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TC2/21

CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
STRUCTURE OF GOVERNMENT

MONDAY
05 JUNE 1995
09H00 -17H00
V475

DOCUMENTATION

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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 : Monday 05 June 1995
Time : 09h00 - 17h00
Venue : V475

AGENDA

1. **OPENING AND WELCOME**
2. **SENATE REPORT**
(contd from pg 5)
3. **PROVINCIAL GOVERNMENT STRUCTURES**
(contd from pg 35)
4. **NOTIFICATION OF MATTERS REFERRED**
5. **AOB**
6. **CLOSURE**

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**CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
STRUCTURE OF GOVERNMENT**

REPORT ON THE SENATE

(As at 05 June 1995)

THEME COMMITTEE 2

DRAFT REPORT ON BLOCK 2

THE SENATE

INTRODUCTION

This draft report deals with the Senate.

The draft report consists of two parts. The first is a numbered, tabular summary of the conclusions reached by the Theme Committee on each of the matters listed. In other words, it reflects the most recent state of the discussion in the Theme Committee.

The second part, also in summarised form and in the same sequence as in the table, contains the gist of the written submissions received by the Committee. The two parts of the draft should be read together.

It should be noted that a position adopted by a political party in a written submission, as reflected in the second part of the draft, may differ from that ascribed to the party in the table. During the discussion of the relevant issues and the various submissions in the Theme Committee, political parties had reserved the right to reconsider their position in order to ascertain areas of agreement and contention. As far as possible, such a change in position has been reflected in the summary of submissions.

Proposals made by the Commission on Provincial Government, are referred to separately in the draft.

In the "Comment" column of the table, reference is made to the gist of the submissions of individuals and other organisations, where such submissions had been received. These references are made in italics.

THE SENATE (SECOND CHAMBER)

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	1. Terminology	Senate		
	2. Nature and purpose of the Senate	<p>1. There should be a second chamber of the Legislature, the Senate [see PAC position under "Comment"].</p> <p>2. The primary function of the second chamber is to represent the provinces and provincial interests.</p> <p>3. Parliamentary laws affecting provincial interests can only be passed with the concurrence of the Senate.</p> <p>4. In respect of other parliamentary legislation, the Senate will have a power of review.</p>	The definition and representation of interest groups in the Senate.	<p>1. PAC: the need for a second chamber has to go beyond the representation of provinces if the position and powers of the latter are clearly stated in the Constitution.</p> <p>2. The FF would see the Senate represent cultural and other interest groups; to be a nation-building and reconciliation institution, and to reduce conflict potential.</p> <p>3. 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>4. 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 interests in society.</p> <p>5. 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 submissions:</i></p> <p>O Bothma: Provinces to send delegates to second chamber to advise State President;</p> <p>K Gottschalk questions the existence of a senate, the function of which is merely to duplicate the NA; Senator J Selfe proposes that the primary purpose of the Senate should be representation of provincial interests (he proposes a number of mechanisms to achieve this), with as secondary purpose review (again with suggestions as to how this could be effected)</p>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	<p>3. Composition and size: 5, 7, 8 and 10 per province</p>	<p>Equal number of senators per province.</p>	<p>Number of senators per province</p>	<p>1. The CPG expressed itself satisfied with equal representation of provinces, and would appear to favour ; the current 10 per province; it did not voice an opinion on the representation of other interest groups, but draws the attention of the CA to this matter.</p> <p>2. The DP (Gauteng region) also proposed equal representation for each province.</p> <p>3. For individual submissions on the size of Parliament, see also the report on the NA under the heading "Size of the NA". JA Louw proposes that the Senate should be composed on an ethnic basis; Senator J Selfe proposes a Senate of 10 members per province; PS Clark proposes equal representation of provinces, one third the size of the NA; CG Snyman proposes a Senate with equal representation of minority groups; AH Taute proposes 60 members</p>
	<p>4. Appointment/election</p>	<p>Senators to be elected/appointed by Provincial Legislature</p>	<p>1. Whether or not Senators to be elected/appointed from Provincial Legislatures.</p> <p>2. Whether, in the appointment/election of Senators, the principle of proportionality should apply.</p>	<p>1. The CPG proposed that senators be elected members of the provincial legislatures, nominated by the legislatures on a proportional basis.</p> <p>2. The DP (Gauteng region) proposed direct election on a list system.</p> <p>3. Individuals: JM Vosloo merely proposes election of a Senate; N Athinodorou proposes that the Senate should consist mainly of competent academics appointed by the President; Senator J Selfe proposes that the Senate be elected on a 10 member party list basis, to allow smaller parties to be represented as well; PI du Preez proposes 10 Senators per province, serving for 6 years; RH Addison proposes a Senate directly elected by members of professional and other organisations of civil society; J Glyn favours a directly elected Senate representing provinces; PJ Sousa proposes a 50 member Senate (5 per province and 5 appointed by the President from 5 important functional areas); PS Clark would like Senators to be at least matriculated land owners</p>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	5. Recall		<p>1. The ANC expressed itself in favour of the principle of recall of Senators by the provincial legislatures and/or executives. The FF and the DP, during the first discussion, also indicated that they were not in principle against the notion of recall.</p> <p>2. Question of rotation of Senators.</p>	To be revisited

