as a permanent feature of the Constitution.

#### *4.12 Code of conduct for members of the Cabinet*

The ANC referred to this aspect: no other paid employment or activities inconsistent with the position of minister; the NP in terms of stated approach also in favour. (See Interim Constitution sec 88(8) and (9)).

Individual submission: JW Conroy proposed that Ministers should submit a statement of gross assets and liabilities to an ombudsman at the beginning and the end of their term of office.

#### *4.13 Consultation between President and Cabinet*

The ANC proposed consultation by the President when taking important decisions, and the Cabinet to advise President; the NP, in terms of stated approach, in favour of President acting 'in consultation with' ministers (Interim Constitution sec 82(3) read with sec 233(3). The DP proposed that the President should act 'on the advice' of the Cabinet.

#### *4.14 Decision-making*

The NP favours consensus-seeking spirit underlying the concept of a government of national unity and the need for effective government (Interim Constitution sec 89(2), subject to certain qualifications.

Individual submission: BS Hiddleston proposed at least a 75% majority of power-sharing executive.

#### 4.15 *Counter-signing by ministers*

The IFP expressed itself in favour of this; in terms of its stated approach, the NP would also be in support of countersigning of presidential action. The DP is by implication in favour of this by endorsing sec 75 of the Interim Constitution.

#### 4.16 *Other issues identified*

4.16.1 Oath/affirmation (Interim Constitution sec 88(7))

4.16.2 Remuneration (sec 88(10))

4.16.3 Temporary assignment of powers/functions to another minister (sec 90; see FF submissions)

4.16.4 Transfer of minister's powers/functions to another minister (sec 91; see FF submissions).

4.16.5 Qualifications: the Organisation Development Institute of Southern Africa proposed that executive staff need to be appointed on the basis of ability. PS Clark suggested that all members of the executive should be tertiary graduates and at least 30 years of age. UA Naicker proposed along similar lines and felt that ministers earned too much. MC D'arcy felt that ministers should only be appointed to portfolios for which they are qualified, and was also in favour of a delcaration of assets.

4.16.6 BAL Hellryd proposed the institution of 'independent central agencies' to perform actual state administration, while ministers should deal with policy and parliamentary matters (including legislation).

4.16.7 The House of Royal and the Conservative Party also made submissions which were fundamentally different from the overwhelming trend of all other submissions, and which might be dealt with under traditional authorities and the volkstaat respectively.

4.16.8 In two identical submissions (P Dickerson, G du Toit, vol 3) it was proposed that taxes should be used for purposes listed in the Constitution.