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SOUTH AFRICAN GOVERNMENT OFFICE  
- WORLD TRADE CENTRE -

27 May 1993

Head of the Administration  
Multi-Party Negotiating Process  
World Trade Centre

Dear Dr Eloff

SUBMISSION BY THE SOUTH AFRICAN GOVERNMENT FOR THE  
ATTENTION OF THE PLANNING-SUMMITTEE | Attached | /Owt T 7o  
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1. Attached is a submission by the South African Government entitled First  
draft text of a proposed CONSTITUTION OF THE REPUBLIC OF  
SOUTH AFRICA 1993 submitted to the Multi-Party Negotiating Process by  
the South African Government.

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2. Kindly transmit the document for immediate attention to the Se~Committee.

Yours sincerely

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First draft text of a proposed

CONSTITUTION OF THE  
REPUBLIC OF SOUTH AFRICA  
1993

submitted to the  
Multi-Party Negotiating Process

by the  
SOUTH AFRICAN GOVERNMENT

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This text is intended as a working document for the purposes of discussion and negotiation of the text

of a transitional Constitution at the MPNP.

The text was drafted in quasi-statutory language which will require refinement by legal draftsmen

when agreement is reached on the general content.

It will be noted that some parts of the draft are more detailed than others. It is the intention of the Government to submit further details in due course as the negotiations progress, in order to support the

process as effectively as possible.

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## PREAMBLE

[To be formulated when the text is complete.]

## The Republic of South Africa

1. The Republic of South Africa, consisting of the territories within its national boundaries on the date of the commencement of this Act, shall continue to exist as a sovereign state and shall be known as the Republic of South Africa.

## Constitution

2, This Constitution shall be the supreme law of the land and any law inconsistent with this Constitution shall be null and void.

## National Anthems

o The national anthems of the Republic shall be Die Stem van Suid-Afrika/ The Call of South Africa and Nkosi sikelel iAfrika.

## National Flag

4, The design and colours of the national flag and coat of arms of the Republic shall be [those agreed upon in the MPNP].

## Official languages

5. (1) English and Afrikaans shall be the official languages of the Republic, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights and privileges.

(2) All records, journals and proceedings of Parliament shall be kept in both the official languages and all bills, laws and notices of general public

importance or interest issued by the Government of the Republic shall be in both the official languages.

(3) An Act of Parliament may, on the request of a regional executive and with the consent of the regional legislature, provide for one or more languages to be an additional official language or additional official languages in a specified region of the Republic, and such additional official language or languages shall in such region be treated on a footing of equality with English and Afrikaans.

Other symbols

6. Other official and cultural symbols existing on the date of the coming into operation of this Constitution, including monuments, shall be respected and protected.

National Unity, Nation Building and Reconciliation

y Every organ of the Republic shall, in the exercise of its powers, the execution of its functions and the performance of its duties, promote the unity of the South African nation, respect the diversity within the nation and support the process of national reconciliation.

#### CHARTER OF FUNDAMENTAL RIGHTS

[This chapter, consisting of eg. sections 8 to 34, shall provide for a set of fully justiciable fundamental rights binding upon all organs of the state at all levels of government. The precise content of this chapter should emerge from the debates of the reports of the Technical Committee on Fundamental Rights during the Transition in the Negotiating Council.]

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## THE LEGISLATURE

## Legislative power

35, -41) The legislative power 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 parts of the Republic.

(2) In respect of the subjects referred to in Schedule 1 to this Constitution, but subject to the other provisions of this Constitution, Parliament shall not be competent to legislate beyond the extent of

competence as set out in the second column thereof.

(3) 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

36. Parliament shall continue for five years from the day on which its first session commences.

## Franchise

37. (1) Subject to the provisions of subsection (2) and the provisions of the Electoral Act, 1993, every South African citizen who is of or over the age of 18 years shall be entitled to vote in the election of members of Parliament.

(2) No person shall be entitled to vote as contemplated in subsection (1) -

(a) if his ordinary place of residence is not situated in the Republic; or

(b) if he is subject to an order of a court declaring him to be of unsound mind, or if he is detained as a mentally ill person under the Mental Health Act, 1973 (Act No 18 of 1973); or

(c) if he is serving a sentence of imprisonment without the option of a fine imposed upon him by a competent court of law; or

(d) if he is an unrehabilitated insolvent.

#### Constitution of National Assembly

38. The National Assembly shall consist of four hundred members elected according to the system of proportional representation on national party lists as contemplated in Schedule 3.

#### Speaker of the National Assembly

39. (1) A meeting of the National Assembly convened for this purpose, shall elect the Speaker of the National Assembly.

(2) The Speaker shall preside at meetings of the National Assembly or at joint meetings of the National Assembly and the Senate

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

#### Constitution of the Senate

40. (1) Subject to the provisions of subsection (2), the Senate shall be composed of at least five members of the legislature of each region designated in the manner provided for in subsection (3).

(2) (a) The legislature of a region in which more than 15% but less than 20% of the total population of the Republic resides, shall designate six of its members to the Senate.

(b) The legislature of a region in which more than 20% but less than 25% of the total population of the Republic resides, shall designate seven of its members to the Senate.

(c) The legislature of a region in which more than 25% of the total population of the Republic resides, shall designate eight of its members to the Senate.

