

NATIONAL PARTY PRELIMINARY SUBMISSION

THEME COMMITTEE

THE SENATE

A PURPOSES OF A SECOND CHAMBER

It is the considered opinion of the National Party that the constitution should provide for a second chamber of parliament, called the Senate. Our reasons for this are as follows:

1 The main purpose of a second chamber is to represent particular interests in society not adequately represented in the popularly elected house. This is particularly relevant in federations or other decentralised societies where second chambers are often established to represent the constituent states or provinces. We believe that a second chamber to represent the constitutionally entrenched, but still fledgling, South African provinces in decision-making at national level is strongly called for, both for symbolic reasons and for the real influence it can exercise in the governing process. This is particularly important in view of the fact that the national parliament has extensive powers to legislate on matters affecting the provinces, for example in the case of provincial finances and in those cases where national legislation overrides provincial legislation (see the present section 126(3)).

2 From a broad perspective, a second chamber can, by providing a second opportunity to consider legislation, enhance the quality of parliamentary decision-making and serve as an effective control mechanism in a democratic society. In this regard, a second chamber is often referred to as a house of revision, that promotes thorough consideration of matters before parliament, strengthens control over the executive and alleviates parliament's workload in the process. It is our contention that a second chamber can serve a useful purpose in this regard in South Africa,

3 A second chamber that represents the provinces would give appropriate effect to the Constitutional Principles contained in Schedule 4 of the transitional constitution. The Constitutional Principles dealing with aspects such as a three tier system, constitutionally entrenched provinces with a certain measure of autonomy and the close links between the national and provincial levels envisaged by those Principles, both financially and in respect of the exercise of their respective powers, obviously presuppose the legislative liaison that can be provided by a second chamber.

For these reasons, a bicameral legislature at national level seems a necessary and logical component of a future South African constitution. As a matter of fact, it could even be considered to include in the constitution an express reference to the purpose for which a second chamber is established,

In view of the fact that a second chamber will, as a matter of course, fulfil a revising function by participating in the legislative process and other functions of parliament, only the main purpose of providing the provinces with representation in national decision-making, needs to be mentioned,

B COMPOSITION OF THE SENATE

1 Number of members

Two aspects should be considered in this regard:

- (a) The National Party is of the opinion that the Senate should be composed of an equal number of members for each province. By this arrangement, the equal status formally enjoyed by the provinces is recognised and the purpose of the Senate to represent the provinces at national level is confirmed.
- (b) The present number of ten Senators per province should be retained. The size of the country and of the population warrant a second chamber of at least the present size. A reduction in the number of Senators would make it very difficult for the Senate to function effectively and, in any case, make it even more difficult for smaller parties to obtain seats in the Senate.

· Method of electing Senators

If it is accepted that the main purpose of the Senate should be to represent the provinces in national decision-making, Senators should be elected/appointed according to a method that serves and promotes that purpose. In this regard, the present method of nomination by the political parties holding seats in the various provincial legislatures has been criticised for not providing enough linkage between a province and its Senators. A few alternative methods could be considered:

- (a) Direct election by the electorate of each province. The objection here is that it could lead to a mere duplication of the composition of the National Assembly.
- (b) Indirect election on a proportional basis by the respective provincial legislatures. The end result will probably be the same as at present, but a formal constitutional link, presently largely absent, will be established between Senators and their respective provinces.
- (c) Nomination by the provincial legislatures from among their members. This would strengthen the link between the provinces and the Senate even more, but would result in dual membership, which could create tremendous practical problems.

(d) Nomination by the provincial executives from among their members. This is the German method, even providing that members of the executives rotate according to the matters to be discussed. We feel this can only lead to practical problems, a Senate lacking proper cohesion and injury to smaller parties. As it entails membership by members of the provincial executives in the national legislature, it in any case affects the principle of the separation of powers (Constitutional Principle VI).

The only feasible option seems to be the one in (b), indirect election by the provincial legislatures, and we propose accordingly. However, we further believe that the present proportional formula according to which the parties nominate Senators should be reconsidered as it tends to favour the bigger to the disadvantage of the smaller parties. Normally, in composing a parliamentary committee, for example, the smaller parties are being favoured to some extent. The present formula should be adapted accordingly and applied in such a way that when the provincial legislatures elect their Senators, all but the very small parties represented in such a legislature will be able to nominate at least one Senator.

3 Qualifications of Senators

The qualifications for Senators should be the same as for members of the National Assembly, with the addition of the requirement that all Senators must be ordinary resident in their respective provinces. This, we believe, is a necessary concomitant to the main purpose of the Senate and the attempt to strengthen the ties between Senators and their provinces.

