

EMBARGOED UNTIL TABLING IN THE
NEGOTIATING COUNCIL
**NINETEENTH REPORT OF THE TECHNICAL COMMITTEE
ON CONSTITUTIONAL ISSUES
TO THE NEGOTIATING COUNCIL
I NOVEMBER 1993**

CHAPTER 6

(As reformulated in terms of the instructions of the Negotiating Council)

The Executive Power

Executive power

70. The executive power of the Republic regarding all matters falling within the legislative power of Parliament shall vest in the President who shall exercise his or her powers and functions subject to the provisions of this Constitution.

Head of State

71. The President shall be the Head of State.

Election of the President

72. (1) The first President under this Constitution shall be elected by the National Assembly at its first sitting.

(2) The election of a President other than the first President referred to in subsection (1) shall be held within 30 days after the vacation of the office of President, within 7 days after a vote of no confidence as contemplated in section 83, or in the event of a general election held in terms of this Constitution, within 30 days after the commencement of the first sitting of the Senate after such general election.

(3) The election referred to in subsection (2) shall take place at a joint sitting of the National Assembly and the Senate.

(4) The Chief Justice or a Judge of the Appellate Division designated by him or her for this purpose shall preside over the elections referred to in subsections (1) and (2).

(5) The election of the President in terms of this section shall be conducted in the manner provided for in Schedule 8.

(6) No person may be elected as President unless he or she has been elected to the National Assembly.

(7) On being elected the President shall vacate his or her seat in the National Assembly, and political party to which he or she belongs shall be entitled to fill the vacancy by nominating, according to order of preference, a person on such party's election list compiled for the general election, or if there is such person, by nominating any member of such party.

Oath or affirmation

73. The President-elect shall, before formally assuming office, make an affirmation or take an oath in form contained in Schedule 6, which shall be administered by the Chief Justice or a judge designated by Chief Justice for this purpose.

Tenure of office

74. The President shall hold office until he or she is removed from office in terms of this Constitution until he or she is replaced in terms of the provisions of the new constitutional text contemplated in Chapter 4 of this Constitution.

Responsibility of the President

75. (1) The President shall be responsible for the observance of the provisions of this Constitution by executive and shall as head of state defend the Constitution as the supreme law of the land.

(2) The President shall with dignity provide executive leadership in the interests of national unity in accordance with the provisions of this Constitution and all the laws of the Republic.

Powers and functions of the President

76. (1) The President shall be competent to exercise the following powers and functions -

- (a) to assent to, sign and promulgate bills duly passed by Parliament;
- (b) in the event of a procedural shortcoming in the legislative process, to refer a bill passed by Parliament back for further consideration by Parliament;
- (c) to convene meetings of the Cabinet, including extraordinary meetings for the resolution of disputes among the members of the Cabinet;
- (d) to refer disputes of a constitutional nature between political parties represented in Parliament or between organs of the State at any level of government to the Constitutional Court or other appropriate institution, commission or body for resolution, whether such institution, commission or body was appointed by himself or herself or constituted under this Constitution or other law;
- (e) to confer honours;
- (f) to appoint, accredit, receive and recognise ambassadors, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;
- (g) to appoint commissions of enquiry;
- (h) to make such appointments as may be necessary under powers conferred upon him or her by this Constitution or any law;
- (i) to negotiate and sign international agreements;

(j) to proclaim referenda and plebiscites in terms of this Constitution or an Act of Parliament; and

(k) to pardon or reprieve offenders, either unconditionally or subject to Such conditions as he or she may deem fit and to remit any fines, penalties or forfeitures.

(2) The President shall consult the Executive Deputy Presidents -

(a) in the development and execution of the policies of the government;

(b) in all matters relating to the management of the Cabinet and the performance of Cabinet business;

(c) in the assignment and allocation of the functions contemplated in section 79(4) to an Executive Deputy President;

(d) regarding appointments made under subsection (1)(f); and

(e) before exercising any of the competences referred to in subsection (1)(g)- (k) .

(3) The President shall exercise all other powers and perform all other functions as may be conferred upon or assigned to him or her in terms of this Constitution or any other law in consultation with the Cabinet.

Executive Deputy Presidents

77. (1) Every party holding at least 80 seats in the National Assembly shall be entitled to designate an Executive Deputy President from among the members of the National Assembly.

