

# PROPOSED ANC AMENDMENTS TO CONSTITUTION BILL

\* Please note: underline indicates addition, [square brackets] indicates deletion.

## Amendments - Ch 1

Section 1        The Republic of South Africa is one sovereign democratic state founded on the following values:

Technical

- (a) [A commitment to promote and protect]....
- (b)                [A commitment to promote and protect]...

Section 5        The mathematics of the flag are incorrect and need rectification. Remove the word "chilli" from diagram of flag.

Technical

## Section 6

(1)        The official languages of the Republic are siPedi [Sesotho sa Leboa], Sesotho, SiSwati, Xitsonga, Setswana, Tshivenda, isiXhosa, isiZulu, Afrikaans, English, isiNdebele.

(2)        Recognising the dispossession and diminution of the traditional languages - of our people the state must therefore take positive measures to elevate the status of these languages.

(3)        The use of these languages as official languages must be regulated by national and provincial legislation and administrative action. Without prejudice to (2), all languages must enjoy parity of esteem.

(4)        The Pan South African Language Board must promote the conditions for the development and use of the official languages, including the Khoi and San languages and sign language.

(5)        National and provincial government may use particular official languages for the purposes of government taking into account usage, practicality and expense.

Substantive

## Amendments - Ch 2

Section 9(4)        .... [in applying section 8(3) to the right in this subsection, courts may develop the common law only to the extent that the required national legislation does not provide a remedy based on this right.]

Technical

Note: If necessary this could be dealt with in section 8(3).

Section 15(3)(b) Marriages, or systems of personal and family law, recognised by legislation referred to in paragraph (a) must be consistent with this section and the other provisions of the Constitution.

Substantive

Section 23(3)(c) [to lock out]

Substantive

Section 29(1) Everyone has the right -

Substantive

- (a) to basic education, including adult basic education [in a state or state-aided institution];
  - (b) to further education, which the state must take reasonable and progressive legislative and other measures to make generally available and accessible; and
  - (c) to receive education [choose instruction] in the official language or languages of one's choice in public educational institutions, where [instruction in such language] such education is reasonable practicable [in state or state-aided institutions].
- (2) Everyone has the right to establish and maintain at their own expense independent [private] educational institutions that -
- (a) do not discriminate on the basis of race;
  - (b) are registered with the state;
  - (c) maintain standards that are not inferior to standards at comparable public [state-aided educational] institutions.

Section 30A New formulation under consideration

Substantive

Section 36(3) The courts [Any High Court] may, as described in Chapter 8. enquire into the validity of -

Technical

36(4)(b)(iii) ... Gazette as soon as reasonably possible [immediately] after...

Technical

Note: Numbering in table requires correction

### Amendments - Ch3

Section 39 (1) The Government of the Republic is constituted as distinctive, interdependent and inter-provincial and local spheres of government.

- (2) All spheres of government must observe, adhere to and conduct their activities within the confines of t
- (3) All spheres of government must -
  - (a) preserve peace, national unity and the indivisibility of the Republic;
  - (b) secure the well-being of the people of the Republic; and
  - (c) provide effective, transparent, accountable and coherent government for the Republic as a whole;
  - (d) cooperate with each other in mutual trust and good faith to -
    - (i) foster friendly relations;
    - (ii) assist and support each other..
    - (iii) inform and consult each other on matters of common interest;
    - (iv) co-ordinate their actions and legislation with each other;
    - (v) adhere to agreed procedures; and
    - (vi) avoid legal proceedings and litigation against each other;
  - (e) must be loyal to the Constitution, the Republic, and its people;
  - (f) must respect the constitutional status, institutions, powers and functions of government in other spheres;
  - (g) must assume only the powers and functions conferred on it in terms of the Constitution; and
  - (h) must not exercise any powers or functions in a manner that encroaches on the geographical, functional integrity of government in another sphere.
- (4) National legislation may establish structures and institutions to promote and facilitate inter-governmental relations.
- (5) An organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other available remedies before it approaches a competent court to resolve the dispute.
- (6) National legislation must provide for appropriate mechanisms and procedures to facilitate settlement of inter-governmental disputes.
- (7) If a competent court is satisfied that the requirements of subsection (5) have not been met, it may refer a dispute back to the organs of state involved for resolution.

