

The Natal Provincial Council 1910-1986

“Born in Battle” could well have been the motto of the Provincial Councils of South Africa. At the time of the National Convention (1908-1909) the two smaller British colonies, Natal and the Orange Free State, were in favour of federation whilst the Transvaal and the Cape colony wanted one central Government, a union. A compromise was reached in terms of which certain powers were to be retained by each of the four provinces in a unitary state. It seems however, that this represented an uneasy truce, for attempts were soon made to abolish the Provincial Councils. The following quotation from *The South African Accountant and Auditor* of September 1915 shows the division of opinion which existed at that time:—

The question of the abolition of Provincial Councils has again been mooted, and this has given rise to strong views being expressed in the local press in favour of their retention. Natal is unanimously opposed to any proposal either to do away with its Provincial Council or to interfere with the provincial control of education. It is not surprising, therefore, that Natal people are inclined to look with suspicion upon the Commission recently appointed to inquire into the present system of provincial administration, more especially as one of its terms of reference is to inquire whether the system ‘should be continued, extended or modified’. At a meeting of the Council, sitting in Committee, resolutions were passed regarding the evidence to be led before the Commission, and it was decided to endeavour to show that it is essential, in the interests of provincial government, that the Act of Union should be amended in order to make the Provincial Councils a more effective factor in the government of the country. One of the most far-reaching amendments to be proposed is that the Executive Committee should resign and a new Committee be elected in the event of a vote of no-confidence being carried by a majority of at least two-thirds of the Council.

This attempt to abolish the Provincial Council failed but the opponents of the *status quo* did not give up. The *Natal Mercury* in its editorial published on Monday January 5, 1948 stated;

If, as has been indicated by General Smuts, there is to be an overhaul of the Union’s Constitution it is a matter of primary importance that no stone be left unturned to have the Provincial system placed upon a fair, satisfactory and unassailable basis. Even today the importance and special significance which Provincial government is destined to

have in the future of Southern Africa is not properly appreciated. Thirty-seven years ago the people of this country chose union rather than federation, but to satisfy those who favoured the latter system of government the boundaries of the four Colonies were left intact while the new Provinces of Union were given a substantial measure of domestic autonomy. Although, therefore, federation was rejected, the framers of the South Africa Act decided upon a modified version of the rigid unitary system of government. Unfortunately the precise character and purpose which the Provincial Councils were to play in the future development of the nation were never properly defined. In consequence the opponents of Provincial government were unintentionally given ample scope, of which they have seldom been slow to take advantage, to undermine one of the pillars upon which our Constitution rests.

But even if the long term view be ignored and the question studied from a purely South African angle it would be unfair to suggest that the Provincial Councils, in spite of the many disabilities under which they have laboured, have been anything but a success. In fact, it is not too much to question whether the Union would have survived as successfully as it has done were it not for the measure of domestic autonomy enjoyed by each of the four partners. Yet there are influential forces at work doing their utmost to destroy the Provincial system. These pressure groups would surrender the traditions and achievements of a lifetime for the deadening and stultifying influence of an impersonal and unsympathetic centralised state bureaucracy.

Finance is the Achilles heel of the Provincial system. By attacking this weakness these opponents have undoubtedly succeeded in diminishing the system's erstwhile popularity. While this is something of a tragedy, the abolitionists would be prudent if they first asked themselves whether their experience of Pretoria's dilatory methods is such that they would willingly suffer an extension of State jurisdiction for the sake of what will probably turn out to be a purely illusory saving of a few pounds in taxation. If the electorate of Natal are wise they will rather demand that the spirit as well as the letter of the South Africa Act be implemented.

Had such a policy been scrupulously pursued since Union little criticism would be heard today of the Provincial system. Because so comparatively little is known or understood about the difficulties confronting the Natal Provincial Council and the changes that have taken place *in its financial and legislative powers since its functions were first determined in 1909*

In the intervening years, several attempts had been made to do away with Provincial Councils. All failed, but certain of their powers were taken away. George Heaton-Nicholls, Administrator of Natal from 1941 to 1943 writes in his book, *South Africa in my Time*:

Every Union department was busily at work nipping off the edges of the Provincial authority as defined in the Act of Union. In all this the towns of Natal had assisted. In the normal way they had formed themselves into a Natal Municipal Association for the purpose of bypassing the Provincial authorities to whom, of course, they owed their

existence. The other Provinces had done the same. The four Provincial Associations had then affiliated with each other to form an all-Union body for the purpose of putting pressure on the Central Government, instead of applying to the Provincial Councils, thus undermining their own governing authority. So, as time went on, the Provincial Councils found themselves by-passed by their children for whom, under the South Africa Act, they were supposed to be entirely responsible. The Union Ministers were only too happy, of course, to afford the Municipal Associations the authority to approach them.

