

2/4/2/1/1/22

TC2/18(1)

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2

STRUCTURE OF GOVERNMENT

THEME COMMITTEE MEETING

Monday

15 May 1995

9h00

M46

DOCUMENTATION

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CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 2
STRUCTURE OF GOVERNMENT
THEME COMMITTEE MEETING

Please note that a meeting of TC2 will be held as indicated below:

Date : Monday 15 May 1995

Time : 9h00-17h00

Venue : M46

Please note that the Core Group indicated that it may be necessary for the meeting to continue beyond the morning session.

AGENDA

1. **Opening and Welcome**
2. **Minutes of Theme Committee Meetings (19, 20, and 21 April; 5 May)**
(documentation: will be provided in supplementary pack: TC2/18(2))
3. **Matters Arising**
 - 3.1. **TC Representation**
 - 3.2. **Traditional Authority Reports (In-house Workshop and CPG Workshop)**
(documentation will be provided in supplementary pack)
3. **CPG Presentation of Recommendations pertaining to *Structure and Functioning of Government at Provincial Level***
(see documentation pack TC2/16, pp 3-49)
4. **Progress Report from Technical Committee on *National Assembly, Presidency, and Cabinet***
(see documentation pp 1-35)
5. ***The Senate***
(see documentation pack TC2/16, pp 50-52)

6. **Structure and Functioning of Government at Provincial Level**
(see composite edition of political parties submissions on block 2/3, as well as addendum "A" to it. Further submissions from political parties are awaited)
 7. **Any Other Business**
 8. **Closure**
-

**HASSEN EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY**

Enquiries:	James Nene	Pager: 468 - 5050 CODE 9127; Tel: 403 - 2109
	Thomas Smit	403 - 2281
	Charmaine Fredericks	245031 EXT 2272

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 2

STRUCTURE OF GOVERNMENT

THEME COMMITTEE MEETING

**Monday
15 May 1995
9h00
M46**

**TECHNICAL COMMITTEE'S DRAFT
REPORT**

**NATIONAL ASSEMBLY, PRESIDENCY,
CABINET**

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

	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 subsect (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/cabinet
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		

Section 43	Vacation of seat	<p>1. Become disqualified i t o IC sec 42</p> <p>2. Resignation</p> <p>3. Membership of Senate, provincial legislature or local govt</p>		<p>Revisit:</p> <p>1. Cease to be member of nominating party, right of recall and free/imperative mandate</p> <p>2. 15 consecutive days absence</p>
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	<p>Agreed subject to -</p> <p>1. question whether there should be duty to create committees</p> <p>2. kind of Senate</p>		To be revisited

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	<ol style="list-style-type: none"> 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	<p>President has to assent and sign bill unless -</p> <ol style="list-style-type: none"> 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 		

Section 65	Enrolment and public access to laws	<ol style="list-style-type: none"> 1. Copies in required official languages to be kept by Registrar of Court 2. Signed copy prevails in event of conflict 3. Subject to Act protecting safety and durability of Acts, public have access 		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> <ol style="list-style-type: none"> 1. minorities are not necessarily a matter for the Constitution, and 2. other political parties are not opposed to voluntary coalitions

REPORT ON SUBMISSIONS : THE NATIONAL ASSEMBLY

Introduction

Part of the report should be read with the tabular analysis above, and the sections on the President, 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:

Terminology

Summoning of National Assembly and Parliament

Sittings and sessions

Joint sitting of two houses

Size of National Assembly

Constituencies

Election of members

Qualifications for membership

Term and dissolution

Continuation of NA and membership after dissolution

Oath of office

Vacation of seat

Filling of vacancy

Rights of non-members entitled to be in National Assembly

Disqualified person sitting

Presiding officer(s)

Voting rights of presiding officers

Committees

Rights, immunities, privileges, benefits of members

Powers of National Assembly

Quorum and majorities for decision

Types of legislation

Assent to bills

Enrolment and public access to laws

Public access to National Assembly

Relationship towards the Executive

Role of minority parties

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

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.

