

TRANSITIONAL PROVISIONS

Transitional Provisions for SPRâ\200\231s

(1) All administrative structures of the TBVC States, the self-governing territories, and the provinces existing on the date of coming into force of Chapter 9 of this Constitution shall continue to exist. Unless and until they are lawfully changed or dismantled, or lawful instructions to the contrary are given to them and subject always to the provisions of Chapter 3 of this Constitution, they will continue to perform the functions they were previously performing.

Unless and until a determination is made in accordance with Section 6 of Chapter 9 of this Constitution the functions referred to in some subsection (1) hereof, which are being carried out by such administrative structure located within the boundaries of any SPR, and which are within the functional areas defined in Section 6 (2) of Chapter 9, shall, subject to the provisions of subsection (1) hereof, continue to be carried out by such administrative structures on behalf of and subject to the control and direction of the

government of such SPR.

The functions referred to in subsection (1) and (2) hereof, shall continue to be carried out in terms of the laws previously governing the execution of such functions by the TBVC states, the self-governing territories or the provinces the case may be and such laws shall be deemed to the laws of the SPRâ\200\231s, and subject always to the provisions of Chapter 3 of this constitution shall have force within the areas in which they previously applied until they are lawfully amended or repealed.

General Transitional Provisions

(1) (a) All administrative structures of the South African Government existing within the boundaries of any SPR at the date of coming into force of Chapter 9 shall continue to exist, and unless and until they are lawfully dismantled or lawful instructions to the contrary are given, and subject always to the provisions of Chapter 3 of this Constitution, shall continue to function on behalf of and subject to the control of the South African Government.

(b) The functions referred to in subsection (a) hereof shall be carried out in terms of the corresponding laws of the Republic of South Africa, or if there are no such laws, in accordance with the laws previously governing such functions at the places at which they were previously being carried out.

Subject always to the provisions of Chapter 3 of this Constitution, the laws referred to in subsection (b) hereof shall be deemed to be laws of the Republic of South Africa in force in such places, unless and until they are lawfully amended or repealed.

[omissions are indicated by bold lettering and square brackets]; insertions are indicated by underlining

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

(3) Parliament and the legislatures of the SPRs shall, each within their respective areas of competence, undertake the consolidation and unification of the laws referred to in subsection (1) as expeditiously as possible.

SPR finance and fiscal affairs

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

230(2) The Financial and Fiscal Commission established in terms of Chapter 11 shall make recommendations to the National Assembly regarding equitable fiscal and financial allocations to the SPRs from revenue collected nationally, taking into account the national interest, the provisions of subsection (1), economic disparities between the SPRs, as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each SPR.

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

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

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

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

[omissions are indicated by bold lettering and square brackets]; insertions are indicated by underlining

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

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

Effect of laws of SPR legislature

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

(2 The provisions of a law made by an SPR legislature shall be construed as being repugnant to an Act of Parliament only if such provisions are expressly or by necessary implication inconsistent with an Act of Parliament.

Recommendations to Parliament

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

SPR Constitutions

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

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

(3) An SPR constitution adopted by an SPR legislature shall not be inconsistent with the Constitutional Principles enumerated in Schedule 7 or the provisions of the new constitutional text adopted in terms of Chapter 5.

(4) An SPR constitution shall be developed in consultation with the Commission on SPR Government established in terms of section 127.

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

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

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

Development of constitutional provisions regarding SPR Government

125. (1) The development of a system of SPR government shall receive the priority attention of the Constitutional Assembly and in this regard it shall take into consideration

the recommendations of the Commission on SPR Government referred to in section 127 and the views expressed thereon by the executives of the various SPRs.

(20) The Commission's recommendations to the Constitutional Assembly regarding any matter that falls within the ambit of its objects in terms of section 128 shall include draft provisions for the national Constitution.

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

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

5 Draft provisions referred back to the Commission may again be presented to the Constitutional Assembly, provided that if amended in one or more substantive

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respects, the provisions of this section regarding the acceptance, rejection or referral of the recommendations of the Commission shall apply mutatis mutandis.

Election of new SPR Governments

126. An SPR government may at any time after the coming into force of an SPR constitution contemplated in section 124 or of the constitutional dispensation contemplated in section 125, petition the Constitutional Assembly to determine by resolution that an election for the establishment of a new SPR legislature and executive in that SPR, or in an SPR incorporating that SPR in whole or in part, shall be held.

