

DRAFT : FOR DISCUSSION PURPOSES ONLY

THEME COMMITTEE 2

BLOCK 2 AGENDA ITEM 2

PROPOSALS BY THE NATIONAL PARTY REGARDING STRUCTURE OF GOVERNMENT

1. GENERAL POINTS OF DEPARTURE

1, 1 As a general point of departure, it is the position of the National Party that the structures of Government as set out in the Constitution of 1993, should be retained. Inasmuch as the current position should be amended, specific proposals will be submitted.

1.2 A clause which sets out that all state authority emanates from the people should be invoked. Such a clause will form the basis of the representative democracy, and shall state that the people will exercise their authority by means of elections and voting, according to prescribed procedures.

1.3 The concept of a representative democracy entails that the duly elected representatives of the people shall take decisions on behalf of the people (as opposite to a direct democracy where the people rule by plebiscite or referendum).

1,4 The envisaged democracy shall, furthermore, be a Parliamentary democracy which entails that the executive is directly accountable to the legislature and, within certain parameters, depends on statutory authorization.

1.5 The envisaged democracy shall also be a participatory democracy based on the principle of inclusiveness. The latter principle is reflected by elements which are encapsulated by the letter and spirit of the Constitutional Principles and which inter alia include: proportional representation; a multi-party system and the protection of the role of minority parties; the promotion of conditions for the encouragement of the diversity of language and culture; and the protection of the organs of civil society.

Hence, government (i.e. legislature and executive) shall be structured in a way that gives full effect to the principle of inclusiveness and accordingly broadly reflects all interest groups at all levels of government, In order to realise these objectives, it may be necessary to draw a distinction between political representation on the one hand, and the need for nonparty political representation on the other hand. Party political interests will be served by means of participation in the formal structures of government (i.e. legislative and executive) on a proportional basis. Non-party political interests, on the other hand, will obviously be served through the usual means of the structures of civil society. However, given the diversity of, in particular, language and culture, mechanisms should be devised to give additional promotion to those interests through the means of formalised statutory bodies which will receive financial assistance from the State. Such a step would be in accordance with the letter and spirit of Constitutional Principle XI, and may also, arguably, comply with the "any other recognised way" envisaged in Constitution Principle XXXIV (1).

2, NATIONAL LEVEL

2.1 Legislative Structures

2.1.1 The legislature shall consist of two houses viz a National Assembly and a Senate (the exact powers of each and the relationship between the two houses, will be dealt with at the appropriate stage of the process).

2.2.2 Section 48 should be revised, inter alia, regarding the following aspects senators should be directly elected the terms of office of senators should differ from those of members of the National Assembly, and should coincide with elections for provincial governments.

2.2.3 Apart from the foregoing, the legislative structures established by the current Constitution, should be retained.

2.2 Executive Structures

Based on the particular circumstances of South Africa and the principle of inclusiveness, the National Party regards it necessary that the concept of multiparty participation in decisionmaking at executive level be provided for at national and provincial levels.

3, PROVINCIAL LEVEL

3.1 Legislature

3.1.1 Constitutional Principle XVIII(1) inter alia provides that the powers and functions of provincial governments shall be defined in the Constitution, which implies that provincial legislatures shall have autonomous and original powers.

3.1.2 In accordance with Principle XXI(1) it is the National Party's view that the lowest level of government at which decisions can be taken most effectively should be held responsible for such powers and functions.

3.1.3 The principles laid down by ss 125, 127, 131 and 132 shall be retained.

3.1.4 Mechanisms shall be developed to provide for formal and informal liaison between provincial governments and the Senate, jointly and individually. The formal mechanism could be structures along the lines of the current Commission on Provincial Government (the latter being a transitional body) and could be bestowed with similar powers and could function with a view to attain similar objectives as those currently exercised by the Commission on Provincial Government. For reasons which are obvious, certain adaptations (compared to the role and functions of the CPG) will have to be made e.g. the members of such a body will not be appointed by the President (see §163) but will come from democratically elected representatives (i.e. members of the Senate and the Provincial Governments).

3.2 Executive

See the comments under Paragraph 2.2,

4, GENERAL COMMENTARY

4.1 As the Constitutional Principles provide for government to be structured at national, provincial and local levels (XVI) and as the Principles furthermore state that the powers of provincial governments shall be defined in the Constitution (XVIII(2)) and shall include exclusive and concurrent powers (XIX) it is inevitable that the Constitution will refer to those structures and institutions to the extent which will be necessary in order to attain the

objectives set by the Constitutional Principles. it is also necessary that clear legal understanding be given to the definition of norms and standards and overriding powers where applicable.

4,2 To the extent that provincial structures and institutions need not be defined in the Constitution, provinces may elect to deal with such details in provincial constitutions.

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