

## **PART 1- ISSUES REQUIRING CONSIDERATION BY THE CONSTITUTIONAL COMMITTEE**

No	Page	Section	Issue	Comment
1.	5		Citizenship	Draft formulation requires agreement.
2.	5		Franchise	Draft formulation requires agreement.
3.	5		National Territory	No formulation. Technical matter. Experts to be assembled to advise.
4.	5		Prov. Boundaries	No formulation. Requires definition by experts.
5.	5		National Symbols	No formulation. Experts being consulted. Management Committee has agreed to form multi-party sub committee to address matter.
6.	5		Language	Requires agreement on the application of the 11 official languages.
7.	43	37	Senate	Requires agreement.
8.	43	38	Membership of N/A	Requires agreement.
9.	43	39(2)(b)	Dep. Presidents/ Prime Minister	This provision is subject to the agreements reached in the Chapter on the National Executive.
10.	43	39(2)(c)	Senate	This provision is subject to agreement reached on the second house.
11.	43	39(2)(f)	disqualification of membership	<b><u>Recommendation by Refinement Team</u></b> There are a number of small inconsistencies in this provision and 39(2)(g). A person whose sentence expires just before the Constitution commences escapes the effect of the provision altogether. 39(2)(f) appears to cover people sentenced outside the Republic even if the conduct concerned would not have been an offence in the Republic. In this way it is wider than (g). 39(2)(f) does not protect people pending an appeal.
12.	45	39(4)	Non-members in the National Assembly	<b><u>Recommendation by Refinement team</u></b> It is recommended that this provision be deleted as it is not necessary and makes the imposition of a fine obligatory. The provision giving the NA control over its internal arrangements would cover this. If there was any remaining doubt, the right could be given to the NA in legislation. There seems to be no need to elevate this provision to a Constitutional Principle.
13.	45	40	Crossing of floor	This provision is subject to a decision on the crossing of the floor.

No	Page	Section	Issue	Comment
14.	45	40(2)	Vacancies	This provision is subject to agreement on the electoral system.
15.	45	42(1)	First sitting	<b><u>Recommendation by Refinement team</u></b> This provision is subject to agreement that the President of the Constitutional Court will determine the first sitting of the National Assembly.
16.	45	42(3)	Seat of parliament	This provision is subject to agreement on the seat of parliament.
17.	47	43	Duration of parliament	Provision should be made to deal with the National Assembly should it be impossible to hold elections e.g. during a state of national defence.
18.	47	43(4)	Elections	<b><u>Recommendation by Refinement team</u></b> This provision is subject to agreement. The provision was inserted ensure that it is not possible to delay elections.
19.	47	44(2)	Election of Speaker	<b><u>Recommendation by Refinement team</u></b> This provision is subject to agreement that the President of the Constitutional Court preside over both the election of the Speaker and the President which would take place at the same time.
20.	47	44(6)	Resign - speaker	It is recommended that this provision be deleted as its contents are evident.
21.	47	45	Votes of no confidence	<b><u>Recommendation by Refinement team</u></b> This provision allows for a vote of no-confidence to be taken when only one-third of the members are present. The vote could therefore be taken by a very small number of members. Special provision for votes of no confidence either here on in the section dealing with them in the chapter on the Executive might be considered.
22.	49	49	Parliamentary Privilege	<b><u>Recommendation by Refinement team</u></b> The title of this section would have to be changed as this clause only deals with the National Assembly. It will have to be appropriately amended when the Chapter is completed.

No	Page	Section	Issue	Comment
23.	49	49(1)	Freedom of speech	<b><u>Recommendation by Refinement team</u></b> . The reference to freedom of speech in subclause (1) is problematic as the draft bill of rights refers to freedom of speech and expression. The sentence in brackets should be deleted. If it is intended to prevent courts from limiting parliamentary debate, it is unnecessary. The express inclusion of the right to open debate in the clause itself protects that right from limitation by courts. At worst, the assertion that this particular right may not be limited by the courts suggests that other rights may be limited. The reference to questioning by the courts is equally problematic. It will always be open to a court to determine whether a particular incident is a case in which this parliamentary privilege applies or not. Once the right is granted in the Constitution, the only role of the courts is to protect it.
24.	49	50 - 52	Senate	These provisions may only be formulated once a decision on the second house has been taken.
25.	51	53	Assent to bills	These provisions are subject to agreement.
26.	51	54	Safe-keep of Acts	A choice must be made between the Appellate Division and the Constitutional Court.
27.	53	55(1)	Competence	<b><u>Recommendation by Refinement team</u></b> The last part of this section may need amendment once competencies have been settled.
28.	53	55(2)	Executive Authority	This is a general empowerment clause as per political instructions and is subject to agreement.
29.	53	56	The President	This section reflects the instructions of the CC sub committee and is subject to agreement.
30.	53	56(3)	International sovereignty	<b><u>Recommendation by Refinement team</u></b> This identifies the seat of sovereignty vis-à-vis other states.
31.	53	57(2)(a)	Appointments	This provision is subject to agreement on the authority of the President to make appointments.
32.	55	57(2)(g)	Snap Elections	There has been no provision made for snap elections. This is subject to political agreement.
33.	55	59	Assumption of office	<b><u>Recommendation by Refinement team</u></b> The term "that day" needs review. Sufficient time must be allowed to plan a public ceremony.