(3) The legislature of a region shall, at the first session after its election, designate by election according to the principle of proportional representation, each voter having one transferable vote, the persons who will represent the region in the Senate from their number.

#### Chairman of the Senate

41. The provisions regarding the election of the Speaker, his functions, resignation, and tenure of office shall apply mutatis mutandis in respect of the Chairman of the Senate.

#### Parliamentary Procedure

42. (1) There shall be separate procedures for the adoption by Parliament of constitutional and other legislation.

(2) For the purposes of this Constitution, "constitutional legislation" shall mean legislation which amends, repeals or substitutes provisions of this Constitution.

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(3) The National Assembly and the Senate may separately make rules and orders in connection with the order and conduct of their various proceedings.

(4) The National Assembly and the Senate may make rules and orders in connection with the order and conduct of their joint proceedings.

#### Constitutional legislation

43. (1) Constitutional legislation shall be passed by the National Assembly by a majority of not less than two thirds of the total number of its members, and, subject to other provisions of this Constitution, if such legislation concerns regional government, also by a majority of not less than two thirds of the total number of members of the Senate.

(2) Constitutional legislation shall not be inconsistent with the constitutional principles referred to in Schedule 4.

(3) Constitutional legislation shall not be considered by Parliament unless it has been certified by the Constitutional Court to conform to the constitutional principles set out in Schedule 4.

(4) Should any member of Parliament contend on behalf of his party that a bill contains clauses inconsistent with Schedule 4, such member shall inform the Speaker of this contention, and no further consideration of such bill by Parliament shall take place unless the Constitutional Court pronounces the bill to be consistent with Schedule 4.

(5) A pronouncement by the Constitutional Court on the consistency or otherwise of a bill with the said Schedule 4, shall be final and binding.

(6) No amendment of the said Schedule 4 shall be valid unless the bill embodying such amendment has been agreed to by not less than four fifths of all members of Parliament in a joint sitting.

(7) Should the majority required for the adoption of a new Constitution or legislation of a constitutional nature referred to in subsection (1) not be attained, a representative committee of Parliament shall be appointed and all proposals before Parliament shall be referred to it.

(8) The parliamentary committee will be required to negotiate the terms of a draft Constitution or legislation of a constitutional nature, as the case may be, and report to Parliament within 30 days.

(9) If, after the report of the parliamentary committee, Parliament fails to adopt a Constitution or legislation of a constitutional nature, the Speaker shall inform the State President, who will then consult with the leaders of the political parties represented in Parliament with a view to reaching agreement on the terms of a draft Constitution or draft legislation of a constitutional nature. After consultation with the leaders of the political parties, the President will submit a draft Constitution (or Bill of a constitutional nature) to Parliament for its consideration.

(10) The President shall appoint, in consultation with the leaders of political parties representing at least two thirds of the members of the National Assembly, a panel of five constitutional experts, none of whom may be members of the National Assembly or take part in the activities of any political party. The panel of experts may at any time be consulted by a parliamentary committee or the State President and leaders of political parties.

(11) Should Parliament fail to adopt the draft Constitution (or legislation of a constitutional nature) referred to it by the State President in terms of subsection (9) by the required majority, but the draft is supported by at least 50% of the members of the National Assembly, the draft shall be referred by the Speaker to the panel of constitutional experts for their advice on amendments within the framework of the Constitutional Principles that might satisfy the considerations of the required majority.

(12) Should the draft, prepared in accordance with the unanimous advice of the panel of constitutional experts not be supported by the required majority, it may, after 30 days of its submission to Parliament, be adopted by 50% of the members of the National Assembly and of the Senate sitting separately.

(13) A Constitution or legislation of a constitutional nature adopted by Parliament shall come into operation one year after its adoption, except if a majority of two thirds of the members of the National Assembly and a majority of the legislatures of the regions approve another date for implementation.

(14) |If Parliament adopts a Constitution in accordance with the provisions of subsection (12), or fails to adopt a Constitution within a period of two years from the commencement of its first session, the State President may refer a draft Constitution which has the support of the majority of the members of the National Assembly and of a majority of the legislatures of the regions, and has been certified by the Constitutional Court to be in conformity with the constitutional principles, to a national referendum.

(15) The question put before the electorate in the referendum shall be the acceptance or rejection of such draft Constitution.

(16) The text of the Constitution 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.

(17) If the draft Constitution is not approved by the electorate at the referendum, the President shall dissolve Parliament and fresh elections shall be held. In that event the above procedures shall again apply to the adoption of a new Constitution.

## Ordinary legislation

44. (1) Legislation not amending or repealing the provisions of this Constitution may be introduced either in the National Assembly or in the Senate and shall be passed by a majority of all the members of the National Assembly and by a majority of all the members of the Senate, sitting separately: Provided that, and subject to the provisions of section 74, legislation concerning the interests of regions shall not come into operation before the transitional legislatures of .x. [more or less two thirds of the total number of regions] of the regions have expressed acceptance of such legislation by motion adopted by a majority of the members of such regional legislatures: Provided further that a regional legislature shall consider the matter within one month after having been requested to do so by the State President, and failure to do so shall be deemed to constitute acceptance of the legislation.

