

22 March 1995

**DEMOCRATIC PARTY: SUBMISSION TO THEME COMMITTEE 2
BLOCKS 2 & 3 ON
"THE STRUCTURE AND FUNCTIONING OF THE GOVERNMENT AT NATIONAL
LEVEL, INCLUDING CHECKS AND BALANCES TO ENSURE ACCOUNTABILITY,
RESPONSIVENESS AND OPENNESS"
(Ref T.C. 2 no 2)**

INTRODUCTION

This submission by the Democratic Party should be considered in the context of the DP's overall approach to the character and content of a new Constitution best suited to the needs of our people and our country.

This approach - identified by the words 'liberal, democratic, federal' - has been set out in 'Initial Submission on the new Constitution - January 1995' and in the submissions that the DP has already made to the Block One of the Work Programmes of the various Theme Committees.

THE LEGISLATURE

1. The legislature (Parliament) shall consist of a National Assembly and a Senate.

2. The National Assembly

2.1 The National Assembly shall consist of 300 members elected by all adult citizens at intervals of four years unless it is dissolved prior to four years as a consequence of a vote of no confidence in the Government.

2.2 240 members of the National Assembly will be elected on the basis of multi-member constituencies; 60 members will be elected on the basis of national lists provided by political parties in such a manner that the total composition of the National Assembly reflects the proportionality of the votes cast for each party.

2.3 The NA will make decisions by a simple majority except in relation to amendments to the constitution where a special majority will be required.

3. The Senate

3.1 The Senate shall consist of from 7 members from each Province.

3.2 The members shall be elected by members of the Provincial Legislatures through a system of proportional representation at intervals of four years following upon the election of the provincial legislature concerned.

3.3 The Senate will make decisions by a simple majority except in

- 1) relation to amendments to the constitution
- 2) legislation affecting the powers, functions and boundaries of provinces, where special majorities will be required.

4. Powers and Functions

4.1 Legislature authority in terms of the Constitution shall be vested in Parliament.

4.2 The NA and the Senate shall have co-equal legislative powers except

- 1) in respect of the budget and money bills, other than money bills relating to the allocation of financial resources between the provinces and the central governments, where the NA will have overriding powers and 2) in respect of legislation affecting the powers, functions and boundaries of the provinces.

4.3 The NA shall be primarily, but not exclusively, the house where legislation is initiated.

4.4 The Senate shall be primarily, but not exclusively, the house where

- 1) legislation which has been initiated in the NA is reviewed and
- 2) which has a special responsibility for representing the interests of the Provinces in the Parliament.

For this latter purpose the Senate shall set up Standing Consultative Committees with the Provinces.

4.5 Parliament shall have the right to hold the Executive accountable for its policies and actions and in respect of this may establish Portfolio Committees and draw up rules relating to their powers and functions.

4.6 Parliament through Joint Parliamentary Committees of the **NA** and the Senate shall ratify *inter alia*

- 1) Treaties
- 2) International Agreements
- 3) The Appointment of Ambassador and High Commissioners
- 4) The Appointment of key personal in the Security Services.

THE EXECUTIVE

1. The President shall combine the functions of Head of State and Head of Government.

1.1 The President shall be elected by all adult citizens at an election that will take place on the same day(s) as the election of members of the National Assembly, ie at intervals of four years unless the National Assembly is dissolved prior to four years as the consequence of a vote of no confidence in the Government.

1.2 No person shall be elected unless he has received more than fifty percent of the votes cast, and the necessary number ballots shall be conducted until such a result is obtained.

1.3 Upon being elected, the President will cease to be a member of any National, Provincial or Local Government legislature.

1.4 A person may not hold office as President for more than two terms.

1.5 The President may be impeached for misconduct by a resolution adopted by a 2/3 majority of each of the National Assembly and the Senate.

2. Head of State

2.1 The powers, duties and prerogatives normally associated with the office of Head of State shall be entrusted to the President.

