

DEMOCRATIC PARTY

SUBMISSION TO THEME COMMITTEE 2
BLOCKS 2 & 3 ON

"THE STRUCTURE AND FUNCTIONING OF THE
GOVERNMENT AT PROVINCIAL LEVEL, INCLUDING CHECKS
AND BALANCES TO ENSURE ACCOUNTABILITY,
RESPONSIVENESS AND OPENNESS"

(Ref T.C. 2 no 3)

INTRODUCTION

1. The Constitution must make provision for the following:
 - (a) A general constitutional framework for those Provinces who do not wish to draw up their own provincial constitutions, and
 - (b) the procedures by and the framework within which Provinces who wish to can draw up their own constitutions.

2. The relevant provisions contained in Chapter 9 - PROVINCIAL GOVERNMENT of the present (1993) Constitution, excluding the transition provisions, provide a basis for I (a) and 1 (b) above.

PROVINCIAL LEGISLATIVE AUTHORITY Reference 1993 Constitution Sections 125 to 143

The Democratic Party proposes the following substantive amendments to the above:

Section 126 See submissions submitted to Theme Committee 3.

- Section 127 (a) The number of members should be the same as the number of constituency members' elected to the National Assembly from each Province plus another twenty five percent more in number.
- (b) The constituency numbers shall be elected on the basis of multimember constituencies and the balance proportionately on a party list system, the two sets of members combined to result in the proportional representation of the various parties in the provincial legislature.
- (c) Where the above results in a legislature having fewer than 25 members, the number of "constituency' and 'list' numbers shall be increased so that the legislature will have a minimum of 25 members.

Section 128 The term of office of legislature should be four years.

Section 133 A candidate for election to the legislature must be a registered voter in the Province concerned.

Section 133 Subsection 133(b) stating that a member shall vacate his or her seat should he or she cease to be a member of the party which nominated him or her as a member of the legislature should be deleted.

PROVINCIAL EXECUTIVE AUTHORITY
Reference 1993 Constitution Sections 144 - 154

Section 149 (a) The Executive Council should consist of between 5 to 10 members providing the number of members of the Executive Council do not exceed one fifth, (20 percent) of the number of members of the Provincial Legislature.

- (b) Sub sections requiring a "government of national unity' type of Executive Council should be deleted.

New Section Provision should be made for the Provinces to be empowered to establish "Inter Government Consultative Councils" to assist in achieving the necessary co-operation and agreement between the Provinces on matters of mutual interest.

PROVINCIAL CONSTITUTIONS
Reference 1993 Constitution Sections 160 - 162

Section 160 Subsection (3) requires that "A provincial constitution shall not be inconsistent with this Constitution, including the Constitutional Principles set out in Schedule 4: Provided..... (DP underlining)

Once the new constitutional text has been adopted the Constitutional Principles set out in Schedule 4 could fall away unless specifically included as stated principles in the new constitutional text.

Should the Constitutional Principles fall away there would be no stated Constitutional Principles with which a future new provincial constitution would have to be consistent.

The apparent void requires that the Constitutional Assembly considers including in the new constitutional text those of the Constitutional Principles which have a direct bearing on the drafting and adopting of future provincial constitutions.

Constitution Principles that should be considered for inclusion in terms of the above mentioned comments are, inter alia, the following:

VI

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

VIII

"There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters' roll, and, in general, proportional representation. "

IX

'Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.'

X

"Formal legislative procedures shall be adhered to by legislative organs at all levels of government."

XI

"The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged. "

XII

"Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected."

XIV

"Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy."

XVI

"Government shall be structured at national, provincial and local levels."

XVII

"At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of Principle XIII. "

FORMAT OF NEW CONSTITUTIONAL TEXT IN RESPECT OF PROVINCIAL STRUCTURES AND THE ADOPTION OF PROVINCIAL CONSTITUTIONS

It would be appropriate to deal with the above issue in the following way:

The first matter to be dealt with should be "the adoption of Provincial Constitution." This would include:

- (a) an amended Section 160 giving Provinces the authority to adopt new provincial constitutions.
- (b) the parameters within which new constitutional constitutions may be drawn up and adopted.
- (c) the Constitutional Principles with which new Constitutions must comply.

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