Submissions

Submissions on the National Assembly were received from -

Parliamentary political parties

Other organisations (including non-parliamentary parties)

Individuals

Institutional 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 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 (decentralised representation at each level of government).

Submissions received on the aspects of the National Assembly listed above

Terminology

As far 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.).

Some 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*].

Summoning of National Assembly and Parliament

Submissions received.

ittings and sessions

missions received.

oint sittings of two houses

missions received.

ize of the National Assembly

the size of the National Assembly there is no unanimity, not only among political parties, but 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 100 member constituencies, 60 on party lists nationwide). According to the FF, the size of the NA depends on the powers of the provinces, but it would probably be satisfied with the current arrangement, or an NA of between 350-400 members.

A 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.

Following is a brief summary of the viewpoints of individuals:

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

W. J. van der Merwe proposed that the 'legislative chamber' include traditional leaders.

Constituencies

Question of constituencies will have to be dealt with under the electoral system. Although all parties expressed themselves briefly on this aspect (e.g. ANC and DP), the majority of responses 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 stated a preference for a free mandate and the right of recall: Griggs - constituencies and recall; Ninow - constituencies, no lists; Matschak - mix of constituencies and proportional representation; PJ Knock - constituencies; Mase - right of recall; H de Villiers - proportionality failed (probably meant list system); BS Weston - 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 Preez - constituencies; 4 year term with maximum of 3; Munn - mixed list and constituency; independent candidates to be allowed; Joy Macnab - constituencies; UA Naicker - minimum qualifications for public office; D Rabie - constituencies; EJ and others - constituencies; A Smith - constituencies; audited disclosure of finances of MPs; Watermeyer - (by inference in favour of) constituencies; MP should be allowed to cross floor consulting constituency; MPs reside in constituency; H Voges - constituencies and list; allowing of floor; PS Clark - minimum qualifications; constituencies; D Shepherd - constituencies.

Election of members

Submissions received.

Qualifications for membership

Political parties have not expressed themselves on this issue. Mepstone would want qualifications of voters and elected constitutionally entrenched, while a group of 8 pupils from Motse Maria High School suggest that members of the National Assembly should be 30 years old.

Term and dissolution

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; pupils from Motse Maria High School - 5 year term.

Continuation of NA and membership after dissolution

Submissions received.

Oath of office

Submissions received.

Vacation of seat

Submissions received.

Rights of non-members entitled to be in NA

missions received.

Disqualified person sitting

missions received.

Presiding officers

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 from a 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 stated otherwise, it is in favour of the current provisions of the Constitution, the NP would agree to existing measures.

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

Voting right of presiding officer

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

Committees

Political parties offered a view on this aspect. The ANC sees the role of committees to ensure 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 does the NP in terms of its stated position.

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

Rights, immunities, privileges, benefits

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 outside of Parliament, subject to correction of factual error; and of some degree of immunity from legal proceedings. The NP would support the current arrangement.

Individuals referred to an issue which could be classified under this heading: MS Kamedien - should like to give the taxpayer 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.

Powers of the National Assembly

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:

ANC proposed that the NA control national budget, and that it takes primary responsibility for preparation and adoption of 'main' laws. According to the DP, the NA should be the primary or 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 be listed, the remainder going to the provinces; Pi du Preez - 15 responsibilities/powers of the 'federal' parliament.

Quorum and majorities for decisions:

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 those present.

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

Submission on this score was received from individuals or other organisations.

1 Types of legislation and procedure for passing

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 of Parliament (Parliamentary law) should provide for specific matters.

2 Assent to bills

submissions received.

3 Enrolment and public access to laws

submissions received.

4 Public access to NA

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.

Relationship towards the Executive

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

- 1 Executive accountability to the Legislature
- 2 Vote of no confidence in the Executive
- 3 Election and dismissal/impeachment of President
- 4 Powers of President i r o NA/Parliament

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 DP commended that the NA ratifies (with the other chamber) cabinet appointments; one house may ratify the substitution of a minister; and Parliament may ask a minister for information or resign. The NP proposed without further detail that the relationship between the legislature and executive be defined in the Constitution.