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	<p>6. Powers and functions:</p> <p>1.1 The ANC proposes a fourfold function for the Senate: 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> <p>1.2 The ANC specifically proposes the following i r o legislative competence: a. disputes between the national and provincial levels on concurrent legislative powers: i. if approved by the Senate, such a bill will be deemed necessary 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>			<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> <p>2. <i>Individuals/organisations: ODISA would see the Senate evaluate the working of Parliament and the Executive on an ongoing basis. It</i></p>
	<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 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 - a. i r o money bills (excluding money bills allocating funds to provinces), where the NA would have overriding powers; and b. legislation affecting powers, functions and boundaries of provinces.</p>			<p><i>would further see Senators giving up party affiliations and stand as representatives of their regions, committed to an impartial and objective approach.</i></p> <p><i>N Athinodorou proposes that the Senate be able to veto</i></p>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	<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:</p> <ol style="list-style-type: none"> 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. g. having an extended role in certain top executive and judicial appointments, other constitutional bodies, and national Commissioner of Police Service and Chief of Defence Force h. be represented in the CPG and Financial and Fiscal Commission i. be a watchdog over constitutionality of bills. 			<p><i>bills detrimentally affecting the provinces and that bills concerning the provinces be introduced in the Senate only; Senator J Selfe proposes equal powers for the NA and Senate, with the Senate in addition having other constitutionally distinct tasks and possibly representing other interests as well; PI du</i></p>
	<p>6. The CPG -</p> <ol style="list-style-type: none"> a. supports the present sec 59(1) on separate adoption of bills 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 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 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 e. supports the current provisions on constitutional amendment f. proposes the incorporation of CP XVI, XX, XXI, XXII, XXIII AND XXVI into the final Constitution. 			<p><i>Preez proposes that provincial disputes be resolved by the Senate, and that the Senate has the sole power to impeach the President (for legislation a 66% majority will be needed); T Sonjica would see money bills introduced at a joint sitting of the NA and the Senate; RH Addison proposes a veto power and the election of the Ministers of Defence, Law and Order and Justice</i></p>

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	<p>7. 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><i>Submissions from individuals/organisations: ODISA proposes that the Senate can mediate between Parliament and the Executive</i></p>
	<p>8. 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 of a constitutional requirement of meaningful interaction; constitutionally provided committees of the Senate to .</p>
	<p>9. 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>			
Section 49	<p>10. President and Deputy President:</p> <p>1. The FF proposes retention of the current provision.</p> <p>2. The CPG is also in favour of a provision resembling sec 49.</p> <p>This issue has not been discussed by other parties, and one can only assume that there is no contention.</p>			

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 50	<p>11. Qualifications for membership:</p> <p>1. ANC: A senator has to be a member of a provincial legislature/executive</p> <p>2. DP</p> <p>3. FF: Current provision</p> <p>4. NP: same as for NA, with requirement of ordinary residence in the province.</p> <p>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.</p>			1. The DP (Gauteng region) proposes a residential requirement in addition to any other qualifications.
Section 51	<p>12. Vacation of seat and filling of vacancy:</p> <p>1. ANC: In support of recall and replacement by provincial legislatures/excutives.</p> <p>2. FF: Current provision.</p> <p>3. NP: Current provision, in terms of stated position.</p> <p>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.</p>			
Section 53	<p>13. Sittings of Senate:</p> <p>1. The ANC's proposal of the Senate as a perpetual body, may affect the question of sessions/sittings.</p> <p>2. FF: Current provision.</p> <p>3. NP: current provision, i t o stated position.</p> <p>4. CPG: Current provision.</p>			
Section 54	<p>14. Quorum:</p> <p>1. FF: Current provision</p> <p>2. NP: Current provisions i t o stated position.</p> <p>3. CPG: Current provision.</p> <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>			

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
Section 55	<p>15. Powers, privileges, immunities and benefits:</p> <p>1. CPG: Current provision</p> <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>16. Sitting when disqualified:</p> <p>1. CPG: Current provision.</p> <p>This matter was not addressed by the political parties.</p>			
Section 57	<p>17. Joint sittings:</p> <p>1. CPG: Current provision.</p> <p>This matter was not addressed by political parties (but see report on NA).</p>			
Section 58	<p>18. 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>19. Oath or affirmation</p> <p>1. FF: Current provision</p>			

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	<p>20. 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"). 			

REPORT ON SUBMISSIONS: THE SENATE

1 Introduction

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

1 Terminology

2 Nature and purpose of the Senate

3 Composition and size

4 Appointment/election

5 Recall

6 Powers and functions

7 Relationship towards the Executive

8 Relationship towards provinces

9 Party discipline

10 President and Deputy President

11 Qualifications for membership

12 Vacation of seat and filling of vacancy

13 Sittings of Senate

14 Quorum

15 Powers, privileges, immunities and benefits

16 Sitting when disqualified

17 Joint sittings

18 Rules and orders

19 Oath or affirmation

20 Other matters

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 this part of the report.

2 Submissions

Submissions on the Senate were received from -

- 1 Parliamentary political parties
- 2 The Commission on Provincial Government
- 3 Other organisations (including non-parliamentary parties)
- 4 Individuals

3 Constitutional Principles

The following Constitutional Principles have a direct bearing on the aspects of the Senate 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); XVIII.4 (if there is a second chamber, two-thirds majority for change of powers, boundaries, functions or institutions of of provinces).

4 Submissions received on the aspects of the Senate listed above

4.1 Terminology

All parties, the CPG and individual submissions that expressed themselves on a second chamber, agreed that it should be called the Senate.

4.2 Nature and purpose of the Senate

4.2.1 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.

