

THEME COMMITTEE 1

NATIONAL PARTY PROPOSALS : DEMOCRACY AND THE CHARACTER

THE STATE

The concept of "democracy" as encapsulated in the letter and spirit of the Constitutional Principles, implies the following fundamental characteristics:

1. A Constitutional State (Rechtsstaat) based on an entrenched Constitution which constitutes the supreme law. The formal aspects of the Constitutional State include:
 - (i) the vertical and horizontal separation of powers in a balanced way, and which will prevent the abuse of power by any organ of state at all levels;
 - (ii) the principle of legality viz the basis of all state action is the law, of which the Constitution forms the basic normative standard;
 - (iii) the Protection of fundamental rights and freedoms in a justiciable and entrenched bill of rights;
 - (iv) state action shall be transparent, predictable and proportional to the objectives it sets out to achieve;
 - (v) an independent judiciary shall protect and enforce the Constitution and all fundamental rights;
 - (vi) the exercise of state power shall be controllable and within set limits.

The material aspects of the Constitutional State imply that all organs of state will exercise their powers with a view to the advancement of the higher values which are encapsulated in and reflected by the spirit of the Constitution and which, e.g. , include the promotion of a rights culture and respect for the Constitution by all state organs as well as by the citizenry.

2. One sovereign state, a common citizenship, and adult suffrage based on a common voter's roll.
3. Representative Government at all levels of government viz national, provincial and local. This principle implies proportional representation in all legislative and executive structures.
4. A multi-party system and regular elections.
5. An electoral system based on proportional representation, which may possibly include elements of geographical representation.
6. Transparent, anti-totalitarian and accountable government.
7. The vertical separation of power shall be founded on autonomous and original powers for each level of government.
8. At the national level Parliament shall comprise of two Houses viz, the National Assembly and the Senate. The Senate shall represent the provinces at national level and its members shall be empowered to act authoritatively on behalf of the provinces.
9. Levels of decision-making will be determined with regard to the quality and effectiveness of the rendering of services in accordance with the principle of subsidiarity.
10. The role and function of civil society and its institutions shall be recognised and protected as will collective rights of self-determination of inter alia, linguistic, cultural and religious groups. The viability of corporate selfdetermination, as a method for furthering these objectives and the letter and spirit of Constitutional Principle XII, should be explored.

11. Loyalty to the single sovereign state shall be premised on

the enhancement of national reconciliation whilst, simultaneously, the richness of the diversity of language, culture and religion shall be protected and conditions for their promotion be encouraged.
12. The preamble shall embody the encompassing and encapsulating philosophy of the Constitution and should, as such, have normative value.
13. The principle of the Constitutional State (Rechtsstaat) and the Constitution as the Supreme Law, shall be inviolable and non-repealable.
14. Proposals regarding national symbols and official languages will be put forward in due course.

In the final analysis the "democracy" envisaged in the Constitutional Principles and with which the new Constitution shall comply, shall be premised on the values of freedom and equality. Those values imply:

- that the state obtains its value by securing the liberty of the people;
- that no discrimination on whatever grounds shall be tolerated or allowed in the pursuit to achieve substantive equality for all;

the minority must have the right to political opposition and the chance to itself becoming the majority;

that the majority has to respect the liberty of the people and the rights of the minority. Hence, "the majority" is not identical with "the people" and "the state" is not identical with "society".