No	Page	Section	Issue	Comment
34.	57	63	Deputy Presidents	This is subject to political agreement on the number of deputy presidents and the question of a government of national unity.
35.	59	64	Removal by National Assembly	<b><u>Recommendation by Refinement team</u></b> It is an anomaly that the National Assembly may remove the President and Deputy President but not Ministers. This section warrants further consideration and political agreement.
36.	59	64(2)	Removal of President	<b><u>Recommendation by Refinement team</u></b> Should there be some discretion in the National Assembly regarding the removal of an incumbent's right to benefits from the office? If so, clear instructions must be given. A separate procedure may be needed for removing office holders for reasons of physical or mental inability.
37.	59	65(2)	Chairing Cabinet meetings	<b><u>Recommendation by Refinement team</u></b> It would appear to be too rigid not to allow for casual absences for short periods during a meeting, or for the chair to be left temporarily. This provision warrants review and further political instructions.
38.	59	66	Appointment and dismissal of Deputy Ministers	This provision is subject to political agreement. <b><u>Recommendation by Refinement team</u></b> Is it intended that Deputy Ministers are to be provided for in the Constitution? They are not part of the Executive. Political instructions are required.
39.	61	69(2)(c)	Enrichment of Ministers	<b><u>Recommendation by Refinement team</u></b> The word "improperly" before "use" should be removed. When could it ever be proper for Ministers to use their position or information (often confidential) to enrich themselves?
40.	61	71	Assignment of Powers	<b><u>Recommendation by Refinement team</u></b> A proclamation is recommended in the interests of public awareness of which ministry carries which responsible.
41.	63	72	Transfer of powers	<b><u>Recommendation by Refinement team</u></b> A proclamation would be necessary in the interests of legal certainty.
42.	63	73	Votes of no confidence	<b><u>Recommendation by Refinement team</u></b> As stated above, it may be necessary to stipulate the quorum and the vote required for the passing of a vote of no confidence.

No	Page	Section	Issue	Comment
43.	65	74(1)	Judicial Authority	<b><u>Recommendation by Refinement team</u></b> This provision is changed to reflect that the Courts are independent and must be impartial. It may also be necessary to qualify the word “court” to indicate that traditional courts are not covered by this provision.
44.	65	74(2)	Jurisdiction	<b><u>Recommendation by Refinement team</u></b> The words “within jurisdiction” may not be necessary. The apparent objective is that all persons and organs of state must be bound by court decision. A problem arises with the words “within its jurisdiction”. The concept of “jurisdiction” has at least two meanings. Geographical jurisdiction relates to the area <b><u>over</u></b> which jurisdiction exists. In a different sense, jurisdiction relates to the particular court’s <b><u>power</u></b> to hear certain matters and issue certain orders. The section, as presently worded, tends to restrict the meaning of the notion to the first mentioned.
45.	65	74(3)	Judicial Authority	<b><u>Recommendation by Refinement team</u></b> The word “improperly” has been omitted because it is superfluous (interference incorporates the idea of impropriety) and because other, similar provisions use the term “interfere” without qualification.
46.	65	75(1)(c)	Courts	<b><u>Recommendation by Refinement team</u></b> 1) As some of these courts are not yet established, they must be referred to but cannot be named. 2) There is concern about the term “courts of similar status” rather than “superior” and “lower” courts. The terms “superior” and “lower” carry well established meanings. For example, the Water Court and Tax Appeal court are superior courts. It is not as clear that these two courts are “of similar status” as the Supreme Courts. These courts are “special courts”. The use of the terms “superior” and “lower” would avoid any controversy in this regard.
47.	65	75(1)(f)	Traditional Courts	<b><u>Recommendation by Refinement team</u></b> If traditional courts are classified as “courts”, it may be necessary to insert a provision stipulating the level of government at which different levels of court may be established.
48.	67	76(2)(a)	Constitutional Jurisdiction	<b><u>Recommendation by Refinement team</u></b> The draft does not provide for exclusive jurisdiction in respect of disputes between organs of the national government.

No	Page	Section	Issue	Comment
49.	69	78(3)(b)	Constitutional Jurisdiction	<b><u>Recommendation by Refinement team</u></b> It is uncertain whether the consequences of this provision are intended. The initial draft did not provide for constitutional disputes between national organs of state. The section should convey that constitutional disputes between organs of state at a national-national; national-provincial; provincial-provincial could only be decided by the Constitutional Court. Another possible formulation could be: "...over disputes in constitutional matters between national, national and provincial, and provincial organs of state."
50.	69	79(1)	Other Jurisdiction	<b><u>Recommendation by Refinement team</u></b> The extent of the constitutional jurisdiction of lower courts must be determined by an Act of parliament. For instance, parliament must determine whether Magistrate's Courts may invalidate subordinate legislation or municipal bylaws.
51.	71	80(1)	Qualifications of Judges	<b><u>Recommendation by Refinement team</u></b> Constitutional Principle 7 requires the judiciary to be appropriately qualified. It is not certain that 80(1) is sufficient. Further political instructions need to be given in this regard.
52.	71	80(5)(d)	Appointments of Judges	<b><u>Recommendation by Refinement team</u></b> It is not clear whether appointments should be made from a new list or the original list supplemented by new names. Further political instructions in this regard should be given.
53.	71	80(7)	Appointment of Acting Judges	<b><u>Recommendation by Refinement team</u></b> Does this oblige the Minister to make appointments? "Senior Judge" refers to the head of a division.
54.	73	80(8)	Judges of Traditional Courts	<b><u>Recommendation by Refinement team</u></b> Are heads of traditional courts judicial officers? Political instructions are required?
55.	73	80(10)	Term of office - Judges of Constitutional Court	<b><u>Recommendation by Refinement team</u></b> It is not clear whether "6 months" refers to one period or a number of shorter periods totalling 6 months, and whether it is renewable. What happens if the period expires while a judge is hearing a matter? Political instructions are required.

