

26/01/95

THEME COMMITTEE ONE

DEMOCRACY AND THE CHARACTER OF THE DEMOCRATIC STATE

Submission by the Democratic Party

The Democratic Party believes that the hallmark of the democratic state is the existence of a representative system of government which makes possible the reasonably regular alternation of government, or the realistic possibility of this through free and fair elections at regular intervals.

In our deeply divided society, in which voting along racial lines was a characteristic of our first free election, the problem is very much that of how will democracy prove compatible with the racially based voting that seems likely to continue? Put another way, how does one avoid the tyranny of the majority which has so characterized other deeply divided societies in Africa and elsewhere? In these societies the nationalist party wins the founding election, further entrenches itself in power in future elections and forms a mutually parasitical relationship with the state until removed by a coup or, after long decades, by a convulsive election.

The PP believes that 50% + 1 gives a party the right to govern (because that is democracy), but 50% + 1 does not give a party exclusive right to unfettered power. In any democratic state worthy of the name there have to be checks on the executive.

Examples of these include regular free and fair elections, freedom of the media and information, and the protection of Human Rights.

In terms of constitutional principle XIV of Schedule 4 of the interim Constitution, the final Constitution is obliged to provide for the "participation of minority political parties in the legislative process in a manner consistent with democracy". The Democratic Party believes that this constitutional injunction will be best furthered by a constitution containing the following provisions:

- (1) Supremacy of the Constitution over the ordinary law. (The Interim Constitution (I.C.) provides that the constitution shall be the supreme law - Sec.4 and principle 4)
- (2)

The maximum devolution of power. For this reason the DP supports federalism, since it distributes power, brings

government closer to the people, is a defence against tyranny and accommodates pluralism. (The I.C. makes

provision for the establishment of provinces and local government with provincial legislative and executive

authorities with exclusive and coordinate powers principles- 16, 18, 19, 20, 22.)

- (3) The power of the Federal Government and the States to be specially defined and entrenched. (The I.C. lays down the powers of the provinces in Schedule 6 of the Constitution Sec 61 provides for limited entrenchment.)
- (4) A system of voting based on Proportional Representation (P.R.) . (The I.C. makes provision for P.R. in Sec. 40 principle 8.)
- (5) Protection of all basic human rights of each citizen under a justiciable Bill of Rights. (The I.C. makes provision for the protection of Fundamental Rights in Chap 3 principle 2).
- (6) A separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness. (This is provided for in Schedule 4 (VI) of the I.C.)
- (7) The creation of the office of Public Protector and a Commission to safeguard Human Rights and gender rights. (The I.C. makes provision for both of these under Chap. 8)