Amendment - Ch4

Section 41 A            The President may summon Parliament to an extraordinary meeting at any time to condu

Substantive

Section 42            The legislative authority of the Republic -

- (a)    of/in the national sphere of government is vested in Parliament, as set out in section 43;
- (b)    the provincial sphere of government is vested in the provincial legislative province, as set out in section 103; and
- (c)    the local sphere of government is vested in the municipal councils, as set out in section 151.

Technical

Section 43(1)(b)(ii) to pass legislation with regard to any matter within a functional area listed in schedule 4 and any other legislation referred to in section 74(3)(a) [determined by the Constitution], in accordance with section 74, and

Technical

Section 43(2)            TRT to re-draft

Technical

Section

44(1) (e)            provides for the election of members -

(i)    from national and provincial. or only provincial, lists of party candidates drawn up in a party's order of preference; and

(ii) in a manner which ensures that -

(aa) the number of members fixed-for each province is elected from the lists for that province only; and

(bb) the members elected reflect the proportions of the votes recorded for the respective parties nationally and in the provinces.

(2)            Nothing in this section shall prohibit the establishment of an electoral system as prescribed by national legislation, which results in general, in proportional representation and allows for constituency representation also.

Section 48(1) its dissolution, provided that such dissolution shall not take place within three years of the last election.

Substantive

Section 49(3) To be drafted as in 5th Working Draft.

Substantive

Section 50 There shall be a Speaker of parliament as provided for in national legislation.

Substantive

Section

53(2)(b)(ii)

Any organ of state, other than the courts, or a statutory body.

Technical

Section 55(1)(a) determine and control [and dispose]

Technical

Section 61(3) Reflect the equivalent section as per the National Assembly

Technical

Section 62(6) .... from office by a vote of five provinces (but see section

63(1)(b))

Technical

[62(7)A National Council may elect from among the permanent delegates other presiding officers to assist the Chairperson and the Deputy Chairpersons, in terms of its rules and orders].

Technical

Section 65 (Provide that representatives from local government are not full time members of the National Council.)

Technical

Section 66(a) Consider, pass, amend, propose amendments to, or reject any legislation before the Council in accordance with this Chapter: and

Technical

Section 67(b) Add clause similar to 54(b)

Technical

Section 68(1)(a) determine and control [and dispose of]

Technical

Section 68(2)(c) the participation of all the minority political parties in its proceedings in a manner consistent with democracy, as contemplated in section 73(1)  
Substantive

Section 69(3) technical clarification to ensure rotating members of NCOP do not receive full salaries  
Replace [members] with permanent delegates  
Technical

Section 71 Amend sections 71(3), 74(3) and 75(4) accordingly to eliminate the contradictions between these three sub-sections.  
Technical

Section 71(3) A Bill failing within a functional area listed in schedule 4 or referred to in section 74 (3)(a), [excluding a money Bill failing within that schedule,] may be introduced, in the National Council of Provinces.  
Technical

Section 72(2)A All constitutional amendments concerning the powers, boundaries and functions of provinces shall be referred to the provincial legislatures to obtain their views.  
Substantive

Section 72(3)A (Should provision be made for any special amendment procedure of section 1 of the Constitution?)  
Technical

Section 72(4)(5) Amendment reflecting founding principles  
Technical

Section 74(3)(b) Chapter 13, and that affects the financial interests of the provincial sphere of government bills, must be dealt with in terms of the procedures established by sub-section (1) and (2).  
Technical

Section 74(1)(j) If a Bill referred to the National Assembly in terms of paragraph (g) or (h) is not passed by the Assembly, it lapses and the Bill as originally passed by the Assembly may again be passed by the Assembly, by a vote of at least two thirds of its members.