The Nationalist Party policy as enunciated by Dr D.F. Malan at Ceres in September, 1929 was that South Africa could not become a nation until the provinces were destroyed and all executive government of the country was concentrated in a single department in Pretoria. Two years later Mr N.C. Havenga, then Minister of Finance, asked General Smuts for his support in abolishing the provinces and creating local bodies appointed by the central government in their stead. There were to be two councils in the Cape, three in the Transvaal and one each in Natal and the Free State. The Councils would not have any legislative power and would fall under the control of a minister. The Natal members of Parliament objected very strongly, with the result that General Smuts refused to go along with the suggestion.

In 1939 The Transvaal Land and Trading Act was placed on the Statute Book to 'peg' the Indian ownership of land in that Province. This was intended as a temporary measure, but the restrictive Act was extended in 1941. The public of Durban also became apprehensive about the increasing ownership by Indians of land in White residential areas, so The Trading and Occupation of Land (Transvaal and Natal) Registration Act was enacted in 1943. Here again this was intended as a temporary measure. The Natal Administrator, the Hon. G. Heaton-Nicholls, introduced an ordinance into the Natal Provincial Council to give effect to an agreement which he had reached with the Indian leaders. Certain amendments were made by a Select Committee of the Provincial Council, which amendments appeared to be acceptable to the Indian community. The ordinance as passed by the Council was forwarded for the approval of the Governor-General-in-Council, who vetoed it on the grounds that it was *ultra vires* the South Africa Act, notwithstanding the fact that the Provincial legal adviser and the legal adviser to the Indian leaders had agreed that the Natal Provincial Council had the power to pass the relative legislation. The agreement between the Natal Administrator and the Indian leaders was therefore never implemented. Instead, Parliament approved the Asiatic Land Tenure and Indian Representation Act with the result that South Africa was arraigned by the Indian Government before the United Nations. The failure of the central government to ratify the actions of the Provincial Council of Natal thus started an attack on South Africa which has continued to this day.

Notwithstanding the problems that had been encountered as a result of the opposition to the Provincial Council system, the Natal Provincial Council had made progress and was backed by the vast majority of the voters of Natal. Mr Douglas Mitchell, who had been a member of the Executive Committee during the period Mr George Heaton-Nicholls was Administrator, succeeded him in this post. Under his dynamic leadership, coupled with his intimate knowledge of Natal and the affairs of the Natal

Provincial Council, major changes were instituted which led to far better administration. The leader of the Provincial Council was Mr E.C. Wilks who served as a Provincial Councillor for no less than 31 continuous years, of which he had 25 years' unbroken service as a member of the Natal Executive Committee. (This is probably a record for Natal and most likely for South Africa as a whole).

Under their guidance the Provincial Council passed ordinances setting up such statutory bodies as The Natal Parks, Game and Fish Preservation Board (1947), The Natal Town and Regional Planning Commission (1951), The Natal Local Health Commission (1941) later to become the Development and Services Board, and The Natal Water Advisory Board (1946).

The Natal Parks, Game and Fish Preservation Board is acclaimed as one of the finest conservation bodies in the world and is famous for its efforts in saving the white rhino from extinction, the perfection of techniques for the capture and relocation of game, and for its turtle and crocodile research programmes.

The Natal Town and Regional Planning Commission has over the years ensured orderly development and has given guidance and assistance to many local authorities in preparing or revising town planning schemes. The Commission's staff has also done considerable research. The numerous publications issued by the Commission bear testimony to its excellent services to the community.

The Local Health Commission was established initially to improve health standards in small areas which could not justify the formation of local authorities. The services rendered by the Commission increased and the name was changed to the Development and Services Board to accord more with its activities. Almost one hundred smaller villages and areas are at present served by the Board which renders all the services which one would expect of a local authority.

In 1964, following shark attacks on bathers in our coastal waters, the Natal Safety Bathers' Association was set up. As a result of the work of the late Mr R.B. Archibald M.E.C., the Natal Anti-Shark Measure Ordinance was enacted by the Natal Provincial Council. Thus the protection of bathers against attacks by sharks became an important function and over the years nets were installed in the sea at various beaches along the coast from Richards Bay in the north to the Transkei border in the south. In addition to the protection of bathers the Natal Sharks Board is engaged in scientific research concerning sharks.

