

**CONSTITUTION OF THE REPUBLIC OF SOUTH
AFRICA
1993
(Draft Outline: 21 July 1993)**

PREAMBLE

CHAPTER I

Formal and Constituent Provisions

Including:

- The name, sovereignty and territorial definition of the state.
- The supremacy of the Constitution.
- National symbols.
- Languages.

CHAPTER 2

Citizenship

- South African citizenship at the time of the coming into operation of this Constitution.
- The acquisition and loss of South African citizenship after the coming into operation of this Constitution.
- The protection of South African citizenship after the coming into operation of this Constitution.

CHAPTER 3
Fundamental Rights

Wording provided by the Technical Committee on Fundamental Rights during the
Transition

CHAPTER 4
The Legislature

Legislative authority

1 . (1) The legislative authority of the Republic shall be vested in the Parliament of the Republic which shall consist of the National Assembly and the Senate and shall, subject to the provisions of this Constitution, have the power to make laws applying equally in all SPRs of the Republic.

(2) Parliament shall be competent to delegate by law any matter within its powers to the legislature of a region or of a local authority.

Duration of Parliament

2. Parliament shall continue until the entering into force of a new and totally revised constitutional text, or until it is dissolved under Chapter 5.

Franchise

3. [To be formulated in light of the Negotiating Council's discussion of the reports of the Technical Committee on the Independent Electoral Commission.]

Composition of the National Assembly

4. The National Assembly shall consist of four hundred members elected according to the system of proportional representation on national and regional party lists as provided for in Schedule 3.

Speaker of the National Assembly

5. (1) The Speaker shall be elected by the members of the National Assembly.
(2) The Speaker shall preside at meetings of the National Assembly.

(3) The Speaker shall be vested with all powers, duties and functions assigned to him or her by the rules and orders approved by the National Assembly.

Composition of the Senate

6. (1) The Senate shall be composed of ten members from each SPR, elected by the SPR legislature of each SPR at the first session after its election from among its number according to the principle of proportional representation, each voter having one transferable vote.

(2) The members of an SPR legislature elected in terms of subsection (1) to the Senate, shall vacate their seats in the SPR legislature.

(3) The vacancies in the SPR legislature occurring in terms of subsection

(2) shall be filled by persons whose names appear on the party lists on which the names of the persons elected to the Senate appeared.

President of the Senate

7. (1) The President of the Senate shall be elected by the Senators.

(2) The President of the Senate shall preside at meetings of the Senate and at joint sessions of the National Assembly and the Senate.

(3) The President of the Senate shall be vested with all powers, duties and functions assigned to him or her by the rules and orders approved by the Senate.

Immunities and privileges

8. The immunities and privileges of Parliament and its members shall be regulated by law.

Parliamentary procedure

Rules and orders

9. (1) The National Assembly and the Senate may separately make rules and orders concerning the order and conduct of their various proceedings.

(2) The National Assembly and the Senate may make rules and orders concerning the order and conduct of their joint proceedings.

(3) Parliament may institute representative standing committees of the National Assembly and the Senate, in order to resolve possible disagreements and to make joint reports.

Ordinary legislation

10. (1) All laws, except laws relating to finance, specified SPR matters, and the amendment of this Constitution, shall be considered to be ordinary legislation.

(2) Ordinary legislation may be introduced in either the National Assembly or the Senate and shall be passed by a majority of the total number of the members in both Houses.

(3) A bill passed by one House and rejected by the other shall be referred to a joint committee consisting of members of all parties represented in Parliament to report on proposed amendments to the bill, whereafter the bill shall be referred to a joint sitting of both houses for decision by a majority of the total number of members of Parliament.

Finance Bills

11. (1) Bills appropriating revenue or moneys or imposing taxation shall be introduced only in the National Assembly after they have been considered and reported on by a joint committee of both Houses and, in so far as it may be required in terms of this Constitution, by the Financial and Fiscal Commission.