Section 74(3)  
(a) section 63 (2) or section 158 [159(1)] must be dealt with in terms of the procedure established by either sub-section (1) or (2); or

(b) Chapter 13, and that affects the financial interests of the provincial sphere of government, excluding money Bills, must be dealt with in terms of the procedure established by subsection (1) [and (2)].

Technical

Section 75(1) All sections relating to the process of money bills to be reviewed.

Technical

Section 75(4) A money Bill that affects the financial interests of the provincial sphere of government must be referred to the National Council of Provinces and the Council must consider it in terms of the procedure [process] established in section 73.

Technical

Section 77 The National Assembly and the National Council of Provinces must establish a joint rules committee joint rules and orders only concerning their joint business, including joint rules and orders to -

(a) determine the business and procedures of the joint rules committee;

Technical

[(e) provide for joint sittings of the Assembly and the National Council.]

Technical

Section 78(2)(d)[if the court decides the Bill is unconstitutional, the Bill lapses.]

(e) If the court decides that a provision of the Bill is unconstitutional, the President refers the bill back to the National Assembly, and the procedures in subsections (2)(a). (b). (c and..(d) applies again.

Substantive

Section 78(3)(b) The Assembly amends the Bill to accommodate any or all the 'President's or Constitutional Court's reservations and the amendment detrimentally effects the interests of the provinces.

Technical

### Amendments - Ch5

Section 83(2)

(g) receiving and recognising consular; [accrediting] foreign diplomatic and

(h) appointing South African ambassadors- plenipotentiaries, diplomatic and consular representatives;

(j) to pardon or reprieve offender, either unconditionally or subject to such conditions as he or she may deem fit, and to remit any fines, penalties or forfeitures:

(k) the power to make such appointments as this Constitution or any other legislation requires the President to make otherwise than as Head of the National Executive and

(1) to proclaim referenda and plebiscites in terms of this Constitution or an Act of Parliament.  
Substantive

Section 84(2)(e) performing any other executive function provided for in the Constitution or in national legislation.

Substantive

Section 90(3)(a) The President is the head of the Cabinet

Substantive

Note: Re-number accordingly

Section 97(1)The national executive [an executive] organ of state, by agreement with a provincial executive organ of state, may -

(a) .....

(b) by proclamation of the President authorise [that other] the provincial -organ of state to perform any of its functions.

(2) A provincial [An] organ of state may perform any function of the national [another] executive organ of state that has been assigned to it, or that it has been authorised to perform in terms of sub-section (1).

Technical

Section 98(1)When a province is responsible for the administration of legislation, or an executive function in terms of the Constitution, and it cannot or does not fulfil its obligations in terms of that law or the Constitution, the national executive may intervene by taking any appropriate steps to ensure compliance, including -

(a);[and] or

(b)assuming responsibility for the administration of that law or the performance of that function in that province., when it is necessary to -

(2)When a province is responsible for an executive function in terms of legislation, the national executive may issue a directive or assume responsibility or perform that function, as provided in sub-section (1), if -

Technical

(3) Any intervention by the national executive in terms of sub-section (1) (b), or sub-section (2) where the national executive assumed such responsibility or performed such function must be approved by the National Council of Provinces no more than [14] 30 days after the intervention begins, or if the Council is in recess within 30 day of its first sitting.

Substantive

(3A) The National Council of Provinces must regularly review such intervention and make recommendations in this regard to the national executive.

(3B) The mechanisms in sections 97, 98,123A and 135 may be elaborated upon in national legislation.

Substantive

Section 99(3) National legislation [Legislation must] specify the manner in which,  
Technical

#### Amendments - Ch6

Section 102(1)(b)(ii)any matter outside these functional areas expressly assigned [delegated] to the province by national legislation; and

Technical

(c) to assign any of its legislative powers to any [legislature in another sphere of government] municipal council in that province,

Technical

(4A) Provincial legislation passed by a provincial legislature shall unless provided otherwise by an Act of Parliament, be applicable only within the territory of that province,

(4B) A provincial legislature may recommend to the National Assembly the passing of any law relating to any matter in respect of laws or in legislature is not competent to make which an Act of Parliament prevails over a provincial law in terms of sections 142, 143 or 144.

