

25 January 1995

**DEMOCRATIC PARTY: SUBMISSION TO THEME COMMITTEE 2**  
**ON "SEPARATION OF POWERS"**

(Ref T.C. 2 no 1)

1. In respect of the heading "Separation of Powers' the Constitutional Assembly is required to give effect to the following Constitutional Principle.

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"There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness."

2. To achieve the above in respect of the separation of powers, the Constitution must contain specific provisions in which the separate powers are allocated. The DP proposes the following provisions:

2.1 Legislative authority of Republic

"The legislative authority of the Republic shall, subject to this Constitution, vest in Parliament which shall have the power to make laws for the Republic in accordance with this Constitution.' (See interim Constitution Section 37)

2.2 Executive Authority of the Republic

"The executive authority of the Republic with regard to all matters falling within the legislative competence of Parliament shall vest in the President, who shall exercise and perform his or her powers and functions subject to and

in accordance with this Constitution.' (See I. C. Sect 75)

'On being elected, the President shall vacate his or her seat in the National Assembly.' (See I. C. Sect 77 (4))

### 2.3 Judicial Authority

"(I) The judicial authority of the Republic shall vest in the courts established by this constitution and any other law.

(2) The judiciary shall be independent, impartial and subject only to this Constitution and the law.

(3) No person and no organ of state shall interfere with judicial officers in the performance of their functions.' (See I.C. Sect 96)

3. There are a number of mechanisms/structures that should be included in the Constitution to ensure "accountability, responsibility and openness."

e. g. certain provisions in a Bill of Rights, a Human Rights Commission, an Auditor General, a Public Protector, regular elections, accountability at Provincial and Local level etc.

However, the most important 'checks and balances' are to be found in the relationship between the President and his Cabinet on the one hand and Parliament on the other.

4. There should be no ambiguity about the Executives accountability to Parliament. Accordingly, the Democratic Party proposes, inter alia, the following provisions:

#### 4.1 Accountability of Ministers and Cabinet

'A Minister shall be accountable individually both to the President and to Parliament for the administration of the portfolio entrusted to him or her, and all members of the Cabinet shall correspondingly be accountable collectively for the performance of the functions of the national government and for its policies.'

(See I. C. Sect 92 (1))

#### 4.2 Votes of no confidence

"(I) If Parliament passes a vote of no confidence in the Cabinet, including the President, the President shall, unless he or she resigns, dissolve Parliament and call an election in accordance with section 39.

- (2) If Parliament passes a vote of no confidence in the President, but not in the other members of the Cabinet, the President shall resign.
- (3) If Parliament passes a vote of no confidence in the Cabinet, excluding the President, the President may -
  - (a) resign;
  - (b) reconstitute the Cabinet in accordance with section 88(4); or
  - (c) dissolve Parliament and call an election in accordance with section 39.
- (4) The President shall where required, or where he or she elects, to do so in terms of this section, dissolve Parliament by proclamation in the Gazette within 14 days of the relevant vote of no confidence.'

(See I. C. Sect 93)

#### 4.3 National Revenue Fund

- '(I) There is hereby established a National Revenue Fund, into which shall be paid all revenues, as may be defined by an Act of Parliament, raised or received by the national government, and from which appropriations shall be made by Parliament in accordance with this Constitution of any applicable Act of Parliament, and subject to the charges imposed thereby.
- (2) No money shall be withdrawn from the National Revenue Fund, except under appropriation made by an Act of Parliament in accordance with this Constitution: Provided that revenue to which a province is entitled in terms of section 155(2)(a), (b), (c) and (d) shall from a direct charge against the National Revenue Fund to be credited to the respective Provincial Revenue Funds.'

(See I.C.Sect 185)

#### 4.4 Annual budget

'The Minister responsible for national financial affairs shall in respect of every financial year cause to be laid before the National Assembly an annual budget reflecting the estimates of revenue and expenditure, which shall, inter alia, reflect capital and current expenditure of the government for that year.'

(See I.C. Sect 186)

5. This submission is made without knowing which structure of government the Constitutional Assembly will decide on. The provisions may have to be adjusted dependant upon the nature and details of such structure of Government.

Colin Eglin MP  
Democratic Party