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CONSTITUTIONAL ASSEMBLY

DRAFT FORMULATIONS: NATIONAL COUNCIL OF PROVINCES

MEMORANDUM

TO: Members of the Constitutional Committee Subcommittee
FROM: Executive Director
DATE: 12 March 1996
RE: Draft Proposal on the National Council of Provinces

We enclose for your consideration the document entitled, "*Draft Proposal on National Council of Provinces*," produced by the Technical Advisors to the 6 March 1996 meeting of the Constitutional Committee Sub-committee.

**H EBRAHIM
EXECUTIVE DIRECTOR
CONSTITUTIONAL ASSEMBLY**

P. O. Box 15, Cape Town, 8000
Republic Of South Africa

Tel: (021) 245 031, 403 2252 Fax: (021) 241 160/1/2/3, 461 4487, E-mail: conassem@iaccess.za



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THE NEW CONSTITUTION

DRAFT - 5 MARCH 1996

Status: Proposal by Technical Advisers after taking into consideration discussions at a Constitutional Assembly Sub-Committee Meeting on 6 March 1996

DRAFT PROPOSAL ON NATIONAL COUNCIL OF PROVINCES

NATIONAL COUNCIL OF PROVINCES

CONCEPT

- 1 The function of the National Council of Provinces shall be to act as a Chamber representing provincial interests. It shall have the powers to propose revision and thus delay¹ legislation regarding national competencies, and more importantly to initiate, amend or reject/² national legislation in respect of the functional areas in which the provinces have concurrent legislative and executive authority.
- 2 The Council will be premised on a direct and strong link with the provinces. Accordingly it should be steered by them and in regard to matters pertinent to provincial government its main activities will be to represent the concerns of that level of government.³
- 3 It is this level of government which is largely responsible for and has administrative experience in the execution and implementation of Schedule 5 legislation. It will also serve the function of exposing the provincial governments and legislatures to the concerns of Parliament, of national government and of other provincial governments, and also promoting co-responsibility between levels of government for the joint administration of the country as a whole. The National Council

¹ See below. The exact nature of this delay is still to be specified.

² See below. See 2.2.

³ There is still some debate as to the value of a second house or house of general legislative revision. Such Chamber is considered by some, including the PAC, to be expensive and to present no new perspective in the legislative debates. It can not justify, it is argued, special legislature powers and it plays no meaningful function if it simply mirrors the composition of the Assembly. This reasoning would not, however, apply if the chamber is specifically structured to bring the province's views to Parliament. This is only so if the provincial representations are determined by provinces and not national caucuses.

will also have the power to monitor inter-governmental executive relations.

outstanding 4

Parliament

It is recorded that this body is a legislative organ. The exact functions will be spelt out as specific to this body. It has been suggested it should have the status of a parliamentary chamber. Its formal inclusion in the definition of Parliament remains to be finally resolved

NP "Chamber of Provinces"

National Council of Provinces

Composition

1. (1) There shall be a National Council of Provinces through which the provinces participate in the national legislative process.

(1)

(2) The National Council shall comprise of 9 provincial delegations made up as follows:

is agreed but proportional but proportion between floating + permanent needs agreement.

DP propose that NCOP members participate in Provinces

(a) five (Option: seven) members elected directly by each provincial legislature in proportion to the support enjoyed by the political parties represented in such provincial legislature.⁴ (Option: the members so elected shall cease to be members if the provincial legislature loses confidence in its representatives.)⁵

(b) five (Option: three) representatives⁶ appointed by each provincial legislature (Option: Executive) in proportion to the support enjoyed by the political parties to attend specific council meetings from time to time⁷.

⁴ The Provincial legislature may need to 'top-up' their membership if MPL's are designated as members under this subsection. This draft is silent on whether MPL's must be selected or whether councillors could be chosen from outside this body.

⁵ This introduces a form of 'recall' and ensure the representatives and the Council maintains provincial confidence.

⁶ The DP argues for 3 such representatives appointed by the executive.

⁷ There is a proposal that either 5 or 10 persons be appointed to represent the interests of local government. A further discussion is required with regard to this principle and as to the appointment process. See also item 2.

Participation in National Legislative Process

- 2 (a) The National Council shall have the power to consider legislation dealing with matters which fall within the exclusive competence of national government.
- (b) The National Council may consent or to object to such legislation and may propose amendments thereto.
- (c) Where the National Council has proposed amendments or has objected to such a Bill, the National Assembly must reconsider such a Bill and amendments if any and may pass the Bill with or without such amendments by a simple majority.
- (d) The National Council and the National Assembly may establish any joint committee in accordance with their respective rules to consider such a Bill and any amendments proposed thereto, provided that no more than 30 days, shall be allowed for such joint consideration after the Bill has been referred to the National Council.⁸
- 2.(2) All Bills which effect the exercise or performance of the powers and functions of the provinces as provided in schedule 5, excluding appropriation bills and amendments to the Constitution shall be dealt with by the National Council as follows:
- (a) if the Council supports the Bill, it must be submitted to the President for assent;
- (b) if the Council proposes amendments or opposes the Bill, the Bill together with any proposed amendments must be referred to the Mediation Committee;
- (c) if the Mediation Committee agrees on the version of the Bill as passed by the National Assembly, the Bill must be submitted to the President for assent;
- (d) if the Mediation Committee agrees on a different version of the Bill to that approved by the National Assembly it shall be submitted to the Assembly for approval, and if approved, the Bill shall be submitted to the President for assent.
- (Option. If the mediation Committee agrees on a different version of the Bill, to that approved by the National Assembly, such amended Bill must be referred to both the Council and the

ANC to revert
on 30 days
requirement.
ANC-NO

⁸ There has been no agreement on the period of delay.