(2) A bill shall not be deemed to appropriate revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties.

(3) The Senate may not amend any bills in so far as they impose taxation or appropriate revenue or moneys.

(4) If the National Assembly in any session passes a bill imposing taxation only or dealing with the appropriation of revenue or moneys, and the Senate in the same session rejects or fails to pass it within thirty days after it had been passed by the National Assembly, the bill shall be reconsidered by the National Assembly and may thereafter be presented to the State President for his or her assent and shall as soon as it has been assented to by the State President become an Act of Parliament as if it had been approved by the Senate.

Bills concerning specified SPR matters

12. (1) Bills concerning the exercise of powers and functions allocated to SPR governments in section 6(1) of Chapter 9, shall be approved by the National Assembly and the Senate.

(2) A bill which affects the exercise of powers or functions allocated in terms of section 6(1) of Chapter 9 to a particular SPR only, shall also be approved by a majority of the Senators of that particular SPR.

Amendment of the Constitution

13. (1) Save for the provisions of subsection (2) of this section and of Chapter 5, an amendment to this Constitution shall be passed by a two thirds majority of the total number of members of the National Assembly and the Senate sitting in joint session.

(2) No amendment of this Constitution shall be permissible in so far as it is designed to detract, directly or indirectly, from the essence of the Constitutional Principles contained in Schedule 1.

Provision should further be made for the following matters:

- Assent to Bills by the State President
- Signature and enrolment of Acts of Parliament
- Resolution of conflicts between texts in different official languages

- Seat of the legislative power
- Sessions of Parliament
- Qualifications and disqualifications of members of Parliament
- Penalty for sitting or voting when disqualified
- Oath or affirmation of members of Parliament
- Quorum in Houses of Parliament
- Casting vote of President of the Senate and Speaker in the event of an equality of votes
- Rights and obligations of State President and Ministers regarding speaking, sitting and voting in the H Parliament.

CHAPTER 5

Total Revision of the Constitution and the Adoption of the new Constitutional

Text

The Constitution-making Body

1. (1) The National Assembly and the Senate, sitting in joint session, shall be the CMB.

(2) The CMB shall undertake a total revision of this Constitution and adopt a new constitutional text in accordance with the provisions and procedures of this Chapter.

(3) The CMB shall be presided over by the President of the Senate, and

in his or her absence, by the Speaker, and in the absence of both, by a person elected by the CMB for such purpose.

Constitutional Principles

2. (1) In undertaking its task of total revision of the present Constitution and the drafting of a new constitutional text, the CMB shall adhere and give effect to the Constitutional Principles contained in Schedule 1.

(2) During the course of undertaking the total revision and the drafting of the new constitutional text, any constitutional proposal pertaining to such revision and drafting may be referred to the Constitutional Court by the Chairperson after being petitioned by one third of the members of the CMB to do so, in order to obtain an opinion from the Court as to whether such proposal, if adopted, would conform with the Constitutional Principles.

(3) A new constitutional text, or any separate part thereof, shall not come into operation unless the Constitutional Court certifies that all its provisions conform to and adequately give effect to the principles contained in Schedule 1.

(4) A decision of the Constitutional Court in terms of subsections (2) and (3) shall be final and binding and no court of law shall have jurisdiction to enquire into or pronounce upon the validity of any constitutional provision which has been certified by the Constitutional Court in terms of subsection (3).

Appointment of commissions, committees and advisory bodies

3. (1) The CMB shall have the power to appoint its own commissions, technical and parliamentary committees and other advisory bodies to assist it in its task.

(2) The CMB shall, with the concurrence of at least two thirds of all its members, appoint an independent panel of five persons being recognised constitutional experts not holding office in any political party, to advise it and the Chairperson on constitutional matters and to perform such other tasks as are provided for in this Constitution.

Adoption of a new constitutional text

4. (1) A total revision of this Constitution shall be undertaken by the CMB, and a new constitutional text shall be adopted within two years from the commencement of the first session of Parliament.