(2) Should a bill not amending or repealing or substituting the provisions of this Constitution be passed by one House and rejected by the other, the bill shall be referred to a joint committee consisting of members of all parties represented in Parliament to propose 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.

## Signature and enrolment of Acts

45. (1) A bill duly passed by Parliament shall be presented to the State President for his assent.

(2) The State President's assent shall be attested by his signature on either the English or Afrikaans text so passed, and he shall cause the texts so passed, to be promulgated.

(3) The texts so passed shall, immediately after having been signed

by the State President, be enrolled in the office of the Registrar of the Appellate Division of the Supreme Court of South Africa, and such copies

shall be conclusive evidence as to the provisions thereof, and in case of conflict between the two copies, the signed copy shall prevail.

#### Dissolution of Parliament

46. (1) Subject to the provisions of section 43 of this Constitution, Parliament shall be dissolved by the State President before the expiry of its

full term of five years only under the following circumstances:

(a) If a motion of no-confidence in the national executive is adopted by a majority in the National Assembly;

(b) If more than one third of the members of the National Assembly resign their seats within a period of thirty days; or

(c) If two thirds of the members of the National Assembly and two thirds of the members of the Senate, sitting separately, request the State President to do so.

(2) On the dissolution of Parliament, a general election shall be held within two months of such dissolution.

#### EXECUTIVE GOVERNMENT

##### Executive power

47. The executive power of the Republic shall be vested in the State President, who shall be the head of state and who shall exercise his powers subject to the provisions of this Constitution.

#### Constitution and Functioning of a Government of National Unity

48. There shall be a Government of National Unity which shall consist of the leaders of political parties occupying at least 20 seats in the National

Assembly, and of Cabinet Ministers designated by those parties in proportion to their relative support in the National Assembly.

#### State President

49. (1) The State President shall be elected by Parliament at its first session in accordance with the procedures provided for in Schedule 2.

(2) The State President shall be the head of state of the Republic and he shall exercise the following powers after consultation with the Government of National Unity:

(a) the appointment of times for the sessions of Parliament and for its prorogation;

(b) addressing any session of Parliament;

(c) the conferment of honours;

(d) the appointing, accrediting, receiving and recognizing ambassadors, plenipotentiaries, diplomatic representatives and

other diplomatic officers, consuls and consular officers;

(e) entering into and ratifying international conventions, treaties and agreements;

(f) assenting to, signing and promulgating laws duly passed by Parliament, or referring such laws back to Parliament in the event of procedural shortcomings in the legislative process;

(g) convening the Cabinet for the purposes of consultation or the resolution of disputes among the members of the Cabinet or the political parties represented in the Cabinet;

(h) referring disputes of a constitutional nature between political parties represented in Parliament or between organs of the state at any level of government to the Constitutional Court or other appropriate institution or body for resolution.

(3) All other powers and functions shall be exercised and performed by the State President on the advice of the Government of National Unity.

[Further details regarding the composition and functioning of the national executive, to be regulated by eg. sections 50 to 52, will be submitted in due course.]

#### THE JUDICIARY

[This chapter, consisting of eg. sections 53 to 59, will provide, inter alia, for the vesting of the judicial power of the Republic in the Supreme Court of South Africa, the establishment of a Constitutional Court and the determination of its jurisdiction, the manner of the appointment of judges and other judicial officers and other incidental matters.]

#### FINANCE

Existing debts and liabilities of the State.

60. Nothing in this Constitution contained shall affect any assets or rights belonging to the State or any debts or liabilities of the State as existing immediately before the commencement of this Constitution, and all such assets, rights, debts and liabilities shall remain assets, rights, debts and liabilities of the Republic, subject, notwithstanding any other provisions contained in this Constitution, to the conditions imposed by any law under which such debts or liabilities were raised or incurred, and without prejudice to any rights of security or priority in respect of the payment of principal, interest, sinking fund and other charges conferred on the creditors

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concerned, and the Republic may, subject to such conditions and rights, convert, renew or consolidate such debts.

All revenues vest in State President.

61. All revenues of the Republic, from whatever source arising, shall vest in the State President.

State Revenue Fund.

62. (1) There shall be a State Revenue Fund, into which shall be paid all revenues as defined in the Exchequer Act, 1975.

(2) No moneys shall be withdrawn from the State Revenue Fund, except in accordance with an Act of Parliament.

Auditing of State Revenue Fund.

63. The accounts of the State Revenue Fund shall be investigated, examined and audited annually in terms of the provisions of the Exchequer Act, 1975 and the Auditor-General Act, 1989.

Appropriation bill shall not deal with other matters.

64. Any bill which appropriates revenue or moneys for the ordinary annual services of the State shall deal only with such appropriation.

Appropriation not initiated by a Minister.

65. Parliament shall not consider any proposal, whether by way of a vote or by way of a resolution, address or bill, for the appropriation of any part of the public revenue or of any tax or impost to any purpose and which has not been initiated by a Minister, unless such appropriation has been recommended by message from the State President during the session in which the proposal is made.



## Finance Bills

66. (1) Bills appropriating revenue or moneys or imposing taxation shall originate only in the National Assembly after they have been considered and recommended by a joint committee of both Houses.

(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 for services of the Government.

Disagreement between the Senate and the National Assembly.