6 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.

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

8 Melikow proposed that Parliament should elect the cabinet by single transferable vote (STV).

Relationship towards the other chamber (if any)

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

(the NA should have final power i r o financial bills; equal powers i r o provincial matters; right to review by the second chamber (without veto) of all other matters); DP (equal powers over budget and money bills, where NA will override; i r o provincial powers, functions and duties, and distribution of financial resources between provincial and national levels, DP would prefer to imply overriding power for second chamber); IFP (equal powers for the two chambers, 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 i r o status quo.

9 In its 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 session of the NA and the Senate.

Role of minority parties

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

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

TSCRIPT

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

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"> 1. The IFP prefers separate offices 2. The majority of individual submissions received expressed preference for non-executive head of state
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"> 1. The DP prefers a directly elected President 2. The NP is not against a directly elected President 3. Whether election should be by the NA or Parliament to be revisited when finality reached on composition of the Legislature
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"> 1. Number of terms that President may serve to be revisited 2. IFP prefers one 7 year term

<p>Section 93</p>	<p>Motion of no-confidence by legislature</p>	<p>The legislature may pass a motion of no-confidence (the DP reserving its position)</p>	<p>Consequences of motion of no-confidence</p>	<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>
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Section 82

Powers and functions

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))

2. In view of fixed term of Legislature, may only dissolve Legislature in circumstances provided for by Constitution

3. Has to assent to bills and sign unless:

a. there is procedural irregularity; or

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

1. The IFP favours a Prime Minister as head of government

2. Declaration of war, martial law and conclusion of peace to be revisited

3. Acts in consultation with Cabinet to be revisited

		<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>9. International relations</p> <p>10. Reprieve and pardon</p> <p>11. Commander-in-chief of armed forces</p>	<p>Whether President acts in sole discretion or in accordance with provisions of the Constitution</p>	
	<p>Deputy President/Prime Minister</p>			<p>See under Cabinet</p>

RT ON SUBMISSIONS: THE PRESIDENCY

roduction

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

Combined or split office: head of state and head of government

Election of President

President member of Legislature?

Tenure of office and number of terms

Motion of no-confidence by Legislature

Powers and functions.

bmissions

missions on the Presidency were received from -

Parliamentary political parties

Other organisations

Individuals

nstitutional principles

**Following Constitutional Principles have a direct bearing on the aspects of the Presidency dealt
in this report: IV (Constitution supreme law of the land, binding on all organs of state at all
s of government); and VI (separation of powers and checks and balances).**

missions received on the aspects of the Presidency listed above

Combined or split office: head of state and head of government

amentary parties expressed the following views:

: President with both ceremonial and executive powers.

An executive president combining the powers of head of state and head of government.

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

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

- (a) Vice-President to assist in the execution of the duties as Head of State which include the powers, duties and prerogatives normally associated with the office of Head of State;
- (b) Prime Minister to assist in the executions of functions of government, namely, to coordinate the work of the cabinet and in the absence of the President preside over the cabinet.

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

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

The Conservative Party made a submission on a constitution for the Afrikaner/Boer People. As such a document does not address itself on the organization of the central state.

With the exception of one, the public submissions favour a non-executive head of state separate from the head of government:

Ke (vol 3): Head of state should be non-executive

Wenden-Thurgood (vol 3): Non-executive head of state separate from head of government. The Prime Minister should be the head of government.

Wenden-Thurgood (vol 3): Non-executive head of state separate from head of government. The Prime Minister should be the head of government.

Wenden-Thurgood (vol 3): Council of Wisemen, including the State President and Prime Minister.

Wenden-Thurgood (vol 3): State president without legislative powers

Wenden-Thurgood (vol 3): Head of state separate from head of government.

Wenden-Thurgood (vol 3): There shall be a State President and Prime Minister

Wenden-Thurgood (vol 4): Executive President.