No	Page	Section	Issue	Comment
56.	73	81(2)	Removal of Judges	<b><u>Recommendation by Refinement team</u></b> The “judicial service commission” is inserted in the place of “Chief Justice” to ensure that the CJ does not have this power over Constitutional Court judges. In addition, this captures the intention that the CJ exercises this function as chair of the JSC.
57.	73	84(1)	Judicial Services Commission	<b><u>Recommendation by Refinement team</u></b> It is necessary to consider the tenure of JSC members who do not hold their positions ex officio.
58.	73	84(1)(c)	Judge President	<b><u>Recommendation by Refinement team</u></b> This provision constitutionalises the office of the Judge President. Is this the intention? Possible alternative formulation: “One judge to represent the High Courts to be designated in terms of a national law.”
59.	75	84(1)(e)	Adv. & Attorneys	<b><u>Recommendation by Refinement team</u></b> An alternative formulation may be required.
60.	75	84(1)(h)	Senators	<b><u>Recommendation by Refinement team</u></b> the meaning of “together”/ “en bloc” is unclear. What happens if one Senator resigns?
61.	75	84(4)	Quorum of JSC	<b><u>Recommendation by Refinement team</u></b> Is this a quorum provision? Must members be present at meetings at which decisions are made, or can JSC make decisions without meeting?
62.	75		Attorney General	The question of the Attorney General has been raised by some parties. There is an opinion which believes that this office should be constitutionalised. There is also an opposing view. The matter requires political agreement.
63.	77	86(3)	Public Protector - Judicial Functions	<b><u>Recommendation by Refinement team</u></b> No decision has been taken on this issue yet. Requires agreement.
64.	79	86(5)	“exceptional circumstances”	<b><u>Recommendation by Refinement team</u></b> The words “security of the Republic, interests of justice” may be used as an alternative for “exceptional circumstances”.
65.	81	91(1)(c) & (3)	Provin. Legislation re: Auditor General	<b><u>Recommendation by Refinement team</u></b> There is uncertainty as to whether provinces should have the power to require the Auditor General to perform audits.
66.	87	97	Provincial Constitutions re: Provincial Authority	<b><u>Recommendation by Refinement team</u></b> This provision may need to include some reference to provincial constitutions since the Provinces authority may be further limited by it.

No	Page	Section	Issue	Comment
67.	87	98	No. of Provincial Legislators	The method of determining the number of legislators will have to be determined. This is subject to political agreement.
68.	87	99(1)	Eligibility re: Provincial Legislature	This provision is taken from the National Assembly and may need to include a requirement on residency. This is subject to a political agreement on the electoral system applied.
69.	87	99(2)(c)	Disqualification - Local Council	<b><u>Recommendation by Refinement team</u></b> It is not clear whether membership of a local council is intended to be disqualification.
70.	87	99(2)(f)	Disqualification re: imprisonment	<b><u>Recommendation by Refinement team</u></b> There are some small inconsistencies between this provision and the next. The same applies in the case of the National Assembly.
71.	89	99(4)	Fine for non members	<b><u>Recommendation by Refinement team</u></b> As in the case of the National Assembly, this section seems to be unnecessary; it also makes a fine obligatory.
72.	89	100	Crossing floors	The question as to whether the crossing of the floor would result in the loss of membership needs to be answered. This is a question also raised in the chapter on the National Assembly.
73.	89	102	Seat of Provincial Legislature	<b><u>Recommendation by Refinement team</u></b> Since it is entirely within the discretion of the Provincial Legislature as to where its seat would be, the words in brackets should be removed.
74.	91	103	Provincial elections re: state of national defence	<b><u>Recommendation by Refinement team</u></b> As in the instance of national elections, it may be appropriate to insert a provision dealing with provincial legislatures should elections be impossible e.g. during a state of national defence.
75.	91	103(4)	Setting date for election	<b><u>Recommendation by Refinement team</u></b> It may be more appropriate for the President to call, and set the date for, provincial elections
76.	91	104(4)	Speaker re: Provincial Legislature	<b><u>Recommendation by Refinement team</u></b> Is this provision necessary? A provision briefly describing the role of the Speaker would make this part and the operation of the provincial legislatures much clearer to readers.



No	Page	Section	Issue	Comment
77.	91	104(6)	Speaker re: resignation	<b><u>Recommendation by Refinement team</u></b> This provision is unnecessary. It cannot be disputed that a Speaker ceases to hold office on resignation, and the requirement in subclause (1) that a Speaker must be a member of the legislature means that a Speaker could not hold office after leaving.
78.	93	105	Votes of no-confidence	<b><u>Recommendation by Refinement team</u></b> As in the instance of the National Assembly, this provision allows for a vote of no confidence to be taken when only one-third of the members are present. The vote could therefore be carried by a very small number. Special provision should be made for a vote of no confidence either here or in the section dealing with them in the part of provincial executives might be considered.
79.	93	108(1)	Freedom of speech	<b><u>Recommendation by Refinement team</u></b> The reference to freedom of speech in sub clause (1) is problematic as the draft Bill of rights refers to freedom of speech and expression; the sentence in brackets should be deleted.
80.	95	109	Referral of Bills	<b><u>Recommendation by Refinement team</u></b> This provision differs from its counterpart in the chapter on Parliament because it does not give a Premier the right to refer Bills to the Constitutional Court. This is an issue that must still be considered.
81.	103		Competencies	The subject of national and provincial legislative competencies is subject to further political agreement. The relevant provisions could only be drafted once these political instructions are at hand.
82.			Inter-governmental relations	This is an issue which arises from the discussion on Competencies. The matter will therefore have to be attended to in conjunction with the discussion on competencies.
83.	103		Local Government	There have been no draft formulations produced on this. Clear political instructions based on agreements are required to facilitate drafting on these provisions.
84.	103		Indigenous Leaders	Draft formulations have been prepared in accordance with Constitutional Committee instructions. This requires agreement.