67. If the National Assembly in any session passes a bill imposing taxation only or dealing with the appropriation of revenue or moneys for the services of the Government, and the Senate in the same session rejects or fails to pass it, the bill shall, unless the National Assembly otherwise directs, be presented to the State President for his 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.

## REGIONAL GOVERNMENT

Transitional Regional Government  
Regions

68. The regions described in Schedule 5 shall be the regions for the purposes of parliamentary elections and of the establishment of transitional regional government structures.

[The content of Schedule 5 will be the outcome of the work of the Commission on Regional Government established by the MPNP.]

## Composition of transitional legislatures and executives

69. (1) For each region a transitional legislature and executive shall be established.

[The MPNP should determine the number of seats that each regional legislature will have as soon as the delimitation of regions for the purpose of the elections is complete.]

(2) The legislature of each region shall consist of the members elected according to the system of proportional representation on regional party lists as contemplated in Schedule 3.

(3) The executive of a region shall be appointed by the transitional regional legislature in proportion to party support in that region, and shall not consist of less than five and not more than ten persons.

(4) The executive of a region shall from among its own number elect a chief executive officer.

## Powers and Functions of Transitional Regional Governments

70. (1) The powers, functions and obligations vesting in the authorities which exist within the boundaries of a region at the time of the coming into

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operation of this Constitution, and which do not devolve upon Parliament and the National Executive, shall vest mutatis mutandis in the transitional legislature and executive of such region.

(2) Subject to the provisions of this Constitution the transitional legislature of a region shall have the power to make laws applicable within the boundaries of that region and the transitional regional executive shall have executive powers in respect of matters falling within the following categories -

(a) Taxation within the region in order to raise revenue for regional purposes;

(b) The raising of loans for capital expenditure in the region with the prior approval of the Central Borrowing Authority;

(c) The appropriation of revenue and moneys for financing the government and services of the region.

(d) The regional economy, trade, industry, markets, development, regional and town planning and tourism.

(e) Casinos, horse racing and gaming.

(f) Roads and transport.

(g) Housing.

(h) Land.

(i) Local government.

(j) Health and welfare.

(k) Cultural affairs.

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Education.

Environmental affairs.

Regional and local policing.

Regional finance and fiscal affairs

71. (1)

A Regional Revenue Fund shall be established in every region,  
into which shall be paid all revenues raised by or accruing to the region.

(2)

The financial and fiscal powers and functions of the national  
government and of a transitional regional government shall be exercised  
subject to the following limitations:

(a)

(b)

(c)

(d)

(e)

A transitional regional government shall not be competent to  
raise loans for current expenditure;

Allocations to local governments by the national government  
shall be made only via the regional government;

The regional governments shall be entitled to a share of the  
income tax on individuals, on mining companies, on other  
companies and of VAT;

A regional government shall be entitled to raise a surcharge not  
exceeding x% on income tax of individuals residing in its region;

Loans required for capital expenditure of the regions shall be  
raised by a central borrowing authority and regions shall service  
such loans from their revenue accounts;

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(f) All taxes (except purely local taxes) shall be collected by an independent national institution; and

(g) Transitional regional governments shall not raise taxes affecting inter-regional commercial activity or the functions of the national

government.

Effect of laws

72. (1) A law made by Parliament shall have effect in and for a region as long and as far only as it does not fall within the legislative competence of the transitional regional government in terms of this Constitution.

(2) A law made by a transitional regional legislature shall have effect in and for the region 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.

Recommendations to Parliament

73. (1) A transitional regional 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.

(2) A transitional regional government may at any time petition the National Assembly to determine by resolution that an election for the establishment of a provincial legislature and executive in that region, or in a region incorporating that region in whole or in part, shall be held.

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## Establishment of Provincial Government

### Development of Provincial Government

74. (1) The development of a system of provincial government shall receive the priority attention of Parliament and in this regard it shall take into consideration in the prescribed manner, the recommendations of the Commission on Provincial Government referred to in section 75.

(2) The Commission's recommendations regarding any matter that falls within the ambit of its objects in terms of section 75 of this Constitution shall be placed before Parliament in the form of draft legislation.

(3) Parliament shall deal with such draft legislation as constitutional legislation.

(4) Should the draft legislation recommended by the Commission not be adopted by Parliament, it shall lapse, except if a majority of the members of both houses present and voting resolve that the recommended legislation be referred back to the Commission for further consideration.

(5) Draft legislation that has been referred back to the Commission may again be presented to the National Assembly provided that it has been amended in one or more substantive respects in which event the provisions of this section regarding the acceptance, rejection or referral of the recommendations of the Commission shall apply mutatis mutandis.

(6) The boundaries, functions, powers and constitutional structures of a region may not be amended without the consent of the transitional legislature established in such region in terms of this Constitution.

(7) The transitional executive and legislature of a region shall be required to establish a single, rationalised regional administration as expeditiously as possible and the constitutional dispensation of any future

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province which may include any part of such region, shall not be determined without the consent of the transitional legislature of such region.

#### Commission on Provincial Government

##### Establishment of Commission on Provincial Government

75. A Commission on Provincial Government shall be appointed in terms of this Constitution within 30 days of its coming into operation for the purposes of the expeditious development of a system of provincial government on the basis of the system of transitional regional government provided for in this Constitution.

