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# Bicameralism in South Africa

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**Hon. Nomaindiya Mfeketo MP**

*During the transition following Apartheid, South Africa completely redesigned its constitution and its political institutions. This article looks at how bicameralism operates in that country.*



Both the South African and Canadian Parliaments subscribe to a system of bicameralism but I must hasten to point out that our system of bicameralism is firmly rooted within the unitary state system of governance whilst the Canadian one functions within the federal State system where provinces are regarded as autonomous. This actually differs from our system where provincial legislatures take their cue from the national parliament through a system of cooperative governance.

In reflecting on the concept of bicameralism itself, perhaps it is important to highlight that the institutions which form part of a bicameral system trace their origins to the medieval period when Kings would consult with trusted and respected members of different sections in society. Parliament came into existence to serve this practical purpose, and a bicameral structure was adopted because different forms of consultation with different sections of society were deemed more appropriate.

I am reminded of our unique situation in South Africa when we were determining how to establish a legislative body to adequately deal with the country's needs. During the Convention for Democratic South Africa (CODESA) negotiations, not only was an interim constitution adopted, but it was also decided that a bicameral system would be ideal for the country's needs. A bicameral Parliament was established, which resulted in the abolition of a racially and ethnically divided tri-cameral system which was in place. The

then tri-cameral system catered to whites through the House of Assembly, coloureds in the House of Representatives and Indians in the House of Delegates. This system actually marginalised the African people since their affairs were designated in the homelands. As a way of endeavouring to deepen democracy and foster public participation, it was imperative for the Parliament of the Republic of South Africa to establish National Council of Provinces system as opposed to the Senate or Second House. Through this arrangement the process of public involvement through the law making processes has been enhanced and provinces are better placed to reach the members of the public.

I also draw attention to the mandate of our Parliament which forms the bedrock upon which our system of democracy is established. The mandate of the South African Parliament is premised on building a democratic Parliament that is transparent and responsive to the needs of the people. It also bases its existence on the need to develop and follow a legislative agenda that is aimed at accelerating the transformation of South African Society. This has been Parliament's overriding policy and strategic objective since 1994.

In terms of Chapter 4, section 42(3) and (4) of the Constitution, Parliament's role and ultimate objective is to represent the people and to ensure government by the people under the Constitution, as well as to represent the provinces in the national sphere of Government.

In terms of section 42(3) of the Constitution of the Republic of South Africa, 1996, the National Assembly is elected to represent the people under the Constitution and to ensure government by the people under the Constitution. It does this by electing the President, providing a national forum for public consideration of issues, passing legislation and by scrutinising and overseeing executive action. The National Assembly is further required to provide mechanisms to ensure

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that all executive organs in the national sphere of government are accountable to it.

In terms of section 42(4) of the Constitution, the NCOP represents the provinces to ensure that the provincial interests are taken into account in the national sphere of government. It consists of 52 Members who are appointed in the provincial legislatures to represent the interests of provinces. The NCOP participates in the national legislative process by providing a national forum for public consideration on issues affecting the provinces. In addition, the NCOP's role includes exercising oversight over the national aspects of provincial and local government. Section 100 of the Constitution provides for the National Council of provinces to exercise oversight in cases when the National Executive intervenes in a province that cannot fulfil its executive obligations.

The institutional relationship between the two Chambers can be realised through the legislative process, in the sense that any Bill that has been debated and passed by the National Assembly has to be referred to the National Council of Provinces for issues that might impact on the provinces, before it can be adopted by the National Assembly. In dealing with National legislation, the Parliament introduced the notion of tagging mechanism to determine whether a particular legislation is of national competency or provincial and local competency.

The Constitution differentiates between the Section 75 legislation that deals with national competency and Section 76 Bills that deal with Provincial and local competencies. The legislation that deals with Constitutional amendments and Money Bills resides within the competency of the National Assembly as it is enshrined in Section 74 and Section 77 of the Constitution respectively. All Bills dealt with in the National assembly are referred to the National Council of Provinces for concurrence and vice versa.

This legislative process also encompasses the ratification of International Agreements, where the constitution clearly states that "an international Agreement binds the Republic only after it has been approved by resolution in both the National Assembly and National Council of Provinces" (section 231(2)).

The National Assembly consists of 400 Members, directly elected through a system of Proportional Representation, and our constitution prescribes for Members of Parliament to be voted into power every five years period they have been in office. Before elections, parties draw up electoral lists of potential members of the Assembly. Voters vote for the party

of their choice and parties gain seats in the Assembly strictly according to the support they receive".

Election to the NCOP is indirect. Citizens vote for provincial legislatures, and each legislature then appoints a delegation of ten members to the NCOP. Thus, each of South Africa's nine provinces has equal representation in the Council regardless of population. Each provincial delegation consists of six permanent delegates, who are nominated for a term that lasts until a new provincial legislature is elected, and four special delegates. One of the special delegates is the province's Premier, or another member of the provincial legislature designated by the Premier, while the other three special delegates are designated ad hoc by the provincial legislature. The party representation in the delegation must proportionally reflect the party representation in the provincial legislature, according to a formula included in the Constitution.

The challenge, in certain occasions, the temptation by one Chamber to overstep the constitutional mandate lends itself into situations where the system itself would look unsustainable because one house would have assumed responsibilities that goes beyond or outweighs its capacity. Perhaps it could be argued that clear roles and lines of responsibilities as enshrined in the constitution need to be clarified at all times.

### **Women in Politics**

I must reflect on some of the success stories of our Parliament in relation to women and gender issues. There is a minimum success that we pride ourselves as a country in key political sectors of the country. This off course relates to the 50% gender parity adopted by the ruling party in key political areas of deployment. The Minister of Women, Children and People with disabilities is currently initiating a bill to compel both public and private sector to adopt the 50% gender parity. We also celebrate the election of our former Home Affairs Minister, Dr Nkosazana Dlamini-Zuma who has been elected Chairperson of the African Union Commission and we hope that she will enjoy your support in her endeavours to advance the cause of Africa and women of the continent.

In 2014, South Africa government will be celebrating twenty years of democracy. This should also present an opportunity to review our statutory frameworks, reflect on the progress on Institutions Supporting Democracy. This introspection should also examine whether we are on track with the systems we have created in Parliament, governance systems, electoral systems and the whole debate of having three spheres of governance. As we review other transformational

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changes that are necessary for the country to succeed, including issues relating to the reduction of provinces. It is perhaps incumbent upon us to re-consider a debate of having a Speaker of Parliament who will account for both houses and the legislative of the state in general. This will off course be done in spirit and the quest to strengthen our system of bicameralism. As we walk this path of transformation, we shall also draw lessons on best practices in our counterparts in the Commonwealth Parliaments. We do so conscious that in the course of strengthening our democratic systems, along the way mistakes will be made. We might be able to draw a distinction on what we should not do, but we might not always know what should be done to get things right.

### **Conclusion**

Let me conclude by reflecting on one of the famous statements uttered by Comrade President Mandela during his legal defence statement in the Rivonia Trial

in 1964 which he repeated during his release from Prison in 1990. These words are still lingering in our subconscious minds as a source of inspiration to the majority of South Africans. In his statements, President Mandela state that,

“I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons will live together in harmony with equal opportunities. It is an ideal which I hope to live for, and to see realised. But if needs be, it is an ideal for which I am prepared to die”

Looking back on the epoch-making events that surrounded President Mandela's release from prison with the advantage of hindsight, we cannot but appreciate the enormity of challenges we had to wade through, and Mandela's statesmanship, courage and moral consistency, qualities that successfully guided our political transition through uncharted but turbulent terrain.