No	Page	Section	Issue	Comment
85.	111	127(7)	Security Services - 'broadly representative'	<b><u>Recommendation by Refinement team</u></b> This provision suggests that security services must be 'broadly representative' immediately. This needs reconsideration. Compare section 138(1)(l). It may be unnecessary to include this provision here if security services are covered by Public Administration.
86.	111	127(8)	Security Services - Labour relations	<b><u>Recommendation by Refinement team</u></b> This provision seems unnecessary because the constitution does not bar the establishment by law of special mechanisms for regulating industrial relations in the Security Services, and because it isn't clear whether the mechanisms referred to here are intended to trump the Bill of Rights. If they are, this section may not achieve the intention.
87.	113	130	Command of Defence force	<b><u>Recommendation by Refinement team</u></b> Section 56 establishes the President as the Commander in Chief of the Defence Force. Section 130(2) speaks of the Chief of the Defence force acting on Ministerial or Presidential direction. These provisions need to be clarified.
88.	113	130(2)	Dismissal - Chief of Defence Force	<b><u>Recommendation by Refinement team</u></b> The provision that the President may dismiss the Chief of the Defence Force was included to make the provision consistent with the provision on the National Commissioner of the police service.
89.	113	131	Defence Secretariat	<b><u>Recommendation by Refinement team</u></b> This formulation does not explain how a secretariat should be established.
90.	129	153	Constitutional Amendments	Matter is subject to further political discussion and agreement.
91.			International Agreements	Draft formulations have been prepared and is subject to further political discussion and agreement.

**PART 2 - OUTSTANDING CONSTITUTIONAL PRINCIPLES REQUIRING CONSIDERATION IN THE DRAFT**

No.	Principle	Issue	Provisions - Sections
92.	8	There shall be universal adult suffrage	
93.	11	The diversity of language shall be acknowledged and protected,	27; (?)
94.		and conditions for their promotion shall be encouraged.	
95.	12	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.	13; (?)
96.	13	The institution, status and role of traditional leadership shall be recognised and protected in the Constitution.	Ch 10; (?)
97.		Indigenous law, like common law, shall be recognised and applied by the courts, subject to the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.	
98.		Provisions in a provincial constitution relating to the institution, role, authority and status of a traditional monarch shall be recognised and protected in the Constitution	
99.	14	Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy	
100.	15	Amendments to the Constitution shall require special procedures involving special majorities.	153 (?)
101.	17	At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of Principle 13	45; 105; (?)
102.	18	The powers and functions of the national government and provincial governments	
103.		and the boundaries of the provinces shall be defined in the Constitution.	
104.		The powers and functions of the provinces defined in the Constitution, including the competence of a provincial legislature to adopt a constitution for its province, shall not be substantially less than or substantially inferior to those provided for in this Constitution	111; (?)
105.		The boundaries of the provinces shall be the same as those established in terms of this Constitution.	

No.	Principle	Issue	Provisions - Sections
106.	18	<b>4.</b> 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.	
107.		<b>5.</b> Provision shall be made for obtaining the views of a provincial legislature concerning all constitutional amendments regarding its powers, boundaries and functions.	
108.	19	The powers and functions at the national and provincial 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.	
109.	20	Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively.	
110.		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 recognises the need for and promotes national unity and legitimate provincial autonomy and acknowledges cultural diversity.	
111.	21	The following criteria shall be applied in the allocation of powers to the national government and the provincial governments: <b>1.</b> The level at which decisions can be taken most effectively in respect of the quality and rendering of services, shall be the level responsible and accountable for the quality and the rendering of the services, and such level shall accordingly be empowered by the Constitution to do so.	
112.		<b>2.</b> Where it is necessary for the maintenance of essential national standards, for the establishment of minimum standards required for the rendering of services, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one province which is prejudicial to the interests of another province or the country as a whole, the Constitution shall empower the national	

**Issues Requiring Consideration - 16 October 1995**

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No.	Principle	Issue	Provisions - Sections
		government to intervene through legislation or such other steps as may be defined in the Constitution.	
113.	21	<b>3.</b> 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.	
114.	21	<b>4.</b> 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.	
115.	21	<b>5.</b> The determination of national economic policies, and the power to promote inter provincial commerce and to protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.	
116.	21	<b>6.</b> Provincial governments shall have powers, either exclusively or concurrently with the national government, inter alia (a) for the purposes of provincial planning and development and the rendering of services; and (b) in respect of aspects of government dealing with specific socio-economic and cultural needs and the general well-being of the inhabitants of the province.	
117.	21	<b>7.</b> 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 provincial governments.	
118.	21	<b>8.</b> The Constitution shall specify how powers which are not specifically allocated in the Constitution to the national government or to a provincial government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national government or provincial governments.	
119.	22	The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the provinces.	
120.	23	In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national government and provincial governments which cannot be	

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No.	Principle	Issue	Provisions - Sections
		resolved by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the national government.	
121.	24	A framework for local government powers, functions and structures shall be set out in the Constitution. The comprehensive powers, functions and other features of local government shall be set out in parliamentary statutes or in provincial legislation or in both.	
122.	25	The national government and provincial governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in Principle XXIV shall make provision for appropriate fiscal powers and functions for different categories of local government.	
123.	26	Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that provinces and local governments are able to provide basic services and execute the functions allocated to them.	
124.	32	The Constitution shall provide that until 30 April 1999 the national executive shall be composed and shall function substantially in the manner provided for in Chapter 6 of this Constitution.	
125.	33	The Constitution shall provide that, unless Parliament is dissolved on account of its passing a vote of no-confidence in the Cabinet, no national election shall be held before 30 April 1999.	
126.	34	<b>1.</b> This Schedule and the recognition therein of the right of the South African people as a whole to self-determination, shall not be construed as precluding, within the framework of the said right, constitutional provision for a notion of the right to self-determination by any community sharing a common cultural and language heritage, whether in a territorial entity within the Republic or in any other recognised way.	
127.	34	<b>2.</b> The Constitution may give expression to any particular form of self-determination provided there is substantial proven support within the community concerned for such a form of self-determination.	
128.	34	<b>3.</b> If a territorial entity referred to in paragraph 1 is established in terms of this Constitution before the new constitutional text is adopted, the new Constitution shall	

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No.	Principle	Issue	Provisions - Sections
		entrench the continuation of such territorial entity, including its structures, powers and functions.	