##### Objects of the Commission

76. (1)

The objects of the Commission are to submit recommendations to Parliament in the form of draft legislation regarding -

- (a)
- (b)
- (c)
- (d)

the finalisation of the number and the boundaries of the constituent provinces of the Republic of South Africa to the extent that these matters have not been finalised;

the constitutional dispensations of such provinces, including the constitutional structures within such provinces as well as the method of their election and their authority, functions and procedures;

measures, including transitional measures, that provide for the phasing in of new provincial constitutional dispensations and the phasing out of existing constitutional dispensations;

the rationalisation of statutory enactments and public sector resources directed at facilitating the introduction and maintenance of a system of provincial government;

(e) the final delimitation of powers and functions between central and provincial institutions of government with due regard to the

criteria that are set out in this Constitution;

(1) fiscal arrangements between the institutions of central government and those of provincial government;

(g) the powers and functions of local authorities; and

(h) any matter which the Commission considers to be in pari materia with or ancillary to the functions enumerated in the preceding

paragraphs.

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

[The considerations relevant to the task of the Commission set out here, should be the subject of an agreement at the MPNP, but should include the following:

(a) relevant agreements of the MPNP;

(b) the constitutional principles set out in Schedule 4.]

Constitution and impartiality of the Commission

77. (1) The Commission shall consist of a number of full-time members, but not fewer than ten, for such period, not exceeding five years, as the

State President may determine.

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



(3) A member shall not perform or commit himself to perform remunerative work outside his official duties.

(4) A member of the Commission may not be a member of or take part in the activities of a political party (whether it is registered or not) or any other movement, organisation, body or association with political objects, or stand for election as a member of, or serve on, an institution, council or body referred to in section 84(1)(f) of the Provincial Government Act, 1961 (Act No. 32 of 1961).

(5) The provisions of subsection (3) shall not be construed as to prohibit a member to cast a vote in respect of the election of a person to a body established under the provisions of any law, by way of any form of election.

(6) It shall be an offence to attempt to influence a member to act otherwise than in accordance with the provisions of subsections (2), (3) and (4).

#### Chairman and deputy chairman

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

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

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

#### Vacation of office and filling of vacancies

79. (1) A member of the Commission shall vacate his office if he resigns or if he becomes 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 77(4) appoint somebody to fill the vacancy.

#### Meetings of the Commission

80. (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 Chairman.

(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 chairman shall have a casting vote in addition to his deliberative vote.

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

#### Committees

24 R 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 chairman thereof, and if any such chairman is absent from a meeting of the committee the members present shall elect one from among their number to act as chairman.

(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 76 to such a committee; and

(ii) grant authority that a duty assigned to it by or in terms of section 76 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

82. (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 has been co-opted, but shall not be entitled to vote.

Remuneration and allowances of members of the Commission and other persons

83. Members of the Commission and persons referred in sections 78 and 82 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

84. 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.

#### LOCAL GOVERNMENT

[Here, in eg. sections 85 to 90, the principle of the autonomy of local government, structures of a transitional local government dispensation and the mechanisms for the establishment of a new system of local government, will be provided for.]

#### THE OMBUDSMAN

[Here, eg. in sections 91 to 93, provision will be made for the details of the appointment and conditions pertaining to the office of Ombudsman, its functions, powers and duties and for its independence and impartiality.]

## COMMISSION FOR ADMINISTRATION

[Here, eg. in sections 94 to 96, provision will be made for the details of the appointment and conditions pertaining to the Commission for Administration, its functions, powers and duties and for its independence and impartiality with a view to the maintenance and improvement of the standards of the Public Service.]

## RESERVE BANK

[Here, eg. in sections 97 to 99, provision will be made for the details of the appointment and conditions pertaining to the Board of Directors of the Reserve Bank, its functions, powers and duties and for its independence and impartiality with a view to the promotion of monetary stability and balanced economic growth.]

## AUDITOR GENERAL

[Here, eg. in sections 100 to 102, provision will be made for the details of the appointment and conditions pertaining to the office of Auditor-General for the Republic, its functions, powers and duties and for its independence and impartiality with a view to the promotion of efficient and honest administration. ]

## THE SOUTH AFRICAN DEFENCE FORCE

Supreme authority and command of the South African Defence Force

103. The South African Defence Force shall be under the supreme authority

of the State President and under the command of the Chief of the Defence Force.

## South African Defence Force Advisory Council

104. (1) A council known as the South African Defence Force Advisory Council is hereby instituted.

(2) (a) Each political party which is represented in the National Assembly, shall be entitled to designate one person as member of the Council, and such party may designate such a member as often as may be necessary.

(b) A member of the Council holds office during the pleasure of the political party which so designated him.

(c) A vacancy in the Council shall not affect the functions of the Council.

(3) The chairmanship of the Council shall rotate in terms of office of six months between the members in terms of rules determined by the Chief Justice.

(4) A decision of the Council shall be adopted by a unanimous decision of the chairman and all the members of the Council.

(5) The Council shall be competent to advise the State President at his request on any matter affecting the South African Defence Force.

(6) The State President shall not make any decision, except on and in accordance with the advice of the Council, whereby -

(a) any person is appointed or promoted as Chief of the Defence Force or as chief of land, air or sea forces of the Republic or in the rank of brigadier and higher; or

(b) a military unit or force outside the South African Defence Force is instituted or financed by State funds or is supported in any way.

