

8 November 1995

NATIONAL PARTY

CHAPTER 4 SENATE/ COUNCIL OF PROVINCES

ESTABLISHMENT

57. There is a SENCOP consisting of members, who are women and men nominated in accordance with Schedule 3 to represent the provinces (and local governments).

Option

PARLIAMENT AND NATIONAL LEGISLATIVE AUTHORITY

- AAA. (1) Parliament shall consist of the National Assembly and the Senate and shall subject to this Constitution be the national legislative authority of the of the Republic.
- (2) Parliament shall have the power to make laws for the Republic in accordance with this Constitution.

COMPOSITION OF SENATE

- BBB. (1) Every province shall subject to subsection (2) elect 10 persons who shall be members of the Senate.
- (2) The persons referred to in subsection (1) shall be indirectly elected by their respective provincial legislatures on a proportional basis in accordance with the provisions of Schedule XXX.
- (3) The persons elected by the provinces to be Senators shall ordinarily be resident in their designating province.

POWERS AND FUNCTIONS

58. The SENCOP -
- (a) participates in the legislative process of Parliament as provided for in the Constitution;
 - (b) must be informed of, and may comment on, national budget proposals;
 - (c) must promote co-operative governance by overseeing and co-ordinating intergovernmental relations among all levels of government and among governments on the same level;

[(d) may ratify international agreements; and]

(e) approves appointments of ambassadors and high commissioners.)

Option

PURPOSE OF SENATE

CCC. The purpose of the Senate is -

- (a) to represent the provinces in national decision-making; and
- (b) to function as a second House of Parliament.

POWERS OF SENATE

DDD. (1) The Senate shall consider all bills introduced in Parliament.

- (2) A Bill passed by the National Assembly but rejected by the Senate shall be referred to a joint committee consisting of members of both Houses and of all the parties represented in Parliament and willing to participate in the joint committee, to consider and report on any proposed amendments to the Bill, whereafter the Bill shall be referred to the two Houses, which at separate sittings may pass the Bill with or without amendment: Provided that where one House passes the Bill as amended and the other House rejects that amended Bill, that amended Bill shall be referred to a joint sitting of both Houses at which it may be passed by a majority of the total number of both Houses: Provided that a Bill referred to a joint sitting of both Houses which has been rejected may be introduced only twelve months after the date of such rejection.
- (3) Bills appropriating revenue or moneys or imposing taxation other than bills pertaining to matters contemplated in sections [*dealing with the finances of provinces etc.*] shall be considered by the Senate within thirty days after having been passed by the National Assembly.
- (4) Bills affecting the boundaries or the exercise or performance of the powers and functions of the provinces shall be deemed not to be passed by Parliament unless passed separately by both Houses and, in the case of a Bill, other than a Bill referred to in subsection (5), affecting the boundaries or the exercise or performance of the powers or functions of a particular province or provinces only, unless also approved by a majority of the senators of the province or provinces in question in the Senate.
- (5) Subject to subsection (6), a Bill amending this Constitution shall, for its passing by Parliament, be required to be adopted at a joint sitting of the National Assembly and the Senate by a majority of at least two-thirds of the total number of members of both Houses.

- (6) No amendment of sections ... *[of the Constitution dealing with concurrent legislative competences or the provincial executive authorities]* shall be of any force and effect unless passed separately by both Houses by a majority of at least two-thirds of all the members in each House: Provided that the boundaries and legislative and executive competences of a province shall not be amended without the consent of a relevant Provincial *legislature*.
- (7) *All Bills contemplated in subsections (4) and (6) shall first be introduced in the Senate.*
- (8) The Senate shall subject to this Constitution assent to or if provided for otherwise in this Constitution be involved in the nomination or appointment, as the case may be, of ambassadors, high commissioners or other heads of mission, judges of the Constitutional Court, the Supreme Court of Appeal, the High Court and the Land Claims Court and any other judicial body other than courts referred to in section 86(e) *[of the refined Working Draft Second Edition]*, the Public Protector, the Auditor-General and members of any Commissions or other similar bodies established under this Constitution.
- (9) No international agreement shall be deemed to have been ratified or acceded to unless the Senate has also by resolution agreed to such ratification or accession.
- (10) The Senate may notwithstanding the provisions of this subsections (2), (3), (4) or (5) or any other provision of this Constitution at any time refer a Bill to the Constitutional or any other competent court of law, as the case may be, to determine the constitutionality of that Bill.

QUALIFICATIONS

- 59. Anyone qualified to be an member of a provincial legislature may be a member of the SENCOP.

Option

QUALIFICATION FOR MEMBERSHIP OF SENATE

- EEE. Any person who is eligible for membership of the National Assembly as contemplated in section 42 *[of the Refined Working Draft Second Edition]* is subject to section BBB.(3) *[See above]* eligible for membership of the Senate.

OATHS OR AFFIRMATIONS BY MEMBERS

- 60. Before members of the SENCOP begin to perform their functions, they must swear or affirm faithfulness to the Republic and obedience to the Constitution, by solemn declaration in accordance with Schedule 2.

