

CHAPTER SIX

THE SENATE

Article 61. Composition of the Senate

The Senate shall consist of 105 senators:-

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(a) al of whom shall be nominated by the President

=) (b) One hundred (100) of whom shall be elected by secret
ballot.

Article 62. Powers of the Senate

The Senate shall have the power to

(a)

(b)

(c)

Consider and approve or refer back to the National
Assembly for its further consideration in accordance
with the provisions of Articles Xd, 77 and 9 hereof,

all Bills passed by the National Assembly.

Refer any Bill passed by the National Assembly to the
Constitutional Court in terms of Article & if it
considers that such bill is or may be contrary to the
provisions of this constitution.

Consider reports from Regional Administrators made in
terms of Article , and generally to enquire into
and make recommendations to the President in regard to

the functioning of Regional Councils and the

desirability of increasing, curtailing or amending
their powers.

(d) Confirm or reject, through the appropriate committees
appointed by it in terms of this Constitution or any
other law, and in accordance with the provisions of
this Constitution, the nomination by the President of

any person or persons to be appointed to the following
offices

(i) Judge of the Supreme Court

(ii) The Ombud

(iii) The Director of Public Prosecutors

(iv) The Chief of the Defence Force

(v) The Commissioner of Police

(vi) The Public Service Commission

(e) Enquire into, consider and report on any other matters
referred to it for such purpose by the President.

(f) Perform any other functions assigned to it by the
President, the National Assembly or by an Act of
Parliament.

Article 63. Election of Members of the Senate

(1) Every South African citizen who has reached the age of
forty (40) years and who is not disqualified under

Article 64 of this Constitution, shall be eligible for

election to the Senate.

(2) Elections for the Senate shall be conducted in accordance with Schedule() hereof, and in accordance

with procedures to be determined by Act of Parliament.

(3) Elections for the Senate shall take place at the same time as elections for the National Assembly.

(4) Senators shall be elected for a period of five (5) years.

Article 64. Disqualification

Any person who is disqualified from being a member of the National Assembly in terms of Article 46 of this constitution, shall be disqualified from being a member of the Senate.

Article 65. Vacation of Seats

(1) Members of the Senate shall vacate their seats:

(a) if they become disqualified under Article 64; or

(b) If they cease to be members of the political party which nominated them to sit in the Senate; or

(c) If they resign their seats in writing addressed to the leader of the Senate; or

(d) If they cease to be ordinarily resident in

4

the region from which they have been elected.

If they absent themselves voluntarily from the Senate for thirty (30) consecutive sitting days, without having obtained the leave of the Senate on grounds specified in

its rules and standing orders.

If a member of the Senate dies, or if the seat of a member of the Senate is vacated in terms of

Sub-Article (1) hereof, the political party which nominated such member to sit in the Senate shall be entitled to fill the vacancy by nominating another person, qualified to be appointed as a senator, who is ordinarily resident in the region from which the

former member was elected.

Article 66. Duration

The Senate shall continue for a maximum period of five (5) years from the date of its election, but may prior thereto be dissolved by the President by Proclamation, in the circumstances provided for in Article 67 of this Constitution.

Article 67. Dissolution of the Senate

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If the President dissolves the National Assembly in terms of Article 50 of this Constitution, he or she shall simultaneously, by Proclamation, dissolve the Senate.

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Upon the expiry of the term of the Senate, or if it is dissolved in terms of Sub-Article (1) hereof, an election for a new Senate shall be held and such election shall take place on the same day as the

election for a new National Assembly.

Notwithstanding any dissolution of the Senate under this Constitution, whether by effluxion of time or

otherwise -

(a) every person who at the date of the dissolution is a member of the Senate shall remain a member

thereof;

(b) The Senate shall remain competent to perform its

functions; and

(c) The President shall have the power to reconvene the National Assembly and the Senate for the

dispatch of business,

during the period following such dissolution up to and including the day immediately preceding the polling day for the election held in pursuance of such dissolution, in the same manner in all respects as if

the dissolution had not occurred.

The President shall by Proclamation convene the first

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sitting of a newly elected Senate to take place on the same day as the first sitting of the newly elected National Assembly.

Article 68. Quorum

The presence of at least twenty-five (25) senators, other than the Leader of the Senate or the person presiding at a meeting of Senate, shall be necessary to constitute a valid meeting for the exercise by the Senate of its powers and for the performance of its functions.