4.2.2 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.

4.2.3 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.

4.2.4 The IFP proposes that the Senate should represent the provinces, and should monitor the Executive i r o certain activities which fall outside provincial competencies.

4.2.5 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.

4.2.6 The PAC regards the Senate as redundant if its primary function is to look after provincial interests in a system in which the position and powers of the provinces are clearly circumscribed in the Constitution.

4.2.7 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 interests in society.

Individual submissions:

O Bothma: Provinces to send delegates to second chamber to advise State President; K Gottschalk questions the existence of a senate, the function of which is merely to duplicate the NA; Senator J Selfe proposes that the primary purpose of the Senate should be representation of provincial interests (he proposes a number of mechanisms to achieve this), with as secondary purpose review (again with suggestions as to how this could be effected).

4.3 *Composition and size*

4.3.1 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.

4.3.2 The DP is in favour of 7 members from each province.

4.3.3 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.)

4.3.4 The IFP proposes equal representation of provinces (number unnamed).

4.3.5 The NP proposes 10 Senators per province.

4.3.6 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.

For individual submissions on the size of Parliament in general, see also the report on the NA under the heading "Size of the NA". JA Louw proposes that the Senate should be composed on an ethnic basis; Senator J Selfe proposes a Senate of 10 members per province; PS Clark proposes equal representation of provinces, one third the size of the NA; CG Snyman proposes a Senate with equal representation of minority groups; AH Taute proposes 60 members.

4.4 Appointment/election

4.4.1 The ANC proposes that senators be appointed from the members of the Provincial Legislature and/or Executive.

4.4.2 The DP proposes indirect election by the provincial legislatures on a proportional basis for 4 years.

4.4.3 The FF suggests that 8 senators per province be nominated by the parties represented in the Provincial Legislature.

4.4.4 The IFP supports election by the provincial legislatures for 5 years, in consultation with provincial cabinet.

4.4.5 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.

4.4.6 The CPG proposed that senators be elected members of the provincial legislatures, nominated by the legislatures on a proportional basis.

4.4.7 The DP (Gauteng region) proposed direct election on a list system.

Individuals: JM Vosloo merely proposes election of a Senate; N Athinodorou proposes that the Senate should consist mainly of competent academics appointed by the President; Senator J Selfe proposes that the Senate be elected on a 10 member party list basis, to allow smaller parties to be represented as well; PI du Preez proposes 10 Senators per province, serving for 6 years; RH Addison proposes a Senate directly elected by members of professional and other organisations of civil society; J Glyn favours a directly elected Senate representing provinces; PJ Sousa proposes a 50 member Senate (5 per province and 5 appointed by the President from 5 important functional areas); PS Clark would like Senators to be at least matriculated land owners.

4.5 Recall

The ANC expressed itself in favour of the principle of recall of Senators by the provincial legislatures and/or executives.

4.6 Powers and functions

4.6.1.1 The ANC proposes a fourfold function for the Senate:

- 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.

4.6.1.2 The ANC specifically proposes the following i r o legislative competence:

- a. disputes between the national and provincial levels on concurrent legislative powers:
 - i. if approved by the Senate, such a bill will be deemed necessary 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.

4.6.1.3 The ANC further proposes that the Senate should have a say over the content of national subordinate legislation affecting the provinces.

4.6.1.4 The Senate should also be the channel through which the provinces participate in fiscal matters, in particular the budget.

4.6.1.5 The Senate would have no power to block financial legislation.

4.6.1.6 The Senate would have the power to block or delay bills dealing with provincial matters, and to review other legislation.

4.6.2 The DP is in favour of equal powers with the NA, except -

- a. i r o money bills (excluding money bills allocating funds to provinces), where the NA would have overriding powers; and
- b. legislation affecting powers, functions and boundaries of provinces.

4.6.3 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.

4.6.4 The IFP maintains that the Senate must have concurrent legislative power with the National Assembly.

4.6.5 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.
- g. having an extended role in certain top executive and judicial appointments, other constitutional bodies, and national Commissioner of Police Service and Chief of Defence Force
- h. be represented in the CPG and Financial and Fiscal Commission
- i. be a watchdog over constitutionality of bills.

4.6.6 The CPG -

- a. supports the present sec 59(1) on separate adoption of bills
- 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 agreemen, be submitted to the houses sitting together
- 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
- 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
- e. supports the current provisions on constitutional amendment
- f. proposes the incorporation of CP XVI, XX, XXI, XXII, XXIII AND XXVI into the final Constitution.

Individuals/organisations: ODISA would see the Senate evaluate the working of Parliament and the Executive on an ongoing basis. It would further see Senators giving up party affiliations and stand as representatives of their regions, committed to an impartial and objective approach.

N Athinodorou proposes that the Senate be able to veto bills detrimentally affecting the provinces and that bills concerning the provinces be introduced in the Senate only; Senator J Selfe proposes equal powers for the NA and Senate, with the Senate in addition having other constitutionally distinct tasks and possibly representing other interests as well; PI du Preez proposes that provincial disputes be resolved by the Senate, and that the Senate has the sole power to impeach the President (for legislation a 66% majority will be needed); T Sonjica would see money bills intoduced at a joint sitting of the NA and the Senate; RH Addison proposes a veto power and the election of the Ministers of Defence, Law and Order and Justice.

