

Inkatha Freedom Party

THEME COMMITTEE No. 2
STRUCTURES OF GOVERNMENT

1ST REPORT ON
SEPARATION OF POWERS'

SEPARATION OF POWERS (Form of Government):

1. There shall be a pure parliamentary form of government.
2. Head of State and Head of Government shall be separate. Parliament shall sit for a five year term.
3. The President shall be elected by parliament in joint session for a seven year non renewable term and shall have the task to ensure the proper functioning of the constitutional and institutional machine.
4. The President shall appoint the head of government who shall form the cabinet in his/her discretion.
5. Cabinet shall be in a fiduciary relationship with Parliament which shall freely exercise its no-confidence vote without being dissolved.

HEAD OF STATE AND HEAD OF GOVERNMENT

1. In order to secure greater democracy and improve checks and balances, the office of the Head of State and that of the Head of Government should be separate.
2. The Head of State should ensure the preservation of the constitutional order and the proper functioning of the constitutional machinery while the Head of Government shall be in charge of the daily operation of Government.
3. Important functions related to the composition of other constitutional organs, such as the Constitutional Court and the defense forces could be ascribed to the Head of State

The IFP makes this submission under protest, for the Constitutional Committee should withhold consideration of the matters covered in this report and further development of the work program so as to allow international mediation to take place.

2. The IFP has proposed that the Defense Force be under the control of a collegial civilian body headed by the Head of State, who is also the Commander-in-Chief of the Defense rather than to the Head of Government.
4. The Head of State shall own exercise functions with respect to the representation of the state in international relations, ceremonial functions, the political resolution of conflicts within the institutional machine, and clemency and granting of honours.

EXECUTIVE AND PARLIAMENTARY FORM OF GOVERNMENT

1. South Africa should have a pure parliamentary system in which cabinet is collegially responsible to parliament, with which cabinet is to entertain a fiduciary relation.
2. Parliament's vote of no-confidence should not be impaired.
3. After consultation with the leaders of the political parties the Head of Government (Prime Minister) shall be appointed by the Head of State (President).
4. The Head of Government shall form the Cabinet and submit it for ratification by means of a vote of confidence of both Houses of in joint session.

MONO-CAMERALISM OR BI-CAMERALISM

1. There shall be a bicameral system and the Senate shall represent the Provinces.
2. The Senate shall have as much legislative power as the National Assembly.

RECONCILIATION OF DIFFERENT TEXTS ADOPTED BY THE TWO HOUSES

1. Differences between the texts adopted by the two House!; should be reconciled by a Joint Standing Committee of the two Houses in which the Senate and the National Assembly have an equal number of representatives.
2. The text so reconciled shall be approved by both Houses separately.
3. If one of the Houses does not approve it, the legislation is not enacted.

THE SENATE

1. The Senate should not have less legislative authority than the one given to the National Assembly.
2. The Senate should represent the provinces and its members should derive directly from the provinces either through appointment or through indirect elections.
3. Each province shall be equally represented in the Senate.
4. Legislation affecting the powers, functions and boundaries of Provinces may only be introduced in the Senate. Legislation affecting one of more specific Provinces must be approved by the senators of the Province(s) concerned.

COMPOSITION AND APPOINTMENT/ELECTION OF THE SENATE

1. Senators should be elected for a five year term by the Provincial Legislatures in consultation with the provincial Cabinet.
2. The Premiers of the Provinces shall have the privilege of the floor for themselves and/or for their ministers or designees.

ROLE OF SENATE WITH RESPECT TO SOME EXECUTIVE FUNCTIONS

1. The Senate should have a special role in monitoring the function of the Executive branch of government with respect to some activities which are outside the competence of the Provinces such as defense and armed forces.

COMPOSITION OF CABINET

1. Members of Cabinet shall be appointed by the Head of Government and shall serve at his or her pleasure, subject to the power of Parliament to vote its no confidence with respect to Cabinet in its entirety.

POWER SHARING OR ROLE OF MINORITIES IN CABINET

- 1 . The IFP does not believe in constitutionally mandated power-sharing arrangements.
2. The IFP believes that the protection of minorities should be provided for by means of a federal system and by means of very effective protection of minorities in Parliament'.

RELATION BETWEEN HEAD OF GOVERNMENT AND MINISTERS - COLLECTIVE OR PERSONAL RESPONSIBILITY OF CABINET

- I . The Ministers shall be chosen by the Head of Government and shall serve at his/her pleasure, provided that any substitution shall be ratified by a resolution of at least one House of Parliament.
2. Cabinet shall be collegially responsible to Parliament.
3. Each Minister shall be responsible to Cabinet for his/HER. Department, provided that Parliament may ask any Minister to provide information or to tender his/her resignation to Parliament.

CONSTITUTIONAL COURT

- 1 . A portion of the justices of the Constitutional Court shall be appointed by the Provinces from their own judicial systems and legal fraternities.

TRADITIONAL LEADERS AND THEIR STRUCTURES

The separation of powers of government should be cross-referenced with the recognition of the role of traditional leaders and the preservation of traditional communities.

In fact, traditional communities are autonomous societies, organised by traditional and

1. For instance, the Senate could be charged with the special task to authorize the execution by the Executive of international treaties or the employment of armed forces outside the country or even within the country for civil protection reasons.

As a part of the second Report of this Theme Committee, the IFP will address the issue of protection of political minorities in Parliament.

customary law and administered by traditional leaders. Within the traditional community, legislative and executive and judicial functions are exercised in terms of indigenous and customary law, which also determines the degree and the modalities of the separation of these powers. Among the most significant aspects which regard the exercise of these powers is the institution of communal property.

Given its speciality, this matter will be treated in the third Report of this Theme Committee as per the approved schedule.