(2) A new constitutional text shall be approved by two thirds of all the members of the CMB.

(3) Should the CMB fail to adopt a new constitutional text by a two thirds majority, but a draft of the new constitutional text is supported by a majority of its members, such draft shall be referred to the panel of constitutional experts by the Chairperson for their advice, to be given within 30 days of such referral, on amendments within the framework of the Constitutional Principles which might secure a majority necessary for the approval of the constitutional text.

(4) Should a draft prepared in accordance with the unanimous advice of the panel of constitutional experts in terms of subsection (3) not be submitted to the CMB within 30 days, or, should such draft, after being so submitted, not be supported by the necessary majority in the CMB, a constitutional text may be accepted by a majority of the members of the CMB.

(5) The State President shall refer a constitutional text accepted in terms of subsection (4), after it has been certified by the Constitutional Court to be in conformity with the Constitutional Principles enumerated in Schedule 1, to a national referendum.

(6) The question put before the electorate in the referendum shall be the acceptance or rejection of such draft constitutional text.

(7) The constitutional text presented to the electorate in the referendum shall, if approved by a majority of sixty per cent of the votes in the referendum, become the Constitution of South Africa.

(8) If the new constitutional text is not approved in the referendum contemplated in subsection (7), or if a new constitutional text is not otherwise approved, Parliament shall be dissolved by the State President and a general election shall be held.

(9) The CMB, composed of the newly elected National Assembly and Senate, shall within a period of one year after its first session, approve and pass the new constitutional text by ordinary majority.

Amendment of this Chapter

5. (1) No amendments to the provisions of this Chapter shall be permitted in so far as they relate to -

- (a) the Constitutional Principles set out in Schedule 1;
- (b) the requirement that the new constitutional text or texts shall comply with the Constitutional Principles, and that such text or texts shall be certified by the Constitutional Court as being in compliance therewith.

(2) All other provisions of Chapter 5 shall be capable of being amended by a two thirds majority of the CMB.

CHAPTER 6

The Executive Power

An Executive representative of political parties occupying a specified percentage of the seats in the National Assembly.

CHAPTER 7

The Judicial Power

Provisions for the continuation of existing courts and the establishment of a Constitutional Court.

CHAPTER 8

The Ombudsman and the Human Rights Commission

Provisions for the establishment of an impartial and independent Ombudsman and Human Rights Commission.

CHAPTER 9

SPRs

Establishment of SPRs

1. The SPRs of South Africa shall be ... LISTED BY NAME the boundaries of which are defined in Schedule 2.

SPR legislatures

2. (1) There shall be a legislature for each SPR.

(2) The legislature of each SPR shall consist of the members elected at the time of the election of the National Legislature according to a system of proportional representation on SPR party lists as provided for in Schedule 3.

(3) The number of seats in an SPR legislature shall be determined by dividing the total number of votes cast in the SPR in the election held in terms of subsection (2) by 50 000, approximated to the nearest complement.

Provision should further be made for the following matters:

- Convening, venue and holding of sessions of SPR legislatures
- Qualifications for election to SPR legislatures
- Vacation of seats by members of SPR legislatures
- Filling of vacancies

- Quorum of meetings of SPR legislatures
- Rules of procedure for the conduct of the business of SPR legislatures
- Duties, privileges and immunities of members of SPR legislatures
- The requisite majority for decisions by SPR legislatures
- Public access to sittings of SPR legislatures
- Assent to bills passed by SPR legislatures
- Publication and enrolment of SPR legislation Duration of the SPR legislature.

SPR executives

3. (1) The executive of an SPR shall be elected by the SPR legislature according to the principle of proportional representation, each voter having one transferable vote, and shall consist of ten members.

(2) The executive of an SPR shall from among its own number elect a Premier.

(3) Each member of the executive shall be responsible for the administration of one or more of the departments of the SPR to be established by the Premier.

(4) The Premier shall determine how responsibility for the administration of departments shall be allocated among members of the executive.