Assembly for approval before it is submitted to the President for assent.⁹); and

- (e) if the Mediation Committee fails to agree on the Bill or amendments thereto, the Bill shall lapse unless the Assembly approves such Bill by a majority of at least 2/3 of its members present.

(Option. If the Mediation Committee fails to agree on the Bill, or amendments thereto, the Bill shall lapse.)

2

ANC option

Deal with my confederation with finance

3. **Financial Bills**

- 3.1 All appropriation Bills shall be dealt with in terms of procedures set out in section 2(1).
- 3.2 Other Bills having financial implications for provincial government with regard to the functional areas listed in schedule 5, shall be dealt with in terms of the procedures set out in section 2(2)¹⁰.

4. **Constitutional Amendments**

- 4.1 The approval of 2/3 of the total number of members of the National Council shall be required for any constitutional amendment which amends any provisions of the Constitution dealing with provinces.
- 4.2 In the event that a constitutional amendment amends the powers and functions of a specific province or provinces, the approval of the legislature of such province or provinces shall be required. (Option. Approval of 2/3 of the legislature of such province or provinces shall be required.)

4

5. **Mediation Committee**

- 5.1 The Mediation Committee shall consist of (a) one delegate from each province designated by members of the province in the National Council and (b) 9 members of the National Assembly elected by the Assembly in proportion to the representation of the parties represented in the Assembly.
- 5.2 Support by the majority of the members of the National Assembly and by the majority of the delegates of the National Council on any issue placed before the Mediation

⁹ Under this option the Mediation Committee would be no different, in effect, to a normal joint committee and could not be considered as a specific deadlock-breaking mechanism.

¹⁰ The Council may have other roles such as vetting the proposals of the financial and fiscal commission. Firm proposals are required.

Committee shall constitute an agreement by the Committee.

6. Voting in the Council


- 6.1 Each Province shall be entitled to one vote to be cast by its representatives in accordance with the mandate given by the provincial legislature.¹¹
- 6.2 With regard to all decisions other than those which affect the exercise of performance of the powers and functions of the provinces as provided in Schedule 5, each member of the Council shall exercise a vote and the Council shall take its decisions by a majority of such votes cast.¹²

7. Powers to summon Ministers

- 7.1 The Council shall have the power to summon national Ministers and officials of the Executive to the Council and its committees.
- 7.2 Members of the Cabinet shall have the right to address the National Council or its committees in respect of any deliberations regarding legislation affecting their portfolio.¹³

8. Appointments

- 8.1 The National Council may confirm the appointments set out in Schedule X.¹⁴ (Option. The National Council shall confirm the appointment of Constitutional Court judges.)¹⁵


outstanding

9. Chairpersons

- 9.1 The Chairperson of the National Council shall be a member of the National Council elected by the Council.

¹¹ The precise way in which the legislature gives its instructions requires further consideration. It could be done by allowing the leader of the representatives in i(2)(b) to cast the vote.

¹² The option of individual voting in regard to the 'comment' bills is useful in that it absolves the provincial legislature of the need to give instructions on these bills which, in any event, the Council cannot veto.

¹³ The DP consider that members of the Cabinet shall not have a right to address committees as this is not contained in the Interim Constitution.

¹⁴ It has been proposed that certain national appointments which more directly impinge on provincial administration (e.g. Public Protector or Provincial Public Protectors) could be confirmed by the Council.

¹⁵ This latter proposal comes from the NP and has not yet been approved. The viability of the proposal may depend on whether the Council also participates in the Judicial Services Commission.

- 9.2 Upon election, a Chairperson shall have no vote and his or her delegation may fill the vacancy caused by such an election.
- 9.3 The term of office of such a Chairperson shall be for one year and he or she shall be succeeded by a person chosen from another province. Provision shall be made for Deputy Chairpersons.

Option

(6)

- 10.1 There shall be a President of the Council who shall be appointed by the President.
- 10.2 The President of the Council shall have no vote and shall be responsible for the Secretariat.
- 10.3 There shall be two vice-presidents who shall be elected annually at a meeting of the council of Premiers from amongst their numbers.
- 10.4 At least one of the vice Presidents shall be elected from one of the minority parties if such a minority party is a majority party in a province.

11. General

- 11.1 The members of the National Council of Provinces shall be entitled to participate in the deliberations of the Provincial Legislatures from which they have been elected and in the committees of such legislatures but shall have no vote therein.
- 11.2 Properly mandated representatives (delegates) of local government may attend and participate in the National Council and their committees but may not vote.¹⁶
- 11.3 The Council shall have the right to express itself by passing resolutions on any matter of concern including the performance of the national or provincial executives and their members.¹⁷

(7)

* Internal Autonomy Clause
 Power to establish committees and take mandates.

¹⁶ There has been no concrete proposal as to how such representatives will be selected or mandated. This proposal would however recognise the interests of local government, not as an interest group, but as a tier of government.

¹⁷ It is not clear whether this clause is necessary, as the Council would have such powers anyway. It is included to indicate that this power is not excluded.