## ISSUES REQUIRING POLITICAL AGREEMENT AND INSTRUCTIONS

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6.	5		Language	Requires agreement on the application of the 11 official languages.
7.	43	37	Senate	Requires agreement.
8.	43	38	Membership of the Nat. Assembly	Requires agreement.
9.	43	39(2)(b)	Dep Presidents/ Prime Minister	This provision is subject to the agreements reached in the Chapter on the National Executive.
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15.	49	50 - 52	Senate	These provisions may only be formulated once a decision on the second house has been taken.
16.	51	53	Assent to bills	These provisions are subject to agreement.
17.	51	54	Safe-keep of Acts	A choice must be made between the Appellate Division and the Constitutional Court.
18.	53	55(2)	Executive Authority	This is a general empowerment clause as per political instructions and is subject to agreement.



**Issues Requiring Consideration - 16 October 1995**

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22.	57	63	Deputy Presidents	This is subject to political agreement on the number of deputy presidents and the question of a government of national unity.
23.	75		Attorney General	The question of the Attorney General has been raised by some parties. There is an opinion which believes that this office should be constitutionalised. There is also an opposing view. The matter requires political agreement.
24.	87	98	No. of Provincial Legislators	The method of determining the number of legislators will have to be determined. This is subject to political agreement.
25.	87	99(1)	Eligibility re: Provincial Legislature	This provision is taken from the National Assembly and may need to include a requirement on residency. This is subject to a political agreement on the electoral system applied.
26.	89	100	Crossing floors	The question as to whether the crossing of the floor would result in the loss of membership needs to be answered. This is a question also raised in the chapter on the National Assembly.
27.	103		Competencies	The subject of national and provincial legislative competencies is subject to further political agreement. The relevant provisions could only be drafted once these political instructions are at hand.
28.			Inter-governmental relations	This is an issue which arises from the discussion on Competencies. The matter will therefore have to be attended to in conjunction with the discussion on competencies.
29.	103		Local Government	There have been no draft formulations produced on this. Clear political instructions based on agreements are required to facilitate drafting on these provisions.
30.	103		Indigenous Leaders	Draft formulation has been prepared in terms of Constitutional committee instructions and is subject to further political discussion and agreement.

<b>No</b>	<b>Pag e</b>	<b>Section</b>	<b>Issue</b>	<b>Comment</b>
<b>31.</b>	<b>129</b>	<b>153</b>	Constitutional Amendments	Matter is subject to further political discussion and agreement.
<b>32.</b>			International Agreements	Draft formulations have been prepared and is subject to further political discussion and agreement.

## RECOMMENDATIONS MADE BY THE TECHNICAL REFINEMENT TEAM

No	Page	Section	Issue	Comment
1.	43	39(2)(f)	disqualification of membership	There are a number of small inconsistencies in this provision and 39(2)(g). A person whose sentence expires just before the Constitution commences escapes the effect of the provision altogether. 39(2)(f) appears to cover people sentenced outside the Republic even if the conduct concerned would not have been an offence in the Republic. In this way it is wider than (g). 39(2)(f) does not protect people pending an appeal.
2.	45	39(4)	Non-members in the National Assembly	It is recommended that this provision be deleted as it is not necessary and makes the imposition of a fine obligatory. The provision giving the NA control over its internal arrangements would cover this. If there was any remaining doubt, the right could be given to the NA in legislation. There seems to be no need to elevate this provision to a Constitutional Principle.
3.	45	42(1)	First sitting	This provision is subject to agreement that the President of the Constitutional Court will determine the first sitting of the National Assembly.
4.	47	43	Duration of parliament	Provision should be made to deal with the National Assembly should it be impossible to hold elections e.g. during a state of national defence.
5.	47	43(4)	Elections	This provision is subject to agreement. The provision was inserted ensure that it is not possible to delay elections.
6.	47	44(2)	Election of Speaker	This provision is subject to agreement that the President of the Constitutional Court preside over both the election of the Speaker and the President which would take place at the same time.
7.	47	44(6)	Resig. of speaker	It is recommended that this provision be deleted as its contents are evident.
8.	47	45	Votes of no confidence	This provision allows for a vote of no-confidence to be taken when only one-third of the members are present. The vote could therefore be taken by a very small number of members. Special provision for votes of no confidence either here on in the section dealing with them in the chapter on the Executive might be considered.

No	Page	Section	Issue	Comment
9.	49	49	Parliamentary Privilege	The title of this section would have to be changed as this clause only deals with the National Assembly. It will have to be appropriately amended when the Chapter is completed.
10.	49	49(1)	Freedom of speech	<b><u>Recommendation by Refinement team.</u></b> The reference to freedom of speech in subclause (1) is problematic as the draft bill of rights refers to freedom of speech and expression. The sentence in brackets should be deleted. If it is intended to prevent courts from limiting parliamentary debate, it is unnecessary. The express inclusion of the right to open debate in the clause itself protects that right from limitation by courts. At worst, the assertion that this particular right may not be limited by the courts suggests that other rights may be limited. The reference to questioning by the courts is equally problematic. It will always be open to a court to determine whether a particular incident is a case in which this parliamentary privilege applies or not. Once the right is granted in the Constitution, the only role of the courts is to protect it.
11.	53	55(1)	Competence	The last part of this section may need amendment once competencies have been settled.
12.	53	56(3)	Intern. sovereignty	This identifies the seat of sovereignty vis-à-vis other states.
13.	55	59	Assumption of office	The term "that day" needs review. Sufficient time must be allowed to plan a public ceremony.
14.	59	64	Removal by National Assembly	It is an anomaly that the National Assembly may remove the President and Deputy President but not Ministers. This section warrants further consideration and political agreement.
15.	59	64(2)	Removal of President	Should there be some discretion in the National Assembly regarding the removal of an incumbent's right to benefits from the office? If so, clear instructions must be given. A separate procedure may be needed for removing office holders for reasons of physical or mental inability.
16.	59	65(2)	Chairing Cabinet meetings	It would appear to be too rigid not to allow for casual absences for short periods during a meeting, or for the chair to be left temporarily. This provision warrants review and further political instructions.