Provision should further be made for the following matters:

- Oath or affirmation of office by Premier, members of SPR executives and legislatures
- Remuneration of members of SPR legislatures, members of SPR executives and Premiers
- Appointment of secretary and other officers for SPRs
- Vacation and removal from office of SPR Premiers and members of SPR executives.

Transfer and consolidation of existing administrative responsibility

4. (1) Subject to the relevant transitional provisions contained in Chapter 12 and immediately following the determination of the extent of the legislative and executive competence of an SPR in terms of section 6, an SPR shall mutatis mutandis assume responsibility for all the administrative and executive institutions existing within the SPR which were previously charged with the administration and execution of the matters falling within the competence of the SPR.

(2) The government of an SPR shall, on the advice of the Commission on SPR Government instituted in terms of this Constitution, establish a single, consolidated SPR administration as expeditiously as possible.

(3) In those instances where the administrative institutions of an SPR are charged by the National Executive with the administration of matters falling within the competence of the national government, the SPR executive shall administer those structures for and on behalf of the National Executive

Administration of existing laws

5. (1) Subject to the relevant transitional provisions contained in Chapter 12 and immediately following the determination of the extent of the legislative and executive competence of an SPR in terms of section 6, existing laws applicable in the SPR governing matters falling within the competence of the SPR, shall mutatis mutandis be deemed to be laws of the SPR legislature.

(2) The powers, functions and obligations relating to the legislative and executive competence of the SPR arising from the provisions of the laws referred to in subsection (1), shall vest mutatis mutandis in the legislature and executive of the SPR.

(3) The legislatures of the SPRs shall undertake the consolidation and unification of the laws referred to in subsection (1) as expeditiously as possible.

Powers and Functions of SPR Governments

6. (1) The National Executive shall, after consultation with each SPR executive and receipt of the recommendation of the Commission on SPR Government established in terms of this Constitution, determine the extent of the legislative and executive competence of each SPR regarding the functional areas referred to in subsection (2), and such determination of competence shall, if approved by the CMB, be promulgated by the State President in a proclamation published in the Government Gazette.

(2) An SPR shall be entitled to the allocation of legislative and executive competences in each of the following functional areas -

- (a) Taxation within the SPR in order to raise revenue for SPR purposes
- (b) The appropriation of revenue and moneys for financing the government and services of the SPR
- (c) Local government
- (d) Town planning
- (e) Markets and pounds
- (f) Traffic control
- (g) Protection services
- (h) Local policing and law enforcement
- (i) Housing
- (j) Education
- (k) Cultural affairs

- (1) Traditional authorities and indigenous law

- (m) Health services

- (n) Welfare services

- (o) Agriculture

- (p) Fish and game preservation

- (q) Environmental affairs

- (r) Tourism and recreation

- (s) Public media

- (t) Public works

- (u) Roads

- (v) Transport

- (w) Casinos, racing and gambling

- (x) Language policy and languages for official use in the SPR.

(3) The competence of an SPR shall be determined as provided for in subsection (1) after due consideration of the SPRs' financial, administrative and infrastructural capability, and such determination shall have regard to the principles enumerated in Schedule 1.

(4) An SPR executive may decline specific powers and functions in any of the functional areas at the time of the initial allocation and may from time to time request the National Executive to expand its competence.

(5) The determination of the extent of the legislative and executive competence of an SPR made in terms of subsection (1) shall not be amended during the period of the operation of this Constitution without the consent of the SPR legislature,

SPR finance and fiscal affairs

7. (1) An SPR shall be entitled to an equitable share of revenue collected nationally in order to enable it and the local governments within its boundaries to provide basic services and to execute their functions and powers-

(2) The Financial and Fiscal Commission established in terms of Chapter 11 shall make recommendations to the National Assembly regarding equitable fiscal and financial allocations to the SPRs from revenue collected nationally, taking into account the national interest, the provisions of subsection (1), economic disparities between the SPRS, as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each SPR.