#### Primary tasks of the Defence Force

105. The primary tasks of the Defence Force shall be-

(a) to protect the territorial integrity of the Republic;

(b) to protect the citizenry against any threat to life and property originating beyond the borders of the Republic; and

(c) to defend this Constitution.

#### Internal deployment of the Defence Force

106. The Defence Force shall not be operationally deployed or utilized within the borders of the Republic, except to protect the Republic's territorial integrity and the citizenry's safety against a threat from outside the Republic, unless the Chief Justice, on the request of the State President, has decided that this is prima facie reasonably necessary to maintain internal security and to protect this Constitution.

#### THE SOUTH AFRICAN POLICE

[Here, in eg. sections 107 to 110, matters concerning the command over the

SAP, multi-party access to policy-making, and the constitutional tasks and deployment of the police, will be regulated.]

## AUTONOMY OF THE INSTITUTIONS OF CIVIL SOCIETY

111 4 No organ of the Republic shall interfere with the lawful activities of the institutions of civil society or transform any such institution into an organ of the state without its consent and the agreement of other institutions of civil society active in the same field.

(2) Notwithstanding the provisions of this section, public funds may be allocated to institutions of civil society, provided that all such institutions active in the same field shall be entitled to equal allocations.

(3) For the purposes of this Constitution "institution of civil society" shall mean any institution which is not competent to act for or in the name of the Republic or any organ of the Republic, including sports, cultural and welfare organizations, voluntary associations, educational, professional, traditional and religious institutions, trade unions and employer organizations and the public communications media.

## GENERAL AND TRANSITIONAL PROVISIONS

[Here, eg. in sections 112 to 120, a variety of matters relating to the transition from the present constitutional and legal dispensation to that provided for by this Constitution with a view to, inter alia, continuity, terminology and the orderly coming into operation of its provisions, will be regulated.]



SCHEDULE 1

Limitations on the Legislative Competence of Parliament

[The following exposition is not presented as a final proposal. As an outline, it may however serve the purpose of an example of how the relative powers and functions of the national and regional governments may be regulated

constitutionally.]

SUBJECT

EXTENT OF COMPETENCE

Education

Cultural affairs

Health and welfare

Trade, industry, development  
and tourism

Forestry

The national policy framework  
regarding the administration,  
professional and educational standards  
and financing of education at all levels  
on the basis of equality in all parts of  
the Republic.

Equal protection of culture in all parts  
and among all cultures of the Republic.

The national policy on health and  
welfare, control of disease, academic  
hospitals, medical research, control and  
registration of medicine, the medical  
and welfare professions and medical  
aid schemes.

Foreign trade relations, foreign tourism,  
industrial policy, labour relations,  
unemployment, consumer protection  
and promotion of technological  
development.

International protection of the interests  
of South African forestry.

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Local Government The facilitation of the transition and reconstruction of local government and the provision of a general statutory framework for the co-ordinated development of local government.

Environmental affairs Matters requiring the co-ordinated protection of the environment in two or more regions.

Roads and transport National roads, land transportation, civil aviation and shipping.

Housing The determination of minimum standards and the allocation of funds on an equal basis among the regions for the purposes of the provision of housing.

Land Minimum standards for the utilization of land, the administration of state land and land surveying.

Law and Order National police services, co-ordination of crime prevention and detection, training of police, inspection and auditing of policing at all levels.

Taxation and Finance The national economy and budget, taxation and expenditure, the State Revenue Fund, the allocation of tax sources, the determination of maximum levels of taxation, and vertical and horizontal financial transfers.

## 1. Election of State President

(1) The State President shall be elected by the members of the National Assembly and the Senate present at a joint meeting of the two Houses called in accordance with the provisions of this section and presided over by the Chief Justice or a judge of appeal designated by him.

(2) The election of a State President shall be held, subject to the provisions of subsection (4), at a time and place fixed by the Chief Justice and made known by notice in the Gazette not less than 14 days before the election.

(3) The date so fixed shall -

(a) in the case of the first such election, be a date not more than seven days after the commencement of the first session of Parliament after the commencement of this Constitution;

(b) whenever a general election of the members of Parliament has been held after a dissolution of Parliament, be a date not more than seven days after the commencement of the first session of Parliament after the general selection;

(c) if the State President dies or for any reason vacates his office before the expiration of his period of office and his successor in office has then not yet been elected, be a date not more than one month after the office became vacant: Provided that if the State President resigns and intimates in his resignation lodged with the Chief Justice in terms of item 3(4) of this Schedule that he will vacate his office on a day not less than one month after the date of the lodging of his resignation, a date earlier than the day on which the office becomes vacant, shall be so fixed.

(4) If the State President is removed from office in terms of item 3 of this Schedule, the two Houses of Parliament shall at that same joint meeting proceed to elect a State President.

(5) No person may be elected or serve as State President unless such person is qualified to be nominated or elected and take a seat as a member of a House.

(6) Any person who holds a public office in respect of which such person receives any remuneration or allowance out of public funds, and who is elected as State President, shall vacate such office with effect from the date on which the election took place.

## 2. Method of election

(1) Nominations of candidates for election as State President shall be called for at the joint meeting at which the election is to take place, by the person presiding at the meeting.