Election of President

Political parties expressed the following views:

A: President shall be elected by and from the National Assembly.

B: Elected by Parliament as at present, that is to say, from among its members.

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

D: Elected by Parliament in joint sitting from among its members.

E: Elected by NA from amongst its members.

Direct election on same day as election of NA. President need not be member of Parliament.

Majority of submissions support a directly elected president. Two submissions suggest that the President should also obtain special majorities:

(vol 3): Appointed by body representative of people of country
Munir-Thurgood (vol 3): Appoint by government of day, selected for their special non-party
seats to the State

Mathi (vol 3): People elect president

(vol 3): People elect president

Person (vol 3): Appointed by parliament, after consultation among all parties, by a special
majority of 60%

Deez (vol 4): Directly elected by people. Must receive 66% support in all 9 provinces

Stone (vol 5): Directly elected by people.

President member of Legislature?

Political parties had the following views:

On election President vacates his or her seat in Parliament.

On election President vacates his or her seat.

On election president vacates seat in NA.

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

FP did not express itself on this matter.

President remains member of Parliament.

Submissions from individuals support a separation of powers between the president and the
legislature:

DeKamp (vol 3): Executive not part of the legislature

Munir-Thurgood (vol 3): President should not be a member of the legislature.

Tenure of office and number of terms

Following submissions were received from political parties:

Term of office is linked to that of National Assembly. After dissolution of NA, the president
may be re-elected for a second full term only. A maximum of 10 years.

Term of office linked to that of NA. No limit on number of terms.

One seven year term.

No limitation on number of terms.

Tenure limited to two terms of 4 years each. Maximum of 8 years.

submissions from individuals were divided on the question.

Widgen-Thurgood (vol 3): Maximum of two terms of 5 years

Preez (vol 4): Two 4 year terms only

Widgen-Thurgood (vol 5): limited period

Widgen-Thurgood (vol 5): 5 years term, re-eligible for unlimited amount of terms.

Motion of no-confidence by legislature

Political parties offered the following views:

1. Parliament may pass a motion of no-confidence in the President. The President shall then dissolve Parliament and call a new election.

2. After adoption of motion of no-confidence, President resigns or calls an election.

3. After adoption of motion of no confidence in the head of government and his or her cabinet, the President shall appoint a new Prime Minister.

4. After adoption of motion of no confidence in President and cabinet, the president may resign or dissolve Parliament and call an election. If a no-confidence motion pertains only to the President, he or she shall resign.

5. After adoption of a motion of no-confidence in the prime minister and cabinet, President may dissolve Parliament, terminating also the presidency.

6. Impeachment (see 'comment 2' in block on 'motion of no-confidence'), parties expressed themselves as follows:

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

2. Parliament may impeach members of the executive.

3. Removal by simple majority vote in both houses of Parliament on grounds of mental incapacity, drunkenness or felony.

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

5. Impeachment for misconduct by resolution adopted by a 2/3 majority of each house in Parliament.

6. Submissions from individuals were in agreement that Parliament should have the power to impeach the President on specific grounds:

Widgen-Thurgood (vol 3): President removed from office for conduct considered to be prejudicial to the interest of state, or mental deterioration or bankruptcy

Preez (vol 4): If president breaks the law and is found guilty, National Assembly has right to remove him from office

Widgen-Thurgood (vol 5): impeachment on 2/3 vote of Parliament

wers and functions

Following submissions were received from political parties:

Convening of the legislature:

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

IFP: (Head of State) Convenes parliament after elections.

Dissolving legislature

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

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

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

Assent to laws

ANC: Yes

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

IFP: Yes, but with a 'line-by-line' power of veto.

Individual submissions expressed themselves on this matter:

reez (vol 4): May veto any legislation for one session. Both houses of Parliament may overturn by 66% vote

(vol 5): Veto, but by 2/3 vote override.

Power to appoint and dismiss ministers and deputy ministers

ANC: To appoint and dismiss ministers at his or her discretion. Not stated whether ministers should be members of Parliament.