Substantive

Section 107(1) ... its dissolution, provided that such dissolution shall not take place within three years of the election of such legislature.

Substantive

Section 111 The legislature may require [request] a permanent delegate to attend or speak in the legislature or its committees.

Technical

Section 112(2)(b)(ii) ... any provincial organ of state, pi [other than] provincial statutory body.  
Technical

Section 114(1)(a) determine and control [and dispose of] its.....  
Technical

Section 117 Should a distinction not be made between a provincial money Bill and a national money Bill in thi  
Technical

Section 118 Should a distinction not be made between a provincial money Bill and a national money Bill in thi  
Technical

Section 119(2)(d) Amendment similar to that in section 78.  
Substantive

Section 123(2)....

(a) preparing and initiating provincial legislation

(b) developing and implementing provincial policy

(c) co-ordinating the functions of provincial governments departments:

(d) administering all national legislation [matters] within the functional areas listed in schedule 4, unless the Constitution or an Act of Parliament provides otherwise;

(e) ...

(f) administering national legislation outside the functional areas listed in schedule 4 in the province the administration of which has been assigned to it in terms of an Act of Parliament or an agreement envisaged in section 97; and

(3) A province shall have the executive authority in terms of subsection 2(a)[of a province exists] only to the extent that the province has the administrative capacity to assume effective responsibility.

(4) Any dispute concerning the administrative capacity of a province in regard to any function must be referred to the National Council of Provinces, [or an executive inter-governmental structure to be provided for in national legislation,] for resolution within 30 days.

Substantive

Section 123A(1) A provincial executive organ of state, by agreement with a municipal council in that province, may

(a) assign any of its functions in terms of provincial legislation to that municipal councils or

(b) by proclamation of the Premier authorise that municipal council to perform any of its functions

(2) A municipal council may perform provincial executive organ of state that has been assign

been authorised to perform, in terms of subsection (1).

Substantive

Section

124(1) Add powers and before functions

Technical

Section

135(1) When a municipality is responsible for the administration of legislation or an executive function in terms of legislation, and it cannot or does not fulfil its obligations in terms of that legislation, the relevant provincial executive may, subject to national legislation- intervene by taking appropriate steps, including -

(a) ...

(b) assuming responsibility for the administration of that legislation or function in that municipality when it is necessary to:

(i) maintain essential national standards or to establish minimum standards for the rendering of services;

(ii) to prevent that municipal council from taking action which is unreasonable and prejudicial to the interest of another municipality or the province as a whole.

(2) Any intervention by the provincial executive in terms of subsection (1) must be approved by the Minister responsible for local government affairs no more than 14 days after the intervention begins.

Substantive

Section 139(2)(b) may not confer on the province any power or function that falls outside the area of provincial competence in terms of Schedule 4 and any other powers conferred upon the province by any other section of this Constitution.

Technical

Section 142(2)(b) ... and establishes -

(i) norms and standards;

(ii) frameworks; or

(iii) national policies,

which provide for uniformity across the nation with regard to a matter which in the interest of the country as a whole requires uniformity;

Substantive

Section 142(2)(d) National legislation prevails over provincial legislation if the national legislation is aimed at preventing unreasonable action by a province that -

Technical

Section 144 TRT to consider whether this matter does not fall within the exclusive jurisdiction of the Constitutional Court. See sections 163(4) and 168 in the fifth draft and sections 156(4)(d) and 161 in the fourth draft.)

Technical

Section 145 The same question is posed here as in 144.

Technical

Section 145A National legislation and provincial legislation or national legislation and a provincial constitution as referred to in this Chapter, must be construed as being consistent with each other, unless, and only to the extent that, they are, expressly or by necessary application, inconsistent with each other.

Substantive

#### Amendments - Ch7

This Chapter is under consideration by parties.

#### Amendments - Ch8

Amendments on this Chapter are to be tabled in due course.