Article 69. Leader and Deputy Leader of the Senate

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At the first meeting of a newly elected Senate, and before proceeding to the dispatch of any other business, the Senate, with the Secretary of the Senate acting as Chairperson, shall elect one of its members to be the Leader of the Senate. The Senate, with the Leader presiding, shall then elect a Deputy Leader from amongst its members and whenever the Leader is not available, the Deputy Leader shall act as Leader of the Senate and for that purpose, shall have all the powers vested in the Leader of the Senate by this

Constitution.

The Leader of the Senate, or in his or her absence the Deputy Leader shall preside over meetings of the

Senate.

(3) The Leader or Deputy Leader of the Senate shall vacate his or her office if he or she ceases to be a member of the Senate, may be removed from office by a resolution of the Senate, and may resign by resignation tendered in writing under his or her hand

to the President.

(4) When the office of Leader of the Senate becomes vacant, the Senate shall in like manner elect one of

its members to fill the vacancy.

(5) When neither the Leader or Deputy Leader of the Senate is available to preside at any meeting of the Senate, the Senate, with the Secretary acting as Chairperson, shall elect one of its members to act as Leader for as

long as may be necessary.

Article 70. Casting Vote

The Leader, or Deputy or Acting Leader presiding at a meeting of the Senate, shall have and exercise a casting vote in the case

of equality of votes.

Article 71. Oath/Affirmation

Every member of the Senate shall make and subscribe to an oath or solemn affirmation before the Chief Justice, or a judge

designated by the Chief Justice for this purpose, in the terms

set out in Schedule ().

Article 72. Privileges and Duties

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Members of the Senate shall bear no legal responsibility for the statements expressed by them and for the votes cast by them in the course of

conducting the official business of the Senate.

Rules providing for the privileges and immunities of members of the National Assembly shall be of equal application to members of the Senate, and all members of the Senate shall be entitled to the protection of

such privileges and immunities.

All members of the Senate shall regard themselves as servants of the people of South Africa and seek to

discharge their duties with dignity and integrity.

Any statute, or resolution of the National Assembly, requiring members of the National Assembly to make disclosure in regard to their financial or business affairs, shall be of equal application to members of

the Senate.

Article 73. Public Access to Sitzings

All sessions of the Senate shall be held in public and members of the public and media shall have access to such meetings:

provided that reasonable safeguards may be instituted to search or refuse entry to persons in order to protect members of the Senate.

Article 74. Committees

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(2)

The Senate may make rules of procedure for the conduct of its business and proceedings and may also make such rules for the establishing, functioning and proceedings of committees, and formulate such standing orders, including restrictions on access to such committees as may appear to be expedient or necessary,

having regard to the business of such committees.

For the purposes of exercising its power and performing its functions any committee of the Senate established in terms of Sub-Article (1) hereof shall have the power to subpoena persons to appear before it to give evidence on oath and to produce any document required by it, and to hear and receive

representations from interested parties.

Article 75. Sessions

(1)

The Senate shall sit:

(a) at in Cape Town, unless the Leader of the Senate directs otherwise on the grounds of public interest, security or convenience;

(b) for at least one session during each year in order to discharge their functions under the

Constitution, and such sessions shall commence and terminate on such dates as the Senate from

time to time determines;

(c) for such special sessions as may be directed by

Proclamation by the President from time to time;

(d) for such special sessions as are required in

terms of the provisions of this constitution.

(2) During such sessions the Senate shall sit on such days and during such times of the day or night as the

Senate by its rules and standing orders may provide.

(3) The date of commencement of any session of the Senate may be altered by Proclamation by the President, if the President is requested to do so by the Leader of the Senate on grounds of public interest or

convenience.

Article 76. Requisite Majorities

Save as provided in this Constitution, a simple majority of votes cast in the Senate shall be sufficient for the passage of any Bill, decision or resolution of the Senate.

Article 77. Review of Legislation

(1) All Bills, which have been passed by the National

Assembly, shall as soon as possible thereafter be

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referred by the Speaker of the National Assembly to the Leader of the Senate for consideration by the

Senate.

The Senate shall consider every Bill referred to it under Sub-Article (1) and shall confirm the Bill, or refer such Bill back to the National Assembly either with amendments proposed by it, or with a statement adopted by a two-thirds majority of its members, indicating that it rejects the principle of such Bill and the reasons therefor, or shall refer such Bill to the Constitutional Court under the provisions of

Article 80 of this Constitution.