(3) An SPR Revenue Fund shall be established in every SPR, into which shall be paid all revenues raised by or accruing to the SPR.

(4) An SPR government shall not be competent to raise loans for current expenditure.

(5) An SPR government shall be competent to raise loans for capital expenditure with the consent of the national executive given on the advice of the Financial and Fiscal Commission.

(6) An SPR government shall be competent to levy such taxes and surcharges as may be recommended by the Financial and Fiscal Commission and approved by the National Assembly, which approval shall not unreasonably be withheld.

(7) An SPR government shall not be entitled to raise taxes detrimentally affecting national economic policies, inter-SPR commerce, or the national mobility of goods, services, capital and labour.

(8) Allocations by the national government to local governments shall ordinarily be made only via an SPR government.

Effect of laws of SPR legislature

8. (1) A law made by an SPR legislature shall have effect in and for the SPR as long and as far only as it is not repugnant to any Act of Parliament duly passed within the competence of Parliament in terms of this Constitution.

(2) The provisions of a law made by an SPR legislature shall not be deemed to be repugnant to an Act of Parliament unless such provisions are expressly or by necessary implication inconsistent with an Act of Parliament.

Recommendations to Parliament

9. An SPR legislature may recommend to Parliament the passing of any law relating to any matter in respect of which such legislature is not competent to make laws.

SPR Constitutions

10. (1) An SPR legislature may, subject to the provisions of this Constitution, adopt a constitution for the SPR by a two thirds majority of all its members.

(2) An SPR legislature may make such arrangements as it deems appropriate for the negotiation and drafting of an SPR constitution.

(3) An SPR constitution adopted by an SPR legislature shall not be inconsistent with the principles enumerated in Schedule 1 or the provisions of the new constitutional text adopted in terms of Chapter 5.

(4) An SPR constitution shall be developed in consultation with the Commission on SPR Government established in terms of section 13.

(5) An SPR constitution adopted prior to the adoption of a new constitutional text in terms of Chapter 5 shall be approved and come into operation in terms of a resolution of the CMB passed by two thirds of its members.

(6) An SPR constitution adopted by an SPR legislature may be referred to the Constitutional Court by the chairperson of the CMB after being petitioned by one third of the members of the CMB in order to obtain an opinion from the Court as to whether such constitution, if adopted, would conform with the Constitutional Principles.

(7) An SPR constitution which is not in force prior to the new constitutional text intended in Chapter 5, shall be approved and come into operation in terms of such new constitutional text.

Development of constitutional provisions regarding SPR Government

11. (1) The development of a system of SPR government shall receive the priority attention of the CMB and in this regard it shall take into consideration the recommendations of the Commission on SPR Government referred to in section 13 and the views expressed thereon by the executives of the various SPRs.

(2) The Commission's recommendations to the CMB regarding any matter that falls within the ambit of its objects in terms of section 14 shall include draft provisions for the national Constitution.

(3) The CMB shall deal with such draft provisions in the same manner as it is required to deal with other constitutional provisions.

(4) Draft provisions recommended by the Commission which are not adopted by the CMB, shall lapse, except if a majority of the members of the CMB present and voting resolve that the recommended provisions be referred back to the Commission for further consideration.

(5) Draft provisions referred back to the Commission may again be presented to the CMB, provided that if amended in one or more substantive respects, the provisions of this section regarding the acceptance, rejection or referral of the recommendations of the Commission shall apply mutatis mutandis.

Election of new SPR Governments

12. An SPR government may at any time after the coming into force of an SPR constitution contemplated in section 10 or of the constitutional dispensation contemplated in section 11, petition the CMB to determine by resolution that an election for the establishment of a new SPR legislature and executive in that SPR, or in an SPR incorporating that SPR in whole or in part, shall be held.

Commission on SPR Government

Establishment of Commission on SPR Government

13. A Commission on SPR Government shall be appointed by the State President in terms of this Constitution within 30 days of its coming into operation.