No	Page	Section	Issue	Comment
17.	59	66	Appointment and dismissal of Deputy Ministers	This provision is subject to political agreement. Is it intended that Deputy Ministers are to be provided for in the Constitution? They are not part of the Executive. Political instructions are required.
18.	61	69(2)(c)	Enrichment of Ministers	The word “improperly” before “use” should be removed. When could it ever be proper for Ministers to use their position or information (often confidential) to enrich themselves?
19.	61	71	Assignment of Powers	A proclamation is recommended in the interests of public awareness of which ministry carries which responsible.
20.	63	72	Transfer of powers	A proclamation would be necessary in the interests of legal certainty.
21.	63	73	Votes of no confidence	As stated above, it may be necessary to stipulate the quorum and the vote required for the passing of a vote of no confidence.
22.	65	74(1)	Judicial Authority	This provision is changed to reflect that the Courts are independent and must be impartial. It may also be necessary to qualify the word “court” to indicate that traditional courts are not covered by this provision.
23.	65	74(2)	Jurisdiction	The words “within jurisdiction” may not be necessary. The apparent objective is that all persons and organs of state must be bound by court decision. A problem arises with the words “within its jurisdiction”. The concept of “jurisdiction” has at least two meanings. Geographical jurisdiction relates to the area <u>over</u> which jurisdiction exists. In a different sense, jurisdiction relates to the particular court’s <u>power</u> to hear certain matters and issue certain orders. The section, as presently worded, tends to restrict the meaning of the notion to the first mentioned.
24.	65	74(3)	Judicial Authority	The word “improperly” has been omitted because it is superfluous (interference incorporates the idea of impropriety) and because other, similar provisions use the term “interfere” without qualification.

No	Page	Section	Issue	Comment
25.	65	75(1)(c)	Courts	1) As some of these courts are not yet established, they must be referred to but cannot be named. 2) There is concern about the term “courts of similar status” rather than “superior” and “lower” courts. The terms “superior” and “lower” carry well established meanings. For example, the Water Court and Tax Appeal court are superior courts. It is not as clear that these two courts are “of similar status” as the Supreme Courts. These courts are “special courts”. The use of the terms “superior” and “lower” would avoid any controversy in this regard.
26.	65	75(1)(f)	Traditional Courts	If traditional courts are classified as “courts”, it may be necessary to insert a provision stipulating the level of government at which different levels of court may be established.
27.	67	76(2)(a)	Constitutional Jurisdiction	The draft does not provide for exclusive jurisdiction in respect of disputes between organs of the national government.
28.	69	78(3)(b)	Constitutional Jurisdiction	It is uncertain whether the consequences of this provision are intended. The initial draft did not provide for constitutional disputes between national organs of state. The section should convey that constitutional disputes between organs of state at a national-national; national-provincial; provincial-provincial could only be decided by the Constitutional Court. Another possible formulation could be: “...over disputes in constitutional matters between national, national and provincial, and provincial organs of state.”
29.	69	79(1)	Other Jurisdiction	The extent of the constitutional jurisdiction of lower courts must be determined by an Act of parliament. For instance, parliament must determine whether Magistrate’s Courts may invalidate subordinate legislation or municipal bylaws.
30.	71	80(1)	Qualifications of Judges	Constitutional Principle 7 requires the judiciary to be appropriately qualified. It is not certain that 80(1) is sufficient. Further political instructions need to be given in this regard.
31.	71	80(5)(d)	Appointments of Judges	It is not clear whether appointments should be made from a new list or the original list supplemented by new names. Further political instructions in this regard should be given.
32.	71	80(7)	Appointment of Acting Judges	Does this oblige the Minister to make appointments? “Senior Judge” refers to the head of a division.

No	Page	Section	Issue	Comment
33.	73	80(8)	Judges of Traditional Courts	Are heads of traditional courts judicial officers? Political instructions are required?
34.	73	80(10)	Term of office - Judges of Constitutional Court	It is not clear whether "6 months" refers to one period or a number of shorter periods totalling 6 months, and whether it is renewable. What happens if the period expires while a judge is hearing a matter? Political instructions are required.
35.	73	81(2)	Removal of Judges	The "judicial service commission" is inserted in the place of "Chief Justice" to ensure that the CJ does not have this power over Constitutional Court judges. In addition, this captures the intention that the CJ exercises this function as chair of the JSC.
36.	73	84(1)	Judicial Services Commission	It is necessary to consider the tenure of JSC members who do not hold their positions ex officio.
37.	73	84(1)(c)	Judge President	This provision constitutionalises the office of the Judge President. Is this the intention? Possible alternative formulation: "One judge to represent the High Courts to be designated in terms of a national law."
38.	75	84(1)(e)	Adv. & Attorneys	An alternative formulation may be required.
39.	75	84(1)(h)	Senators	the meaning of "together"/ "en bloc" is unclear. What happens if one Senator resigns?
40.	75	84(4)	Quorum of JSC	Is this a quorum provision? Must members be present at meetings at which decisions are made, or can JSC make decisions without meeting?
41.	77	86(3)	Public Protector - Judicial Functions	No decision has been taken on this issue yet.
42.	79	86(5)	"exceptional circumstances"	words "security of the Republic, interests of justice" may be used as an alternative for "exceptional circumstances".
43.	81	91(1)(c) & (3)	Provin. Legislation re: Auditor General	There is uncertainty as to whether provinces should have the power to require the Auditor General to perform audits.
44.	87	97	Provincial Constitutions re: Provincial Authority	This provision may need to include some reference to provincial constitutions since the Provinces authority may be further limited by it.

