

2/4/2/1/9/10

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2 STRUCTURE OF GOVERNMENT

THEME COMMITTEE MEETING

**Friday
21 April 1995
9H00-13H00
V475**

**STRUCTURE AND FUNCTIONING OF
GOVERNMENT AT NATIONAL LEVEL**

**TECHNICAL COMMITTEE'S DRAFT
REPORT: THE SENATE**

SENATE

1. INTRODUCTION

The following parties made submissions:
African Christian Democratic Party (ACDP)
African National Congress (ANC)
Democratic Party (DP)
Freedom Front (FF)
Inkatha Freedom Party (IFP)
National Party (NP)
Pan Africanist Congress (PAC)

A number of organisations including individuals also made submissions in this regard. There is a pleasant unanimity on the question of the desirability of a second chamber. All parties agree that parliament should consist of two houses, namely the National Assembly and the Senate. This view is shared by all parties and individuals who made submissions.

2. NOMENCLATURE (TERMINOLOGY)

There is no contention about the name, Senate. On the contrary it is a preferred name by all the parties.

3. COMPOSITION OF THE SENATE

Other than the ACDP, which did not address the question of the Senate, the Parties differ on the numbers which range from 6, 7, 8 and 10 per province.

4. ELECTION / APPOINTMENT OF SENATORS

There are two schools of thought in this regard:

One which is shared by both the ANC and the IFP is that the senators be appointed from the members of the Provincial Legislature. The ANC went further to suggest that they can be removed or dropped at the will of the Provincial Legislature or National government respectively. The Freedom Front suggests that the senators be nominated by the parties represented in the Provincial Legislature.

The other school of thought is that the Senators should be elected directly. The Freedom Front suggests that there should be equal representation from all provinces that will form 60 % of the Senate. Traditional leaders and any community seeking self determination, should elect a fixed number of representatives to the Senate and the remaining members should come from organised labour, organised business and organised agriculture.

5. FUNCTIONS AND POWERS

The IFP maintains that the Senate must have concurrent legislative power with the National Assembly. This position is supported by the DP with a rider or proviso that such legislative power to be given to the Senate should exclude money bills and all other legislation dealing with the boundaries of provinces. The other parties accept that the legislative authority will vest in the National Assembly and that the Senate will be:

mainly to represent the provinces;

review legislation from the National Assembly without having the veto power and be able to refer legislation to the Constitutional Court if in its opinion there has been a contravention of the constitution.

The Freedom Front wants the Senate to play a much more involved role than that, amongst others: protecting the right of minorities; contribute towards nation building and protection and development of different languages and cultures of South Africa.

The IFP, other than equal legislative power with the National Assembly wants the Senate also to supervise and control the executive, particularly when it relates to national defence.

6. PRESIDENT AND DEPUTY PRESIDENT OF THE SENATE

This issue has not been discussed and one can only assume that there is no contention.

7. QUALIFICATION FOR MEMBERSHIP OF SENATE

It can be deduced from the submissions that a member should be qualified to become a member of the National Assembly or the Provincial Assembly in order to qualify to be a Senator.

8. VACATION OF SEAT BY SENATOR AND FILLING OF VACANCIES

This will be determined by which of the three schools of thought outlined a party prefers or affirmation by Senators. This matter is not contentious.

9. SITTING OF SENATE

This matter is not contentious

10. QUORUM

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.

11. POWERS, PRIVILEGES AND IMMUNITIES OF SENATORS AND BENEFITS OF MEMBERS

The parties did not address this and we assumed that there is satisfaction with what is contained in Section 55 of the Interim Constitution.

12. PENALTY FOR SITTING AND VOTING WHEN DISQUALIFIED

This matter was not addressed.

13. JOINT SITTINGS OF HOUSES

This matter was not addressed.

14. RULES AND ORDERS

We assume that the parties are satisfied with what is contained in Article 58 of the Interim Constitution.

15. PASSING OF BILLS

This is dependent on which school of thought the party prefers.

THEME COMMITTEE 2

DRAFT REPORT ON BLOCKS 2 AND 3

THE SENATE (SECOND CHAMBER)

CP/SEC	CONSTITUTIONAL ISSUE	AGREEMENT	CONTENTION	COMMENT
	Nomenclature (terminology)	Senate		
	Composition: 6, 7, 8 and 10 per province			

<p>Appointment/election: There are two schools of thought in this regard: one which is shared by both the ANC and the IFP is that the senators be appointed from the members of the Provincial Legislature. The ANC went further to suggest that they can be removed or dropped at the will of the Provincial Legislature or National government respectively. The Freedom Front suggests that the senators be nominated by the parties represented in the Provincial Legislature. The other school of thought is that the Senators should be elected directly. The Freedom Front suggests that there should be equal representation from all provinces that will form 60 % of the Senate. Traditional leaders and any community seeking self determination, should elect a fixed number of representatives to the Senate and the remaining members should come from organised labour, organised business and organised agriculture</p>			
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Powers and functions:

The IFP maintains that the Senate must have concurrent legislative power with the National Assembly. This position is supported by the DP with a rider or proviso that such legislative power to be given to the Senate should exclude money bills and all other legislation dealing with the boundaries of provinces. The other parties accept that the legislative authority will vest in the National Assembly and that the Senate will be: mainly to represent the provinces; review legislation from the National Assembly without having the veto power and be able to refer legislation to the Constitutional Court if in its opinion there has been a contravention of the constitution.

The Freedom Front wants the Senate to play a much more involved role than that, amongst others: protecting the right of minorities; contribute towards nation building and protection and development of different languages and cultures of South Africa.

Section 49	President and Deputy President: This issue has not been discussed and one can only assume that there is no contention.			
Section 50	Qualifications for membership: It can be deduced from the submissions that a member should be qualified to become a member of the National Assembly or the Provincial Assembly in order to qualify to be a Senator			
Section 51	Vacation of seat and filling of vacancy: This will be determined by which of the three schools of thought outlined a party prefers or affirmation by Senators. This matter is not contentious			
Section 53	Sittings of Senate: This matter is not contentious			
Section 54	Quorum: 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.			

Section 55	Powers, privileges, immunities and benefits: The parties did not address this and we assumed that there is satisfaction with what is contained in Section 55 of the Interim Constitution			
Section 56	Sitting when disqualified: This matter was not addressed.			
Section 57	Joint sittings: This matter was not addressed			
Section 58	Rules and orders: We assume that the parties are satisfied with what is contained in Article 58 of the Interim Constitution.			
	Passing of bills: This is dependent on which school of thought the party prefers.			