

ANNEXURE B

Government of National Unity: National Sphere

1. Section 84 of the new Constitution is deemed to contain the following additional subsection:

“(3) The President must consult the Executive Deputy Presidents—

- (a) in the development and execution of the policies of the national government;
- (b) in all matters relating to the management of the Cabinet and the performance of Cabinet business;
- (c) in the assignment of functions to the Executive Deputy Presidents;
- (d) before making any appointment under the Constitution or any legislation, including the appointment of ambassadors or other diplomatic representatives;
- (e) before appointing commissions of inquiry;
- (f) before calling a referendum; and
- (g) before pardoning or relieving offenders.”

2. Section 89 of the new Constitution is deemed to contain the following additional subsection:

“(3) Subsections (1) and (2) apply also to an Executive Deputy President.”

3. Paragraph (a) of section 90(1) of the new Constitution is deemed to read as follows:

“(a) an Executive Deputy President designated by the President;”

4. Section 91 of the new Constitution is deemed to read as follows:

“Cabinet

91. (1) The Cabinet consists of the President, the Executive Deputy Presidents and—

- (a) not more than 27 Ministers who are members of the National Assembly and appointed in terms of subsections (8) to (12); and
- (b) not more than one Minister who is not a member of the 175 National Assembly and appointed in terms of subsection (13), provided the President, acting in consultation with the Executive Deputy Presidents

- and the leaders of the participating parties, deems the appointment of such a Minister expedient.
- (2) Each party holding at least 80 seats in the National Assembly is entitled to designate an Executive Deputy President from among the members of the Assembly.
 - (3) If no party or only one party holds 80 or more seats in the Assembly, the party holding the largest number of seats and the party holding the second largest number of seats are each entitled to designate one Executive Deputy President from among the members of the Assembly.
 - (4) On being designated, an Executive Deputy President may elect to remain or cease to be a member of the Assembly.
 - (5) An Executive Deputy President may exercise the powers and must perform the functions vested in the office of Executive Deputy President by the Constitution or assigned to that office by the President.
 - (6) An Executive Deputy President holds office—
 - (a) until 30 April 1999 unless replaced or recalled by the party entitled to make the designation in terms of subsections (2) and (3); or
 - (b) until the person elected President after any election of the National Assembly held before 30 April 1999, assumes office.
 - (7) A vacancy in the office of an Executive Deputy President may be filled by the party which designated that Deputy President.
 - (8) A party holding at least 20 seats in the National Assembly and which has decided to participate in the government of national unity, is entitled to be allocated one or more of the Cabinet portfolios in respect of which Ministers referred to in subsection (1)(a) are to be appointed, in proportion to the number of seats held by it in the National Assembly relative to the number of seats held by the other participating parties.
 - (9) Cabinet portfolios must be allocated to the respective participating parties in accordance with the following formula:
 - (a) A quota of seats per portfolio must be determined by dividing the total number of seats in the National Assembly held jointly by the participating parties by the number of portfolios in respect of which Ministers referred to in subsection (1)(a) are to be appointed, plus one.
 - (b) The result, disregarding third and subsequent decimals, if any, is the

- quota of seats per portfolio.
- (c) The number of portfolios to be allocated to a participating party is determined by dividing the total number of seats held by that party in the National Assembly by the quota referred to in paragraph (b).
 - (d) The result, subject to paragraph (e), indicates the number of portfolios to be allocated to that party.
 - (e) Where the application of the above formula yields a surplus not absorbed by the number of portfolios allocated to a party, the surplus competes with other similar surpluses accruing to another party or parties, and any portfolio or portfolios which remain unallocated must be allocated to the party or parties concerned in sequence of the highest surplus.
- (10) The President after consultation with the Executive Deputy Presidents and the leaders of the participating parties must—
- (a) determine the specific portfolios to be allocated to the respective participating parties in accordance with the number of portfolios allocated to them in terms of subsection (9);
 - (b) appoint in respect of each such portfolio a member of the National Assembly who is a member of the party to which that portfolio was allocated under paragraph (a), as the Minister responsible for that portfolio;
 - (c) if it becomes necessary for the purposes of the Constitution or in the interest of good government, vary any determination under paragraph (a), subject to subsection (9);
 - (d) terminate any appointment under paragraph (b)—
 - (i) if the President is requested to do so by the leader of the party of which the Minister in question is a member; or
 - (ii) if it becomes necessary for the purposes of the Constitution or in the interest of good government; or
 - (e) fill, when necessary, subject to paragraph (b), a vacancy in the office of Minister.
- (11) Subsection (10) must be implemented in the spirit embodied in the concept of a government of national unity, and the President and the other functionaries concerned must in the implementation of that subsection seek to achieve consensus at all times: Provided that if consensus cannot be achieved on—