NP: To appoint ministers from among members of Parliament. Appointment of non-party political experts from outside Parliament to be used sparingly.

FF: To appoint ministers from among members of Parliament. May dismiss ministers in his or her discretion.

DP: May appoint ministers from among members of Parliament.

PAC: May appoint ministers from among members of Parliament.

Two individual submissions:

D'Arcy (vol 4): President appoints ministers who have expertise in their posts. Appoint also from outside party-political scene

Du Preez (vol 4): Appoints any office bearers in his government, with approval of both Houses of Parliament.

Manage and preside over cabinet

ANC: To manage and preside over cabinet.

NP: Chairs the cabinet.

FF: Presides over cabinet.

DP: Presides over cabinet.

Relation to cabinet

ANC: Consults with cabinet when taking important decisions. Ministers to advise President.

NP: Powers exercised mainly in consultation with the cabinet.

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

President (head of state) to ensure the preservation of the constitutional order and the proper functioning of the constitutional machinery.

IFP: Yes

3 Conferring honours

ANC: Yes

IFP: Yes

3 International relations: ambassadors, sign and negotiate agreements

ANC: Yes

IFP: Accreditation of ambassadors and foreign delegations.

10 Pardon and reprieve offenders

ANC: Yes

IFP: Yes

Du Preez (vol 4): May pardon any person at the end of his term of office. In criminal cases the appeal court can overturn a pardon.

1 Commander-in-chief of armed forces

ANC: Yes

IFP: Yes

Du Preez (vol 4): President commander-in-chief.

2 Declare war, martial law, proclaim peace

ANC: Yes

3 Execute policies of national government

ANC: Yes

NP: Yes

4 Other individual submissions:

Cooke (vol 3): Head of State should not be involved in appointment to non-political posts.

Longden-Thurgood (vol 3): Prime minister appoints 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

	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		<p>1. Question whether ministers may be appointed from both houses of Parliament to be revisited when clarity obtained on nature of Senate.</p> <p>2. The NP is prepared to support limited appointment from outside the legislature.</p>
	Term of office/dismissal	<p>Term of office determined by:</p> <p>1. Membership of parliament;</p> <p>2. vote of no-confidence by Parliament in the Cabinet or in the President</p>	Whether dismissal to be in the discretion of the President (see under 'The Presidency - Powers and Functions')	

	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	

	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		

RT ON SUBMISSIONS : THE CABINET

Introduction

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

- Terminology**
- Composition**
- Size of Cabinet**
- Appointment of Deputy President/Prime Minister**
- Appointment of Ministers**
- Ministers to be appointed from Legislature**
- Term of office**
- Accountability to Parliament**
- Vote of no-confidence in the Cabinet by the Legislature**
- Ministers to be responsible to the President**
- Role of minority parties**
- Code of conduct for members of the Cabinet**
- Consultation between President and Cabinet**
- Decision-making**
- Counter-signing by ministers**
- 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**

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

missions

ssions were received from -

amentary political parties

er organisations (including non-parliamentary parties)

viduals.

stitutional Principles

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

missions received on the listed aspects relating to the Cabinet

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

erminology

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

Composition

Party submissions were explicit in this regard (DP and FF), but it was subsequently agreed in the Name 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 nature 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.

Size of the Cabinet

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 a structure of not more than 10. L. Lus merely said structures have too many members.

Appointment of Deputy President/Prime Minister

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 Prime Minister), apparently from the ranks of Parliament.

Individual submission: O Bothma proposed that two Vice-Presidents be chosen from the largest parties; Ablot (vol 4) and Du Preez (vol 4) are in favour of one deputy president.

Individual submissions contained the following detail about the Deputy President(s):

1 Election/appointment

NP: Elected by NA from amongst its members.

DP: One of deputy presidents should come from second largest party in Parliament.

FF: Nominated by President and then endorsed by majority of members of Parliament.

2 Powers

2.1 Deputizing for the President

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

NP: In case of a vacancy, one of deputy presidents, nominated by cabinet, acts as President until new one elected. Acts on President behalf in his absence, including chairing cabinet.