(2) Should no party or only one party hold 80 or more seats in the National Assembly, the party holding the largest number of seats, and the party holding the second largest number of seats, shall each be entitled to designate one Executive Deputy President.

(3) On being designated as such, an Executive Deputy President may vacate his or her seat in the National Assembly, and the party to which he or she belongs shall be entitled to fill the vacancy by nominating, according to the order of preference, a person on such party's election list compiled for the general election, or if there is no such person, by nominating any member of such party.

(4) An Executive Deputy President shall perform such functions as may be assigned to him or her by the President.

(5) The provisions of section 75 shall apply mutatis mutandis to an Executive Deputy President.

(6) The President shall appoint on a rotational basis one of the Executive Deputy Presidents to act as President during his or her absence or temporary incapacity: provided that if the President is unable to do so, the Cabinet shall make such appointment.

Salaries of the President and Executive Deputy Presidents

78. (1) There shall be paid to the President and the Executive Deputy Presidents out of and as a charge on the National Revenue Fund and apart from any privilege which they may enjoy, such salaries and allowances as may be determined from time to time by resolution of Parliament.

(2) The President and Executive Deputy Presidents shall not hold any other public offices and shall not perform remunerative work outside the duties of their offices.

Removal from office of the President and filling of the vacancy

79. (1) The President or an Executive Deputy President shall be removed from office if two thirds of all the members of the National Assembly and the Senate, at a joint sitting adopt a resolution impeaching the President or the Executive Deputy President on the grounds of a serious violation of the laws of the land, of misconduct or inability rendering him or her unfit to perform his or her functions in accordance with the provisions of section 75.

(2) If the President resigns, or is removed from or ceases to hold office for any reason, the vacant office of President shall be filled in accordance with the provisions of section 72.

(3) If the office of President becomes vacant an Executive Deputy President, designated by a majority of the members of the Cabinet, shall act as President pending the election in terms of subsection (2).

(4) If the office of an Executive Deputy President becomes vacant, the vacancy shall be filled in accordance with the provisions of section 77.

The Cabinet

80. (1) The Cabinet shall consist of the President, the Executive Deputy Presidents and not more than 27 Ministers appointed by the President in accordance with the provisions hereof to administer one or more of the Departments of State established by the President.

(2) A party holding at least 20 seats in the National Assembly shall be entitled to be allocated a number of Cabinet portfolios in proportion to the number of seats held by it in the National Assembly relative to the number of seats held by the other parties represented in the Cabinet.

(3) The President shall allocate portfolios to the parties represented in the Cabinet after consultation with the Executive Deputy Presidents and the leaders of the parties represented in the Cabinet.

(4) The President shall appoint Ministers from among the members of Parliament to the portfolios referred to in subsection (3) on the advice of the leaders of the parties to which the relevant portfolios have been allocated.

(5) The President shall terminate the appointment of any Minister if requested to do so by the leader of the party by which such Minister was designated.

(6) In the event of a vacancy in the Cabinet, occurring for any reason, the President shall appoint another person from the ranks of the party entitled to the portfolio on the advice of the party leader concerned.

(7) No member of the Cabinet may take up any other paid employment, engage in activities inconsistent with membership of the Cabinet, or expose himself or herself to any situation which carries with it the risk of a conflict developing between his or her responsibilities as a member of the Cabinet and his or her private interests.

(8) No member of the Cabinet shall use his or her position as such, or use information entrusted confidentially to him or her in such capacity, directly or indirectly to enrich himself or herself or any other person.

Procedure in the Cabinet

81. (1) Meetings of the Cabinet shall be presided over by the President, or in his or her absence, by an Executive Deputy President: provided that the Executive Deputy Presidents shall, in the absence of the President, preside over consecutive meetings of the Cabinet in turn.

(2) The Cabinet shall endeavour to reach consensus on all its decisions, in the absence of which, and if any member of the Cabinet requests a vote, by a majority of % of the Ministers present and voting: provided that, if the Cabinet takes a vote on the national budget, any other financial matter or on a matter concerning the security of the Republic, a majority of -% shall be required.

