

2/21/116/17



**CONSTITUTIONAL ASSEMBLY
MEMORANDUM**

TO: Members of the Constitutional Committee Subcommittee
FROM: Executive Director
DATE: 19 February 1996
RE: Technical Refinement Team's Revised Formulations on the National Assembly

We enclose for your consideration the Technical Refinement Team's revised formulations on the National Assembly for consideration at the 19 February 1996 meeting of the CC Sub-committee.

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Status: For consideration by CC Subcommittee

CHAPTER 3 PARLIAMENT

Legislative authority of Republic

40. (1) The legislative authority of the Republic is vested in Parliament, which may make laws for the Republic in terms of the Constitution.
- (2) Parliament consists of the National Assembly and [a second house].

THE NATIONAL ASSEMBLY

Composition and election of National Assembly

41. The National Assembly consists of between 300 and 400 members as determined by national legislation, who are women and men elected in terms of an electoral system that is prescribed by national legislation, is based on a common voters roll and [results], in general, [in] proportional representation¹.

Membership

42. (1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly, except -
- (a) anyone who is appointed by or is in the service of the state and receives remuneration², other than the President, Deputy President, Ministers and Deputy Ministers and any other office-bearers whose functions have been declared by national legislation to be compatible with the functions of a member of Parliament;
 - (b) members of [the second House,] a provincial legislature or a local government;
 - (c) unrehabilitated insolvents;
 - (d) anyone declared to be of unsound mind by a court of the Republic;
or
 - (e) anyone who, after this section takes effect, has been convicted of an offence and sentenced to more than 12 months' imprisonment

¹The issue relating to the nature of the electoral system is still outstanding. *Bilaterals are continuing.*

² Reformulation is under consideration by Technical Refinement Team

without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic; but, no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.

- (2) A person loses membership of the National Assembly if that person -
 - (a) ceases to be eligible; or
 - (b) is absent from the Assembly without permission in circumstances for which the rules and orders of the Assembly prescribe loss of membership.
- (3) Vacancies must be filled in terms of national legislation.

Vacancies

43. ...

Oaths or affirmation by members

44. Before members of the National Assembly begin to perform their functions in the Assembly, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, by solemn declaration in accordance with Schedule 3.

Sittings and recess periods

45. (1) The first sitting of the National Assembly after an election must take place at a time and on a date determined by the President of the Constitutional Court, but not more than 10 days after the election result has been declared. The National Assembly may determine the time and duration of its other sittings and its recess periods.
- (2) The President may summon the National Assembly to an extraordinary sitting at any time to conduct urgent business.

(3) ³

Elections and duration of National Assembly

Amend
46. (1) The National Assembly is elected for a term of five years but it may be dissolved earlier if it passes a vote of no confidence in the Cabinet⁴.

(2) When the National Assembly is dissolved, or its term expires, the President, by proclamation, must call and set dates for an election, which must be held within 90 days of the date the Assembly was dissolved, or its term expired.

*Amend 113(1)
in one disk*
(3) If the results of an election of the National Assembly are not declared within the period referred to in section 113(1) or if an election is set aside by a court, the President, by proclamation, must call and set dates for another election, which must be held within 90 days of the expiry of that period or of the date on which the election was set aside.

(4) The National Assembly remains competent to function from the time it is dissolved or its term expires until the day before the first day of polling for the next Assembly; but, if the election results are not declared within the period referred to in section 113(1) or an election is set aside by a court, the Assembly as constituted previously again becomes competent to function until the day before the first day of polling in the next election.

46 A Insert

Speaker and Deputy Speaker

47. (1) At the first sitting after its election, or when necessary to fill a vacancy, the National Assembly must elect a Speaker and a Deputy Speaker from among its members.

(2) The President of the Constitutional Court must preside over the election of the Speaker, or designate another judge to do so. The Speaker presides over the election of a Deputy Speaker.

³ NP to revisit the deletion of the provision. DP proposes the option of including a provision that the seat of Parliament is Cape Town and another option of providing for the process of determining the seat of Parliament.