(2) Every nomination shall be submitted in the form prescribed and shall be signed by two members of Parliament and also by the person nominated, unless such person has in writing or by telegram signified willingness to accept nomination.

(3) The names of the persons duly nominated as provided in subitem (2) shall be announced at the meeting at which the election is to take place by the person presiding at the meeting, and no debate shall be allowed at the election.

(4) If in respect of any election only one nomination has been received, the person presiding at the meeting shall declare the candidate in question to be duly elected.

(5) Where more than one candidate is nominated for election, a vote shall be taken by secret ballot, each member of Parliament present at the meeting in question having one vote, and any candidate in whose favour a majority of all the votes cast is recorded shall be declared duly elected by the person presiding at the meeting.

(6) (a) If no candidate obtains a majority of all the votes so cast, the candidate who received the smallest number of votes shall be eliminated and a further ballot taken in respect of the remaining candidates, this procedure being repeated as often as may be necessary until a candidate receives a majority of all the votes cast and is declared duly elected.

(b) Whenever two or more candidates being the lowest on the poll have received the same number of votes, the meeting shall by separate vote, to be repeated as often as may be necessary, determine which of those candidates shall for the purposes of paragraph (a) be eliminated.

(7) Whenever -

(a) only two candidates have been nominated; or

(b) after the elimination of one or more candidates in accordance with the provisions of this section, only two candidates remain,

and there is an equality of votes between those two candidates, a further joint meeting shall be called in accordance with the provisions of item 1, and the provisions of this item shall apply as if such further meeting were the first meeting called for the purposes of the election in question.

(8) (a) The Chief Justice shall make rules in regard to the procedure to be observed at a joint meeting constituted as provided in item 1, including rules prescribing the form in

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which any nomination shall be submitted and rules defining the duties of the presiding officer and of any person appointed to assist him, and prescribing the manner in which a ballot at any such meeting shall be conducted.

(b) Such rules shall be made known in such manner as the Chief Justice may consider necessary.

Tenure of office of the State President

The State President shall hold office, subject to the other provisions of this item -

(a) during the continuance of the Parliament that elected the State President;

(b) after the dissolution of that Parliament, whether by effluxion of time or otherwise, until a State President has, at or after the commencement of the first session of the newly constituted Parliament, been elected as provided in items 1 and 2 and has assumed office,

but shall be eligible for re-election.

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The office of State President shall be vacated -

(a) if in terms of item 1(5) the occupant of the office becomes disqualified from serving as State President; or

(b) if the occupant of the office is removed from office under subitem (3).

(a) The State President shall cease to hold office on a resolution adopted by a majority of the members present

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at a meeting constituted as prescribed in item 1 and convened, as so prescribed, by the Chief Justice at the request of each of the two Houses, and declaring him to be removed from office on the ground of misconduct or inability to perform efficiently the duties of the office.

In connection with a resolution contemplated in paragraph (a) no debate shall be allowed in the joint meeting.

No request in terms of paragraph (a) shall be made by any House, except after consideration of a report of a committee of Parliament appointed in accordance with rules and orders contemplated in section 42 of the Constitution.

A House shall not adopt a resolution that such a committee be appointed, unless there has previously been submitted to the Speaker of Parliament a petition signed by not less than half the members of each House and requesting that such a committee be appointed.

In connection with a resolution contemplated in paragraph (d) no debate shall be allowed in the House in question.

(4) The State President may resign by lodging his resignation in writing with the Chief Justice.

SCHEDULE 3  
SYSTEM OF PROPORTIONAL ELECTION

(1) Only registered political parties may nominate candidates for election as members of the National Assembly and the transitional regional legislatures.

(2) For the purpose of electing the members of the National Assembly contemplated in section 38, such registered political parties shall take part in the election by submitting to the chief electoral officer a list of candidates, not exceeding four hundred, in such order as that party may determine.

(3) For the purpose of filing the four hundred seats in the National Assembly, the total number of votes cast in a general election shall be divided by four hundred and the result shall be the quota of votes per seat.

(4) The total number of votes cast in favour of a registered political party which has participated in the election by submitting a list of candidates as contemplated in paragraph (2), shall be divided by the quota of voters per seat and the result shall, subject to paragraph (5), constitute the number of seats to which that party will be entitled and which shall be allocated to its candidates in the order contemplated in paragraph (2) subject to such ancillary provisions as may have been provided for in the Electoral Act, 1993.

(5) Where the formula set out in paragraph (4) yields a surplus fraction not absorbed by the number of seats allocated to the political party concerned, such surplus shall compete with other similar surpluses accruing to any other political party or parties participating in the election, and any undistributed seat or seats (in terms of the formula set out in paragraph (4)) shall be awarded to the party or parties concerned in sequence of the highest surplus.



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The provisions of paragraphs (1) to (5) shall apply mutatis mutandis to the election of the members of the transitional regional legislatures contemplated in sub-section (2) of section 69: Provided that -

(a) the number of candidates on a registered political party's list of candidates for the transitional regional legislature may not exceed the number of seats in such legislature; and

(b) the quota is to be determined by dividing the appropriate number of votes cast in a particular region by the appropriate number of seats in the relevant regional legislature.