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

FF: To deputize in case of incapacity or absence.

Only one individual submission referred to this matter: Du Preez (vol 4), who is in favour of the Deputy President deputizing for the President.

2 As executive deputy president

ANC: Member of cabinet. President may assign duties and functions to the Deputy President.

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

FF: To perform some of the duties of the president.

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

Removal

Same as for President.

Can be impeached.

Same as for President.

Prime Minister

Prime Minister appointed by President after consultation with the leaders of the political parties. Forms cabinet and submits it for ratification by means of vote of confidence to Parliament.

Prime Minister appointed by President. To assist in the executions of functions of government. In the absence of the Government business in Parliament: coordinate the work of the cabinet and in the absence of the President preside over the cabinet.

Appointment of ministers

All political parties agreed that ministers of the Cabinet should be appointed by the President. The NP 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 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.

Malikow proposed that Parliament should elect the cabinet by single transferable vote (STV). RM Den-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. Mthema 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.

Ministers to be appointed from Legislature

is agreement that ministers should be drawn from the legislature (the NP was prepared to accept 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 PAC and the FF left room for appointment from both.

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

Term of office

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.

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.

Accountability to Parliament

parliamentary parties support accountability of the executive to Parliament: ANC; DP; IFP, albeit in somewhat different language of the cabinet being in a 'fiduciary' relationship with parliament and collectively 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, requiring accountability; Organisation Development Institute of Southern Africa. In a useful analysis Bill argued for an interpretation of Constitutional Principle VI (separation of powers) which would favour parliamentary government and cabinet responsibility.

Steenkamp proposed a non-parliamentary executive.

Vote of no-confidence in the Cabinet by the Legislature

following parties expressed an opinion on this aspect: ANC - President may reconstitute Cabinet after an election; DP - in the event of a vote of no confidence, a new Prime Minister and Cabinet may 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; would retain sec 93 of Interim Constitution.

Ministers to be responsible to the President

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 not have the power to criticize the President on behalf of the people.

Role of minority parties

Role of minority parties in the Cabinet is contentious. The NP supported a constitutionally based 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 a coalition administration; 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.

Code of conduct for members of the Cabinet

ANC referred to this aspect: no other paid employment or activities inconsistent with the duties of a minister; the NP in terms of stated approach also in favour. (See Interim Constitution sec 3(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.

Consultation between President and Cabinet

ANC proposed consultation by the President when taking important decisions, and the Cabinet to advise the 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.

Decision-making

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.

Counter-signing by ministers

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

Other issues identified

- 1 Oath/affirmation (Interim Constitution sec 88(7))
- 2 Remuneration (sec 88(10))
- 3 Temporary assignment of powers/functions to another minister (sec 90; see FF submissions)
- 4 Transfer of minister's powers/functions to another minister (sec 91; see FF submissions).

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 declaration of assets.

3 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).

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.

3 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.



CONSTITUTIONAL ASSEMBLY

MEMORANDUM

TO: The Secretariat
FROM: Hassen Ebrahim
DATE: 10 May 1995
SUBJECT: Hearing Dates

This memo serves to confirm the National Sector Public Hearing dates as follows:

<u>SECTOR</u>	<u>DATE</u>	<u>VENUE</u>
Business	8 May	Old Assembly Chamber
Traditional Authorities	12/13 May	National Assembly
Children's Rights	13 May	HSRC - Pretoria
Religious Groups	26 May	World Trade Centre
Youth	27 May	World Trade Centre
Labour	3 June	World Trade Centre
Women	4 June	World Trade Centre

There will also be a National Conference on National Machinery and the Advancement of Women - 2/3 June 1995.

Ref.a:\memnvn10.5a

P. O. Box 15, Cape Town, 8000
Republic Of South Africa

Tel: (021) 245 031, 403 2252 Fax: (021) 241 160/1/2/3, 461 4487, E-mail: conassem@iaccess.za

THE NEW CONSTITUTION