4.7 *Relationship towards the Executive*

4.7.1 ANC: Proposes that the Executive should not be accountable to the Senate.

4.7.2 Other parties propose accountability to Parliament (see "Relationship towards the Executive" in report on NA).

Submissions from individuals/organisations: ODISA proposes that the Senate can mediate between Parliament and the Executive

4.8 Relationship towards provinces

(see also "Nature and purpose of the Senate" and "Powers and functions" above)

4.8.1 The ANC proposes a close and ongoing relationship between the Senate and the provinces by virtue of the composition of the Senate.

4.8.2 The DP proposes Standing Consultative Committees with the provinces.

4.8.3 The FF proposes a constitutional mandate for the Senate to interact with the provinces

4.8.4 The IFP would give the provincial premiers and/or their ministers the of designees the "privilege of the floor" in the Senate.

4.9 Party discipline

4.9.1 The ANC proposes that in order to avoid voting along party lines, the Executive should not be accountable to the Senate.

4.9.2 The NP proposes that a convention be developed that senators are not required to vote along line on matters directly affecting the provinces.

4.10 President and Deputy President

4.10.1 The FF proposes retention of the current provision.

4.10.2 The CPG is also in favour of a provision resembling sec 49.

4.11 Qualifications for membership

4.11.1 ANC: A senator has to be a member of a provincial legislature/executive.

4.11.2 FF: Current provision

4.11.3 NP: same as for NA, with requirement of ordinary residence in the province.

4.11.4 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.

4.12 Vacation of seat and filling of vacancy

4.12.1 ANC: In support of recall and replacement by provincial legislatures/excutives.

4.12.2 FF: Current provision.

4.12.3 NP: Current provision, in terms of stated position.

4.12.4 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.

4.13 *Sittings of Senate*

4.13.1 The ANC's proposal of the Senate as a perpetual body, may affect the question of sessions/sittings.

4.13.2 FF: Current provision.

4.13.3 NP: current provision, i t o stated position.

4.13.4 CPG: Current provision.

4.14 *Quorum*

4.14.1 FF: Current provision

4.14.2 NP: Current provisions i t o stated position.

4.14.3 CPG: Current provision.

4.15 *Powers, privileges, immunities and benefits*

The parties did not address this issue.

CPG: Current provision

4.16 *Sitting when disqualified*

This matter was not addressed by the political parties.

CPG: Current provision.

4.17 *Joint sittings*

This matter was not addressed by political parties (but see report on NA).

CPG: Current provision.

4.18 *Rules and orders*

Parties did not express themselves on this issue.

CPG: Current provision.

4.19 *Oath or affirmation*

1. FF: Current provision

4.20 *Other matters*

Other issues not addressed by parties, but dealt with under National Assembly (see report on NA):

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").

CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
STRUCTURE OF GOVERNMENT

REPORT ON
PROVINCIAL GOVERNMENT STRUCTURES

(As at 05 June 1995)

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2

STRUCTURE OF GOVERNMENT

DRAFT REPORT ON BLOCK 3: PROVINCIAL GOVERNMENT

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	1. TERMINOLOGY 1.1. Provincial Legislatures 1.2 Premier 1.3 Executive Council or "cabinet" 1.4 Members of Executive Council or "Ministers"			
CP XVII(2) s 160(2)	2. SHOULD PROVINCES RETAIN THEIR COMPETENCY TO DRAFT AN OWN CONSTITUTION?			
	3. OBLIGATION OR COMPETENCE TO DRAFT PROVINCIAL CONSTITUTION?			Prov. Admin Western Cape: obligation

	4. FRAMEWORK FOR PROVINCIALY-DRAFTED CONSTITUTIONS			
	5. PROVINCIAL LEGISLATURES - DEFAULT FRAMEWORK			
s 125(1)	5.1 Legislature for each province -	Yes		
s 125(3)	5.2 Legislative powers confined to the province			No submission received
s 127(1)	5.3 Composition of legislature: size			
	5.4 Electoral system			
s 128	5.5 Duration and dissolution of provincial legislature		5 years term (DP 4 years)	
	5.6. Date of polling 5.6.1 On same date for all provinces 5.6.2 On same date as Parliament			
s 129(1)	5.6.3 Election within 90 days of dissolution			

s 130	5.7 Sitting of provincial legislatures			
s 131	5.8 Speaker and deputy speaker			
s 132	5.9 Qualifications for membership of provincial legislatures			
s 133	5.9.1 Members ordinarily resident in a province			
s 133	5.10 Vacation of seats and filling of vacancies 5.10.1 Vacation of seats: loss of party membership 5.10.2 Filling of vacancies			
s 134	5.11 Oath or affirmation by members			
s 135	5.12 Powers, privileges and immunities			
s 136	5.12a Penalty for sitting or voting when disqualified			
s 137	5.13 Rules and orders			
s 138	5.14 Quorum			
s 139	5.15 Required majorities			

s 140	5.16 Assent to bills			
s 141	5.17 Signature and enrolment of provincial laws			
s 142	5.18 Public access to provincial legislatures			
	5.19 Legislative committees of oversight			
s 160(4)(b)	5A. PROVINCIAL MONARCHS			
	6. PROVINCIAL EXECUTIVES			
	6.1 PREMIERS			
s 145(1)	6.1.1 Election by legislature			
	6.1.2 Premier member of legislature			

s 146 s 154(2) s 146(2)	6.1.3 Tenure of and removal from office of Premiers 6.1.3.1 Dissolution of legislature 6.1.3.2 Dismissal of premier by motion of no confidence 6.1.3.3 Impeachment			
s 147	6.1.4 Responsibilities, powers and functions of Premiers			
s 148	6.1.5 Acting premiers			
	6.2 EXECUTIVE COUNCILS			
	Framework only			
s 149(1)	6.2.1 Size: Premier and not more than 10 members			
s 149(2)	6.2.2 Composition: government of provincial unity			
s 149(4)(b))	6.2.3 Appointed from the legislature			

s 149(7),(8),(10)	6.2.4 Oath, ethical provisions			
s 150	6.2.5 Executive Council procedure			
s 151	6.2.6 Temporary assignment of powers and functions to Executive Council members			
s 152	6.2.7 Transfer of powers and functions from one member to another member			
s 153	6.2.8 Accountability of members of Executive Councils			
s 154	6.2.9 Votes of no confidence in Executive Council			

CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE TWO
STRUCTURE OF GOVERNMENT

REPORT ON SUBMISSIONS: PROVINCIAL GOVERNMENT STRUCTURES

A. INTRODUCTION

This part of the report should be read with the tabular analysis above. It deals with the structure and procedures of provincial governments under the following headings, which were identified on the basis of submissions received and discussions in the Theme Committee:

1. Terminology
2. Power of provinces of drafting own constitutions
3. Obligation or competence of provinces to draft an own constitution
4. Constitutional framework for province-crafted constitutions
5. Constitutional provisions in default of a provincial constitution.

B. SUBMISSIONS

Submissions on the structure of provincial governments were received from:

1. Parliamentary political parties (excluding the ANC; ACDP)
2. Other organisations (including non-parliamentary parties)
3. Individuals

C. CONSTITUTIONAL PRINCIPLES

The most important Constitutional Principle (CP) pertaining to the structure of provincial governments is CP XVIII(2) which provides:

"The powers and functions of the provinces defined in the Constitution, including the competence of a provincial legislature to adopt a constitution for its province, shall not be substantially less than or substantially inferior to those provided for in this Constitution." (emphasis added).

Every province is presently entitled to pass a constitution for its province by a resolution of a majority of at least two-thirds of all its members (s 160(1)). Such a constitution may be different from the interim Constitution (s 160(4)(a)), but should not be inconsistent with a provision of the interim Constitution including the Constitutional Principles (s 160(3)). Furthermore, a provincial constitution may provide for the institution of a traditional monarch (in KwaZulu-Natal it is compulsory) (s 160(4)(b)).

Four issues need to be addressed: First, would the competencies of provinces be substantially reduced if the entitlement to draft an own constitution is taken away? Secondly, can / should all provinces be compelled to draft their own constitutions? Thirdly, how different may the provincial constitution be without being inconsistent with the interim Constitution and the Constitutional Principles? Can / should a broad framework be provided for provinces for the drafting of their own constitutions? Fourthly, if provinces are not compelled to draft their own constitution, then for those provinces who do not wish to draft their own constitution, what should be the content of a "default" constitution? On these questions the following submissions were received.

D. CONSTITUTIONAL ISSUES

1. TERMINOLOGY

1.1. Provincial Legislatures

1.2 Premier

1.3 Executive Council

DP(Gauteng): Should be called "cabinet"

1.4 Members of Executive Council

DP(Gauteng): Should be called "Ministers"

2. SHOULD PROVINCES RETAIN THEIR COMPETENCY TO DRAFT AN OWN CONSTITUTION? - s 160(2)

IFP: Yes

DP: Yes

DP(G): Yes.

Other submissions

CPG: This competence should be retained in substantially undiminished form to comply with CP XVIII(2). There is no cogent reason to reduce the constitution-making powers of provinces. This competency is, however, limited. In compliance with CP IV which provides that the final constitution will be supreme law of the land, the present competence of provinces cannot be increased to draft constitutions which may be contrary to the final constitution or the Constitutional Principles.

3. OBLIGATION OR COMPETENCE TO DRAFT PROVINCIAL CONSTITUTION?

IFP: Final Constitution will come into force with already operational provinces and therefore the Constitution needs merely to indicate that the existing provincial legislative structures shall continue into force until otherwise modified by provincial constitutions. No further detail on the provincial executive and legislative structures and procedures should be contained in the Constitution.

DP: Provinces should have a choice whether to draft an own constitution.

DP(G): Constitution should compel each province to enact its own Constitution.

Other submissions

Prov. Admin Western Cape: Each province should be required to write its own constitution in terms of which it deals with elections and vacancies, oath of office, appointment of a Speaker and Deputy Speaker, rules and order, quorum, the name which is given to a provincial law.

4. FRAMEWORK FOR PROVINCIALY-DRAFTED CONSTITUTIONS

The interim Constitution provides that the provincial constitutions may be different but not inconsistent with the interim constitution including the Constitutional Principles. The question is how different. They should be in accordance with the Constitutional Principles VI (separation of powers), VIII (multi-party democracy, proportional representation), IX (open government), X (formal legislative procedures), XIV (participation of minority parties in legislature), and XVII (democratic representation at each level of government).

While some submissions have suggested a framework for provincial constitutions, none has clearly identified the basic provisions which would constitute such a framework. As the Constitutional Principles are not precise with regard to the legislature and the executive, the question is whether these Principles should be concretized into a framework. Another suggestion is that the permissible sizes of the legislatures and executive councils should be determined in the final Constitution.