Commission on SPR Government

Establishment of Commission on SPR Government

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

Objects and functions of the Commission

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

(a) advise the National Government and SPR governments on the establishment and consolidation of administrative institutions and structures in the SPRs and on any matter arising out of the provisions of section 118; and

(b) make recommendations to the National Government and SPR governments on the rationalisation of statutory enactments and public sector resources directed at facilitating the introduction and maintenance of a system of SPR government.

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

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the finalisation of the number and the boundaries of the SPR's of the Republic of South Africa;

the constitutional dispensations of such SPRs, including the constitutional structures within such SPRs as well as the method of their election and

their authority, functions and procedures;

measures, including transitional measures, that provide for the phasing in

of new SPR constitutional dispensations;

the final delimitation of powers and functions between national and SPR institutions of government with due regard to the criteria that are set out in subsection (3);

fiscal arrangements between the institutions of national government and those of SPR government;

the powers and functions of local governments; and

any matter which the Commission considers to be relevant or ancillary to its functions.

In carrying out its functions the Commission shall, *infr alia*, take into consideration -

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The provisions of this Constitution;

The Constitutional Principles enumerated in Schedule 7;
Historical boundaries, including those set out in Schedule 1, former provincial boundaries, magisterial and district boundaries and

infrastructures;

Administrative considerations, including the availability or non-availability of infrastructures and nodal points for services;

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The need to rationalise existing structures;

Cost-effectiveness of government, administration and the delivery of services;

The need to minimise inconvenience;

Demographic considerations;

Economic viability;

1] Developmental potential;

(k) Cultural and language realities.

Constitution and impartiality of the Commission

129. (1) The Commission shall be appointed by the President for the period during which this Constitution is in force, and shall consist of not less than 10, nor more than 15

full-time members, as the President may determine.

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

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

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

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

[omissions are indicated by bold lettering and square brackets]; insertions are indicated by underlining

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

Chairperson and deputy chairperson

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

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

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

Vacation of office and filling of vacancies

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

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

() If a member of the Commission ceases to hold office, the President may, subject to section 129 appoint a person to fill the vacancy.

Meetings of the Commission

132. (1) The first meeting of the Commission shall be held within 30 days of its appointment at a time and place to be determined by the Chairperson, and subsequent

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meetings will be held at a time and place determined by the Commission or, if authorised thereto by the Commission, by the Chairperson.

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

(3) A decision of a majority of the members of the Commission shall

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

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

Committees

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

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

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

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

(i) delegate any power granted to it by or under section 128 to

such a committee; and

grant authority that a duty assigned to it by or in terms of section 128 may be performed by such a committee.

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.

[omissions are indicated by bold lettering and square brackets]; insertions are indicated by underlining

Co-option of persons to serve on or advise committees

134. (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 of which he or she has been co-opted, but shall not be entitled to vote.

Remuneration and allowances of members of the Commission and other persons

135. Members of the Commission and persons referred in section 134 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.

Appointment of Staff

136. The Commission may appoint such staff as it may deem necessary for the efficient performance of its functions and administration, and may, in consultation with the Commission for Administration, determine the remuneration and conditions of service of such staff.

Regulations

137. The President may make regulations regarding -

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

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CHAPTER 10 Local Government

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

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

CHAPTER 11 Finance

Provisions relating to existing debts and liabilities of the state;

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

the Auditor-General;
the Reserve Bank;

the Financial and Fiscal Commission representative of the SPRs.

[omissions are indicated by bold lettering and square brackets]; insertions are indicated by underlining

CHAPTER 12

General and transitional provisions

Provisions relating to:

- " The legal system (continuation of statutory and common law subject to the Constitution, unification of provincial ordinances, TBVC laws and laws of the self-governing territories with national and SPR law, recognition of indigenous law);
- " the status of international law;
- . the independence and impartiality of the Commission for Administration and the security forces;
- & civil society;
- 5 method of publication of notices, etc.;
- = affirmation in lieu of oath;
- Â» construction of certain references;
- Â® definitions and terminology;
- . short title, commencement and duration of the Constitution;
- . the prescription of penalties by Parliament.
- # continuation of the electoral system used for the first election

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SCHEDULE 1

The National Territory and Boundaries and Designation of SPRs

[omissions are indicated by bold lettering and square brackets]; insertions are indicated by underlining

SCHEDULE 2

Design of the National Flag

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- SCHEDULE 3

The National Coat of Arms

GRONDWETLIKE BEGINSELS

Die volgende grondwetlike beginsels is eers deur die Onderhandelingsraad en daarna deur die Onderhandelingsforum aanvaar, teen die agtergrond van die feit dat die finale "pakket" van ooreenkomste ook aanvaar moet word.

