

NP PROPOSAL - SENATE / COUNCIL OF PROVINCES - 8/11/95

Parliament and national legislative authority

Option

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

Composition of the 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 ...
- (3) The persons elected by the provinces to be Senators shall ordinarily be resident in their designating province.

POWERS AND FUNCTIONS

Purpose of Senate

Option

- 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 twothirds of the total number of members of both Houses.

(6) No amendment of section ... *[of the Constitution dealing with concurrent legislative competences or the provincial executive competences]* shall be of any force and effect unless passed separately by both Houses by a majority if at least twothirds of all the members in each House: provided that the boundaries and legislative and executive competences of a province shall not be amended with 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 commission 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 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.

Qualification for membership of Senate ***Option***

EEE And 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.

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

Option

GGG (1) The President of the Senate, or in the event of his or 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 and deputy president of Senate

Option

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

Quorum in Senate

Option

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

Rights of national & provincial office bearers of executive authorities in Senate

Option

JJJ (1) 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.

Rules and orders

Option

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

SENCOP & 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 a 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 Np proposals above on the powers of the Senate as well as the provisions relating to provincial competences as well as framework legislation.

Intergovernmental relations

Option

JJJ (1) An Act of Parliament shall be introduced in Parliament within six months of the commencement of this Constitution providing for the establishment of structures, mechanisms, processes and procedures aimed at establishing and promoting intergovernmental relations at both the legislative and executive levels of government and in respect of national, provincial and local government, including but not limited to the Intergovernmental Forum and Ministerial Forums, as well as an Advisory Committee on Intergovernmental Relations and a Commission on Provincial Government.

(2) The Senate shall within six months of the Commencement of this Constitution establish a Senate Consultative Forum which shall establish mechanisms and structures to establish and promote liaison with and amongst the provinces.

(3) The Senate shall within one month of its first meeting on a proportional basis elect the Senators to serve on the Financial and Fiscal Commission as contemplated in section 175 *[of the Refined working draft second edition]*.