The failure of a registered political party to take part in the election of members of the National Assembly to be elected on the basis of national party lists shall not preclude it from taking part in the election of members of a transitional regional legislature on the basis of regional party lists.

Each voter shall have one vote to be exercised in respect of a registered political party -

(a) which has submitted a national list of candidates for the National Assembly; and

(b) which has submitted a regional list of candidates for the transitional regional legislature in respect of the region where such a voter is resident; or

(c) which has submitted only a regional list of candidates for the transitional regional legislature in respect of the region where such a voter is resident.

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## PRINCIPLES GOVERNING CONSTITUTION MAKING IN SOUTH AFRICA

This Constitution shall be amended or substituted only within the framework of the following constitutional principles:

## Constitutional State

(a) South Africa shall be a democratic and non-discriminatory state.

(b) The Constitution shall be the supreme law of the land, binding all organs of government, and shall be entrenched by means of special amendment procedures.

(c) There shall be separation of powers between the legislature, the executive and the judiciary with appropriate checks and balances.

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

(e) The judiciary shall be independent and impartial and shall have the jurisdiction to enforce the Constitution, as well as to adjudicate upon the adherence by all organs of government to the provisions of the Constitution and of all other laws consistent with the Constitution.

(f) There shall be a constitutionally guaranteed legal system that ensures the equality of all before the law and an independent and equitable legal process.

(g) All shall enjoy universally accepted fundamental rights which shall be guaranteed by an entrenched and justiciable Charter of Fundamental Rights.

(h) The general principles of the constitution including the terms of the Charter of Fundamental Rights shall apply to each level of government and all organs of government shall exercise their authority in accordance with the provisions of valid laws.

(i) The Constitution shall incorporate special provisions to safeguard the security forces and functionaries and institutions such as the Auditor-General, the Ombudsman and the Commission for Administration against political manipulation.

#### Constitutional continuity

(a) South Africa shall continue to be a sovereign state in which all shall enjoy a common South African citizenship.

(b) The transitional Constitution shall not be amended or repealed in any other manner or by any other procedure than that prescribed by its own provisions.

#### Participatory democracy

(a) There shall be representative and accountable government at all levels, embracing multi-party democracy, regular elections at all levels, universal adult suffrage, a common voters roll, unimpeded eligibility of law-abiding citizens of sound mind to elected government office and, in general, proportional representation.

(b) The electoral system, procedures for the appointment of executive bodies at all levels of government, and the representation of parties in the executive relative to their representation in the legislature, shall be designed to provide for the effective participation of the major political parties in executive bodies.

(c) The national executive shall be required to consult with the regional government of every region that will be affected by an executive act

before it takes a decision on such act, and in the event of the national executive deciding not to act in accordance with the views of such regional government, the Constitution shall require the national executive to table the reasons for its decision in Parliament.

#### Subsidiarity

(a) Government shall be structured at national, regional and local levels.  
 (b) At each level there shall be democratic representation.

(c) Each level of government shall have appropriate and adequate legislative, executive and fiscal powers and functions that will enable each level to function effectively; such powers and functions to be entrenched in the constitution.

(d) The criterion for the allocation of powers and functions to each level of government in terms of the Constitution, shall be that the maximum measure of powers and functions shall be allocated to the relevant level of government in accordance with its capacity to exercise such power or function effectively to the benefit of and with transparency and accountability to the electorate.

(e) In addition to the powers and functions entrenched in the constitution, each level of government may delegate powers and functions to lower

levels of government.

(f) Regions shall be vested with the power of regional economic development.

(g) Regions shall not be competent to raise loans without the consent of the Central Borrowing Authority or other agreed statutory institutions.

(h) Powers and functions may either be exclusive or concurrent.

(i) The national government shall have overriding power only in such matters that are not allocated exclusively in the Constitution to the regional or local levels of government.

(j) Special procedures involving the consent of regional representatives will be required for changes to the powers or boundaries of their respective regions.

#### Autonomy of civil society

(a) The Constitution shall entrench the autonomy of all structures of civil society as well as the principle that the state may not trespass in the sphere of civil society, while at the same time the state will be obliged in specific instances to provide support for the structures of civil society on a basis of equality.

(b) There shall be freedom of association, involving inter alia the right to form, join and maintain organs of civil society, including sports, cultural and welfare organizations, educational, traditional, religious and professional institutions, trade unions and employer organizations and residentsâ\200\231, students' and social societies.

#### Unity in diversity

(a) = The Constitution shall maintain a foundation for the emergence of national unity.

(b) The Constitution shall not impose linguistic, cultural, religious or regional uniformity. The diversity of languages, cultures and religions shall be acknowledged and where a legitimate cultural or developmental need exists therefor, special provision shall be made for the appropriate representation of traditional institutions at regional and local level.

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(c) National unity shall be promoted by the manner in which the national executive and legislature are structured in terms of the Constitution and the diversity within the nation shall be accommodated by inter alia the establishment of autonomous regions, the recognition of various official languages and languages for official use, the entrenchment of religious freedom and respect for national and segmental symbols.

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SCHEDULE 5

REGIONS DEMARCATED FOR THE PURPOSES OF THE ELECTION OF  
PARLIAMENT AND OF TRANSITIONAL REGIONAL LEGISLATURES

The content of this Schedule will be the outcome of the work of the  
Commission on Regional Government established by the MPNP.

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