The Natal Provincial Council also enacted the Regional Water Services Ordinance paving the way for regional co-operation in the provision of water and sewerage schemes. Seven regional water services corporations have been established and these cover a vast area of Natal.

The Local Authorities Ordinance 1974 enacted by the Provincial Council extended the powers of local authorities and increased their borrowing powers considerably with the result that local authorities had far less need to introduce private draft ordinances to enable them to extend their borrowing powers. The Local Authorities Ordinance, and its predecessor the Natal Government Ordinance, provide general powers and duties for certain categories of local authorities namely, boroughs, townships and health

Committees. Appreciating, however, that certain local authorities would experience problems peculiar to themselves and that a large borough such as Durban would require more powers than the rather smaller boroughs, provision was made for the introduction of private draft ordinances into the Provincial Council in terms of which additional powers were conferred on the particular local authority. Durban has of necessity been obliged to avail itself of this method of obtaining additional powers almost every year. The private draft ordinances were referred to Select Committees which heard evidence from the promoters and the objectors (if any) and studied the reports of the officials of the Administration. The Select Committees reported to the full Council which thereafter, if the legislation was supported by the Select Committees, enacted the ordinances. The Select Committee sometimes amended the draft ordinances removing certain powers which were considered to be too far-reaching. The original Durban Private Ordinance providing for differential rating of properties was bitterly opposed by some of the organisations in and citizens of that city. After a long Select Committee hearing the Committee's report was considered by the Council which refused to pass the ordinance.

The watchdog of the Provincial Council was the Select Committee on Public Accounts. This Select Committee examined the accounts of the province, of the local authorities and statutory bodies as well as the report of the Provincial Auditor. Thereafter it put questions to the officials and after receiving the replies held a hearing at which the officials gave such further information as might have been required. The questions put by the members were searching and involved and required detailed replies. Such has been the quality of the officials of the Province of Natal that they have come out with an unsullied reputation. In fact, in the 76 years of the existence of the Natal Provincial Council there has never been even a suggestion or hint of a scandal. This is a great tribute to the Administrators, members of the Executive Committee, Provincial Secretaries and other senior officials who have served this province so loyally.

Since 1910 the majority of the members of the Natal Provincial Council have been adherents of the South African Party, the United Party or the New Republic Party. The Councils and the Province's Executive Committees over the years have done their best to implement enlightened policies and improve the lot of the less privileged in terms of the policies of parties.

The Executive Committee was the Cabinet of the Provincial Council so it is natural that the successive Natal Provincial Executive Committees had to bear the brunt of implementing the policies of the majority party of the Council. Natal took the lead in improving race relations by being the first to

1. Appoint black traffic officers.
2. Appoint a multi-racial advisory committee to advise on matters pertaining to recreation.
3. Arrange for the formation of Local Affairs Committees and the formation of fully fledged non-white local authorities.
4. Appoint non-whites as members of statutory bodies.
5. Permit non-whites to obtain racing colours and to become bookmakers.

In the early 1970s a consultative committee consisting of the Executive Committee and representatives of the Indian and Coloured communities

was formed. This Committee agreed on a formula for the representation of non-whites by non-whites on local authorities. The necessary ordinance was passed by the Natal Provincial Council but the State President could not be prevailed upon to grant his assent and so the ordinance which would have paved the way for multi-racial local authorities was never passed into law.

When the KwaZulu Legislative Assembly was formed the powers granted to the KwaZulu homeland government were far greater than those which Provincial Councils had. It was clear that the fortunes of Natal and KwaZulu were interdependent. The two administrations, therefore, co-operated very closely and the officials were in constant touch with each other. Recently the two administrations agreed that a joint administrative body should be set up to control the interests of the parties in matters of common interest. Legislation to give effect to this is being enacted at the time of writing.

The Natal Provincial Council, in one of its last major initiatives, resolved that the Natal KwaZulu Indaba should be set up to consider ways and means of establishing a joint legislative body to deal with matters of common interest. Notwithstanding the abolition of the Natal Provincial Council the Indaba discussions continue. There are hopes that the Indaba will formulate proposals which will be accepted by the Cabinet and be passed into law so as to enable the setting up of a Natal KwaZulu legislative body.

With the disappearance of the Provincial Councils the direct accountability of the Executive Committee to the voters is something of the past. The members of the present Natal Executive Committee are nominees of the State President and accordingly are accountable to him, but their decisions will be monitored by a Standing Committee of Parliament.

The light of the old system has been extinguished and we are faced with something new and untried. No doubt teething troubles will be encountered but the hope is that the fine traditions set by the Natal Provincial Councils and the Executive Committees over 76 years will live on.

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