DP: The parameters within which provincial constitutions may be drawn up and adopted should be dealt with in the final Constitution. Should the Constitutional Principles form the basis of a framework for future provincial constitutions, then they should specifically be included in the final constitution. The following Principles should be considered: VI, VIII, IX, X, XI, XII, XIV, XVI, XVII.

DP(G): Constitution should merely contain a framework for provincial constitutions.

CPG: A broad general framework for provincial governments should be established.

While the content of the framework for provincial constitutions is unclear, the provisions of a "default" constitution for provincial government received more attention.

5. PROVINCIAL LEGISLATURES - DEFAULT CONSTITUTION

5.1 There shall be a legislature for each province - s 125(1)

ANC: Legislature for each province.

FF: Retained.

Thuynsma: No provincial government, only provincial council representative of all local councils.

5.2 Legislative powers confined to the province - s 125(3)

ANC: Provincial laws applicable only to the relevant province.

5.3 Composition of legislature: size not less than 30 not more than 100 - s 127(1)

NP: In view of the idea of decreasing the size of legislature, a reduction in number of members of provincial legislatures may also be considered.

FF: Number of MPLs should be determined by the functions and powers allocated to provinces.

DP: The number of members should be the same as the number of constituency members' elected to the National Assembly from each province plus another 25% more in number with a minimum number of 25 members.

CPG: Constitution should specify permissible size of legislature as presently (30-100 members). An act of Parliament should determine a national norm for the determination of the number of members giving weighting to sparsely populated areas.

5.4 Electoral system: pure proportional representation - s 127(1)

ANC: Election on the basis of proportional representation and constituencies.

NP: Members to be elected via a party list system on the basis of a voters' role. After election, elected members should be designated to specific magisterial districts.

DP: Multi-member constituencies and party list system to ensure proportional representation.

DP(G): Mixture of party lists and constituencies.

CPG: Constitution should stipulate that electoral system should be a combination of proportional representation and constituencies. The electoral system should be provided for by an Act of Parliament.

Prov. Admin. Western Cape: Voters' roll for provincial elections. Provinces should have the choice of using only pure proportional representation, or using constituencies or a mixture of the two.

Borsook: Mixture of PR and constituencies as in Germany.

5.5 Duration and dissolution of provincial legislature: five year term - s 128

ANC: Five year term

NP: Five year term

FF: Five year term

DP: Four year term.

DP(G): May be shorter period than 5 years, arguably 4 years.

CPG: Five year term

5.6. Date of polling

5.6.1 On same date for all provinces

CPG: Not possible in view of premiers' powers to dissolve legislatures before 5 years' expiry.

Prov. Admin. Western Cape: Provinces should have option to hold provincial and local elections on same day in the province.

5.6.2 On same date as Parliament

DP(G): Provincial elections should be held on different days from the national election.

CPG: Not necessary or possible to hold on same day as national election.

5.6.3 Election to be held within 90 days of dissolution of the legislature - s 129(1)

ANC: After dissolution, Premier shall call for elections within 90 days.

CPG: Retain s 129(1)

5.7 Sitting of provincial legislatures:

S 130(1) Secretary of a provincial legislature shall convene such legislature within 7 days after an election.

S 130(2) Provincial legislature shall determine its sittings; provided that Premier may summon legislature to an extraordinary sitting for the dispatch of urgent business.

ANC: Each provincial legislature will determine days, hours and periods of its sitting.

NP: Retain s 130

FF: Retains 130

CPG: Retain s 130

5.8 Speaker and deputy speaker: elected by the legislature, election presided over by a judge - s 131

NP: Retain s 131

FF: Retain s 131

CPG: Retain s 131

5.9 Qualifications for membership of provincial legislatures: same as for National Assembly - s 132

ANC: Qualification of membership at national level will also apply to provincial legislatures.

NP: Retain present position: same as for Parliament.

FF: Retain s 132

5.9.1 Candidates should ordinarily resident in a province; but limited exceptions - s 132(3) read with s 40(2) & (3).

DP: A candidate should be registered voter in the province concerned.

CPG: Only persons who are ordinarily resident in a particular province at the time of their nomination should be entitled to become members of a provincial legislature.

5.10 Vacation of seats and filling of vacancies - s 133

5.10.1 Vacation of seats: Members vacate seat with loss of party membership - s 133(1)(b)

ANC: Members will lose their seats if:

(a) they resign; (b) absent themselves voluntarily from the sittings for more than a period stipulated by the rules, or (c) he or she becomes a member of the National Assembly.

FF: Delete s 133(1)(b)

DP: Delete s 133(1)(b)

DP(G): S 133(1)(b), preventing the crossing of the floor, should be scrapped.

CPG: Retain s 133 but termination of party membership should not result in termination of membership of legislature.

5.10.2 Filling of vacancies

CPG: Depends on electoral system.

5.11 Oath or affirmation by members - s 134

FF: Retain s 134

CPG: Retain s 134

5.12 Powers, privileges and immunities - s 135

ANC: Provision should be made for suitable privileges, benefits and immunities of members.

NP: Retain s 135

FF: Retains 135

CPG: Retain s 135

5.12a Penalty for sitting or voting when disqualified - s 136

FF: Retain s 136

5.13 Rules and orders: provincial legislature empowered to make rules and orders - s 137

ANC: Each provincial legislature will make its own rules and orders.

