

SOUTH AFRICAN SOCIETY OF ARCHIVISTS
Supplementary Argument

CERTIFICATION OF NEW CONSTITUTIONAL TEXT: SCHEDULE 5
ARCHIVES OTHER THAN NATIONAL ARCHIVES

This document serves to clarify the attached submission, NC 4/3/1 of 31 May 1996.

PROVISION OF PROFESSIONAL GUIDANCE AND SUPPORT FOR PROFESSIONAL ARCHIVES SERVICES

From its formal establishment in terms of the Public Archives Act 1922 (No. 9 of 1922), South Africa's public archives system been geographically decentralised but managed under national administrative control. In addition to the Service's supervision of records of national and provincial governments, responsible for records of local authorities was assigned in terms of Archives Act, 1962 (No. 6 of 1962). National administrative control has benefited the development of sophisticated archival services in the four former provincial capitals. Despite limited archival expertise available in the country, the support and guidance provided from the national office facilitated application of uniform procedures and standards, which in turn served to develop comprehensive public archives services.

The South Africa Society of Archivists (SASA) accepts that devolution of functions to provincial governments embodied in the new Constitution will entail relinquishing the present unified archival system and that provincialization of archival services will preclude formal administrative ties between national provincial archives services. However, SASA is deeply concerned the classification of provincial archives as an exclusive provincial competence, as it implies that provincial archive services are to be denied any form of professional guidance from the National Archives. Section 3 (g) of the National Archives of South Africa Bill, B17-96, which was tabled in Parliament February 1996, provides that the National Archives shall "assist, support, set standards for and provide professional guidelines to provincial archives services".

This provision was made with the full support of all provincial, archival authorities in the Consultative Forum on Archival Management and Legislation and is the core provision around which a new archival system was to evolve. The archival profession not consulted regarding the reclassification of the function as an exclusive provincial competence. In five of the nine provinces, little or no archival infrastructure currently exists. But provinces have custody of national government records, e.g. those of magistrates and regional offices of the national government, ensure proper management and preservation of, and access by the public to these records, as well as those of a provincial nature, it is essential that uniformity of procedures be maintained across the nation. The widespread lack of archival expertise coupled with, the general disinclination of provincial governments to provide adequate resources for archives services is cause for alarm. It is already apparent in several provinces that one of the main functions of a public archives service, that of ensuring that proper procedures are developed to manage current governmental records, is not being carried out. The consequences for efficient, government, for public transparency, and ultimately, preservation of the provincial documentary heritage, are dire.

MAINTENANCE OF NATIONAL AUTOMATED ARCHIVAL INFORMATION RETRIEVAL SYSTEM

The State Archives Service has since 1974 developed a national automated archival information system in which the archives of the former four provinces are fully integrated. The retrieval system was acknowledged as an international leader and remains an important national resource. The system supports public access government records and will be an important instrument in application of the proposed Open Democracy legislation. The need to maintain and develop the retrieval system to include the provinces was fully supported by the Consultative Forum Archival Management and Legislation. Accordingly provision was made in section 3 (e) of the National Archives of South Africa Bill, B17-1996 that the National Archives shall "maintain national automated archival information retrieval system, in which all provincial archives services shall participate".

The maintenance of the existing retrieval system is a notable instance in which uniformity across the nation is required. It is envisaged that the National Archives would continue to process data that has been supplied by provincial archives services. To enable such processing and facilitate optimal use of the system, it will be essential for standards to be set and guidelines to be provided by the National Archives.

CONCLUSION

A constitutional and legislative basis is required to empower National Archives to provide professional guidance to provincial archives services, as uniformity across the nation is required in several critical archival functions. Without such empowerment, the National Archives will have no authority to intervene in provinces in which gross neglect of archival services is occurring. Furthermore, the National Archives will be under no obligation to make its expertise available to provinces in need of it. SASA contends that the classification of provincial archives services as an exclusive provincial competence does not comply with constitutional principle XXI (4) in Schedule 4 of the Constitution of the Republic of South Africa Act, 1993 (Act. No. 200 of 1993) and that provincial archives should be classified as a concurrent national and provincial competence.

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7 June 1996

SOUTH AFRICAN SOCIETY OF ARCHIVISTS

CERTIFICATION OF NEW CONSTITUTIONAL TEXT: SCHEDULE 5

1. Schedule 5 of the new Constitution specifies archives other than national archives as an exclusive provincial legislative competence. This differs from the interim Constitution (Act

No. 200 of 1993), section 126 of which assigned concurrent competence with Parliament to provincial legislatures to make provincial laws with regard to matters which fell in the functional areas specified in Schedule 6. Cultural matters were a Schedule 6 functional area, incorporating archival services.

2. The provision of concurrent competence in the archival functional area enabled the following core provisions to be made in section 3 of the National Archives of South Africa Bill, B17-96 (which was tabled in Parliament in February 1996):

"objects and functions of National Archives

3. The objects and functions of the National Archives shall be to -
 - (e) maintain a national automated archival information retrieval system, in which all provincial archives services shall participate
 - (g) assist, support, set standards for and provide professional guidelines to provincial archives services;"
3. It is the contention of the South African Society of Archivists that the classification of provincial archives services as an exclusive provincial competence does not comply with constitutional principle XXI (4) of Schedule 4 of the interim Constitution, viz.: "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."
4. The National Archives of South Africa Bill was drafted through a fully consultative process involving all provincial governments, and complete agreement was achieved regarding all its provisions. The classification of provincial archives services as an exclusive provincial competence would imply that the provisions of the Bill mentioned in paragraph 2 above would be invalid. This in turn would mean that essential archival functions, such as the national automated archival retrieval system, would have no legislative basis. This position would hold grave implications for the ability of public archives services to fulfil their obligations in a democratic society, as envisaged in e.g. the Open Democracy Bill.
5. It is the contention of the South African Society of Archivists that archives should be retained as a concurrent national and provincial legislative competence.

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