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

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

At each level of government there shall be democratic representation. This principle shall not derogate from the provisions of Principle 2.12.

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

The powers and functions of national and SPR governments shall be defined in the Constitution. Amendments to the Constitution which alter the powers, boundaries, functions or institutions of SPRs shall in addition to any other procedures specified in the Constitution for constitutional amendments, also require the approval of a specified majority of the legislatures of the SPRs, alternatively, if there is such a chamber, a specified majority of a chamber of parliament composed of regional representatives, and if the amendment concerns specific SPRs only, the approval of the legislatures of such SPRs will also be needed.

It was agreed that the Technical Committee explores the suggested amendments and reports back to the Negotiating Council.]

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

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

National and SPR governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in paragraph 2.19 shall make provision for appropriate fiscal powers and functions for different categories of local government.

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

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

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

General:

[2.24.1 The level at which there is most control over the quality and delivery of services, should be the level responsible and accountable for the execution of the programme or the delivery of the services.

This principle has not yet been accepted.]

The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the SPRs.

Where it is necessary for the maintenance of essential national standards, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one SPR which is prejudicial to the interests of another SPR or the country as whole, the constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the constitution.

The essential principles of the constitution including the fundamental rights contained therein shall apply to all organs of the state at all levels of government.

National Government

2.24.5 Where there is necessity for South Africa to speak with one voice, or to act as a single entity - in particular in relation to other states - powers should be allocated to the national government.

Where uniformity across the nation is required for a particular function, then legislative power over that function should be allocated predominantly, if not wholly, to the national government.

Where minimum standards across the nation are required for the delivery of public services, the power to set such standards should be allocated to the national government.

The determination of national economic policies, and the power to promote inter-SPR commerce and protect the common market in respect of the mobility of goods, services, capital and labour, should be allocated to the national government.

SPR Government

[2.24.9 SPR governments shall have such powers, either exclusively or concurrently with the national government, as may be necessary, inter alia, for the purpose of regional planning and development, and the delivery of services and aspects of health, welfare and education, within

their boundaries.

It was agreed that the Technical Committee reformulate this principle.]

Concurrent Powers

2.24.10 Where mutual co-operation is essential or desirable or where it is required to guarantee equality of opportunity or access to a government service, the powers should be allocated concurrently to the national government and the SPR governments.

In the event of a dispute concerning the legislative powers allocated by the Constitution concurrently to the national and SPR governments which cannot be resolved by a court on a construction of the Constitution, precedence shall be given to the legislative powers of the national government.

Residual Powers

2.24.12 The Constitution shall specify how powers which are not specifically allocated in the constitution to the national government or to an SPR government, shall be dealt with as necessary ancillary powers pertaining to the powers and functions allocated either to the national or SPR governments.

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

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

[It was suggested that the concept of the Attorney General be included within the principle. It was therefore referred back to the Technical Committee for this purpose.] .

Every member of the security forces (police, military and intelligence) and the security forces as a whole shall be required to perform his or her duties and functions and exercise his or her powers in the national interest and shall be prohibited from furthering or prejudicing party political interest.â\200\235

The following principle was proposed to the Negotiating Council but it was not agreed upon. It was agreed that this will be pursued in bi-lateral meetings.

"Nothing in the above Constitutional Principles shall prevent an SPR from democratically approving its own Constitution, which shall not be in conflict with the National Constitution. "

After the following principle was put forward to the meeting for consideration "The right of self-determination of peoples, which allows them to determine their own political status through legislative and executive powers in the form of territorial independence and autonomy, is acknowledged", it was agreed that this whole issue be referred back to the Technical Committee.

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