If a Bill is referred back to the National Assembly by the Senate on a simple majority, with a recommendation that such Bill be amended, the National Assembly shall reconsider the Bill. If upon such reconsideration the Bill is reaffirmed by the National Assembly, either in the form in which it was originally passed, or with any amendments proposed by the Senate the Bill shall not again be referred to the Senate, but shall be referred by the Speaker to the President for his or her assent in terms of Article 82 of this

Constitution.

If a Bill is referred back to the National Assembly by the Senate by a majority of two-thirds of the Senate,

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with a statement that the Senate objects to the principle of the Bill, or with a recommendation that

such Bill be amended in particular respects, the National Assembly shall reconsider the Bill, and if a two-thirds majority of the National Assembly re-affirms the Bill either in the form in which it was originally passed, or with any amendments proposed by the Senate, the Bill shall not again be referred to the Senate, but shall be referred by the Speaker to the President for his or her assent in terms of

Article 82 of this constitution.

If the National Assembly fails to re-affirm a Bill in terms of under Sub-Article (4) hereof by a two-thirds majority of its members, the Bill shall be held over until the first session of the National Assembly in the following year, when the National Assembly (be it the same Assembly or a new Assembly) may then reconsider the Bill, and if it again passes the Bill, either in the form in which it was originally passed by the National Assembly, or with any amendments proposed by the Senate, the Bill shall not again be referred to the Senate, but shall be submitted directly to the President for his or her assent in

terms of Article 82 of this Constitution.

A Bill shall be deemed to be the same Bill as a former Bill sent to the Senate if it is identical with the

former Bill or contains only such alterations as are certified by the Speaker of the National Assembly to be necessary owing to the time which has elapsed since

the date of the former Bill.

Article 78. Taxation and Appropriation of Revenue

Notwithstanding the provisions of Article 77 of this Constitution, if the National Assembly passes a Bill imposing taxation, or dealing with the appropriation of revenue or monies for the services of the government, and the Senate rejects or proposes amendments to such Bill, the Bill shall forthwith be referred back to the National Assembly for its consideration, and if it so resolves, the Bill with or without any of the proposed amendments shall then be presented directly to the President for

his or her assent in terms of Article 82 of this Constitution.

Article 79. Time Limits

(1) Any Bill other than a Bill mentioned in Article 78 of this Constitution, shall be confirmed by the Senate or referred back to the National Assembly within ninety (90) days of the date on which such Bill was referred to the Senate, failing which, the Senate will be deemed to have confirmed such Bill, and the Speaker of the National Assembly shall thereupon refer the Bill to the President for assent in terms of Article 82 of

this Constitution.

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A Bill mentioned in Article 78 of this Constitution shall be confirmed by the Senate or referred back to the National Assembly within thirty (30) days of the date on which such Bill was referred to the Senate, failing which, the Senate will be deemed to have confirmed such Bill, and the Speaker of the National Assembly shall thereupon refer the Bill to the President for assent in terms of Article 82 of this

Constitution.

Article 80. Referral of a Bill to the Constitutional court

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(2)

If the Senate passes a Resolution to the effect that it is of the opinion that a Bill, or any provision thereof, is or may be unconstitutional, such opinion shall be recorded in a resolution, a copy of which shall forthwith be referred by the Leader of the Senate

to the Speaker of the National Assembly.

Notwithstanding the passing of a Resolution in terms of Sub-Article (1) hereof, the Senate shall consider the Bill in terms of Article 77 of the Constitution, and thereafter refer the Bill back to the National Assembly to reconsider the Bill in the light of the Resolution taken in terms of Sub-Article (1) hereof, and any recommendation or statement that may have been made in terms of Article 77(3) or 77(4) of this

Constitution.

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If upon reconsidering the Bill the National Assembly reaffirms the Bill in accordance, insofar as they may be applicable, with the provisions of Articles 77(3) or 77(4) of this Constitution, and by Resolution expresses the opinion that the Bill, or the relevant provision thereof, is constitutional, then notwithstanding the provisions of Article 77 of this Constitution the Bill shall be sent back to the

Senate.

If the objection of the Senate is directed only to a particular provision of a Bill, any Resolution taken by the National Assembly in terms of Sub-Article (3) hereof shall indicate whether it wishes the Bill to be withdrawn or enacted without the relevant provision, should the Constitutional Court subsequently rule that

the relevant provision is unconstitutional.

If, notwithstanding the Resolution of the National Assembly and any amendments that might have been made to the Bill, the Senate passes a Resolution recording that it is still of the opinion that the Bill, or the relevant provision thereof, is unconstitutional, the Leader of the Senate shall refer the Bill to the Registrar of the Constitutional Court, with a request that the Constitutional Court consider and give a decision upon the dispute between the Senate and the

National Assembly concerning the validity of the Bill

or the relevant provision thereof.