⁴ The wording proposed at the Subcommittee meeting of 29/01/1996 is technically problematic. To be revisited when decisions have been made on snap elections.

- (3) The procedure set out in Schedule 4 applies to the election of the Speaker and the Deputy Speaker.
- (4) The National Assembly may remove the Speaker or Deputy Speaker from office by resolution. A majority of the members of the Assembly must be present when the resolution is adopted.

Decisions

48. (1) A majority of the members of the National Assembly must be present before a vote may be taken on a Bill, and one third of the members must be present before a vote may be taken on any other matter, except where the Constitution provides otherwise.
- (2) All questions before the National Assembly must be decided by a majority of the votes cast, except where the Constitution provides otherwise.
- (3) The presiding member of the National Assembly has no deliberative vote, but must cast a deciding vote whenever there is an equal number of votes on both sides of a question.

President's rights in National Assembly

49. The President may attend, and may speak in the National Assembly, but may not vote.

Internal autonomy

50. (1) The National Assembly may determine and control its internal arrangements and may make rules and orders concerning its business and proceedings, including rules and orders regulating the establishment, composition, powers and functions, procedures and duration of its committees. *Delete footnote*
- (2) The rules and orders must provide for the participation of minority parties in the legislative process in a manner consistent with democracy.
- (3) A committee of the National Assembly may summon anyone to appear before it to give evidence on oath or affirmation or to produce documents.

⁵ NP to revisit the issue of minority participation in the legislative and other processes

Parliamentary privilege

51. (1) Members of the National Assembly have freedom of speech and debate in the Assembly and in its committees, subject to its rules and orders.
- (2) Members of the National Assembly are not liable to civil or criminal proceedings, arrest, imprisonment or damages for -
- (a) anything they have said in, produced before, or submitted to the Assembly or any of its committees; or
 - (b) anything revealed as a result of anything that they have said, produced or submitted.
- (3) Other privileges and immunities of members of the National Assembly may be prescribed by national legislation.

Bills

52. ...

Constitutional amendments

53. The Constitution may be amended by a Bill passed by Parliament if it is adopted by at least two thirds of the members of [both Houses of] Parliament⁶.

Assent to Bills

54. (1) The President must either assent to and sign a Bill passed by Parliament or, if the President has reservations about the constitutionality of the Bill, refer it back to Parliament for reconsideration.
- (2) If the President refers a Bill back to Parliament, the following procedure applies:
- (a) Parliament must reconsider the Bill in the light of the President's reservations.
 - (b) If Parliament does not reject the Bill and passes it fully accommodating the President's reservations, the President must

⁶ Further development to ensure compliance with Constitutional Principles XV and XVIII(4) and (5) is under consideration by Technical Refinement Team. Party submissions on unamendable principles to be submitted by 19/02/96. *Bilaterals are taking place on this matter.*

assent to and sign the Bill.

- (c) If Parliament confirms the Bill or passes it without fully accommodating the President's reservations, the President must either assent to and sign the Bill or refer it to the Constitutional Court for a decision on its constitutionality.
- (d) If the Constitutional Court decides that the Bill is constitutional the President must assent to and sign it. If the court decides the Bill is unconstitutional, the Bill lapses.

Application by members to Constitutional Court

- 54A (1) At least one third of the members of the National Assembly may apply to the Constitutional Court, within 30 days after a Bill passed by Parliament has been signed by the President, for an order declaring the Bill, or part of it, or if the Bill has been promulgated, the Act, or part of it, to be unconstitutional.
- (2) The Constitutional Court may declare that the Bill or Act or part of it has no force until the Court has decided the application if:-
- (a) the application has reasonable prospects of success and
 - (b) the interests of justice require this.
- (3) If the application is unsuccessful the Constitutional Court must order the applicants to pay the costs unless the Court decides that the application had reasonable prospects of success.

Promulgation

55. A Bill assented to and signed by the President must be promulgated and becomes an Act of Parliament upon its promulgation.

Safekeeping of Acts of Parliament

56. The signed copy of an Act of Parliament is conclusive evidence of the provisions of that Act and must be entrusted for safekeeping to the Constitutional Court immediately after promulgation.