Objects and functions of the Commission

14. (1) The objects and functions of the Commission regarding the establishment of SPR government in terms of this Chapter are to -

- (a) advise the national government and SPR governments on the establishment and consolidation of administrative institutions and structures in the SPRS; and

- (b) make recommendations to the national government regarding the extent of the legislative and executive competence of SPRs during the period of operation of this Constitution.

(2) The objects and functions of the Commission regarding the constitution making process provided for in Chapter 5 are to submit recommendations to the CMB in the form of draft constitutional provisions regarding -

- (a) the finalisation of the number and the boundaries of the constituent SPR's of the Republic of South Africa;
- (b) the constitutional dispensations of such SPRS, including the constitutional structures within such SPRs as well as the method of their election and their authority, functions and procedures;
- (c) measures, including transitional measures, that provide for the phasing in of new SPR constitutional dispensations;
- (d) the rationalisation of statutory enactments and public sector resources directed at facilitating the introduction and maintenance of a system of SPR government;
- (e) the final delimitation of powers and functions between national and SPR institutions of government with due regard to the criteria that are set out in subsection (3);
- (f) fiscal arrangements between the institutions of national government and those of SPR government;
- (g) the powers and functions of local governments; and
- (h) any matter which the Commission considers to be relevant or ancillary to its functions.

(3) In carrying out its functions the Commission shall, inter alia, take into consideration -

- (a) The provisions of this Constitution;
- (b) The principles enumerated in Schedule 1;
- (c) Historical boundaries, including those set out in Schedule 2, former provincial boundaries, magisterial and district boundaries and infrastructures;
- (d) Administrative considerations, including the availability or nonavailability of infrastructures and nodal points for services;
- (e) The need to rationalise existing structures;
- (f) Cost-effectiveness of government, administration and the delivery of services;
- (g) The need to minimise inconvenience;
- (h) Demographic considerations;
- (i) Economic viability;
- (j) Developmental potential;
- (k) Cultural and language realities.

Constitution and impartiality of the Commission

15. (1) The Commission shall consist of not less than ten full-time members appointed for such period, not exceeding five years, as the State President may determine.

(2) At least one member of the Commission shall be appointed from each SPR after consultation with the Premier of the SPR.

(3) Members of the Commission shall perform their duties fairly, impartially and independently.

(4) Members shall not perform or commit themselves to perform remunerative work outside their official duties.

(5) A member of the Commission may not hold office in any political party or political organisation.

(6) It shall be an offence subject to penalties prescribed by law to attempt to influence a member to act otherwise than in accordance with the provisions of subsection (3).

Chairperson and deputy chairperson

16. (1) The State President shall designate one of the members of the Commission as chairperson and another as deputy chairperson.

(2) (a) When the chairperson is absent or not able to perform his or her functions as chairperson, or where there is a vacancy in the office of chairperson, the deputy chairperson shall act as chairperson, and if the chairperson as well as the deputy chairperson are absent or not able to perform the functions of the chairperson, the Commission shall elect another member to act as chairperson.

(b) Such member shall while acting as chairperson have all the powers and perform all the duties of the chairperson.

Vacation of office and filling of vacancies

17. (1) Members of the Commission shall vacate their offices if they resign or if they become disqualified to hold office for the same considerations and in the same fashion as would apply to a judge of the Supreme Court.

(2) Any person who has ceased to be a member of the Commission by reason of the effluxion of time may be reappointed.

(3) If a member of the Commission ceases to hold office, the State President may, subject to section 15 appoint somebody to fill the vacancy.

Meetings of the Commission

18. (1) Meetings of the Commission shall be held at a time and place to be determined by the Commission or, if authorised thereto by the Commission, by the Chairperson.

(2) A quorum for a meeting of the Commission shall not be less than one half of all its members.

(3) A decision of a majority of the members of the Commission shall constitute a decision of the Commission and in the event of an equality of votes the chairperson shall have a casting vote in addition to his or her deliberative vote.