(6) If the Constitutional Court decides that the Bill, or the relevant provision thereof, is constitutional, the Bill shall thereupon be referred by the Leader of the Senate to the President to be dealt with by the

President in terms of Article 82 of this Constitution.

(7) If the Constitutional Court decides that the Bill is unconstitutional, the Bill shall thereupon lapse.

(8) If the only issue concerns a particular provision of the Bill, and the Resolution of the National Assembly taken in terms of Sub-Article(4) hereof was to the effect that in such event the Bill should be enacted without the relevant provision, the Leader of the Senate shall refer the Bill, without the relevant provision, to the President to be dealt with in terms of Article 82 of this Constitution. If the Resolution of the National Assembly was not to that effect, the

Bill shall lapse.

Article 81. Confirmation by the Senate

Save as set out in Articles 77, 78, 79 and 80 of this Constitution the Senate shall be required to confirm all Bills initiated in the National Assembly, before such Bills are referred to the President for his or her assent in terms of

Article 82 of this Constitution.

CHAPTER SEVEN

PRESIDENTIAL ASSENT

Article 82. Presidential Assent to Bills

(1)

Bills which have been passed by the National Assembly, and if required by this Constitution have been confirmed by the Senate, shall as soon as possible thereafter and save as set out in the Constitution be submitted by the Leader of the Senate to the President

for his or her assent.

If the President assents to a Bill, such assent shall be signified by the signing by the President of the English version of the Bill, which for this purpose

shall be the language of record, and by the

publication of the signed Bill in the Gazette.

Upon publication of the signed Bill in the Gazette, the Bill shall become an Act of Parliament, and subject to the provisions of this Constitution, shall have the force of law throughout the Republic of South

Africa.

Article 83. Withholding of Presidential Assent to Bills

(1)

The President shall within thirty (30) days of any

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Bill having been placed before him or her, sign the Bill, or refer it back to the National Assembly with a recommendation that it be amended in particular

respects, or deal with it in terms of Article 84.

If a Bill is referred back to the National Assembly by the President in terms of Sub-Article (1) hereof, and the National Assembly affirms the Bill without such proposed amendment, the Bill shall again be referred to the President by the Speaker, and the President shall then assent to the Bill in the manner prescribed

by Article 82(2) of this Constitution.

If the Bill is referred back to the National Assembly in terms of Sub-Article (1) hereof, and it affirms the Bill with some or all of such proposed amendments, the Bill shall then be referred to the Senate to be dealt

with in terms of Article 77 of this Constitution.

Article 84. Referral of a Bill to the Constitutional Court

(1)

The President may within thirty (30) days of any Bill having been placed before him or her for assent, other than a Bill referred to in Article 80 of this Constitution cause such Bill to be referred to the Constitutional Court for its opinion in regard to the validity of the proposed legislation, if the President believes that such Bill or any provision thereof is or

may be unconstitutional.

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If the President decides to refer a Bill to the Constitutional Court for its opinion in terms of Sub-Article (1) hereof, the President shall inform the Speaker of the National Assembly of the aspect or aspects of the Bill which he or she believes are or may be unconstitutional, and the Speaker shall forthwith take the steps necessary to have the matter

referred to the Constitutional Court for its opinion.

If the Constitutional Court is of the opinion that the Bill is constitutional, the Registrar of the Constitutional Court shall inform the Speaker of the opinion of the Constitutional Court, and the Speaker shall as soon as possible thereafter inform the President thereof and refer the Bill to the President for his or her assent, and the President shall then assent to the Bill in the manner prescribed by Article

82(2) of this Constitution.

If the Constitutional Court is of the opinion that the Bill, or any provision thereof, is unconstitutional, the Bill shall lapse: provided that the Bill in an amended form, which meets the judgment of the Constitutional Court, may again be introduced into the National Assembly in the ordinary manner, and shall thereafter be dealt with in the ordinary way in the

manner prescribed by this Constitution.

Article 85. Signature and Enrolment of Acts of Parliament

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Any valid Act of Parliament which has been passed and assented to in the manner prescribed by this Constitution shall be lodged in the office of the Registrar of the Constitutional Court, and such copies shall be conclusive evidence of the provisions of the

Act.

The public shall have the right of access to such copies subject to such regulations as may be prescribed by Resolution by the National Assembly in order to protect the durability of such copies, or for

the convenience of the Registrar's staff.