- (a) the exercise of a power referred to in paragraph (a), (c) or (d)(ii) of that subsection, the President's decision prevails;
 - (b) the exercise of a power referred to in paragraph (b), (d)(i) or (e) of that subsection affecting a person who is not a member of the President's party, the decision of the leader of the party of which that person is a member prevails; and
 - (c) the exercise of a power referred to in paragraph (b) or (e) of that subsection affecting a person who is a member of the President's party, the President's decision prevails.
- (12) If any determination of portfolio allocations is varied under subsection (10) (c), the affected Ministers must vacate their portfolios but are eligible, where applicable, for reappointment to other portfolios allocated to their respective parties in terms of the varied determination.
- (13) The President—
- (a) in consultation with the Executive Deputy Presidents and the leaders of the participating parties, must—
 - (i) determine a specific portfolio for a Minister referred to in subsection (1) (b) should it become necessary pursuant to a decision of the President under that subsection;
 - (ii) appoint in respect of that portfolio a person who is not a member of the National Assembly, as the Minister responsible for that portfolio; and
 - (iii) fill, if necessary, a vacancy in respect of that portfolio; or
 - (b) after consultation with the Executive Deputy Presidents and the leaders of the participating parties, must terminate any appointment under paragraph (a) if it becomes necessary for the purposes of the Constitution or in the interest of good government.
- (14) Meetings of the Cabinet must be presided over by the President, or, if the President so instructs, by an Executive Deputy President: Provided that the Executive Deputy Presidents preside over meetings of the Cabinet in turn unless the exigencies of government and the spirit embodied in the concept of a government of national unity otherwise demand.
- (15) The Cabinet must function in a manner which gives consideration to the consensus-seeking spirit embodied in the concept of a government of national unity as well as the need for effective government."

5. Section 93 of the new Constitution is deemed to read as follows:

“Appointment of Deputy Ministers

93. (1) The President may, after consultation with the Executive Deputy Presidents and the leaders of the parties participating in the Cabinet, establish deputy ministerial posts.
- (2) A party is entitled to be allocated one or more of the deputy ministerial posts in the same proportion and according to the same formula that portfolios in the Cabinet are allocated.
- (3) The provisions of section 91(10) to (12) apply, with the necessary changes, in respect of Deputy Ministers, and in such application a reference in that section to a Minister or a portfolio must be read as a reference to a Deputy Minister or a deputy ministerial post, respectively.
- (4) If a person is appointed as the Deputy Minister of any portfolio entrusted to a Minister—
 - (a) that Deputy Minister must exercise and perform on behalf of the relevant Minister any of the powers and functions assigned to that Minister in terms of any legislation or otherwise which may, subject to the directions of the President, be assigned to that Deputy Minister by that Minister; and
 - (b) any reference in any legislation to that Minister must be construed as including a reference to the Deputy Minister acting in terms of an assignment under paragraph (a) by the Minister for whom that Deputy Minister acts.
- (5) Whenever a Deputy Minister is absent or for any reason unable to exercise or perform any of the powers or functions of office, the President may appoint any other Deputy Minister or any other person to act in the said Deputy Minister’s stead, either generally or in the exercise or performance of any specific power or function.”

6. Section 96 of the new Constitution is deemed to contain the following additional subsections:

- “(3) Ministers are accountable individually to the President and to the National Assembly for the administration of their portfolios, and all members of the Cabinet are correspondingly accountable collectively for the performance of the functions of the national government and for its policies.

- (4) Ministers must administer their portfolios in accordance with the policy determined by the Cabinet.
- (5) If a Minister fails to administer the 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 that policy.
- (6) If the Minister concerned fails to comply with a requirement of the President under subsection (5), the President may remove the Minister from office—
 - (a) if it is a Minister referred to in section 91(1)(a), after consultation with the Minister and, if the Minister is not a member of the President's party or is not the leader of a participating party, also after consultation with the leader of that Minister's party; or
 - (b) if it is a Minister referred to in section 91(1)(b), after consultation with the Executive Deputy Presidents and the leaders of the participating parties."