2.2 In the execution of his duties as Head of State the President shall be assisted by a Vice President nominated by the President and endorsed by a majority of the members of the N. A. and the Senate at a joint sitting.

3. Head of Government

3.1 Executive authority in terms of the Constitution shall be vested in the President and the Cabinet.

3.2 The President shall preside at meetings of the Cabinet.

3.3 Except where otherwise provided in the Constitution, the President shall act on the advice of the cabinet.

3.4 The President shall appoint a Prime Minister to assist him in the execution of the functions of Government.

3.5 The Prime Minister shall be the leader of Government business in Parliament; he/she shall coordinate the work of the Cabinet and, in the absence of the President he/she shall preside at meetings of the Cabinet.

4. The Cabinet

4.1 The Cabinet shall consist of the President, and the Prime Minister and Cabinet Ministers, appointed by the President from amongst the members of the National Assembly and/or the Senate.

4.2 All ministers shall be accountable individually for the administration of their own ministries and collectively for the performance of the functions of the Cabinet, both to the President and to Parliament.

4.3 Should the National Assembly express its no confidence in the Government i.e. in the Prime Minister and the Cabinet Ministers, the President shall terminate their office and either

- 1) Appoint a new Prime Minister and Cabinet Ministers who enjoy the confidence of the National Assembly or
- 2) Dissolve the National Assembly and proclaim a general election.

CHECKS AND BALANCES TO ENSURE ACCOUNTABILITY RESPONSIVENESS AND OPENNESS

1. General

1.1 All organs of state, including the legislatures and executives at all levels, are subject to the provisions of the constitution, including the Bill of Rights and, to the jurisdiction of the Constitutional Court.

1.2 The provisions in the 1993 Constitution which relate to structures e.g. a Human Rights Commission, a Public Protector etc, designed ensure accountability, responsiveness and openness, provide a sound base from which to develop further the concept of checks and balances.

2. Parliament

2.1 The most important "check and balance to ensure accountability etc' is the holding of regular free and fair elections.

2.2 To ensure that the elections are free and fair and comply with the criteria of openness and transparency, an Independent Electoral Commission will monitor and adjudicate on the conduct of the election.

2.3 The accountability of members of parliament to the voters on a continuing basis between elections will be made more effective by having MP's directly elected on a constituency basis.

2.4 Vital to the concept of "accountability" is the public's right of access to information, freedom of expression and the media.

2.5 A vigorous civil society including, *inter alia*, an effective party political system should be encouraged as an additional instrument for strengthening grass roots accountability.

3. The Executive

3.1 Apart from the matters referred to in 1. 1 and 1.2 above, the most important "checks and balances" are to be found in the relationship between the Executive, ie the President and his Cabinet, and the Legislature, ie Parliament.

3.2 The Executive must be accountable to Parliament (see *inter alia* 4.2 and 4.3

4.2 All ministers shall be accountable individually for the administration of their own ministries and collectively for the performance of the functions of the Cabinet, both to the President and to Parliament.

4.3 Should the National Assembly express its no confidence in the Government i.e. in the Prime Minister and the Cabinet Ministers, the President shall terminate their office and either

1) Appoint a new Prime Minister and Cabinet Ministers who enjoy the confidence of the National Assembly or

2) Dissolve the National Assembly and proclaim a general election.

3.3 Parliament shall have the right to discuss, amend, approve or reject the annual budget.

3.4 No money shall be withdrawn from the National Revenue Fund except under appropriation made by an Act of Parliament.

3.5 The President shall appoint a person nominated and approved by Parliament to serve as Auditor General. The Auditor General will report directly to parliament on the work that he has carried out.

3.6 There shall be a South African Reserve Bank, which shall be the central bank of the Republic, whose primary objectives shall be to protect the internal and external value of the currency in the interest of balanced and sustainable economic growth in the Republic.

Colin Eglin MP
Democratic Party