NP: Retain s 137

FF: Retain s 137

CPG: Retain s 137

5.14 Quorum: One third, or when vote taken on a Bill, at least half of all member - s 138

ANC: Retain s 138

NP: Retain s 138

FF: Retain s 138

CPG: Retain s 138

5.15 Required majorities: unless otherwise required by the Constitution, all questions shall be determined by a majority of votes - s 139

FF: Retain s 139

CPG: Retain s 139

Borsook: Legislation by simple majority

5.16 Assent to bills by Premier - s 140

ANC: Premier has power of assenting, signing and promulgating bills.

NP: Retain s 140

FF: Retain s 140

CPG: Retain s 140

5.17 Signature and enrolment of provincial laws at Appellate Division - s 141

NP: Retain s 141

FF: Retain s 141

CPG: Retain s 141

5.18 Public access to provincial legislatures - s 142

NP: Retain s 142

FF: Retain s 142

CPG: Retain s 142

5.19 Legislative committees of oversight

CPG: There should be effective committees of legislatures to ensure proper accountability, openness and responsiveness on the part of the executive.

5A. PROVINCIAL MONARCHS - s 160(4)(b)

CPG: A general enabling provision is needed. No specific reference to a particular monarch should be included in the final constitution.

6. PROVINCIAL EXECUTIVES

Framework

DP(G): The tenure of office, responsibilities, powers and functions of Premiers and executive councils should be regulated by provincial constitutions.

Prov. Admin. Western Cape: Institutional issues pertaining to executive council and premier should be dealt with in a provincial constitution.

6.1 PREMIERS

6.1.1 Election by legislature - s 145(1)

ANC: Premier shall be elected from the members of the provincial legislature.

NP: Retain s 145

FF: Retain s 145

DP(G): Directly elected by electorate.

CPG: Parliamentary-elected premiers for provinces without constitutions.

Borsook: By legislature

Fein: Either popularly or by legislature
Mentz: Appointed by Provincial Councils and central government

6.1.2 Premier member of legislature

CPG: In pursuance of the principle of separation of powers, Parliamentary-elected Premiers should vacate their seats on election.

6.1.3 Tenure of and removal from office of Premiers - s 146

6.1.3.1 Term of office is terminated on dissolution of legislature - s 146(1) & 154. Legislature is dissolved:

(1) On expiry of 5 year term;

(2) On a motion of no confidence in Executive Council and Premier, Premier may dissolve legislature - s 154(1)

(3) On a motion of no confidence in Executive Council excluding Premier, then Premier may dissolve legislature - s 154(3)(c)

ANC: Premier elected for 5 years. On motion of no confidence in Executive Council and the Premier, the Premier shall dissolve the legislature and call for elections.

FF: Retain s 146

CPG: Retain s 146 & 154

6.1.3.2 Dismissal of Premier by motion of no confidence in Premier alone - s 154(2)

ANC: If vote of no confidence in Premier alone, then he or she shall resign and the provincial legislature will elect another Premier within 30 days from the date of resignation.

NP: Retain s 154(2)

CPG: Retain s 154(2)

6.1.3.3 Impeachment - s 146(2)

CPG: Retain s 146(2)

6.1.4 Responsibilities, powers and functions of Premiers - s 147

ANC: Executive authority for each province shall vest in the Premier.

NP: Retain s 147. Could be considered that the Premier should be compelled to consult with the leaders of the other parties in the Executive Council before exercising certain of his or her powers.

FF: Executive authority of a province shall vest in the Premier of the province who shall exercise and perform his or her powers and functions subject to and in accordance with the Constitution.

CPG: Retain s 147

6.1.5 Acting premiers, appointment of by Premier - s 148

FF: Retain s 148

CPG: Retain s 148

6.2 EXECUTIVE COUNCILS

Framework

DP(G): Responsibilities, powers and functions of executive councils to be determined by provincial constitutions.

6.2.1 Size: Premier and not more than 10 members - s 149(1)

NP: Consider reduction of number of members in case of smaller provinces.

FF: Retain s 149(1)

DP: Executive Council should constitute of between 5 and 10 members providing that the number of members of the Executive Council do not exceed on fifth (20%) of the number of members of the Provincial Legislature.

DP(G): If province desires to increase size of Executive Council beyond 10 should require the permission of the President in consultation with the Minister of Finance.

CPG: No need to increase number or appoint deputies. Size of executive council should have some bearing to size of legislature.

6.2.2 Composition: government of provincial unity - s 149(2)

NP: Favours government of provincial unity - s 149(2) unamended.
Decisionmaking on the basis of consensus - s 150(2).

FF: Premier shall determine portfolios, appoint members of Executive Council, terminate appointments for the purposes of the Constitution and in the interest of good government, and fill vacancies when necessary.

DP: Reference to government of provincial unity should be deleted.

DP(G): No government of provincial unity after 1999.

CPG: There should no enforced proportional allocation of membership to Executive Councils. While the government of provincial unity is not obligatory until 1999, it should be included in the final constitution until 1999.

Prov. Admin. Western Cape: Ambivalent over the issue.

Fein: No proportional representation in executive.

Mentz: Elected by electorate.

6.2.3 Appointed from the legislature - s 149(4(b))

CPG: Should be able to appoint persons from outside the legislature. Such appointees should have the right to speak but not vote in the legislature. In order to satisfy the concept of separation of powers, it may be necessary to require that members of the legislature vacate their membership on appointment to the Executive Council.

6.2.4 Oath, ethical provisions - s 149(7),(8),(10)

CPG: Retain

6.2.5 Executive Council procedure: meeting presided over by Premier - s 150(1)

ANC: Premier chair meetings

FF: Retain s 150.