Option

OATH OR AFFIRMATION BY SENATORS

FFF. Every member of the Senate shall before taking up his or her seat in the Senate swear an oath or make a solemn affirmation to be faithful to the Republic and this Constitution, as prescribed in Schedule 2.

SITTINGS/MEETINGS

61.

- (1) The SENCOP may determine the time and duration of its sittings and recess periods/the dates of its meetings.
- (2) The President may summon the SENCOP to an extraordinary sitting/meeting at any time to conduct urgent business.
- (3) The seat of the SENCOP is..... Sittings/meetings at other places are permitted only on the grounds of public interest, security or convenience, and if provided for in the rules and orders of the SENCOP.
- (4) The President of the Senate/Chairperson of the Council of provinces must convene the SENCOP if the majority of the members from at least two provinces so demand.

Option

SITTINGS OF SENATE

GGG. (1) The President of the Senate, or in the event of his or her incapacity or unavailability, the Deputy President of the Senate, shall after consultation with the Speaker and the chief whips of all political parties represented in the Senate and in accordance with the rules and orders of the Senate determine the time and duration of sittings of the Senate: Provided that when a majority of Senators representing at least two provinces or one fifth of Senators representing at least five provinces so request, the President or his or her deputy, as the case may be, shall forthwith convene a sitting of the Senate.

▫

(2) The State President may request the President of the Senate to summon members of the Senate for an extraordinary sitting in accordance with its rules and orders to conduct urgent business.

▮

(3) The seat of the Senate is ... : Provided that the President of the Senate may in consultation with the Speaker in the interests of security or because of extraordinary

circumstances by proclamation in the *Gazette* and in accordance with the rules and orders of the Senate determine another location as the Senate's temporary seat.

PRESIDENT/CHAIRPERSON

62.

- (1) The SENCOP must elect from among its members a President/Chairperson to serve for three years.
- (2) The procedure set out in Schedule 3 applies to the election of the President/Chairperson.
- (3) The SENCOP may remove the President/Chairperson from office by resolution.

^aOption

PRESIDENT AND DEPUTY PRESIDENT OF SENATE

The NP proposes the retention of section 49 of the Interim Constitution amended to reflect consequential changes.

DECISIONS

63.

- (1) The majority of the members of the SENCOP must be present before a vote may be taken on a matter when the SENCOP participated in the legislative process of Parliament, and one-third of the members must be present before a vote may be taken on any other matter.
- (2) All questions before the SENCOP must be decided by a majority of the votes cast.
- (3) The president member of the SENCOP has no deliberative vote, but must cast a deciding vote whenever there is an equal number of votes on both sides of a question.

Option

QUORUM IN SENATE

The NP proposes the retention of section 54 of the Interim Constitution.

RIGHTS OF MEMBERS OF CABINET AND EXECUTIVE COUNCILS

64. Cabinet members, and Executive Council members who are not members of the SENCOP, may attend, and may speak in the SENCOP, but may not vote.

Option

RIGHTS OF NATIONAL AND PROVINCIAL OFFICE BEARERS OF EXECUTIVE AUTHORITIES IN SENATE

- JJJ. The State President, the Deputy State Presidents, Ministers, Deputy Ministers, Premiers of provinces and members of executive councils of provinces are entitled to sit in the Senate.
- (2) The State President, the Deputy State Presidents, Ministers and Deputy Ministers may speak in the Senate.
 - (3) Premiers of Provinces may speak in the Senate when business is conducted concerning the affairs of that particular Province.
 - (4) Members of executive councils of Provinces may speak in the Senate with the permission of the President of the Senate or in his or her absence, the permission of the Deputy President of the Senate.
 - (5) No person who is not a Senator may vote in the Senate.

INTERNAL AUTONOMY

65. The SENCOP may make its internal arrangements, rules and orders.

Option

RULES AND ORDERS

The NP favours the retention of section 58 of the Interim Constitution amended to reflect consequential changes.

PRIVILEGES AND IMMUNITIES

66. The members of the SENCOP have the same privileges and immunities as members of the National Assembly

SENCOP AND THE LEGISLATIVE PROCESS

Option 1

SENCOP functions as a second house of the national legislature. All Bills, except money Bills, must be discussed and passed by it. It may have special role with respect to legislation affecting provinces and their functional areas.

Option 2

SENCOP may comment on all Bills, may submit to the National assembly, and, with respect to Bills concerning the functional areas of the Provinces, may, in addition, propose amendments to or the withdrawal of a Bill, and the National Assembly does not agree, the Assembly must refer the Bill to a mediation body. A decision by the mediation body to adopt a Bill is equivalent to adoption by the National Assembly with a two-thirds majority.

Option

See the NP proposals above on the powers of the Senate as well as the provisions relating to provincial competence as well as framework legislation.

SENCOP AND INTERGOVERNMENTAL RELATIONS

According to Option 2, SENCOP plays a role in the legislative process but a primary function is to facilitate cooperative governance by facilitating cooperation, coordination and consultation in executive matters among all levels of government and among government on the same level. This could include monitoring the operation of intergovernmental a[executive actions and relations, facilitating the development of policy in matters of manual interests, and mediating in disputes executive institutions.