Constitution of the Republic of South Africa, 1993
Possible Amendments

Amendment of Section 98

Section 98 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The Constitutional Court shall be the only court having jurisdiction over the following matters, namely -

(a) any inquiry into the constitutionality of an Act of Parliament irrespective of whether such Act was passed before or after the commencement of this Constitution;

(b) any dispute over the constitutionality of any Bill before Parliament subject to subsection (9):

(c) any dispute of a constitutional nature between -

(i) organs of state of which one or more are organs of central government; or

(ii) provincial governments;

the determination of questions whether any matter falls within its jurisdiction."

Amendment of Section 101

Section 101 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

3) Subject to this Constitution a provincial or local division of the Supreme Court shall, within its area of jurisdiction, have jurisdiction in respect of the matters described in section 98(2) subject to section 98(3)."

Amendment of Section 103

Section 103 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) (a) All other courts shall have jurisdiction in the matters described in section 98(2) (a).

(b) Subject to paragraph (a) the establishment, jurisdiction, composition and functioning of all other courts shall be as described by or under a law."

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Amendment of Section 98

Section 98 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The Constitutional Court shall be the only court having jurisdiction over a matter referred to in subsection (2), save where otherwise provided in or in terms of sections 101(3), 101(6) and 103(1)."

Amendment of Section 103

Section 103 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) (a) All other courts shall have jurisdiction in the matters described in section 98(2) (a).

(b) Subject to paragraph (a) the establishment, jurisdiction, composition and functioning of all other courts shall be as described by or under a law."

Amendment of Section 103

Section 103 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) (a) Any other court shall have jurisdiction in relation to any act or omission in conflict with Chapter 3 of this Constitution.

(b) Subject to paragraph (a), the establishment, jurisdiction, composition and functioning of all other courts shall be as described by or under a law."

Amendment of Section 241

Section 241 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection:

"(3) All proceedings which immediately before the commencement of this Constitution were pending before any court of law, including any tribunal or reviewing authority established by or under law, exercising jurisdiction in accordance with the law then in force, shall be dealt with [as if this Constitution had not been passed] by the court of law, tribunal or reviewing authority concerned: Provided that if an appeal in such proceedings is noted or review proceedings with regard thereto are instituted after such commencement such proceedings shall be brought before the court having jurisdiction under this Constitution."

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

3. The national anthems of the "Republic shall be Die Stem van Suid-Afrika/ The Cail 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

ANC NEG COMMISSION :

(i)

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.

THE NEW REPUBLIC

Article 1 Establishment of the New Republic of South Africa

(1) South Africa is hereby reconstituted as a non-racial, non-sexist, democratic and unitary Republic.

(2) The national territory shall consist of the whole of the territory which is recognised by the international community as South Africa, and shall include the Transkei, the Ciskei, Venda and Bophuthatswana.

Article 2 National Symbols

(1) The national flag of South Africa shall be the flag described in Schedule One hereof.

"The national anthem of South Africa shall be - Nkosi sikelel i\200\231iAfrika.

The national coat of arms shall be in accordance with the description set out in Schedule Two hereof.

The national seal of South African shall be in accordance with the description set out in Schedule Three hereof.

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

VIII

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

IX

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

X

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

XI

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

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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.

XII

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

Xv

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

XV

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

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

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

XVII

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

XVIII

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

XIX

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

XX

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

XXI

National and SPR governments shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in Principle

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

XIX shall make provision for appropriate fiscal powers and functions for different categories of local government.

XXII

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

XXIII

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

XXIV

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

- i. The level at which most control can be exercised effectively over the quality and delivery of services, should be the level responsible and accountable for the . quality and the delivery of the services and such level shall accordingly be empowered by the Constitution to do so.
2. The national government shall not exercise its powers (exclusive or concurrent) so as to encroach upon the geographical, functional or institutional integrity of the SPRs.
3. Where it is necessary for the maintenance of essential national standards, the maintenance of economic unity, the maintenance of national security or the prevention of unreasonable action taken by one SPR which is prejudicial to the interests of another SPR or the country as a whole, the Constitution shall empower the national government to intervene through legislation or such other steps as may be defined in the Constitution.

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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.

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, the 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 governments shall have powers, either exclusively or concurrently with the national government, inter alia -

9.1 for the purposes of SPR planning and development and the delivery of services; and

9.2 in respect of aspects of government dealing with the specific socio-economic and cultural needs and the general well being of the inhabitants of the SPR.

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