No	Page	Section	Issue	Comment
45.	87	99(2)(c)	Disqualification - Local Council	It is not clear whether membership of a local council is intended to be disqualification.
46.	87	99(2)(f)	Disqualification re: imprisonment	There are some small inconsistencies between this provision and the next. The same applies in the case of the National Assembly.
47.	89	99(4)	Fine for non members	As in the case of the National Assembly, this section seems to be unnecessary; it also makes a fine obligatory.
48.	89	102	Seat of Provincial Legislature	Since it is entirely within the discretion of the Provincial Legislature as to where its seat would be, the words in brackets should be removed.
49.	91	103	Provincial elections re: state of national defence	As in the instance of national elections, it may be appropriate to insert a provision dealing with provincial legislatures should elections be impossible e.g. during a state of national defence.
50.	91	103(4)	Setting date for election	It may be more appropriate for the President to call, and set the date for, provincial elections
51.	91	104(4)	Speaker re: Prov. Legislature	Is this provision necessary? A provision briefly describing the role of the Speaker would make this part and the operation of the provincial legislatures much clearer to readers.
52.	91	104(6)	Speaker re: resignation	This provision is unnecessary. It cannot be disputed that a Speaker ceases to hold office on resignation, and the requirement in subclause (1) that a Speaker must be a member of the legislature means that a Speaker could not hold office after leaving.
53.	93	105	Votes of no-confidence	As in the instance of the National Assembly, this provision allows for a vote of no confidence to be taken when only one-third of the members are present. The vote could therefor be carried by a very small number. Special provision should be made for a vote of no confidence either here or in the section dealing with them in the part of provincial executives might be considered.
54.	93	108(1)	Freedom of speech	The reference to freedom of speech in subclause (1) is problematic as the draft Bill of rights refers to freedom of speech and expression; the sentence in brackets should be deleted.



<b>No</b>	<b>Page</b>	<b>Section</b>	<b>Issue</b>	<b>Comment</b>
<b>55.</b>	<b>95</b>	<b>109</b>	Referral of Bills	This provision differs from its counterpart in the chapter on Parliament because it does not give a Premier the right to refer Bills to the Constitutional Court. This is an issue that must still be considered.
<b>56.</b>	<b>111</b>	<b>127(7)</b>	Security Services - 'broadly representative'	This provision suggests that security services must be 'broadly representative' immediately. This needs reconsideration. Compare section 138(1)(l). It may be unnecessary to include this provision here if security services are covered by Public Administration.
<b>57.</b>	<b>111</b>	<b>127(8)</b>	Security Services - Labour relations	This provision seems unnecessary because the constitution does not bar the establishment by law of special mechanisms for regulating industrial relations in the Security Services, and because it isn't clear whether the mechanisms referred to here are intended to trump the Bill of Rights. If they are, this section may not achieve the intention.
<b>58.</b>	<b>113</b>	<b>130</b>	Command of Defence force	Section 56 establishes the President as the Commander in Chief of the Defence Force. Section 130(2) speaks of the Chief of the Defence force acting on Ministerial or Presidential direction. These provisions need to be clarified.
<b>59.</b>	<b>113</b>	<b>130(2)</b>	Dismissal - Chief of Defence Force	The provision that the President may dismiss the Chief of the Defence Force was included to make the provision consistent with the provision on the National Commissioner of the police service.
<b>60.</b>	<b>113</b>	<b>131</b>	Defence Secretariat	This formulation does not explain how a secretariat should be established.

## SURVEY OF CONSTITUTIONAL PRINCIPLES - RE:- APPLICATION TO WORKING DRAFT

No.	Principle	Issue	Provisions - Sections
1.	1	One sovereign state	1;
2.		A common SA Citizenship	1;
3.		A democratic system of government	39; 45;
4.		A government committed to achieving equality between men and women and people of all races.	1;
5.	2	Universally accepted rights, freedoms and civil liberties which shall be provided for an protected by entrenched and justiciable provisions in the Constitution	Chapter 2;
6.		The rights must be drafted after giving due consideration to Chapter 3 of the interim constitution	
7.	3	The Constitution shall prohibit racial, gender and all other forms of discrimination and shall promote racial and gender equality and national unity	55; 89; 90
8.	4	The Constitution shall be the supreme law of the land and be binding on all organs of state at all levels of government	2;
9.	5	The legal system shall ensure the equality of all before the law and an equitable legal process. 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.	1; 4; 90
10.	6	There shall be a separation of powers between the legislature, executive and judiciary, with appropriate	1; 37; 38; 44(2); 53; 55; 74; 75; 76; 97;
11.		checks and balances to ensure accountability, responsiveness and openness	43; 64; 68; 73; 80; 81; 103; 116; 121; 126;
12.	7	The Judiciary shall be appropriately qualified	80(1) & (2)
13.		The judiciary shall be independent and impartial	74
14.		The judiciary shall have the power and jurisdiction to safeguard and enforce the constitution and all fundamental rights.	76;
15.	8	There shall be representative government.	38; 98(1); 99(1)

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No.	Principle	Issue	Provisions - Sections
16.		The shall be multi-party democracy	12; 13; 14;
17.		There shall be regular elections	1; 43; 103;
18.		There shall be universal adult suffrage	
19.		There shall be a common voters' roll	1; 38; 98;
20.		There shall, in general, be proportional representation	38; 98;
21.	9	Provision shall be made for freedom of information so that there can be open and accountable administration at all levels of government	28; 29;
22.	10	Formal legislative procedures shall be adhered to by legislative organs at levels of government	44; 45; 47; 53; 105; 106; 109;
23.	11	The diversity of language shall be acknowledged and protected,	27; (?)
24.		and conditions for their promotion shall be encouraged.	
25.	12	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.	13; (?)
26.	13	The institution, status and role of traditional leadership shall be recognised and protected in the Constitution.	Ch 10; (?)
27.		Indigenous law, like common law, shall be recognised and applied by the courts, subject to the fundamental rights contained in the Constitution and to legislation dealing specifically therewith.	
28.		Provisions in a provincial constitution relating to the institution, role, authority and status of a traditional monarch shall be recognised and protected in the Constitution	
29.	14	Provision shall be made for participation of minority political parties in the legislative process in a manner consistent with democracy	
30.	15	Amendments to the Constitution shall require special procedures involving special majorities.	153
31.	16	Government shall be structured at national provincial and local levels	Ch4, 8 and 9
32.	17	At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of Principle 13	45; 105; (?)

