

**EMBARGOED UNTIL TABLING IN THE
NEGOTIATING COUNCIL**

**SIXTEENTH REPORT OF THE TECHNICAL COMMITTEE
ON CONSTITUTIONAL ISSUES
TO THE NEGOTIATING COUNCIL
13 OCTOBER 1993**

1. Introduction

In this report we propose a formulation of Schedule 8 of the Constitution relating to the procedure for the election of the President. We have found it necessary also to propose a consequential reformulation of clause 2 of the preliminary text of Chapter 6 dealing with the national executive, which was contained in the annexure to our Eleventh Report. The proposed texts are attached as an annexure to this report.

2. The substantive provision of the Constitution

Clause 2(1) provides for the election of the first President in terms of the Constitution by the National Assembly at its first sitting. It appears from the debate in the Negotiating Council that it may be important for the presidential election to take place as soon as possible after the first election. It is for this reason that we suggest that only the National Assembly be involved in the election of the first President. It will take time for the Senators to be elected indirectly by the SPR legislatures and the involvement of the Senate in the first presidential election could therefore delay the election of the first President and the composition of the national executive.

The election of subsequent Presidents in terms of this Constitution, if this should be necessary, will involve the Senate as well as the National Assembly according to clauses 2(2) and 2(3) which

provide for the election of a President in a joint sitting of the National Assembly and the Senate within 30 days of a vacancy occurring.

The second part of clause 2(2) introduces the notion of a new election of a President in the event of a general election following the dissolution of the National Assembly before a new constitutional text is adopted in terms of Chapter 5. If this principle is accepted by the Negotiating Council, consequential amendments to Chapter 6 will be required.

Presidential elections envisaged in clauses 2 (1) and 2 (3) shall be presided over by the Chief Justice or a Judge or the Appellate Division designated by him or her.

Clause 2(6) stipulates that no person may be elected as President unless he or she has been elected to the National Assembly. Thus Senators and extra-parliamentary political leaders will not qualify to be elected as President.

On being elected the President will be obliged to vacate his or her seat in the National Assembly and clause 2(7) stipulates how the resulting vacancy in the National Assembly will be filled.

Clause 2(8) provides that the President shall not hold any other public office in respect of which he or she receives any remuneration out of public funds.

3. Schedule 8

Schedule 8 enumerates the details of the procedure to be followed at the election of the President.

Item 9 of the Schedule empowers the Chief Justice to make detailed rules relating to the election of the President and to make these known in a manner that he or she may consider necessary.

The first step in this election will be to call for nominations (item 1). All formalities in regard to nominations are set out in item 2.

Item 3 requires the announcement of the names of the nominated candidates by the presiding judge and provides that no debate shall be allowed at the meeting. Should only one nomination be received, the presiding judge shall then in terms of item 4 declare such candidate to be duly elected.

Where there is more than one candidate, a vote involving a secret ballot must follow in terms of item 5. Those present will be entitled to exercise a single vote. A candidate who secures a majority (more than 50%) of all the votes cast, shall be declared duly elected by the presiding judge.

If this is not the case, items 6, 7 and 8 provide for a process of elimination of the participation of candidates with the smallest number of votes until a single candidate receives a majority of all the votes cast. It also provides for the procedure to be followed in the case of two candidates receiving an equality of votes.

The net result of the procedures described and set out in Schedule 8 is that a successful presidential candidate will be elected by an absolute majority of all the votes cast.

ANNEXURE TO THE 16TH REPORT (CONSTITUTIONAL ISSUES)

PARTIAL REDRAFT OF THE ANNEXURE TO THE 11th REPORT (CONSTITUTIONAL ISSUES)

Relating to the election of the President, and to be read in conjunction with the proposed Schedule 8

Election of the President

2. (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 that referred to in subsection (1) shall be held within 30 days after the vacation of the office of President, or in the event of a general election held in terms of this Constitution, within 30 days after the commencement of the first session 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 the political 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.

(8) The President shall not hold any other public office in respect of which he or she receives any remuneration or allowance out of public funds.

SCHEDULE 8

Procedure for the Election of the President

1. Nominations of candidates shall be called for by the person presiding at the meeting at which the President is to be elected.
2. Every nomination shall be submitted in the form prescribed by the Chief Justice and shall be signed by two members of Parliament and also by the person nominated, unless he or she has in writing signified his or her willingness to accept the nomination.
3. The names of the persons duly nominated as provided for in item 2 shall be announced at the meeting at which the election is to take place by the person presiding thereat, and no debate shall be allowed at the election.
4. If in respect of any election only one nomination has been received, the person presiding at the meeting shall declare the candidate in question to be duly elected.
5. Where more than one candidate is nominated for election, a vote shall be taken by secret ballot, each person present and entitled to vote having one vote and any candidate in whose favour the majority of all the votes cast is recorded, shall be declared duly elected by the person presiding at the meeting.
6.
 - (a) If no candidate obtains a majority of all the votes so cast, the candidate who has received the smallest number of votes shall be eliminated and a further ballot shall be taken in respect of the remaining candidates, this procedure being repeated as often as may be necessary until a candidate receives a majority of all the votes cast and is declared duly elected.
 - (b) Whenever two or more candidates being the lowest on the poll have received the same number of votes, the meeting shall by separate vote, to be repeated as often as

may be necessary, determine which of those candidates shall for the purpose of subitem (a) be eliminated.

7. Whenever -

(a) only two candidates have been nominated; or

(b) after the elimination of one or more candidates in accordance with the provisions of this Schedule. only two candidates remain,

and there is an equality of votes between those two candidates, the person presiding at the meeting shall at the time the result of the election is announced, fix the time and date at which a further meeting will be held, being a date not more than 7 days thereafter.

8. At the further meeting referred to in item 7, the provisions of this Schedule shall apply as if such further meeting were the first meeting called for the purpose of the election in question.

9. (a) The Chief Justice shall make rules in regard to the procedure to be observed at a meeting at which the President is to be elected, and rules defining the duties of the presiding officer and of any person appointed to assist him and prescribing the manner in which the ballot at any such meeting shall be conducted.

(b) Any such rules shall be made known in such manner as the Chief Justice may consider necessary.

10. The election of the President in terms of section 2(2) shall be held at a time and place to be fixed by the Chief Justice and made known by notice in the Government Gazette at least 7 days before the date fixed for such election.