#### Amendments - Ch 9

Section 181 (1) (c) to recommend the establishment, in accordance with national legislation, of a cultural or other council or councils for a particular community or communities in South Africa.

Technical

Section 181 TRT to provide for the "promotion of national unity" in this clause.

Technical

Section 184(2) (b) ... any institution [other than a registered charity or private enterprise,] that is authorised in terms of any law to receive money for a public purpose.

Substantive

Section 189(6) To be deleted.

Technical

#### Amendment - Ch10

Section 191 (2) becomes Section 191 (1).

Section 191 (1) becomes Section 191 (2) and is amended as follows:

Section 191 (2):[Public administration includes-] The above principles must apply to:

(a) administration in every sphere of government; and

(b) [the administration of institutions that are dependent on government financial support or are authorised in terms of any law to impose any tax, levy or duty.] Organs of statutory bodies\*

(c) public enterprises

Substantive

Section 191 (4) The appointment in [the] public administration ...

Technical

Amendment - Ch11

Section 194(b) This resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for by this constitution or in national legislation.

Substantive

Note: Re-number (a) - (d) accordingly.

Section 195(7)(b) furthers or prejudices any [private] partisan interest of a political party.

Technical

Section 197(2) When the defence force is deployed in cooperation with the police service, or in defence of the Republic, the President must inform Parliament, or if Parliament is not sitting, the appropriate oversight committee established in terms of this constitution, within 14 days [at a reasonable time] and in appropriate detail, of -

(a) the reason for the use of the defence force;

(b) any place where the force is being used;

(c) the number of people involved; and

(d) the period for which the force is expected to be used.

Technical

Section 199 The President may declare a state of national defence. The President shall inform Parliament, within 7 days and in appropriate detail of the reasons for the declaration of the state of national defence:

(a) the reasons for the declaration of the state of national defence;

(b) any place where the force is being used

(c) the number of people involved;

A declaration of a state of national defence lapses unless it is approved by Parliament within a period of 7 days

Technical

Section 198(1) The President as head of the national executive is Commander-in-Chief of the defence force, and must appoint one or more senior military officers to the Military Command of the defence force.

Technical

Section 203(5) Each provincial government shall be entitled

(1) to monitor police conduct;

(2) to exercise oversight over the efficiency of the police;

(3) to promote police community relations and cultivate good relations between the police and the community in the province;

(4) to assess the effectiveness of visible policing service;

(5) to receive reports and make recommendations concerning the efficiency and effectiveness of the police; and

(6) to liaise with the relevant cabinet member concerning police matters and crime.

Technical

#### Amendments - Ch 12

Section 208 ... to deal with matters [of common interest] relating to traditional leaders/authorities, indigenous law or the traditions and customs of traditional communities,  
Sub-comm

#### Amendments - Ch13

May be consequential amendments arising out of agreements reached on Chapter 7.

#### Amendments - Ch14

Section 220(1) In order to deepen the culture of democracy established by this Constitution, Parliament may adopt one or more Charters of Rights to elaborate the rights contained in the Bill of Rights-

Substantive

Section 227

(1) The negotiation and signing of international agreements is the responsibility of the national executive.

(2) The ratification of or accession to an international agreement shall be approved by resolution of both the National Assembly and the National Council of Provinces.

(3) Other international agreements [despite subsection 1] which do not require ratification or accession or, international agreements of a technical or administrative nature may be entered into by the national executive and bind the Republic without the approval of the National Assembly

and the National Council of Provinces but must be tabled in the National Assembly and the National Council of Provinces within a reasonable time.

(4) Any international agreement shall be incorporated in the national law of the republic when it is enacted into law by National legislation.

Substantive

### Amendments - Schedules

#### SCHEDULE 3

PART C NP proposal for sub-committee discussion

#### SCHEDULE 4

Amend provincial and municipal roads to read "roads excluding national roads".

Amend population development function to read 'population development'.

Amend sewerage, the paragraph dealing with water and sanitation services to read "sewage".

Delete the words "PART B".

#### SCHEDULE 5

To be reviewed and revised on basis of finalisation of rest of Constitution.