CPG: Retain s 150

6.2.6 Temporary assignment of powers and functions to Executive Council members - s 151

NP: Retain s 151

FF: Retain s 151

CPG: Retain s 151

6.2.7 Transfer of powers and functions from one member to another member - s 152

NP: Retain s 152

FF: Retain s 152

6.2.8 Accountability of members of Executive Councils - s 153

ANC: The executive councils shall be accountable to the Premier and the provincial legislature for the performance of their day to day administration and collectively for the administration of the province as a whole.

NP: Retain s 153

FF: Retain s 153

CPG: Retain s 153

6.2.9 Vote of no confidence in Executive Council alone, then Premier may resign, reconstitute of the Executive Council, or dissolve the legislature - s 154(3)

NP: Retain s 154

FF: Retain s 154

CPG: Retain s 154



CONSTITUTIONAL ASSEMBLY

CONSTITUTIONAL ASSEMBLY

MEMORANDUM

TO: THEME COMMITTEE 2

FROM: EXECUTIVE DIRECTOR

DATE: 30 May 1995

RE: NOTIFICATION OF MATTERS REFERRED

Please note that the following matters have been referred to Theme Committee 2 for its consideration:

1. The *Law Advisors' Analytical Survey of Report by TC1 on Block One, 8 March 1995* referred the following matters to Theme Committee 2 for its consideration:

1. Political System: the comment in the document reads:

No. 2, Constitutional Principle VIII, Political System; Non-contentious aspects:

- (1) *Multi-party system*
- (2) *Regular elections*
- (3) *Universal adult suffrage*
- (4) *Common voters roll*

Remarks: ...Agreement on non-contentious aspects requires further development before drafting can commence. TC 1, 2 and 4 will flesh out the detail in Block Six.

2. Electoral System: the comment in the document reads:

No.3, Constitutional Principle VII, Electoral System: Non-contentious aspects:

- (1) *Basis to be proportional representation*
- (2) *Constituency representation to be explored*

Remarks: ...Agreement lacks specifics. Further clarity needed. TC2 will provide further clarity on national and provincial electoral systems in Block Six."

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3. **Accountability:** the comment in the document reads:

No. 6, Constitutional Principle VI, Accountability: Non-contentious aspects: "Executive to be accountable to Parliament; Remarks: the manner in which the executive will be accountable to Parliament to be developed further by TC2 in Block Two."

4. **Levels of Government:** the comment in the document reads:

No. 10, Constitutional Principle V XI, Levels of Government: Non-contentious aspects: National, Provincial, Local; Remarks: Levels of government need to be further developed. Falls within TC 2's mandate."

5. **Parliamentary Structure:** the comment in the document reads:

No. 13, Constitutional Principle XVI, Parliamentary Structure: Contentious aspects: Whether Parliament should be bi- or unicameral; Remarks: Question of second chamber is to be dealt with by TC 2 in Block 2.

6. **Minority Party Participation in Executive Structures:** t h e comment in the document reads:

No. 15, Constitutional Principle XIV, Minority participation in government: Contentious aspects: (1) Coalition government "forced" by Constitution; (2) Majority party government; Non-contentious aspects: Participation by minority parties in legislative structures on basis of proportional representation. Remarks: Question of minority parties' participation in executive structures will be dealt with by TC2.

2. On 27 February, the Constitutional Committee discussed the report of Theme Committee on Block 1. During that discussion, the following matters were referred to Theme Committee 2:

1. **Constituency Size:** the minute reads:

5.3.ii Regarding point 3, which reads:

"The democratic principles of representation, accountability, responsiveness and openness are best served by government being as close as possible to the people."

The meeting noted the FF's concern that the phrase, "being as close as possible to the people" should require some consideration of the size of constituencies, to allow close contact between elected officials and the people they represent. The meeting agreed that this would be taken forward by Theme Committee 2 when it considers "Structures of Government".

2. "Separation of Powers": the minute reads:

5.3.v. *Regarding point 13, which reads:*

"There shall be separation of powers among levels of government in a balanced way to prevent concentration of power:

the meeting agreed to retain point 13 on the understanding that it would be take up when discussing the report from Theme Committee 2."

3. On 5 May 1995 the Constitutional Committee discussed the report of Theme Committee 1 on Block 2. The "Analytical Survey" of that report referred the following matters to Theme Committee 2:

1. **Provincial legislative and executive competence and national concurrent powers:** the survey noted:

"No. 2, Constitutional Principles I, XI, XIII, XIV, XVI, XVII, XIX, XX, XXII and XXXIV, One Sovereign State: Contentious aspects: (1) Extent of provincial legislative and executive competence and of national concurrent powers. Remarks: Wide ranging views of parties. Details to be worked out by Theme Committees Two and Three.

2. **Minority Participation:** the survey noted:

No. 2 ... [same as above] ...: Contentious aspects (2) Minority participation as a constitutional requirement. Remarks: CP XIV. Again an issue for Theme Committees Two and Three.

3. **Community self-determination:** the survey noted:

"No. 2 ... [same as above] ...: Contentious aspects (3) Community self-determination (including "Volkstaat". Remarks: At what level should self-determination be set - the community or centrally. Again issue for Theme Committee 2.

4. **Traditional Monarchies:** the survey noted:

"No. 2 ... [same as above] ...: Contentious aspects (4) Traditional Monarchies, the extent of their recognition and protection. Remarks: An issue which interlinks TCs 1, 2, 3, 4 and 5.