C POWERS OF THE SENATE

Powers should be assigned to the Senate in accordance with its purpose to (i) represent the provinces in national decision-making and (ii) provide an opportunity for reconsideration during the legislative process in parliament. On this basis, the following existing and additional powers should be assigned to the Senate:

(a) As second chamber of the national parliament, the Senate, like the National Assembly, shall consider all bills introduced in parliament.

(b) With regard to disagreements on ordinary bills, the present arrangement in terms of which a joint committee is established to submit proposals to a joint sitting where the bill must be adopted by a majority of all members of parliament (section 59 of the transitional constitution), is unsatisfactory. The purpose of a joint Committee always is to submit proposals that will be acceptable to both houses sitting separately (cf the conference committees of the United States Congress and the Mediation Committee of the German parliament). Our joint committee should fulfil the same function, namely, to submit proposals to the houses sitting separately and only if agreement is still not reached, should a joint sitting be held,

- (c) Section 61 of the transitional constitution provides that bills affecting the boundaries or powers and functions of the provinces, must be adopted by both houses sitting separately. Furthermore, such a bill, If it affects a particular province or provinces only, must also be approved by a majority of the Senators from that province or provinces. In the absence of agreement between the houses, no law is made. For effective representation of the provinces in matters affecting them, this arrangement should be retained.
- (d) The present section 60 in terms of which the Senate can only delay and not veto money bills, emphasises the Senate's subordinate position with regard to this 'crucial category of bills. Actually, there is no substantial reason why the same arrangement as In the case of ordinary bills cannot apply here. In other words, if the Senate and the National Assembly disagrees on a money bill, a joint committee (eg the joint standing finance committee) could be asked to submit proposals to the houses sitting separately, and if agreement is still not reached, the bill is disposed of at a joint sitting. We propose accordingly,
- (e) Other financial bills affecting the provinces should be dealt with as provided in sections 1 55-1 57 of the transitional constitution, Such bills should be adopted by both houses sitting separately and in the case of disagreement, the normal provisions for resolving disputes (section 59) shall not apply. This means that no law is made if the houses cannot agree.
- (f) The provision for constitutional amendments (section 62) should also be retained. In other words. amendments should be adopted by a two-thirds majority at a Joint sitting, but
 - (i) amendments affecting the legislative and executive powers of the provinces must be adopted by a two-thirds majority in both houses sitting separately, and (ii) amendments affecting a particular province or provinces should only be adopted with the consent of the affected province or provinces.
- (g) It could further emphasise the function of the Senate as the representative of the provinces, if it is required that any bill directly affecting the provinces or a particular province shall be introduced in the Senate first.
- (h) For such bills, the committees of the Senate could in addition be required expressly to hold public hearings where the provinces could state their views.
- (I) The Senate's role as the legislative body that has the "advise and consent" function, ie to assent to, or make recommendations for, certain top executive and judicial appointments, should be extended. The Senate is already involved in nominations for justices (section 105(1)(h)), the public protector (section 110(2)), and the auditor-general (section 191(2)) and, in addition, in the election and impeachment of the President (sections 77 and 87) and the establishment of a Pan South African Language Board (section 3(10)). In addition, the Senate should also be involved in the appointment of constitutional bodies such as the Human Rights Commission, the Commission on Gender Equality, the Commission an Provincial Government, the Financial and Fiscal Commission, the Public Service Commission and the Independent Electoral Commission. The Senate should also have the

function to assent to appointments to bodies such as the Land Claims Court, and to offices such as the National Commissioner of Police and Chief of the National Defence Force.

The Senate should, in any case, be represented in the Commission on Provincial Government and the Financial and Fiscal Commission.

(k) The Senate's role as watchdog over the constitutionality of bills (section 98(9)) should be confirmed.

D FUNCTIONING OF THE SENATE

We believe that the present provisions pertaining to the functioning of the Senate are in order and that no substantial amendment in that regard is necessary. With regard to voting, the convention should, however, be allowed to develop that in the case of bills or other matters directly affecting the provinces, party discipline does not apply so that Senators may vote freely. This would enable a Senator to put the view of the province before that of the party when he or she deems it appropriate.

E CONCLUSION

The Senate can and should be a dignified, respected and Authoritative body that effectively represents provincial interests in national] decision making, contributes significantly to thorough consideration of legislation and other issues before parliament, strengthens parliamentary control over the executive and, in the process, furthers good government. We believe that the above proposals can contribute to the achievement of these objectives.