

PAN AFRICANIST CONGRESS (P.A.C.)

THEME COMMITTEE 2

SEPARATION OF POWERS

The PAC believes that if the objectives of efficiency and political freedom are to be served, complete separation of powers is neither feasible nor effectual in preventing malpractices. "Checks and balances" are more effective than total separation: though too great a degree of direct control of one government organ over another would constitute interference and would stand in the way of efficient government, a measure of control and partial separation of powers is conducive to the basic principle of limited government.

Although the doctrine of separation of powers cannot, by itself, furnish adequate guarantees of protection against excess of power by any organ of government, it certainly has an important contribution to make if interpreted in a limited sense. The PAC proposes enforceable limitation of powers, the following being the minimum requirements:

- (i) The legislature shall not administer laws.
 - (ii) The legislature shall not function as a court of law except with regard to internal disciplinary action.
 - (iii) The executive shall not exercise legislative powers (except when such powers have been delegated to it by the legislature.)
 - (iv) Control by the legislature over the executive authority in the sense that the former has to vote funds for the latter.
 - (v) The executive shall not function as a court of law.
 - (vi) The judiciary shall not exercise legislative powers.
 - (vii) The judiciary shall not perform executive functions.
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- (a) The relationship legislature/executive.
 - (i) Members of the executive shall have seats in any legislative body.

- (ii) Members of the executive shall not appoint any member to any legislative authority.
 - (iii) The executive shall have no powers with regard to the holding or not holding of elections, which matter shall be regulated exclusively by the constitution.
 - (iv) The executive shall have no power to convene or to terminate assemblies of the legislature arbitrarily, since this should be regulated either by the constitution or by the legislature itself.
 - (v) The executive shall have no powers to determine or to change the salaries, pensions, conditions of service and working conditions of members of legislative assemblies, such powers to be laid down solely in the constitution or by the supreme legislature to enable voters to exercise control thereof in elections.
 - (vi) The legislature shall control the country's budget, and the executive shall account for the funds appropriated to it without any secrecy.
 - (vii) No legislature may delegate legislative powers to the executive without retaining control. Such control should include at least direct parliamentary control over delegated legislation, for example by a parliamentary public protector or committee, and in any case the powers of review of the courts should be retained as they exist at present.
 - (ix) The executive shall execute valid legislation.
- (b) The relationship of the legislature and the executive vis-a-vis the judiciary.
- (i) An Independent Judiciary is imperative.

The judiciary should be independent in the following respects:

- * judicial officers shall not be elected, appointed or dismissed by the legislature or the executive.

* The term of office of judicial officers shall not be laid down by the legislature or the executive, but the term of office and reasons for dismissal shall be laid down in the constitution.

The salaries and pensions of judicial officers shall not be controlled by the legislature and the executive, save as is provided in the constitution.

- (ii) An entrenched, justiciable bill of human rights is fundamental to the principle of the separation of powers, checks and balances, and the limitation of powers.
 - (iii) judicial review of administrative and executive acts is likewise fundamental; like a bill of human rights, this should be entrenched.
 - (iv) Formal, judicial acts should be supplemented by a strong public protector institution.
 - (v) It shall be compulsory for the executive to carry out court orders, which shall mean inter alia that legislation and executive acts which have been declared unconstitutional or ultra vires by the courts shall not be administered or carried out.
1. It is self-evident that sanctioning is a function of a court of law, and pre-eminently a constitutional court.
 2. It follows therefore that any citizen should be given the locus standi to institute an action to enforce the above-mentioned principles which must be embodied in the constitution.