Accountability of Ministers and the Cabinet

82. (1) A Minister shall be accountable individually both to the President and to Parliament for the administration of the portfolio allocated to him or her, and all members of the Cabinet shall correspondingly be accountable collectively for the performance of the functions of the government and for its policies.

(2) A Minister shall administer his or her portfolio in accordance with the policy determined by the Cabinet.

(3) If a Minister fails to administer his or her portfolio in accordance with the policy of the Cabinet, the President may require the Minister concerned to bring the administration of the portfolio into conformity with such policy, and may, if the Minister fails to do so and after consultation with the Minister and the leader of his or her party, remove the Minister from office.

Vote of no confidence

83. (1) If a vote of no confidence is passed by Parliament in the President and the Cabinet, the President shall dissolve Parliament and call a general election.

(2) If a vote of no confidence is passed by Parliament in the President, but not the Cabinet, the President shall resign, and the vacancy shall be filled in accordance with the provisions of section 72.

(3) If a vote of no confidence is passed by Parliament in the Cabinet, but not the President, the President may either -

(a) reconstitute the Cabinet in accordance with the provisions of section 80; or

(b) dissolve Parliament and call a general election.

(4) Should the President resign or dissolve Parliament in accordance with the provisions of this section, the President and the Cabinet shall continue to hold office until the vacancy of President has been filled in terms of section 72.

Appointment of Deputy Ministers

84. (1) The President may, after consultation with the Executive Deputy Presidents and the leaders of the parties represented in the Cabinet establish deputy ministerial posts for specified Cabinet portfolios.

(2) A party shall be entitled to be allocated a number of deputy ministerial posts in the same proportion as that in which the portfolios in the Cabinet is allocated to it.

(3) The President shall allocate the deputy ministerial posts to the parties represented in the Cabinet after consultation with the Executive Deputy Presidents and the leaders of the parties represented in the Cabinet.

(4) The President shall appoint Deputy Ministers from among the members of Parliament to the posts referred to in subsection (3) on the advice of the leaders of the parties to which the relevant portfolios have been allocated.

(5) A Deputy Minister shall exercise or perform on behalf of the relevant Minister any of the powers functions and duties entrusted to such Minister in terms of any law or otherwise which may, subject to the directions of the President and the Cabinet, be assigned to him or her them by such Minister.

(6) The President shall terminate the appointment of any Deputy Minister if requested to do so by the leader of the party which such Deputy Minister represents.

(7) The provisions of section 80(5) - (8) and section 82 shall apply mutatis mutandis to Deputy Ministers.

Composition and functioning of Cabinet in the event of non-participation by parties

85. (1) Should any party, other than the party of the President, entitled to designate an Executive Deputy President, fail to do so, the remaining Executive Deputy President or Executive Deputy Presidents shall exercise all the functions of the Executive Deputy Presidents provided for by this Constitution.

(2) If any party entitled to Cabinet portfolios declines to be represented in the Cabinet, portfolios shall be allocated to the other parties entitled to such representation, in proportion to the number of seats each such party holds in the National Assembly.

(3) If all parties entitled to Cabinet portfolios, other than the party of the President, decline to be represented in the Cabinet, appointments to the Cabinet shall be made at the discretion of the President.

EMBARGOED UNTIL TABLING IN THE
NEGOTIATING COUNCIL
**ADDENDUM TO THE
NINETEENTH REPORT OF THE TECHNICAL COMMITTEE
ON CONSTITUTIONAL ISSUES
TO THE NEGOTIATING COUNCIL
2 NOVEMBER 1993**

On account of the instructions of the Negotiating Council we suggest the following:

The following provision should be inserted in Chapter 4:

Rights and duties of President, the Deputy President and Ministers in Parliament

XX. (1) The President, an Executive Deputy President and a Minister shall be entitled to sit and to speak in the National Assembly and the Senate, and in a joint session of both Houses, but may only vote in a House of which he or she is a member.

(2) If requested to do so by resolution of the National Assembly or the Senate, the President, an Executive Deputy President and any Minister shall attend a sitting of such House and reply to questions at such sitting.

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The following additional item should be added to the Constitutional Principles contained in Schedule 7:

The Constitution shall provide that until 30 April 1999 the national executive shall be composed and shall function substantially in the manner provided for in Chapter 6 of this Constitution.