

## 2.7 CHAPTER - AMENDMENTS TO THE CONSTITUTION

*See Annexure 11*

In view of the stipulations contained in Constitutional Principle XVIII.4, the Commission recommends that the following clause be inserted in the Chapter dealing with amendments to the new Constitution :

*"...(1) Amendments to the Constitution which alter the powers, boundaries, functions or institutions of provinces require, in addition to any other procedures specified in the Constitution, approval by a two-thirds majority of the Chamber of Provinces. If the amendment concerns specific provinces only, the approval of the legislature of each of such provinces will also be required.*

*(2) Before Parliament approves any constitutional amendment regarding the powers, boundaries and functions of any province, it must obtain and consider the views of the provincial legislature of that province.*

*(3) An amendment of the Constitution which alters the boundaries of a province may only be considered after a procedure prescribed by national legislation has been followed to determine the view of the inhabitants of any area affected by such an amendment.*

*(4) The name of a province may be amended only upon the request of a two-thirds majority of the members of the legislature of that province."*

### ANNEXURE 11

#### COMMISSION ON PROVINCIAL GOVERNMENT

#### RECOMMENDATIONS REGARDING AMENDMENTS TO THE CONSTITUTION

##### 1 INTRODUCTION

The Constitutional Principles require that the new Constitution contain specific provisions in regard to amendments which alter the powers, boundaries, functions or institutions of provinces. CP XVIII.4 stipulates as follows: -

"Amendments to the Constitution which alter the powers, boundaries, functions or institutions of provinces shall in addition to any other procedures specified in the Constitution for constitutional amendments, require the approval of a special majority of the legislatures of the provinces, alternatively, if there is such a chamber, a two-thirds majority of a chamber of Parliament composed of provincial representatives, and if the amendment concerns specific provinces only, the approval of the legislatures of such provinces will also be needed."

The only variable that will affect the procedures for such amendments, is whether the new Constitution will provide for a chamber of Parliament composed of provincial representatives

or not. The final wording of the appropriate text will dependant, therefore, on the composition and role of the Senate (second chamber) if it is included in the new Constitution.

## **2 DRAFT CONSTITUTIONAL TEXT AND COMMENTS**

### 2.1 Draft text prepared by CA

53. The Constitution may be amended by a Bill passed by Parliament if it is adopted by at least two thirds of the members of [both Houses of] Parliament.

The following were identified as issues still to be addressed by the CA:

"What are the conditions for amending the Constitution, if at all? CP XVIII(4) requires that there be no amendment which alters the powers, boundaries, functions or institutions of provinces without the approval of the affected province. There are two views -

(a) A two-thirds majority of Parliament;

(b) A two-thirds majority of Parliament in respect of the general provisions. Absolute entrenchment of the commitment to a democratic form of state and democratic mechanisms. Specific entrenchment of provincial matters by requiring that provinces consent. Judicial entrenchment of the most basic fundamentals of a democratic state by including these in a separate schedule to the Constitution - the Constitutional Court would have to certify whether any amendment is in accordance with these principles."

### 2.2 Commission's preliminary recommendations

The Commission recommended that provisions similar to section 62 of the interim Constitution, which appears to be in accordance with CP XVIII.4, be incorporated into the new Constitution. (Document 4 of 23 March 1995, paragraph 4.5)

### 2.3 Provincial

Western Cape - CP XVIII.4 and sections 61 and 62 of the Constitution should be retained in the new Constitution.

### 2.4 Comments

2.4.1 It is clear that amendments of the Constitution which alter the powers, boundaries, functions or institutions of provinces require procedures additional to those required for other amendments. The draft provisions in paragraph 2.1 above should therefore be expanded to provide for the additional procedures required.

2.4.2 It should be noted that the passing of Bills affecting the boundaries or the exercise or performance of the powers and functions of provinces should also require special procedures. These should be dealt with in the provisions relating to the passage of Bills in Parliament.

### **3 RECOMMENDATIONS**

3.1 The Commission recommends that the following provisions regarding amendments of the Constitution affecting provincial powers, etc., be incorporated into the new Constitution in addition to the general requirements for constitutional amendments. These recommendations will need to be revisited if the composition and role of a second chamber in the new Constitution differ substantially from the Commission's recommendations regarding a Chamber of Provinces.

3.2 Proposed text:

*“... (1) Amendments to the Constitution which affect the powers, boundaries, functions or institutions of provinces require, in addition to any other procedures specified in the Constitution, approval by a two-thirds majority of the Chamber of Provinces. If the amendment concerns specific provinces only, the approval of the legislature of each of such provinces will also be required.*

*(2) Before Parliament approves any constitutional amendment regarding the powers, boundaries and functions of any province, it must obtain and consider the views of the provincial legislature of the province.*

*(3) An amendment of the Constitution which affects the boundaries of a province may only be considered after a procedure prescribed by national legislation has been followed to determine the view of the inhabitants of any area affected by such an amendment.*

*(4) The name of a province may be amended only upon the request of a two-thirds majority of the members of the legislature of that province.”*