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No.	Principle	Issue	Provisions - Sections
33.	18	The powers and functions of the national government and provincial governments	
34.		and the boundaries of the provinces shall be defined in the Constitution.	
35.		The powers and functions of the provinces defined in the Constitution, including the competence of a provincial legislature to adopt a constitution for its province, shall not be substantially less than or substantially inferior to those provided for in this Constitution	111; (?)
36.		The boundaries of the provinces shall be the same as those established in terms of this Constitution.	
37.		<b>4.</b> 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.	
38.		<b>5.</b> Provision shall be made for obtaining the views of a provincial legislature concerning all constitutional amendments regarding its powers, boundaries and functions.	
39.	19	The powers and functions at the national and provincial 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.	
40.	20	Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively.	
41.		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 recognises the need for and promotes national unity and legitimate provincial autonomy and acknowledges cultural diversity.	
42.	21	The following criteria shall be applied in the allocation of powers to the national government and the provincial governments:	

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No.	Principle	Issue	Provisions - Sections
		1. The level at which decisions can be taken most effectively in respect of the quality and rendering of services, shall be the level responsible and accountable for the quality and the rendering of the services, and such level shall accordingly be empowered by the Constitution to do so.	
43.		2. Where it is necessary for the maintenance of essential national standards, for the establishment of minimum standards required for the rendering of services, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one province which is prejudicial to the interests of another province 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.	
44.		3. 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.	
45.		4. 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.	
46.		5. The determination of national economic policies, and the power to promote inter provincial commerce and to protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.	
47.		6. Provincial governments shall have powers, either exclusively or concurrently with the national government, inter alia (a) for the purposes of provincial planning and development and the rendering of services; and (b) in respect of aspects of government dealing with specific socio-economic and cultural needs and the general well-being of the inhabitants of the province.	
48.		7. Where mutual co-operation is essential or desirable or where it is required to	

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No.	Principle	Issue	Provisions - Sections
		guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the provincial governments.	
49.		8. The Constitution shall specify how powers which are not specifically allocated in the Constitution to the national government or to a provincial government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national government or provincial governments.	
50.	22	The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the provinces.	
51.	23	In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national government and provincial 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.	
52.	24	A framework for local government powers, functions and structures shall be set out in the Constitution. The comprehensive powers, functions and other features of local government shall be set out in parliamentary statutes or in provincial legislation or in both.	
53.	25	The national government and provincial governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in Principle XXIV shall make provision for appropriate fiscal powers and functions for different categories of local government.	
54.	26	Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that provinces and local governments are able to provide basic services and execute the functions allocated to them.	
55.	27	A Financial and Fiscal Commission, in which each province shall be represented, shall recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account the national interest, economic disparities between the provinces as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the provinces.	146; 147; 148;
56.	28	Notwithstanding the provisions of Principle XII, the right of employers and employees to	18;

**Issues Requiring Consideration - 16 October 1995**

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No.	Principle	Issue	Provisions - Sections
		join and form employer organisations and trade unions and to engage in collective bargaining shall be recognised and protected. Provision shall be made that every person shall have the right to fair labour practices.	
57.	29	The independence and impartiality of a Public Service Commission shall be provided for and safeguarded by the Constitution in the interests of the maintenance of a high standard of professional ethics in the public service.	138; 139(1);
58.		The independence and impartiality of a Reserve Bank, shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance.	151(2)
59.		The independence and impartiality of Public Protector 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 public service.	85(2)
60.		The independence and impartiality of an Auditor- General shall be provided for and safeguarded by the Constitution in the interests of the maintenance of effective public finance.	85(2)
61.	30	1. There shall be an efficient, non-partisan, career-orientated public service broadly representative of the South African community, functioning on a basis of fairness and which shall serve all members of the public in an unbiased and impartial manner, and shall, in the exercise of its powers and in compliance with its duties, loyally execute the lawful policies of the government of the day in the performance of its administrative functions. The structures and functioning of the public service, as well as the terms and conditions of service of its members, shall be regulated by law.	138 (?)
62.		2. Every member of the public service shall be entitled to a fair pension.	140(2)
63.	31	Every member of the security forces (police, military and intelligence), and the security forces as a whole, shall be required to perform their functions and exercise their powers in the national interest and shall be prohibited from furthering or prejudicing party political interest.	127(6)
64.	32	The Constitution shall provide that until 30 April 1999 the national executive shall be composed and shall function substantially in the manner provided for in Chapter 6 of this	

No.	Principle	Issue	Provisions - Sections
		Constitution.	
65.	33	The Constitution shall provide that, unless Parliament is dissolved on account of its passing a vote of no-confidence in the Cabinet, no national election shall be held before 30 April 1999.	
66.	34	<b>1.</b> This Schedule and the recognition therein of the right of the South African people as a whole to self-determination, shall not be construed as precluding, within the framework of the said right, constitutional provision for a notion of the right to self-determination by any community sharing a common cultural and language heritage, whether in a territorial entity within the Republic or in any other recognised way.	
67.		<b>2.</b> The Constitution may give expression to any particular form of self-determination provided there is substantial proven support within the community concerned for such a form of self-determination.	
68.		<b>3.</b> If a territorial entity referred to in paragraph 1 is established in terms of this Constitution before the new constitutional text is adopted, the new Constitution shall entrench the continuation of such territorial entity, including its structures, powers and functions.	