(4) All the decisions of the Commission shall be recorded.

Committees

19. (1) The Commission may establish committees from among its number.

(2) Any such committee shall consist of such number of members as the Commission may determine.

(3) The Commission shall designate one of the members of the committee as chairperson thereof, and if any such chairperson is absent from a meeting of the committee the members present shall elect one from among their number to act as chairperson.

(4) (a) The Commission may, subject to such directions as it may issue from time to time-

(i) delegate any power granted to it by or under section 14 to such a committee; and

- (ii) grant authority that a duty assigned to it by or in terms of section 14 may be performed by such a committee.
- (b) The Commission shall not be divested of a power so delegated and the performance of a duty so authorised, and may amend or set aside any decision of a committee.

Co-option of persons to serve on or advise committees

20. (1) A committee may co-opt any person to serve on a committee or to attend a particular meeting thereof in connection with a particular matter dealt with by the committee.

(2) Such a person may take part in the proceedings of the committee in connection with the matter or at the meeting in respect which he or she has been coopted, but shall not be entitled to vote.

Remuneration and allowances of members of the Commission and other persons

21. Members of the Commission and persons referred in sections 16 and 20 who are not in the employment of the State, shall be paid, from moneys appropriated by Parliament for that purpose, such remuneration and allowances as the Minister of Finance may determine.

Regulations

22. The State President may make regulations regarding -

- (a) procedures in connection with any function of the Commission; and
- (b) any other matter in connection with the achievement of the objects of the Commission.

CHAPTER 10

Local Government

General revisions regarding the powers, functions and structures of local government;

The comprehensive powers, functions and other features of local government shall be set out in parliamentary statutes and/or SPR legislation.

CHAPTER 11

Finance

Provisions relating to existing debts and liabilities of the state (note position regarding TBVC and the self-governing territories;

the national and SPR revenue funds, taxation, appropriation and financial procedures and legislation;

the Auditor-General:

the Reserve Bank;

the Financial and Fiscal Commission representative of the SPRS.

CHAPTER 12

General and transitional provisions

Provisions relating to:

- The legal system (continuation of statutory and common law subject to the Constitution, unification of provincial ordinances, TBVC laws and laws of the self-governing territories with national and SPR law, recognition of indigenous law);
- the status of international law;
- the independence and impartiality of the Commission for Administration and the security forces;

- civil society;
- method of publication of notices, etc.;
- affirmation in lieu of oath;
- construction of certain references;
- definitions and terminology;
- short title, commencement and duration of the Constitution.

SCHEDULE 1

Constitutional Principles

i

The Constitution of South Africa shall provide for the establishment of one sovereign state, a common South African citizenship and a democratic system of government committed to achieving equality between men and women and people of all races.

ii

The Constitution shall be the supreme law of the land, shall be binding on all organs of government, shall prohibit racial, gender and all other forms of discrimination and promote racial and gender equality and national unity.

iii

There shall be a separation of powers between the legislature, executive and judiciary, with appropriate checks and balances to ensure accountability, responsiveness and openness.

iv

The judiciary shall be competent, independent and impartial and shall have the power and jurisdiction to safeguard and enforce the Constitution and all fundamental rights.

v

There shall be representative government embracing multi-party democracy, regular elections, universal adult suffrage, a common voters roll, and in general, proportional representation.

vi

Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government.

vii

Formal legislative procedures shall be adhered to by legislative organs at all levels of government.

viii

The diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged.

ix

Collective rights of self-determination in forming, joining and maintaining organs of civil society, including linguistic, cultural and religious associations, shall, on the basis of non-discrimination and free association, be recognised and protected.

x

All shall enjoy universally accepted fundamental rights, freedoms and civil liberties, protected by entrenched and justiciable provisions in the Constitution.

xi

The legal system shall ensure the equality of all before the law and an equitable legal process. The principle of equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.

