

## THEME COMMITTEE 2

### NATIONAL PARTY PROPOSALS REGARDING THE SEPARATION OF POWERS

The proposals contained in this document deal with the separation of powers as envisaged in Constitutional Principle VI viz. .horizontal separation between the legislature, executive and judiciary. The proposals, furthermore, deal with principles (and not detail) and accordingly entail broad outlines which will be filled in as the work of the theme committee progresses.

1. As a general point of departure, the new Constitution must improve the current checks and balances provided by the division of powers between the legislature, the executive and the judiciary.
2. The legislature at the national, provincial and local levels shall comprise of elected representatives who directly represent the voters. Such representatives shall act independently from the respective executive authorities.
3. In order to enhance the objectives set in the previous paragraph, an electoral system based on proportional representation and which may include elements of geographical representation, shall be devised. The viability of corporate self-determination, as a method for

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furthering collective rights of self-determination, should be explored.

4. The concept of representative government, apart from what has been stated above, also entails that the role of opposition parties in the legislatures must be clearly defined e.g. regarding meaningful consultation and participation in decision making.
5. At the national level, the legislature shall comprise of the National Assembly and the Senate.
6. The Senate shall represent the Provinces at the national

level and its members shall be directly elected and empowered to act authoritatively on behalf of the provinces, jointly and separately.

7. Decreasing the number of members of the National Assembly, should be considered.
8. The method of appointment, the functions and the functioning of the Head of State, the Head of Government and the Cabinet (including its composition) should best serve the nation's interests.
9. All executives) should be completely responsible to the relevant legislatures)

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In this regard the advisability to define the rights of the legislature viz-a-viz the executive in the Constitution should be explored. The same applies to Parliament's control over the administration of laws by the executive.

10. Provision must be made for Cabinet members to also be appointed from outside the ranks of Parliament, and on the grounds of expertise.
11. Government at all levels must be transparent, accountable and responsive.
12. The complete independence of the judiciary as the interpreting authority and protector of the Constitution shall be ensured. In particular, the judiciary shall protect and enforce the Constitution and all fundamental rights.
13. The mechanisms and procedures for the appointment of judges must be credible and transparent.
14. The exercise of all state powers shall be controllable and within set limits.