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CONSTITUTIONAL ASSEMBLY  
**MEMORANDUM**

**TO: Members of the Constitutional Committee Subcommittee**  
**FROM: Executive Director**  
**DATE: 19 February 1996**  
**RE: DP Submissions on Council of Provinces/Senate and National and Provincial Legislative and Executive Competencies**

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We enclose for your consideration two updated submissions from the Democratic Party on :

Council of Provinces/Senate - Chapter 4 and

National and Provincial Legislative and Executive Competencies - Chapter 9

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**H EBRAHIM**  
**EXECUTIVE DIRECTOR**  
**CONSTITUTIONAL ASSEMBLY**

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16 February 1996

### **THE SENATE**

1. The prime function of the Senate will be to represent the interests of the Provinces at national legislative level.

To achieve this prime function, the DP proposes the following structures and procedures:

- 1.1 The Senate will consist of 7 members from each Province elected directly by the members of each Provincial Legislature on the basis of proportional representation of parties in that legislature.
- 1.2 The term of office of members of the Senate will be the same as for the Provincial Legislature that elected them i.o.w., members of the Senate will be elected following upon the election of their respective Provincial Legislature.
- 1.3 The members of the Senate may attend and participate but not vote in the proceedings of their respective Provincial Legislatures and their Portfolio Committees, and they will attend when requested by the Provincial Legislature to do so.
- 1.4 Provincial Premiers and members of the Provincial Executive Councils responsible for the relevant portfolios may address the Senate when legislation relating to the Provinces is being discussed.
- 1.5 National legislation falling within the areas of competences of the Provinces must be introduced in the Senate prior to being introduced in the National Assembly.
- 1.6 Such legislation requires the approval of the Senate as well as that of the National Assembly.
- 1.7 When, on the principle of having such legislation, each Province, through its delegation of Senators, will have one vote which vote will be in accordance with any resolution taken by the Provincial Legislature.
- 1.8 In the event of a deadlock between the Senate and the National Assembly, the draft legislation will be referred to a Mediation Committee of the Senate and the N.A.



- 1.9 Should the Mediation Committee fail to reach agreement acceptable to the Senate, the draft legislation will lapse.
  - 1.10 The Senate may set up Portfolio Committees on which each Province through its members of the Senate will be represented to deal with draft legislation falling within the areas of competence of the Provinces, which committees may confer with similar committees of the N.A.
  - 1.11 A similar Portfolio Committee, which may confer with the N.A.P.C on Finance, will consider the budget in so far as it affects the financial allocations and the budget in relation to the Provinces.
2. The secondary function of the Senate is to receive draft legislation that has been introduced in the N.A. - and which does not fall within the areas of competence of the Provinces.
    - 2.1 In respect of such legislation, the Senate may refer it back to the N.A. for further consideration, but will not have power to block such legislation if again passed by the N.A.
3. Amendments to the constitution which alter the powers, boundaries, functions or institutions of provinces will require:
    - 3.1 Procedures for obtaining the views of the Provincial Legislatures on such legislative proposals;
    - 3.2 the approval of two thirds of the Senate;
    - 3.3 and if the amendment concerns specific provinces only, the approval of two thirds of the members of the legislatures of such provinces will also be needed.
4. The Senate will be empowered to set up such committees as it considers necessary to achieve interaction and cooperation on legislative matters as between the Provincial Legislatures and between the Provincial Legislatures and the National Government.
  5. The Senate will be able to hold members of the Cabinet to account by way of questions, interpellations and motions.





**Demokratiese Party  
Democratic Party**

**PARLEMENT  
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## **NATIONAL AND PROVINCIAL LEGISLATIVE AND EXECUTIVE COMPETENCIES**

### **Legislative authority of the Republic**

1. (1) The legislative authority of the Republic vests in Parliament, which shall be competent to make laws in terms of this Constitution.
- (2) Parliament will be competent to make laws on matters which fall within the functional area of Schedule 1 (concurrent) to the extent that such laws apply uniformly in all parts of the country, and are necessary for:
  - the establishment of essential national or minimum standards required for a service to be rendered; or
  - the prevention of unreasonable action taken by a province which is materially and unjustifiably prejudicial to economic unity, or the health, environmental or security interests of another province or the country as a whole.
- (3) Subject to the conditions laid down in the above Sub-section 1 (2), Parliament will be competent to enact framework legislation for legislation of the Provinces on matters which fall within the functional area of Schedule (2) (framework).
  - Framework legislation may not contain detailed or directly applicable provisions.
  - Where Parliament enacts framework legislation, the Provincial legislatures will be obliged to introduce the necessary provincial legislation within a reasonable period of time as prescribed by national law.

### **Legislative authority of Provinces**

2. (1) The legislative authority of a province vests in its provincial legislature which shall be competent to make laws in and for its province in terms of this Constitution.



- (2) A provincial legislature shall be competent to legislate any matter which falls within a functional area specified in Schedule 1 (concurrent) and Schedule 2 (framework) as long as and to the extent that Parliament has not exercised its legislative powers.
- (3) A provincial legislature shall be competent to legislate on any matter which falls within a functional area specified in Schedule 3 (exclusive).

#### **Necessary ancillary powers**

3. The legislative competence referred to in sections 1 and 2 shall include the competence to make laws which are reasonably necessary for or incidental to the effective exercise of such legislative competence.

#### **Conflict of laws**

4. In the event of a conflict between an Act of Parliament and a law of a provincial legislature with regard to any matter which falls within a functional area specified in Schedule 1, the Act of Parliament shall prevail over the provincial law only to the extent such Act was made in terms of section 1(2).

#### **Legislative procedures**

5. (1) A Bill designed to become an Act of Parliament intended in section 1(2) shall be introduced in the Senate and shall require the approval of both the Senate and the National Assembly.
- (2) The Constitutional Court shall, upon application by at least one fifth of the members of the Senate, and prior to the promulgation of a Bill intended in section 1(2), expeditiously determine whether the Bill conforms with the requirements of section 1(2).

#### **Integrity of provinces**

6. (1) An Act of Parliament shall not empower an organ of state to encroach upon the geographical, functional or institutional integrity of a province.
- (2) The National Government shall not exercise its powers so as to encroach on the geographical, functional or institutional integrity of a province.

#### **Executive Authority of the Republic**

7. The Executive Authority of the Republic with regard to all matters falling within the legislative competence of Parliament shall vest in the President and the Cabinet who shall perform his or her powers and functions subject to and in accordance with this Constitution.



### **Executive Authority of Provinces**

8. (1) The Executive Authority of a Province shall vest in the Premier of the Province who shall execute and perform his or her powers and functions subject to and in accordance with this Constitution.
- (2) A province shall have executive authority over all functional areas in respect of which it has legislative competence, matters assigned to it under section (x) or any law, and matters delegated to it by or under any law.

### **Transitional period**

9. (1) A provincial government may assume its executive and legislative powers in each of the functional areas assigned to it in Schedule 1, 2 and 3 when it has the capacity to exercise the powers effectively.
- (2) In the event of the national government disputing the capacity of a province to exercise one or more powers effectively, the Commission on Provincial and Local Government will adjudicate on the dispute.
- (3) Should a province be found not to have the capacity to exercise the relevant legislative or executive powers effectively, the national government may exercise such powers.
- (4) Ten years after the adoption of this Constitution, all the powers in the functional areas listed in Schedule 1, 2 and 3 will automatically be assumed by all the provinces except in the case of a province which has made an alternative arrangement with the national government.