xii

The institution, status and role of traditional leadership, according to indigenous law, shall be recognised and protected in the Constitution. Indigenous law, like common law, shall be recognised and applied by the courts subject to the provisions of the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.

xiii

Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy.

xiv

Amendments to the Constitution shall require special procedures involving specified majorities.

xv

Government shall be structured at national, SPR and local levels.

xvi

At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of Principle XII.

xvii

Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. The allocation of powers between different levels of government shall be made on a basis which is conducive to financial viability at each level of government and to effective public administration, and which promotes national unity, legitimate regional autonomy and cultural diversity.

xviii

The powers and functions of national and SPR governments shall be defined in the Constitution. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of SPRs shall in addition to any other procedures specified in the Constitution for constitutional

amendments, also require the approval of a specified majority of the legislatures of the SPRs, alternatively, if there is such a chamber, a specified majority of a chamber of Parliament composed of regional representatives, and if the amendment concerns specific SPRs only, the approval of the legislatures of such SPRs will also be needed.

xix

A framework for local government powers, duties, functions and structures shall be set out in the Constitution. The comprehensive powers, duties, functions and other features of local government shall be set out in parliamentary statutes and/or SPR legislation.

xx

The powers and functions of the national and SPR levels of government shall include exclusive and concurrent powers as well as the power to perform functions for other levels of government on an agency or delegation basis.

xxi

National and SPR governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in Principle XIX shall make provision for appropriate fiscal powers and functions for different categories of local government.

xxii

Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that SPRs and local governments are able to provide basic services and execute the functions allocated to them in the Constitution.

xxiii

A Financial and Fiscal Commission, representing inter alia each of the SPRs, shall recommend equitable fiscal and financial allocations to the SPR governments from revenue collected nationally, after taking into account the national interest, economic disparities between the SPRs as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the SPRs.

The following criteria shall be applied in the allocation of powers to the national government and the SPR governments:

1. The level at which most control can be exercised effectively over the quality and delivery of services, should be the level responsible and accountable for the quality and the delivery of the services and such level shall accordingly be empowered by the Constitution to do so.
2. The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the SPRS.
3. Where it is necessary for the maintenance of essential national standards, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one SPR which is prejudicial to the interests of another SPR or the country as a whole, the Constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the Constitution.
4. The essential principles of the Constitution, including the fundamental rights contained therein, shall apply to all organs of the state at all levels of government.
5. Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government.
6. Where uniformity across the nation is required for a particular function, the legislative power over that function should be allocated predominantly, if not wholly, to the national government.
7. Where minimum standards across the nation are required for the delivery of public services, the power to set such standards should be allocated to the national government.

8. The determination of national economic policies, and the power to promote inter-SPR commerce and protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.
9. SPR governments shall have powers, either exclusively or concurrently with the national government, inter alia -
 - 9.1 for the purposes of regional planning and development and the delivery of services; and
 - 9.2 in respect of aspects of government dealing with the specific socioeconomic and cultural needs and the general well being of the inhabitants of the SPR.
10. Where mutual co-operation is essential or desirable or where it is required to guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the SPR governments.
11. In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national and SPR governments which cannot be resolved by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the national government.
12. The Constitution shall specify how powers which are not specifically allocated in the Constitution to the national government or to an SPR government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national or SPR governments,

Notwithstanding the provision of any other clause, the right of employers and employees to join and form employer organisations and trade unions and to engage in collective bargaining shall be recognised and protected.

Ale independence and impartiality of a Commission for Administration, a Reserve Bank, and Auditor-General and Ombudsman shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the Civil Service.

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Every member of the security forces (police, military and intelligence), and the security forces as a whole, shall be required to perform their duties and functions and exercise their powers in the national interest and shall be prohibited from furthering or prejudicing party political interest.

SCHEDULE 2

Boundaries and Designation of SPRs

[Report of the Commission on Delimitation/Demarcation of SPRS]

SCHEDULE 3

System for the Election of the National Assembly and SPR Legislatures